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# Blueprint for Legal Practice: Establishing Cicero's Ideal Style

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# **Blueprint for Legal Practice: Establishing Cicero's Ideal Style**



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Abstract:

Marcus Tullius Cicero represents the greatest historical expression of the ideal, best orator and lawyer. Cicero is praised for his success in the Roman trial court and skills of legal practice in that arena. Due to the disparity between the Roman world and modern America in the late-20<sup>th</sup>/21<sup>st</sup> century and the lack of a comprehensive guideline, American lawyers do not directly emulate the style of Cicero, with the goal of achieving the status of the ideal lawyer.

Nevertheless, Cicero has a certain, specific style of legal practice which can be applied to the modern American trial court setting. Through the analyses of Cicero's *De Oratore*, a stylistic blueprint containing the eleven (11) attributes of the ideal lawyer are established with the purpose of realistic application for modern lawyers seeking to embody Cicero's ideal.

The blueprint is applied to four (4) cases from Cicero's own legal experience to support the argument for Cicero's criteria. It is then applied to the modern American courtroom, and provides the means by which a generalized definition of the American lawyer would embody these ideal attributes.

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## [Introduction]

*Every spectator, in every corner of the courtroom, has been hanging on every word that has flown from the mouth of the enraged orator. Utter silence falls over the audience as that lawyer who has proven his worth so many times before, in this same arena, casts mountains of incriminating evidence upon the traitor, Catiline. Each gesture strikes the spirit like a physical blow, and each word is infused with frustration and love for the Republic of Rome – “O tempora! O mores!” – These words strike the soul to the very core. How can this be a time where traitors go free? How can this be a time when champions of the Republic are accused? How have the foundational values of Roman society been so corrupted?*

*The Traitor goes free; The Lawyer is exiled. Oh the times, Oh the customs. The rest of the scene fades from the mind, and all that remains is the advocate of Rome. The shining star that is the example for all lawyers; past and present. No matter the times or the customs, this remains true. There are lessons to be learned from the man who worked tirelessly for the benefit of others, even in the face of a decaying society, perhaps in present times more than ever. Marcus Tullius Cicero; the orator, the advocate, the man.*

This research focuses on the actions of Marcus Tullius Cicero in the Roman courtroom, and an in-depth analysis of the development of Roman law from the conception of the Roman Republic in 509 B.C., through the life of Cicero up to 55 B.C. Starting with the fundamental principles of Roman law during the Republican period, the numerous changes and reforms to the system will be closely analyzed to show the progression and transformation of Roman law from the beginning, to the Roman law that Cicero studied and practiced on a daily basis in his professional career.

This research also deals with the modern American courtroom, its procedure, and its actors ranging from the late 1990s through 2014. A comparison will be able to be set up in order to analyze the modern courtroom proceedings according to ancient Roman criteria. This discussion of the modern courtroom is aimed at the realistic application for modern lawyers seeking to embody Cicero's own personal style of legal practice, expressed in this thesis as the ideal style of legal practice.

Cicero has a certain, specific style of law practice which can be applied to the modern trial court. Through an in-depth analysis of Cicero's *De Oratore*, it is possible to define what in Cicero's mind makes the 'ideal orator,' and it will be proven through this analysis that Cicero's 'ideal orator' and his idea of the 'ideal lawyer' are one and the same. By establishing the criteria that Cicero lays out in the *De Oratore*, a 'blueprint' will be defined by which modern law practices can be compared with ancient Roman law practices. The research regarding Cicero himself is extensive and covers a prosecution and defense case from early in his career, as well as a prosecution and defense case from late in his career. This is essential for developing the most well-rounded understanding of Cicero's style of legal advocacy possible, and will make the relationship between the ancient and modern worlds the most clear.

The life story of Cicero is one of a man who started without wealth and came from relative obscurity, yet rose to fame unbound by time. Although it is possible to write to no end about the lifetime achievements and events of Cicero, it is nevertheless essential to lay out in some detail where Cicero came from and provide an outline of the key events that molded him into the orator and lawyer that is so respected by so many scholars and students in every generation of the world.

Cicero was born to a father of the equestrian rank in 106 B.C., meaning that although his family was not quite Roman nobility, his family was not especially poor either.<sup>1</sup> This allowed for Cicero to undergo the proper education for a young Roman youth to enter the world of Roman politics. Yet it is significant to note that Cicero himself was a *novus homo*, being the first of his family to enter the political life. And truly, even from his youth, Cicero had an inclination towards the practice of law,<sup>2</sup> undoubtedly enforced by his many teachers. The most noteworthy of which, from a legal standpoint, was Quintus Mucius Scaevola; considered to be one of the most significant and respected reformers of the Roman legal system for his definition of the *genera*, and his interpretation and understanding of the 12 Tables of the Roman legal system set forth by the *decimviri* in 451 B.C.<sup>3</sup> Livy, in his greatest historical work *Ab Urbe Condita*, describes the formation of the decemvirate, and the transition period from the previously established Roman Monarchy, to the new Roman Republic.<sup>4</sup>

After studying for only a few years under Scaevola, Cicero pursued a brief military career where he served under Pompeius Strabo during the Social Wars<sup>5</sup> as well as under Sulla during the conflict with the Marsi<sup>6</sup> before returning to Roman political life. In 75 B.C., after the conclusion of the Marsian War, Cicero returned to Rome and was awarded the office of quaestor and was stationed in Sicily where he served as provincial treasurer and collected taxes for the government.

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<sup>1</sup> Powell, Paterson (2004), p. 37: Cicero belonged to a family of semi-wealthy landowners; Powell and Paterson claim in their introduction that this 'landowner' class was more predisposed to "a strongly developed ethic of public service for the benefit of their fellow-citizens" (Powell, Paterson. Chapter One, page 37). Contemporaries of Cicero from this class often entered politics as advocates.

<sup>2</sup> Wilkin (1947), p. 1 – 7 ; Powell, Paterson (2004), p. 1

<sup>3</sup> Watson (1995), p. 3: The first 10 of Rome's *Twelve Tables* were drafted by the 1<sup>st</sup> ever 10 *decimviri*; The final two tables were drafted by the 2<sup>nd</sup> *decimviri*, who were widely regarded in history as being marred by corruption.

<sup>4</sup> Liv. III.1-43.

<sup>5</sup> The Social Wars (90 – 88 BC): uprising of Roman allies all along the Italian peninsula. Cicero served under Pompeius Strabo (father of Pompey Magnus) who fought to secure the territories north of Rome.

<sup>6</sup> The Marsian conflict: (see above) The Social Wars (90 – 88 BC).

A few years later, in 69 B.C., Cicero was elected to the office of aedile; an office which dealt primarily with the grain supply, policing the city of Rome, public works, games, and markets. As aedile, Cicero excelled in winning large amounts of public favor and quickly became one of the brighter beacons of the Roman government as a champion and advocate of the people.<sup>7</sup> Soon after his role as aedile, Cicero was elected to the praetorship in 66 B.C. where he took a much more active role in the judicial proceedings in Rome than when he held other offices. As praetor, Cicero performed legislative, administrative, and judicial duties, while still carrying on his duties as an advocate of the Roman people as both prosecutor and defender.<sup>8</sup> Heaping up honors for himself through every level of the *cursus honorum*, Cicero was elected to the consulship in 63 B.C. where he continued to be an advocate of the Roman people, and the best justice possible for society.

Throughout his life, Cicero is expressed in scholarship as having championed three things: 1) The best possible state policy so that the Roman nation could be governed well. 2) Roman dominion over her territories and expansion in order to bring the whole known world to order. 3) An established civil order so that all might be governed by the same uniform legal system.<sup>9</sup> Cicero is criticized for having a distinctly negative view of the Senate throughout his career, although working closely with the Senate in many cases, because of his belief that the Senate was a corrupt and selfish body that did not have the best interests of the Roman people at

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<sup>7</sup> Wilkin (1947), p. 43

<sup>8</sup> Metzger (Summer 2004), p. 245: Because of the nature of the praetorship c. 66 BC, Cicero's duties were tied closely to the function of the Roman justice system, allowing for him to engage even more with his role as advocate and judge than any of his other offices.

<sup>9</sup> Wilkin (1947), p. 64: These three ideals give good insight into the personal convictions of Cicero; they must be kept in mind during the analysis because readers must not lose sight of the fact that Cicero was a champion of republican ideals even in light of the deteriorating social structure in the late Roman republic.

heart.<sup>10</sup> All these things will be necessary to keep in mind as the style and practice of Marcus Tullius Cicero are discussed throughout the analysis.

Direct interaction with Roman law is entirely necessary for the most complete analysis of Cicero's style and practice, therefore it is important to analyze the fundamentals of Roman law and show its progression from its institution at the beginning of the Republican period, to the time of Cicero himself in the later Republican period. The Roman Republic was founded in 509 B.C., following the overthrowing of Lucius Tarquinius Superbus and extended all the way to the founding of the Roman Empire under Augustus in 27 B.C. When the tyrant Tarquinius Superbus was defeated by representatives of the Roman people, led by Lucius Junius Brutus, reflection on the causes of Tarquinius' tyranny prompted the institution of the Roman legal system for the betterment of the Roman people as a whole.

As Rome became more settled in its new status as a republic, offices and written laws were established to maintain order, and settle the increasingly prevalent legal disputes that arose as a result of the Roman people becoming a more self-governing body. The foundational principles of Roman law were first laid out in 451 B.C. with the establishment of the *decimviri*; ten elected officials first tasked with drafting the basic principles of Roman law.<sup>11</sup> These first ten officials produced the first ten 'tables' (L. *tabulae*) of what would become the *Twelve Tables* of Roman law, with the second round of *decimviri* producing the final two tables.<sup>12</sup> The *Twelve Tables* established by these first two groups of *decimviri* would serve as the benchmark for future reforms and as the foundational principles for new laws that would be created over the

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<sup>10</sup> Wilkin (1947), p. 64 – 65: While this might be true of Cicero later in his career, as the Republic was marked by corruption; rather than rely on the judicial administration of the Senate, Cicero was more prone to relying on his own prowess and legal knowledge to secure the correct administration of a verdict. [Note also *In Verrem II*, III.145]

<sup>11</sup> Riccobono, Nathan (November 1925), p. 2 – 4 ; Watson (1995), p. 7: Both sources here highlight the founding of the *decimviri*, and both seem to view the 2<sup>nd</sup> group of *decimviri* to have been either ill-informed as to the proposed function of the law, or corrupted by a tumultuous social atmosphere.

<sup>12</sup> Watson (1995), p. 7

course of the Republican period. Detailed descriptions of each table and the formation of the *Twelve Tables* are covered extensively in Book III of Livy's *Ab Urbe Condita* and are representative of the fundamental, foundational values of the Roman Republic.<sup>13</sup>

- *Table I* – Procedure for Courts and Trials
- *Table II* – Procedure for Trials
- *Table III* – Concerning Debt
- *Table IV* – Rights of the *Pater Familias* over the Family
- *Table V* – Concerning Legal Guardianship and Inheritance Laws
- *Table VI* – Concerning Acquisition and Possession of Property
- *Table VII* – Concerning Land Rights
- *Table VIII* – Concerning Legal Torts and Laws of Injury
- *Table IX* – Concerning Public Law
- *Table X* – Concerning Sacred Law
- *Table XI* – Supplemental Table (Courts, Trials)
- *Table XII* – Supplemental Table (Private Laws)

At this point, it is the tendency to draw conclusions based on the description of these 12 Tables that would lead one to believe that these foundational Roman legal principles are taken directly from ancient Greek society; looking closely at the Laws of Solon, this seems to be the case. Yet, the fact of the matter seems to be that Roman law bears no sign of Greek influence, although Solon's 10 Table outline of Greek law seems to be a reciprocal.<sup>14</sup> Nevertheless, the social importance of having firmly established, publically displayed laws cannot be overstressed, for legislation publically established for the citizens does not permit shady manipulation of those same laws by a group like the patricians, which would have adverse effects on the majority.

One of the major problems with having set tables within which to operate is inevitable variation. Not every case was able to be fit nicely into one or more of these twelve tables, so legal officials had to be appointed in order to interpret and apply this new law framework in

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<sup>13</sup> Liv. III.1-43.

<sup>14</sup> Watson (1995), p. 4 – 5 ; Riccobono, Nathan (November 1925), p. 3 – 4: Stylistically and fundamentally speaking, comparisons can be drawn by scholars between the Laws of Solon and the 12 Tables of Roman law. Yet nevertheless, the fact remains that although emissaries were sent to Greece to research the foundations of Greek law, nothing from Greek law was used in the formation of the 12 Tables. [See Livy, *Ab Urbe Condita*, Book III]

reality. And so, upon the drafting of the 12 Tables by the first and second *decimviri*, the College of the Pontiffs was established in 450 B.C. in order to interpret and apply the new laws to given cases.<sup>15</sup> Initially, the pontiffs were only elected from the patrician class (up until c. 300 B.C.)<sup>16</sup> and were considered to be the greatest legal minds of the early Roman republic.

Yet, the exclusion of the plebeians in this regard was one of the chief reasons that Tarquinius Superbus was overthrown in the first place; the patricians were the minority that held all the power, while the plebeian majority suffered at their expense. So, in 300 B.C., plebeians were elected into the College of Pontiffs which actually destroyed the institution itself, by ‘cheapening’ the knowledge given by the highly educated patricians that up until that time composed the offices of the pontiffs. From this point, Roman legislation shifted from this all-inclusive College of Pontiffs to a system with three parts: 1) *comitia centuriata* – the main political assembly (composed of Romans from all classes). 2) *comitia calata* – the intermediate assembly (composed primarily of patricians with extensive legal knowledge). 3) *consilium plebis* – the council of the plebeians.<sup>17</sup>

Of these three legislative bodies, the *consilium plebis* quickly became the most prominent with regard to law-making and civilian control. Again, this comes from the negligence of Tarquinius Superbus and the patrician class back in 509 B.C., when the plebeians were ignored in favor of the small, more-wealthy minority. In the Roman Republic, the voice of the plebeian is much louder, and carries the weight of the majority of the Roman people. The concern of Roman legislation shifted from the care of the wealthy minority to the needy majority, and so the

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<sup>15</sup> Watson (1995), p. 7 ; Riccobono, Nathan (November 1925), p. 2 - 3

<sup>16</sup> Watson (1995), p. 7: By 300 BC, plebeians, as well as patricians, could be elected to the College of Pontiffs.

<sup>17</sup> Kocourek (April 1922), p. 438: The fundamental reason for the shift from Monarchy to Republic in Rome was a result of negligent kings (i.e. Tarquinius Superbus) ignoring the needs of the common people (plebeians). So it is only natural that the primary focus of the new Roman republic should be the needs of the people. All three legislative bodies were to have the betterment of the nation and all its people at heart. N.B. This paragraph was included to add support to the inclusion of the discussion of the *plebeian/patrician* issue in this thesis.

grievances of the plebes were the most important. Yet even in this time of reformation between the Roman social classes, the wealthy minority of the patrician class still held the majority of power in both the political and legal systems, with the greater majority of Roman citizens excluded from legal office and active legal practice.

## [Chapter One]

### Introduction to Roman Law and the Roman Courtroom

The principles of Roman law were born from a tumultuous time in Roman history; following the termination of the Roman monarchy with the expulsion of the tyrant Tarquinius Superbus.<sup>18</sup> The Roman people were in desperate need of order and a solid form of government which left behind the negligent litigation of the monarchs, in favor of a government concerned completely with the well-being of the citizens. These governmental ideals became reality with the formation of the Roman Republic in 509 B.C., bringing order and justice to a Roman people previously deprived of basic rights under the tyrannical rule of the Roman monarchs.<sup>19</sup> As a means of providing the necessary historical context for this chapter and the remainder of the work, Livy's *Ab Urbe Condita* Books I and III are especially helpful and outline the formation of the Roman Republic.

Throughout history, the foundational principles of Roman law have served as references for legal and governmental practice and are constantly praised for their stability and majesty. At the formation of the Roman Republic, the Roman people set forth the primary example of how a government was meant to be run, and translated that genius into the Roman legal system that would serve as the baseline for thousands of years to come. In this section, the origins of that Roman legal system will be analyzed in order to give a brief, yet comprehensive, introduction to Roman law that will be necessary to understand the later analyses of Cicero and his actions. This section also contains descriptions of various offices and legislature from the early years of the republic that shaped the Roman legal system, and can be used to characterize it effectively. The

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<sup>18</sup> *Lucius Tarquinius Superbus* – “Tarquin the Proud;” 7<sup>th</sup> Monarch of Rome; r. 535-510 B.C.

<sup>19</sup> This is not a blanket statement that the Roman people experienced nothing but tyrannical rule under the Roman kings. For example, scholarship indicates that Servius Tullius, the 6<sup>th</sup> king of Rome, to have been quite a competent ruler. I am simply describing the state of the Roman people in reaction to the corrupt rule of Tarquin the Proud, and others like him.

second half of this chapter is primarily concerned with giving an introduction to the actual Roman courtroom; i.e. what kind of courts were present in the republic and which actors and officers were involved in said courts.

### The Inception of Roman Law

It is necessary to begin the analysis of Roman law with the events that brought about the creation of the Roman legal system in the first place, and so the analysis will begin with the expulsion of Tarquinius Superbus and the establishment of the Roman Republic in 509 B.C. Tarquinius Superbus, known popularly in translation as ‘Tarquin the Proud,’ was the seventh and final king of the Roman monarchy, which extended from the traditionally accepted founding of Rome by Romulus in 753 B.C. until Tarquin was expelled by the Roman people in 509 B.C. Although Tarquin was regarded as a negligent and tyrannical ruler,<sup>20</sup> the Roman monarchy was not marred by corrupt rulers as frequently as the Roman Empire, for example. On the contrary, the Roman monarchy was characterized as being quite stable, and providing the necessary development for the transition to the Republic in 509. Yet in some ways, it was over-development on the part of Tarquin that led to his expulsion.

One of the defining characteristics of Tarquinius Superbus was his lust for land and spoils, which led in turn to many campaigns against then-wealthy cities and tribes nearest Rome in order to expand the kingdom.<sup>21</sup> The Roman people basically became slaves to the inclinations of the king and labored constantly during his rule to keep building up the city of Rome while maintaining the new, broader range of the Roman kingdom. This prompted unrest in the Roman people and Tarquin quickly became an infamous figure in Roman society. Unwilling to simply stand by while their king abused his power so outrageously, the Roman people led by the tribune

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<sup>20</sup> Watson (1995), p. 33 - 35

<sup>21</sup> See Liv. III: Tarquinius’ campaigns v. Volsci (c.533 B.C.); v. Gabii (c.525 B.C.); v. Rutulians (c.510 B.C.)

Lucius Junius Brutus, brought the grievances against the king in public court before the *comitia centuriata*,<sup>22</sup> realistically the only voice of the Roman people under the monarchy, composed of Roman patricians.<sup>23</sup> One of the most grievous events that sparked this transitional reform from Monarchy to Republic was the horrific rape of the Roman woman Lucretia by the son of Tarquinius, Sextus Tarquinius. Outlined in *Ab Urbe Condita*, Book III, Section 44, Livy tells of how this terrible act played a pivotal role in shaking the Roman peoples' faith in Tarquinius.<sup>24</sup>

Brutus brought the grievances against the king before the *comitia centuriata* while Tarquin was off on one of his many campaigns against the Rutulians,<sup>25</sup> and so it seemed like the Roman people were conspiring behind the king's back which was a necessary precaution considering the scope of the king's power. The findings of the *comitia* in this case would be the foundation of the Roman Republic, and so it was created with a Roman king still technically in power. This is important to note because this really characterizes the Roman people as becoming increasingly independent, which would be entirely necessary for the effective implementation of the new republic especially in the first few years. In place of the monarchy, the Roman people set up a system of government that placed the burden upon two magistrates, elected annually, who would deal with the majority of legal and governmental issues that plagued the Roman people.<sup>26</sup> These two magistrates would eventually become the office of the *consul* and were elected exclusively from the patrician class of Romans, at least until around 367 B.C. when legislation was passed that allowed plebeians to be elected to the position as well.<sup>27</sup>

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<sup>22</sup> Watson (1995), p. 32

<sup>23</sup> Riccobono, Nathan (November 1925), p. 3 - 5

<sup>24</sup> Liv. III.44.

<sup>25</sup> See footnote (19). Tarquin's campaign against the Rutulians (c.510 B.C.).

<sup>26</sup> Watson (1995), p. 2 - 3

<sup>27</sup> *Lex Licinia Sextia* – (c.367 B.C.) Due to increased tensions in the legal and political spheres between the plebeian and patrician classes, this law was put in place to grant plebeians the right to enter leadership roles in both the government and legal system. Initially, the law dictated that one of the two annually elected consuls be from the

## Plebeians and Patricians

Here, it is important to include a brief description of the conflict between the Roman classes at this time, because it is an issue that spans both the last years of the Roman monarchy and the early years of the Roman Republic. The conflict between the patricians and the plebeians has its roots in the very issues that lead to the creation of the Republic in the first place.<sup>28</sup> One of the major grievances brought against Tarquin was negligent rule; he focused only on the wants and needs of himself and those most upper-class Roman citizens (select patricians), while ignoring the needs of the majority of Roman citizens (plebeians). It seems as though the patrician class, whether intentionally or not, adopted a similar viewpoint with regard to the plebeian class by becoming increasingly reserved when it came to issues dealing with the common citizen and making all the efforts to keep their own social position secure. The result of this patrician arrogance was an increased division of the classes, especially in the last years of the Roman monarchy. With the deposition of Tarquin, the patricians and the plebeians made a very real effort to bond together in the face of this difficult time. And truly it would take the combined efforts of all Roman citizens (both patrician and plebeian) to make the Roman Republic a success. It was this coming together over the matter of deposing Tarquin that made the future success of the Republic possible, because it is not outlandish to think that the continued monarchy would have only served to increase the division between the classes to the point where cooperation between the classes may not even have been possible.

Nevertheless, when the Roman Republic was founded in 509 B.C. as a result of the combined efforts of both the patrician and plebeian classes, patricians still held most, if not all,

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plebeian class, but this law led to the creation of the office of praetor, and other opportunities for every Roman to become involved.

<sup>28</sup> Metzger (1998), p. 175 - 177

of the power in both the governmental and legal spheres.<sup>29</sup> Patricians effectively held a monopoly on the power of government, because at this time, only patricians could be elected as leading members in the legal system. For roughly a century and a half, only patricians could be elected to the office of consul, and although the two elected consuls could legally be replaced with three military tribunes or one dictator, the Romans who held those positions were always patricians until around the year 367 B.C.<sup>30</sup>

The fact remains that although the classes remained fairly separate from each other in the early years of the Republic, there was much better communication between the classes than ever before. Previously, the wants and needs of the plebeians were either ignored or set aside by the king and high-level patricians, but now with the institution of the Republic, the patricians were increasingly aware of the needs of the common citizen fostering some sense of solidarity between the classes.

#### Formation of the *Twelve Tables* of Roman Law

In order for the new government to actually govern well, the Roman people decided that there should be a foundational set of legal rules that would serve as the basis for all future legislation as the Roman legal system developed. And so, the consuls proposed the first ever *decemvirate*, composed of the best (*patrician*) legal minds in Rome to set forth a foundational outline of Roman law. The *decemvirate* was composed of ten patricians, chosen from the best legal minds in Rome by the consuls, who deliberated and researched extensively in order to set forth the best set of rules by which to govern this new republic.<sup>31</sup> Livy explains the function of the *decimviri* as establishing for the Roman people *petitum legatum*, a body of laws, to be displayed publically (Liv. III, 1-43). The eventually resulting body of laws represented the

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<sup>29</sup> Watson (1995), p. 35 - 41

<sup>30</sup> *Lex Licinia Sextia* (367 B.C.) [See footnote (27)]

<sup>31</sup> Watson (1995), p. 32 - 34

combined legal knowledge of the first and second *decemvirate* were the ‘Twelve Tables’ of Roman law, which survive as the most clear representation of the fundamental legal system of Republican Rome.<sup>32</sup> The *Twelve Tables* represented the accumulation of Roman legal knowledge with regard to civil law, the most equivalent to common law in ancient Rome. With the physical writing down and public display of these foundational laws for the sum-total of Rome’s citizens, the *Twelve Tables* represented a promise from the Roman people, to the Roman people, that the function of the legal and political systems would serve the Roman people, not harm them.

That first *decemvirate* was charged with setting forth a *petitum legatum* in 451 B.C. in an attempt by the ‘ruling’ consuls to satisfy the need for a frame of reference by which to govern the people of Rome. The results of this first *decemvirate* were the first ten of the *Twelve Tables* of Roman law, which covered many (yet not all) of what were viewed then as the necessary laws for governing the new republic. What follows is a brief analysis of those first ten tables produced from the efforts of the first *decemvirate* in 451 B.C.:<sup>33</sup>

- Table I – Outlined the procedure for the courts and trials. Most specifically, this table dealt with the interactions between the defendant and the plaintiff prior to the actual trial. The law dictated necessity for the presence of the defendant at the trial, and outlined the means by which the plaintiff would take steps to make sure the defendant appeared.
- Table II – Continued with the outline for trials. This table was set up so that evidence may be gathered in a legal way by the plaintiff when making a case against a defendant. The plaintiff may gather evidence from witnesses, yet the extent of this evidence-gathering is restricted by this table.
- Table III – Dealt with requirements for dealing with debt. This table set the ‘grace-period’ for the payment of any debt to be 30 days, after which the freedom of the defendant is effectively forfeit. The punishments for unpaid debts are also laid out in this table and are appropriately severe.
- Table IV – Defined the *pater familias* as having legal control over the family. One of the more-harsh of the foundational Roman laws, this table deals with the *pater* as having

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<sup>32</sup> Metzger (Summer 2004), p. 247-253

<sup>33</sup> Interpretation of *Twelve Tables* courtesy of translation by Johnson, A.C., Coleman-Norton, P.R., & Bourne, F.C. [See additional citation: *Ancient Roman Statutes*, University of Texas Press, 1961]

complete control over his family, to the point of ownership. Fathers could sell their children for personal financial gain as well as determine whether or not a particular child lives or dies.

- Table V – Set forth the requirements for dealing with issues of inheritance and legal guardianship. Tied in closely with Table IV, this table addresses the roles of women as being subservient to their husbands, as well as dealing with the freeing of slaves and the rights of citizens with regard to inheriting property or possessions.
- Table VI – Dealt with all things related to the acquisition and possession of property. This table also includes sections concerning verbal agreements between citizens and how those agreements are binding, and meant to be honored. Once again dealing with the rights of women, they are presented as being the legal property of their respective husbands, to the point that the husband has the same amount of power over his wife as he does over his children.
- Table VII – Continuing to deal with property, dealt with land rights. Aside from continuing to deal with property and land rights, this table also put into effect an ‘eye-for-an-eye’ legal rule with regard to the injury of another citizen. Either way, the injured citizen would be compensated; either by the injury of the offender, or other adequate compensation.
- Table VIII – Set up the criteria of dealing with *delicts*<sup>34</sup> and torts, relating to laws of injury. Ranging from simple laws that banned public meetings at nighttime, to laws requiring punitive action for lying, this table is one of the more comprehensive. Particular attention is given to unlawful actions conducted in the courtroom itself, with explicit punishments for giving false testimony or poor advocacy.
- Table IX – Outlined public law. One of the other comprehensive tables, this table outlined other unlawful behaviors, often punished by death. Such laws contained in this table protected defendants from harm who were not yet found guilty, as well as set forth the punishments for the corruption of legal officials.
- Table X – Dealt with all things concerning sacred law. The most difficult to define in Roman law, sacred laws were primarily concerned with the actions of citizens during funerals or religious celebrations, prohibiting some actions such as inappropriate lamentation or disgraceful sacrifices.

Following the establishment of these ten tables by the first *decemvirate*, the consuls still felt as though there were holes in these legal foundational principles. Thus the result was the election of the second *decemvirate* in 450 B.C. which provided the last two tables in order to clarify the first

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<sup>34</sup> *Law of Delict* – (private, civil law) concerned with ‘private wrongs;’ closest representation of criminal law in the Roman republican legal system. Crimes included - but were not limited to - *theft, robbery* (with violence), *property damage*, and *verbal or physical assault*.

ten, as well as add the necessary legal standards so that the republican government could function to the best of its ability.<sup>35</sup> The last two supplemental tables indeed seem to clarify the entire corpus of the tables, with Table XI laying out some other laws concerning the interactions between citizens of the two classes (patrician and plebeian), and Table XII providing the ‘umbrella statement’ to allow for further elaboration on these twelve tables in the future:<sup>36</sup>

- Table XI – Supplemental table dealing with the interaction between the patrician and plebeian class. Still separated by distinctions of class in the early republic, this addition to the twelve tables was necessary to maintain order in a republic that was still becoming acclimated into one cohesive body of Roman citizens.
- Table XII – Supplemental table that allows for greater elaboration on the laws contained within the preceding tables. The essence of this table is that any legislation proposed in the future, with the full support of the Roman people, will be considered binding law just as the rest of the laws contained within the *Twelve Tables* are to be considered.

Upon the creation of the *Twelve Tables*, the Roman government was still being formed into some semblance of order by the annually elected consuls, and it became quickly apparent that it was necessary to appoint a body in charge of interpreting the *Twelve Tables* as various legal conflicts began to arise in Rome. At this period in Roman history, the Roman people were still very much imbued with the religious facets of their culture, with religious advisors and priests being the most qualified for interpretation of all facets of Roman life. And so, the first *Collegium Pontificum* - ‘College of Pontiffs’ - was established and charged with this difficult task of interpreting the *Twelve Tables* and fitting them with legal cases as they arose within the Republic.<sup>37</sup> Again, the members of the College of Pontiffs were all drawn out from the patrician class, because patricians had made up the previous group of advisors to the Roman monarchs and those of that particular class were still regarded as having the best legal *ethos* when compared

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<sup>35</sup> Livy highlights this separation of the final two tables from the main corpus of the first ten tables again in Book III saying, *duabus tabulis ad decem adiectis* / two tables were added to the ten (Liv. III, 38) and that these final tables were a result of extensive deliberation past the term of office for that first decimverate.

<sup>36</sup> Interpretation of *Twelve Tables* courtesy of translation by Johnson, A.C., Coleman-Norton, P.R., & Bourne, F.C. [See additional citation: *Ancient Roman Statutes*, University of Texas Press, 1961]

<sup>37</sup> Kocourek (March 1922), p. 339

with plebeians who may have little to no knowledge of the law.<sup>38</sup> Of those elected to the College of Pontiffs, the majority focused their efforts on the broad interpretation of the *Twelve Tables*, while one patrician was elected to deal solely with interpreting private law. This is the legacy of the *Twelve Tables* of Roman law, the combined efforts of the patricians, drafted for the betterment of the plebeians; although the patricians were the only ones making the legislation, it is accepted that they did all this with the needs of the plebeians in mind, as well as achieve for themselves (patricians) the level of social and political stability which would allow for successful development of Republican society.

### The Roman Courtroom

Before launching into an analysis of the Roman courtroom during the years of the Roman Republic, it is necessary to note that the actual reconstruction of the ancient courtroom is not the goal. Rather, the analysis will seek to explain the roles of the most influential actors in the Roman republican courtroom, and how legal actions were conducted in that arena. Although it is true that there are several types of different law courts in ancient Rome, with varying numbers of participants, there are certain officials that are always present in the Roman republican trial court, and the trials are conducted in a similar fashion no matter what court hears the case.<sup>39</sup>

This introduction to the Roman republican courtroom will analyze those offices and attributes that are constant throughout Roman trial courts, as well as point out a few major distinctions between the different trial courts that can be found throughout the development of the Republic. Special attention will be given to the characteristics and role of the advocate in the Roman courtroom, paying close attention to the advocate's function both for the prosecution and the defense.

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<sup>38</sup> Watson (1995), p. 34 - 41

<sup>39</sup> Bablitz (2007), p. 51 ; Plescia (January 2001), p. 58 - 59

With regard to the actual, physical layout of the Roman courtroom it is not necessary, when considering the scope of this research, to speculate as to the supposed arrangement of any of the Roman law courts. Therefore the analysis will proceed with those physically present in the courtroom during a civil case, without assuming their actual orientation within the courtroom itself. In the Roman legal system, each civil case was always ‘individual v. individual’<sup>40</sup> and presided over by either *unus iudex* – a single judge – or a panel of judges.<sup>41</sup> These civil cases were usually held in a larger, open arena to allow for advocates, the presentation of witnesses, and often an audience.

From the creation of the Roman legal system in the mid-4<sup>th</sup> century B.C. with the implementation of the *Twelve Tables* of Roman law, to the later years of the republic, the participants in the Roman courtroom remain relatively constant. Since Roman civil trials were always ‘individual v. individual,’ the litigants were required by law to be present at the trial so that the judgment would be fair. As far as those to judge the Roman republican cases, the judge was always an elected magistrate – a *iudex* – usually of the upper (patrician) class so as to be qualified to judge the case in the most just way possible. If the case was of greater importance, a panel of *iudices* could have been used to administer justice.<sup>42</sup> If the litigants felt inclined to have advocates represent them in the trial, that was also an option; an option that was often taken by those litigants whose accounts survive. In addition, to support either side of the case, the litigants could call witnesses to provide testimony, which would be heard by the presiding judge. Finally,

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<sup>40</sup> Just as in modern legal systems, civil cases are always *individual v. individual*; likewise, state cases are always *individual v. the state*. An exception here is that there are no federal-level cases in ancient Rome; cases dealing with treason and other such crimes that harm the entire country were conducted in much the same manner as state-level cases in republican Rome.

<sup>41</sup> Bablitz (2007), p. 59 - 60

<sup>42</sup> Bablitz (2007), p. 51

again, if the case had gained enough renown, there would be an audience present in the courtroom itself; becoming witnesses themselves to the proceedings in the court.<sup>43</sup>

It is important to interject here about the office of the Roman *praetor*, the duties of which involved the function of the Roman legal system and the overall administration of justice. The office itself was created c. 367 B.C. as a result of a shift in legal power between the classes that finally allowed the plebeians to take active leadership roles within the Roman legal system.<sup>44</sup> One of the first ways the plebeians took advantage of this new political power was to enter the Roman legal system as *praetors*; those elected by the consuls to preside over the legal cases and administer justice to Roman citizens. From the creation of this office, the Roman trial court really began to take a definite shape, as the praetors had legislative power and could shape the system more to benefit the common Roman citizen, unlike the patrician-run trials had done effectively before.<sup>45</sup> During the years of the republic following the creation of the office, the role of the *iudex* was no longer exclusively held by upper-class patricians, but by elected Romans from various classes deemed worthy to administer justice.

Going back to what was stated before, the primary actors in the typical Roman courtroom to be discussed in the scope of this research are as follows: 1) the *iudex* – the judge, or panel of judges, appointed by upper level Roman magistrates (*consuls*) to administer justice. 2) the litigants – the plaintiff(s) and the defendant(s) in a particular civil case. 3) the advocates – legal representatives for the plaintiff(s), the defendant(s), or both. 4) the witnesses – called upon by the plaintiff(s) or the defendant(s) to provide testimony to support the case. 5) the audience – though

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<sup>43</sup> All the material mentioned in the corresponding paragraph is dictated by the *Twelve Tables*. The actors to be present in the courtroom during a particular civil case was laid out in the *Twelve Tables* so it can be accepted that these mentioned actors were the primary focus of the trial proceedings.

<sup>44</sup> *Lex Licinia Sextia* – (367 B.C.) [See footnote (24)]

<sup>45</sup> Plescia (January 2001), p. 56 - 57

not always present, they provide reaction to the events of the trial as well as serve as witnesses to the administration of Roman justice.<sup>46</sup>

These definitions of the actors in the typical Roman courtroom will serve to aid in the comprehension of the in-depth analysis of the specific Roman legal cases selected for this research. The five groupings of actors in the Roman courtroom will serve as the all-inclusive example of all Roman courtrooms in general, for the focus of the research deals with cases that include all of these actors.

### Development of the Roman Legal System

Scholars divide the evolution of the Roman Republican legal system into three separate periods, most basically described as such: 1) the pontifical period, 2) the praetorian period, and 3) the bureaucratic period.<sup>47</sup> This distinction is made by multiple scholars and is divided according to the logical evolution of the law as the Republic progressed. The first period, mentioned above as the ‘pontifical period’ was characterized by a form of law called *ius civile*; simply, the ‘law of citizens.’ As stated in an earlier paragraph, at the time of the creation of the Roman republic, the people of Rome were still deeply involved in the religious aspect of their culture. The *ius civile* was a direct reflection of this dependency on ancient ways and customs, focusing on the inherent right of Roman citizens since the very beginnings of the nation. This is also the reason why there was so much emphasis placed upon the role of the College of Pontiffs so early in the Republic; those elected to the *collegium* had religious connotations that went along with their position, which it was believed granted them some greater power of discernment

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<sup>46</sup> It is noteworthy that the audience in the Roman courtroom would have been mainly composed of those of the plebeian class; during this time in Roman history (Republic c. 367 B.C.) it would have been increasingly important that the plebeians feel as though the Roman legal system was working for them, and not to serve only the upper-class.

<sup>47</sup> Kocourek (March 1922), p. 339 – 340 ; Riccobono, Nathan (November 1925), p. 1 - 2

than the common citizen, or even the most educated patrician.<sup>48</sup> The *Twelve Tables* are the actual written testament of the *ius civile*, and one can see by simply scanning a translation that the laws contained within the work are most definitely of some ancient origin. The close relationship between those elected to the College of Pontiffs and Roman antiquity made them the primary candidates for interpreting these more antiquated laws for the present Roman republic.

The second period, mentioned above as being the ‘praetorian period’ of Roman legal development, is the next major transformation of the Roman legal system and seemingly a huge step in the right direction for the people of Rome as a whole. Adding to the previous period of *ius civile*, the praetorian period began to fully incorporate the next stage of justice, *ius gentium*, which increased the focus of Roman law applied to all free men, and introduced ideals of equality that became reality in laws like the *Lex Licinia Sextia* and the creation of the various offices.<sup>49</sup> This period, beginning around the year 367 B.C. with the implementation of the *Lex Licinia Sextia*, was characterized as a major evolutionary period for the Roman legal system because it broke down even more barriers separating the Roman classes from each other; bringing the Roman people even closer together to participate in the growing majesty of Roman law. *Lex Licinia Sextia* dictated that of the two annually elected consuls, one would be selected from the patrician class, and the other would be selected from among the plebeians. This is truly a monumental step for the Roman plebeians, from being the targets of most of the corruption in Roman government and policy to actively participating in the Roman legal system at the highest position.<sup>50</sup> Yet that was only the beginning of the legal reforms that would continue to elevate the status of the Roman plebeians, for not long after, the other political offices were created; *quaestor*, *aedile*, et al. All Romans, plebeian or patrician, had the opportunity to excel in politics

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<sup>48</sup> Riccobono, Nathan (November 1925), p. 1 - 4

<sup>49</sup> Riccobono, Nathan (November 1925), p. 1 - 4

<sup>50</sup> Plescia (January 2001), p. 56 - 58

and law as a result of the creation of these positions, but none was more influential than the office of *praetor*, outside that of *consul* of course. As a praetor, a Roman citizen had a great deal of responsibility directly relating to the law courts and legal matters, as well as having some legislative power. This granted the unique opportunity to those Romans elected to the office of praetor to effectively make laws, and shape the system to better suit the needs of the Roman people as a whole. The legislative power of the praetor came in the form of the praetor's 'edict,' basically, an opening speech given upon election that included everything that the particular praetor meant to accomplish during his term, as well as a proposed law that would benefit the people. Although the laws set in place by a praetor were nullified at the end of the term, if the legislation was good enough, it would be ratified by the Senate and made a permanent part of Roman legislation. In these ways the praetorian period dramatically changed the state of the Roman legal system.

By the time of the late republic, the Roman legal system had entered the period named above as the 'bureaucratic period.' The kind of justice had evolved yet again from the original *ius civile*, and was at this point characterized as *ius honorarium*, and relied heavily on the individual administration of justice by the presiding judge in any particular civil case.<sup>51</sup> It is important to note that the Roman Republic has been divided up into three periods here according to the kind of justice administered, that foundational *ius* found in all three periods is essentially the same.<sup>52</sup> Looking at it this way, the *ius civile* was the first, and foremost foundational principles of justice for the Roman legal system in its early stages of development. When *ius gentium* is accepted in the mid-3<sup>rd</sup> Century, it does not replace *ius civile*, instead it elaborates on

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<sup>51</sup> Riccobono, Nathan (November 1925), p. 1 - 4

<sup>52</sup> It is important to note that each of these three (3) proposed, divisional periods for the Roman Republic are all foundationally the same; having their roots in the original *Twelve Tables*. For the sake of clarity and comprehension, I have chosen to describe the three respective periods of Roman legal development during the Republic in this way.

it; making the legal ideals more well-rounded. In the same way, *ius honorarium* does not replace *ius gentium* and *ius civile* but rather is entirely founded on both principles. The only way that *ius honorarium* can be used effectively is when those sitting in judgment (*praetor, iudex, iudices*) are entirely familiar with both *ius civile* and *ius gentium* so as to administer justice in the best way possible, always referring back to the foundational principles of Roman law.<sup>53</sup> Getting back to the ‘bureaucratic’ designation for this period, the name comes from the fact that the bureaucrats (*praetors, iudices, et al.*) completely control the legal functions of the courts at this time. The Roman legal system has grown so much and developed to such an extent that every single case does not require the same careful process of checking that previous years required. There is no College of Pontiffs to turn to for immediate interpretation here; rather, each individual magistrate was required to administer the law according to his own discretion and knowledge.<sup>54</sup> This period of *ius honorarium* is the Roman legal world into which Marcus Tullius Cicero entered, and surely there was no better time period than this to be an advocate in ancient Rome. With the extensive growth of the Roman legal system, there was no end to cases flowing through the courts that required the aid of an advocate, and without the constant checks for strict adherence to every facet of the law, advocates were able to take more liberties in the courtroom in order to convince the presiding magistrate of guilt or innocence.<sup>55</sup>

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<sup>53</sup> Kocurek (March 1922), p. 339 – 343 ; Riccobono, Nathan (November 1925), p. 1 - 5

<sup>54</sup> Therein lies the Roman principle of *jurisprudence*; not discussed in the scope of this research, yet entirely important to note so as not to detract from the *ethos* of the judges of the late Republic. Their job was most difficult, yet the administration of true justice was the ultimate goal.

<sup>55</sup> The intention here is not to suggest that advocates sought to manipulate the Roman legal system in the mid-to-late Republic. This statement simply means to suggest that due to the increased growth of the Roman legal system as it progressed, the rules governing the actions and speech of the advocate allowed more room for personal style from advocate-to-advocate.

Leanne Bablitz (2007, p. 141) provides an eloquent description of the Roman advocate:

The advocate was the central element in the Roman courtroom, the lynchpin between the various participants; through him the litigant spoke, with him the opposing counsel argued, and by him the audience was moved and the judges persuaded...

In truth, this is one of the most direct and thought-provoking description discovered in the extensive research for this thesis. Right from the beginning of the description, thoughts turn to Cicero; posed in the center of the courtroom, pouring forth his eloquent Latin prose, gesturing forcefully at the defendant, and prompting gasps from the surrounding audience. Is this a feasible scenario? From the amount of scholarship considered in the writing of this thesis, it certainly seems so.

#### Advocacy Arises – Patronus & Cliens

It is important to remember that the advocate was not an absolutely necessary feature of a Roman civil or criminal trial, although this may be the assumption considering the advocate's role. Going back to the foundational principles of *ius civile* and the *Twelve Tables*, it is noted that only the litigants be required to be present at trial before the presiding magistrate in order for the trial to occur.<sup>56</sup> Provisions are only made in these foundational principles of Roman law that an advocate be allowed to be present for either litigant, and his presence is not necessary for justice to be administered. Therefore it is interesting to note that the litigants themselves do not seem to be the focus of the attention in the courtroom; rather, the advocate (when present) commands the attention of the courtroom.<sup>57</sup> This makes logical sense if it is accepted that the advocate completely speaks for his litigant; this would effectively make the advocate the litigant, and the actual litigant himself would simply become an observer awaiting the outcome of his advocate's speech.

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<sup>56</sup> See definition of *ius civile* (p. 19 – 20); 'Table I' of the *Twelve Tables* (p. 13, blt. 1).

<sup>57</sup> Bablitz (2007), p. 144 - 145

As can be expected, advocacy in the Roman Republic began at a slow rate, due to the relative paucity of available cases and the fledgling nature of the Roman legal system as a whole. At first, most advocates did not receive any monetary compensation from the litigants they served; instead accepting favors or simple gratitude in return for their services.<sup>58</sup> Yet as the Roman legal system developed over the years of the Republic, advocacy became increasingly popular as many Romans began to practice legal advocacy and the case load for the republic grew ever larger. Unlike modern times, the Roman republic had no ‘advocacy laws’ either to demand the presence of an advocate or to provide one for destitute litigants.<sup>59</sup> As was the case, litigants had to make their own arrangements to be represented in court. Advocates were not at all free, and some who may have considered themselves more prominent in the field of advocacy would have charged a heightened rate for their services. Those litigants who were in need of representation and had the required funds would have hired advocates in this way, and although this was the most frequently used method of obtaining representation, there was also the method of ‘patronage.’<sup>60</sup>

The use of the civil court was an opportunity that was taken by the majority of plebeians, having seen the chance to actively participate in a legal system biased towards the patrician minority. Given this increase in plebeian involvement in the Republican legal system, and with many of the civil cases flowing in from the common citizens of Rome, it would not have been uncommon that litigants would not be able to pay for an advocate, although desperately in need of representation.<sup>61</sup> The other option mentioned before is that of obtaining a *patronus*; a patron

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<sup>58</sup> Bablitz (2007), p. 144 ; Crook (1995), p. 16

<sup>59</sup> *Advocacy laws* are a product (and service) of the modern American Justice system. Even though each Roman citizen had the legal right to advocacy in a trial, an advocate would not be appointed to them if they could not afford one.

<sup>60</sup> *Lex Cincina* (204 B.C.): established rules for payment of advocates by their clients. Until this time, payment for services was oftentimes left to the discretion of the particular advocate, and was not restricted by Roman law.

<sup>61</sup> Bablitz (2007), p. 157

who is either willing to represent the litigant himself in the court case, or to foot the bill for an advocate to be hired for the case.<sup>62</sup> The nature of the relationship between the *patronus* and the *cliens* is a widely discussed topic, and many of the individual characteristics of the relationship are debated throughout related scholarship. To go too far in-depth with a complete analysis of the *patronus – cliens* relationship is beyond the scope of this thesis, yet the legal aspects of the relationship are relatively straightforward. As mentioned before (in the legal sense), a *cliens* will seek to obtain a *patronus* when he is financially unable to obtain an advocate without the help of the patron. Then, if the patron is legally inclined, or practiced in the art of legal advocacy, the *patronus* himself may choose to represent the litigant – *cliens*.<sup>63</sup> If this is not the case, the *patronus* would provide the necessary funds so that the litigant could have representation the courtroom. Yet this patronage did not come without strings attached, and the *cliens* would often become obligated to serve the *patronus* until such a time that he worked away his debt to the patron.<sup>64</sup> Adequate attention has been given to this means of acquiring advocacy, and so the discussion will close with a brief analysis of how advocates like Cicero conducted their cases in the wash of civil lawsuits in the later years of the Republic.

### The Roman Advocate

As to the advocate's active involvement in the courtroom proceedings, advocates followed the common outline for the public civil trial, described to some length in earlier

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<sup>62</sup> *Patronus, advocatus* – [See Crook (1995), p. 121 – 125] Crook, along with a few other scholars, alludes to the mid-to-late Republican idea of the advocate as *patronus* for the litigant. Sometimes an advocate would take up a case free of monetary charge for a destitute litigant, in exchange only for the experience in the law courts. In this way, it can be seen how *patronus* and *advocatus* often appear synonymously in late republican accounts.

<sup>63</sup> Bablitz (2007), p. 157 – 158: See also footnote (57) above; supports argument made by Crook, et al. concerning the advocate as *patronus* for the litigant; yet the bond between advocate and litigant are stronger, and somehow different than the older definitions of the *patronus – cliens* relationship. Less emphasis on payment, more emphasis on personal guardianship.

<sup>64</sup> Any indication that this *patronus-cliens* relationship was anything like slavery or indentured servitude must be rebuked. The *patronus-cliens* relationship was an agreement between citizens for services rendered, not any form of slavery.

portions of this chapter. For clarity's sake, what follows is a brief outline of the courtroom proceedings so that the actual work of the advocate before the trial can be applied to a trial setting.<sup>65</sup> First, both the prosecution and the defense (whether represented by an advocate or the litigant himself), would present their opening speeches. Oftentimes, the charges would be read against the defendant in the prosecutor's speech, which was presented first before the defense's opening speech. The prosecution would then usually proceed with several questions to the defendant, to which the defendant would respond. Yet the primary action after the opening speeches takes place during the *altercatio*, or debate portion, of the trial. During the *altercatio*, the prosecution and defense would debate over the details of the case, while evidence would be admitted as necessary in the form of witness testimony and relevant documents. Cross-examination of the witnesses brought before the court and the litigants themselves would have been conducted throughout the *altercatio*, and after the closing statements from the prosecution, then the defense, the presiding magistrate would either administer justice according to the standards of the law, or would set a time for another hearing that would involve the admission of more evidence and more time for deliberation. Scholarship reflects Cicero as being exceedingly skilled in public debate and cross-examination, and would have conducted his most successful and noteworthy legal practice during *altercatio*.<sup>66</sup>

Such is the basic outline of any public, civil trial in the mid-to-late Roman Republic and it was in this arena that advocates gained fame, increased legal prowess, and relative wealth.

There was a procedure that advocates followed leading up to an important case that involved much more extensive research than may seem readily apparent when reading a speech from

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<sup>65</sup> What follows is a brief outline of the most basic court proceedings in a Roman civil trial. This information will be valuable in the following chapters as the focus shifts more directly upon Marcus Tullius Cicero, and will serve as a basic outline of the setting in which Cicero would have conducted his best legal work.

<sup>66</sup> Palmer (1959), p. 1150: This is supported through the analyses of Cicero's cases in Chapter Three of this thesis. The textual evidence that serves as the representation of Cicero's legal practice come from his speeches during *altercatio*; either in response to the prosecution, or on behalf of the defense.

Cicero.<sup>67</sup> When an advocate chose to accept a case, whether for the prosecution or the defense, the advocate would conduct a series of interviews with the litigant he would be representing. These interviews would serve as the advocate's 'cross-examination' of his own litigant; seeking to uncover the facts of the case and the true nature of the litigant he is representing.<sup>68</sup> As any good lawyer would do, the advocate then reviews all of the available evidence, whether in the form of documents or some other form, and mentally prepares the litigant and any possible witnesses for the coming trial. After preparing the litigant and the witnesses, the remainder of the preparation for the case rests solely on the advocate and his genius. The advocate would have prepared the opening speech that he would give at the commencement of the trial, and would have taken steps to prepare for possible arguments that could be made against him. Finally, the advocate would consider the closing speech and no doubt have made it just as rhetorically powerful as his opening.<sup>69</sup>

- I. Interview(s) of Litigant – advocate's personal 'cross-examination' of the litigant he is representing. This step is conducted to get the best and most complete picture of the details of the case.
- II. Review of All Related Documents – all documents that will either aid or hinder the success of the case must be reviewed so as to be as prepared as possible for documented evidence presented in court.
- III. Preparation of Possible Witnesses and Litigant – all possible witnesses to aid in the success of the case must be prepared for possible questions that may be posed to them in the courtroom. The litigant must be prepared in the same way in case he is called upon by the presiding magistrate or opposing counsel.
- IV. Composition of Opening Speech – the best opportunity for the advocate to make an immediate impression in the courtroom; the opening speech is rhetorically powerful and often meant to illicit some immediate emotion from the other courtroom participants.

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<sup>67</sup> Bablitz (2007), p. 178 – 189 ; Metzger (1998), p. 9 – 17 ; Crook (1995), p. 131 - 146

<sup>68</sup> Bablitz (2007), p. 171 – 175 ; Crook (1995), p. 131 - 139

<sup>69</sup> What follows is an abbreviated outline of the advocate's pre-trial procedure. This five-step outline serves as the description of the pre-trial activities of Cicero himself, and must be kept in mind as the process by which ancient advocates like Cicero prepared for the actual trial proceedings.

- V. Preparation for *Altercatio* – oftentimes, an advocate would prepare for the debate portion of the trial by testing answers to hypothetical questions or arguments that may come from the opposing counsel/litigant. Powerful closing words may be prepared as well at this stage of pre-trial preparation.

There has been a great deal of information discussed here in this chapter, and all the material included serves to set the context for the following chapters, providing the necessary understanding of the Roman Republican legal system, and advocacy within that system. Following the description of the origins of the Roman Republic, the analysis of the *Twelve Tables* of Roman law lays out the foundational principles of the Roman legal system, so that there is a firm grasp on those concepts going forward into the main body of the argument in the following chapters. The same can be said for the various analyses concerning the active participants in the Roman civil trial court and the basic outline of the courtroom itself. All of these analyses represent the tools necessary for having the most comprehensive understanding of that will be discussed in later chapters. In the concluding sections of this chapter, there was a close engagement with the persona and role of the advocate during the Roman Republic; delving deeper into the actual procedure for advocates preparing to practice their art in the courtroom.

The final five step analysis included at the end of this chapter, concerning the pre-trial preparation of the advocate, brings to light a little-discussed facet of the role of the Roman advocate. While there is extensive scholarship on the actions of various advocates in the courtroom itself, any student having knowledge of the participation of a lawyer in any particular case is aware that the majority of the leg-work comes before any appearance in the courtroom. In truth, the lawyer's performance within the arena of the courtroom is in many dictated by the amount and quality of preparation.<sup>70</sup> It is the intention of this chapter to accurately and

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<sup>70</sup> When discussing the individual attributes of Cicero's *stylistic blueprint for legal practice* in Chapter Two, and analyzing the selected Roman cases in Chapter Three, many of the attributes of the ideal *orator/advocatus* have their

effectively convey the role and procedure of the advocate in the mid-to-late republican civil trial court, for it is from this final analysis of the advocate that the discussion will continue in Chapter Two, the defining characteristics of Cicero himself: orator and advocate of the late Roman Republic.

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foundation in pre-trial education and preparation. Other attributes are realized through the actual speech in the primary texts, yet prior preparation for advocates wishing to embody Cicero's ideal is absolutely essential for effective expression of many of the attributes.

## [Chapter Two]

### Cicero the Orator: An Analysis of *De Oratore*

Cicero's, *De Oratore* will be carefully analyzed in order to obtain an essential aspect of this research, and as stated in the Introduction, it is the goal of the research to determine and illustrate a unique set of stylistic rules for oratory set forth by Cicero in the work. This *stylistic blueprint* will serve as the primary tool for the further analyses of both the ancient Roman trials in Chapter Three, and the modern American trials in Chapter Five. The *De Oratore* itself contains a great many examples from a legal perspective, and the importance of the political life in Roman society (especially late Roman Republican society) and the personal life of Cicero is apparent. Even while conducting the research on the ancient portion of this thesis, there are parallels to be seen to the modern American legal system, both in its functionality and its practice. Before a discussion of the modern American legal system, what was required of the best ancient Roman lawyers must be revealed and who better to instruct in such matters than Cicero himself – the epitome of the *orator/advocatus*.<sup>71</sup> Yet before delving into an analysis of *De Oratore*, it is necessary to lay out some important aspects of the way that the analysis will be conducted here in this research. Cicero's list of rules and aspects of the ideal orator are unique to him and represent the best guidelines for orators and lawyers alike.

#### Brief Context

The foundational principle for the analysis of *De Oratore* in particular is that this research considers *orator* and *advocatus* to be synonymous for Cicero and modern readers. Cicero, when writing the *De Oratore*, could as well have been writing about 'the ideal lawyer' as 'the ideal orator.' This is a viewpoint that is not foreign to scholars and historians, and is in fact a

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<sup>71</sup> *Orator/advocatus* is used extensively throughout this chapter and is meant to always draw readers back to the presupposition of the research overall – that the orator and the lawyer at the time of Cicero's life were inexplicably linked. [Also appears in the research as the plural *oratores/advocati*, and as the translation, "orator/advocate"]

popular connection for scholars and students alike when thinking about the functionality of *oratores* in the Roman Republic.<sup>72</sup> James May and Jakob Wisse, whose translation of *De Oratore* is used for this thesis, write in their introduction: "...the field of Cicero's ideal orator is universal, the conviction that his primary task is in the political arena is hardly ever forgotten" (May, Wisse (2001), p. 4). The previous quote, in unity with other scholarship, confirms the basis of the following analysis of *De Oratore* as being a work not only to instruct the ideal *orator*, but the ideal *advocatus* as well. It is important to note however, that although it is a common connection to make between oratory and legal advocacy, every orator was not a lawyer, even though to some extent, every lawyer is an orator.<sup>73</sup>

Building off the supposition that *orator* is synonymous with *advocatus*, this research also relies on the presupposition that there is, in fact, an expressible set of stylistic rules for legal practice laid out by Cicero within the pages of the *De Oratore*. The logical expression of Cicero's 'blueprint for lawyers' gleaned from the analysis of the work will serve as proof for this aspect of the research that maintains that there is such a 'blueprint' to be found in the text; it only needs to be uncovered through textual analysis. In brief summary:

1. The research holds that Cicero's *De Oratore* is an account of 'the ideal lawyer' as well as the more obvious account of 'the ideal orator' by definition.
2. The research holds that there is, in fact, an expression of Cicero's personal style of legal practice contained within *De Oratore* that is realized as a result of textual analysis.
3. The research holds that Cicero's 'blueprint' for lawyers can be used to evaluate the quality of legal conduct, both in the ancient and modern legal settings analyzed in Chapters 3 and 5, respectively.

Sections from *De Oratore* to be analyzed in this chapter were chosen for their reciprocal value for both the ideal *orator* and the ideal *advocatus*. Selections from Book I include the opening

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<sup>72</sup> See May, Wisse (2001) "Introduction"; Steele (2006) "I. The Orator in Roman Society"; Remer (Oct. 2010); et al.

<sup>73</sup> May, Wisse (2001), p. 6: "Hardly any politician could afford, or would want, to neglect the central role of oratory."

argument concerning “eloquence” (L. *eloquentia*) between Crassus, Scaevola, and Antonius (1.30-79), the second discussion on if there is an “art” (L. *ars*) of speaking (1.102-159), Crassus’ argument for the ideal orator with emphasis on knowledge of the law (1.160-203), and Antonius’ objections to Crassus’ definition of the ideal orator (1.204-262a).

Selections from Book II include Antonius’ arguments about the ideal orator and the art of oratory (2.28b-98), the discussion of the importance of persuasion, *ethos*, and *pathos* (2.178-290), and the discussion about the parts of speech and genre of oratory (2.307-360). It is important to note that for the focus of this thesis, Cicero’s section in Book II commonly referred to as *On Invention* (Cic. *De Inventione*) by scholars, is not viewed as necessary or helpful in describing Cicero’s rules for oratory/legal practice.<sup>74</sup> Therefore, the majority of Book II will not be considered for analysis in this work, so that more credence might be given to the legal application of Cicero’s insights.

Selections from Book III begin with Crassus’ description of the qualities of oratory style and the unity of words and content (3.19-55) and several aspects of the technical discussions of the details of the ideal orator (3.56-227).

Throughout the analysis of the work, it becomes apparent that the interlocutor Crassus becomes the primary agent of Cicero, although this is especially apparent in Books I and III. In Book II though, it can be seen that the interlocutor Antonius becomes the primary agent of Cicero’s insights. Yet no matter which interlocutor is speaking in the dialogue, it is of utmost importance that when reading and interpreting the text that scholars bear in mind that Cicero is the author of the entire work, and that the ideas and viewpoints contained within the work are reflections of his own personal convictions. The following analyses will summarize the

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<sup>74</sup> May, Wisse (2001), p. 7

importance of the selected passages in order to create the most complete set of guidelines that Cicero lays out in *De Oratore*.

Analysis: *De Oratore*, Book I

[Section 1 – 1.30-79]

The actual dialogue between the interlocutors in *De Oratore* begins at 1.30 with Crassus<sup>75</sup> praising *eloquentia* and the eloquent man in typical Ciceronian style.<sup>76</sup> Again, it is beneficial to point out that in Book I it is through the character of Crassus that Cicero presents some of his most important arguments. Crassus comments in the midst of his emotional praise of eloquence saying: *aut tam potens tamque magnificum, quam populi motus, iudicum religiones, senatus gravitatem unius oratione converti?* / or what is so powerful and so magnificent as when the oratory of one man reverses the unrest of the people, the obligation of the judges, and the authority of the Senate? (Cic. *De Or.*, 1.31). If the relationship between *orator* and *advocatus* was not clear before, it most certainly becomes apparent very early on in Book I. Cicero, by means of Crassus, is indicating the function of the orator, that it has distinct political and legal connotations.<sup>77</sup>

The section continues with Scaevola<sup>78</sup> providing objections to Crassus' praise of eloquence and brings up a facet of oratory that is not discussed at length in this thesis, namely philosophy. Scaevola indicates here in Book I that there is a close relationship between the state

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<sup>75</sup> *Lucius Licinius Crassus* (140-91 B.C.) – one of the most prominent orators in Rome c. 95 B.C. Cicero was greatly influenced by Crassus when he moved to Rome in 95 B.C. to begin his formal education.

<sup>76</sup> Crassus begins the dialogue in *De Oratore* by praising eloquence in “Tri-Colon” style; a style championed, and often implemented by Cicero himself in his speeches.

<sup>77</sup> Remer (October 2010), p. 1063 - 1064

<sup>78</sup> *Quintus Mucius Scaevola* (c.160-87 B.C.) – another of the most prominent orators in Rome c. 95 B.C., Scaevola was also credited as being one of the most knowledgeable legal experts in Rome as well. Cicero studied the law extensively under Scaevola during his education at Rome and no doubt gained much of his legal prowess from his noteworthy mentor.

of the philosopher and the orator.<sup>79</sup> This prompts Crassus to briefly address Scaevola's view of philosophy, but then gets into a discussion of the first of Cicero's guidelines, the discovery of which is the goal of this analysis.

The first rule for the orator/lawyer that Cicero lays out in *De Oratore* is the intrinsic need for universal knowledge (L. *scientia*). Through the mouth of Crassus, Cicero points out in 1.48 that it is impossible for an orator (or lawyer) to excel in his position without extensive knowledge of a great many disciplines. Among those mentioned in 1.48, Crassus describes knowledge necessary as being: *omnium res publica* / public affairs in all things, *leges* / knowledge of the law, *mores* / knowledge of custom, *iures* / knowledge of statutes, *natura hominum ac morum* / human nature and behavior. Cicero is indicating here the apparent truth that if an orator has only specific knowledge of only a few subject areas, then it is not possible for that man to excel in speech because if asked to present on something which he does not know, he will not be able to adequately do his duty. The remainder of this first section is dedicated to Crassus and Scaevola finishing their discussion of eloquence and universal knowledge, with both giving numerous examples of instances where universal knowledge is absolutely necessary.

[Section 2 – 1.102-159]

The second section from Book I, from section 102 to 159, that holds importance to this thesis includes a discussion into whether or not there is an actual 'art' of speaking, a debate over natural ability playing a pivotal role, and the importance of correct oratorical training. With regard to whether or not there is an 'art of speaking,' Cicero expresses through Crassus et al. that there is an art of speaking – most easily understood for the purposes of this research as *rhetoric* –

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<sup>79</sup> This research will attempt to stay away from the more complex philosophical connotations of *De Oratore*.

which is essential in practice to the life of the ideal orator/advocate. This art is developed through both experience and diligent observation of those the orator wishes to emulate.

The attention of the discussion turns from the art of speaking to discussing the natural ability<sup>80</sup> (“quick-thinking”; L. *natura*)<sup>81</sup> of an individual seeking to excel in oratory. In order to excel in speaking well, Cicero maintains that there is at least some required natural ability, so as to present speeches confidently and effectively. The idea of natural ability turns the discussion to the way in which orators/advocates should be trained. Crassus begins by first outlining what was commonly accepted as *standard oratory training*, and then making edits to this list of standard rules by adding what he thinks is missing from those standard rules. By contrasting the standard set and the updated set of rhetorical rules, Cicero is making a two-fold claim about rhetoricians, who initially laid out the stringent rules for speaking and writing:<sup>82</sup>

1. Cicero’s first criticism of the rhetoricians is actually about how serious and rigid the standard rules are. The text from 1.137-159 reveals that Cicero does not believe that strict rules should be placed on orators at all, and that the words of the orator must be unregulated by any person but the orator himself.
2. Cicero’s second criticism of rhetoricians and their rhetorical theory is that their rules are too narrow-minded, and do not allow for personal elaboration into other fields (e.g. *universal knowledge*). As evidenced above, Cicero is a firm believer in the necessity of universal knowledge for the orator/advocate, and such pursuits into other fields of study are not permitted by the overly stringent rhetoricians.

Included in Cicero’s revised set of rhetorical rules are several other guidelines that are essential to the blueprint being developed from this analysis. 1.148-159 contains Cicero’s rules for vocal

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<sup>80</sup> For this attribute – *natural ability* – I have made the decision to work this attribute of the ideal orator/advocate into Cicero’s 5<sup>th</sup> rule: “Quick-thinking” because a keen mind is a naturally occurring blessing, just as “natural ability” with regard to anything.

<sup>81</sup> Cicero also refers to the ‘keen mind’ as *acumen stilus* (1.151) – literally in translation “a sharp pen” perhaps referencing the importance Cicero places on the written word, but also translating to a keen intellect.

<sup>82</sup> Remer (October 2010), p. 1073

inflection (L. *vox spiritus*), body movement and gesture (L. *motus corporis*), memory (L. *memoria*), knowledge of history (L. *historia*), and knowledge of law (L. *omnes leges*).<sup>83</sup>

[Section 3 – 1.160-203]

In this section of Book I immediately following the previous analysis, Crassus continues to elaborate on the importance of knowledge of law (L. *omnes leges*), giving various historical examples of orators who did not have the required legal knowledge and therefore were ineffective in their efforts. With the close association of oratory with all things political in Cicero's Rome not only is it logical for orators to be well-versed in legal knowledge, but it is absolutely essential.<sup>84</sup> Although other interlocutors propose that legal knowledge is not necessary and only eloquence is essential, Crassus' argument is untouchable for he brings up that the presence of the orator is in the courts and the forum. The role of the orator is inexplicably connected to political and legal life in ancient Rome.

Through further numerous examples, Crassus continues arguing for the necessity of knowledge of the law, calling those who neglect this education to be shameless with no respect for such an important aspect of public life. He also goes on to list other benefits to the study of the law, and rounds off his argument by indicating the importance of studying all public law; not simply criminal or civil, exclusively.<sup>85</sup>

This argument prompts a lengthy response from Antonius<sup>86</sup> who digresses from 1.204-262 on the problems with the updated rules for the best orator/advocate. In this section, Cicero is cross-examining his own previous statements, so that they will be shown to be better than the standard rules in the face of opposition.

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<sup>83</sup> Each is described at length in the 'blueprint' at the end of this chapter. [See p. 38 - 42]

<sup>84</sup> Remer (October 2010), p. 1067

<sup>85</sup> Hall (2014), p. 8 - 10

<sup>86</sup> *Marcus Antonius* (143-87 B.C.) – another prominent figure in Cicero's education in Rome, Marcus Antonius was regarded as one of the greatest orators and was an object of Cicero's education in, and emphasis on, the spoken word.

## Analysis: *De Oratore*, Book II

[Section 1 – 2.28b-98]

Moving into Book II of *De Oratore*, it becomes clear that Cicero adopts the interlocutor Antonius as his agent for this section of the work. Antonius begins by making a similar argument for “oratory as art” as Crassus made earlier,<sup>87</sup> with the exception that he says it is something *like* an art, rather than coming right out and saying that it *is* an art. Antonius then launches into praise of *eloquentia*, not unlike Crassus’ speech at the beginning of Book I, placing special emphasis on eloquence as not only demanded of the orator, but absolutely essential if the ideal form of oratory is the goal.

Antonius then praises *deliberative* (L. *deliberatio*), *laudatory* (L. *laudatio*), as well as *judicial oratory* (L. *quaestio*) as absolutely the most essential forms of oratory, giving due credit to the necessity of the legal aspects of judicial oratory.<sup>88</sup> Then, Antonius turns to another Ciceronian rule in the form of knowledge of history (L. *historia*) also encouraging the actual writing of history by the best orators by giving a review of some of the greatest ancient historians.<sup>89</sup> Cicero is here considering both the knowledge and role of the historian, drawing parallels between the duty of the orator and the duty of the historian. From an extensive study of history and the practice of historiography, an orator/advocate not only becomes more well-read in word-choice and technique, but also gains an aspect of that essential universal knowledge that aids in the speaking about a greater range of topics. Philosophy is also discussed at length throughout the entirety of Book II, but such discussions do not serve to increase the value of this research that is concerned primarily with the legal application of the style of the ideal orator.

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<sup>87</sup> Important to note, since Cicero is playing the parts of Crassus and Antonius at different points in the work, yet both interlocutors are meant to reflect the personal arguments of Cicero himself. When an author uses an interlocutor to provide important arguments, it is understood that the author is meaning for that interlocutor’s direct thought to mimic his own.

<sup>88</sup> See also *De Oratore*, Bk. II, sections 307 - 360

<sup>89</sup> Mostly Greek historians – Herodotus, Xenophon, Callisthenes, et al.

Antonius rounds up his first argument here by once again addressing the standard rhetorical rules as well as more elaboration on oratory training. From these last few points of Antonius, it can be summarized that he means to re-emphasize the point that to attempt to practice oratory without all the necessary tools is folly. One can simply imitate the style of a great orator/advocate like Cicero, yet never realize the same genius without all of the other criteria (*scientia, historia, etc.*).

[Section 2 – 2.178-290]

In this next section from Book II, there is much of the discussion about *persuasion* between the interlocutors. Antonius, being the primary agent of Cicero in Book II, presents the two means of persuasion: 1) *ethos* and 2) *pathos*. The information contained within this section from 2.178-290 relates, in part, to several of Cicero's rules, namely word choice/arrangement (L. *collocatio conformatioque verborum*), emotional knowledge (L. *generae mentis*), humor and wit (L. *iocus, facetia*), and those rules that deal with delivery (L. *motus corporis, vox spiritus, vultus pudor*).<sup>90</sup>

Cicero, through Antonius et al., places much weight on the ability to persuade throughout the entire work, as is expected considering the ultimate goal of orators and lawyers alike – to persuade an audience with their speech. The ability to persuade is absolutely essential for any orator/advocate and Cicero lays out the two ways that persuasion of an audience is achieved, namely through the rhetorical tools *ethos* and *pathos*. According to Cicero in this section, *ethos* and *pathos* are both effective tools for orators/advocates seeking to persuade an audience in any context.

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<sup>90</sup> Rules dealing with *delivery* : i.e. 9. *Body Movement and Gesture*, 10. *Facial Expression*, and 11. *Voice Inflection*. When 'delivery' appears in the corpus of the work, all three of these attributes contained in the stylistic blueprint must be considered.

- *Ethos* is a complex rhetorical idea that refers to an individual's status with regard to fame or authority, and an individual's *ethos* is only increased through deeds and experience. An orator who possesses significant *ethos*, to the point where the audience will respect his authority and speech simply through presence, that orator has already partly persuaded his audience to his views.<sup>91</sup>
- *Pathos* is the element of rhetoric concerned with emotion, and persuading the audience with language that arouses an emotional response. When it comes to public speaking, there is no better way to capture the attention of the audience (other than *ethos* perhaps) than to use specific word choice, arrangement, and vocal inflection to elicit an emotional response, thus making them more attentive to the essence of the speech itself.<sup>92</sup>

Certainly these are two of the most potent rhetorical tools in the repertoire of the best orator or the best lawyer.<sup>93</sup> The interlocutors debate at length over the various functionality of many different emotions<sup>94</sup> with the eventual consensus rounding out to the first point of the entire discussion, namely that knowledge of emotion (*L. generae mentis*)<sup>95</sup> is essential to the orator.

Following this discussion of emotion, the remainder of this section (2.216b-290) is Cicero's commentary on wit (*facetia*) and humor (*iocus*) via the interlocutor, Caesar.<sup>96</sup> In the dialogue, Caesar proposes that both humor and wit are characteristic of the ideal orator and further goes on to claim from personal experience<sup>97</sup> that these attributes are a part of *natural ability* ("quick thinking"; *L. natura*) and therefore cannot be taught. The digression on humor continues, and Cicero seems to place the same value on wit and humor for the ideal orator/advocate, as he does on his guidelines for knowledge of emotion. Humor and wit can be

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<sup>91</sup> Steele (2006), p. 64 - 65

<sup>92</sup> Steele (2006), p. 65

<sup>93</sup> *De Oratore*, Bk. II, sections 197-204a: A hypothetical discussion of the prosecution of *Gaius Norbanus* by Crassus – used to show the influence of emotion [*ethos* and *pathos* included] in a court setting. Although politically and legally oriented, it may not be necessary to include the account here. N.B. Cicero is using this as yet another opportunity to emphasize the orator's direct connection to the legal system. [See *orator/advocatus*]

<sup>94</sup> See 2.197-216a.

<sup>95</sup> Cicero (by means of Crassus) establishes the ideal *orator/advocatus* as having emotional knowledge described in the text as *generae mentis* (N.B. Bk. I, sec. 185), which literally translates to "varieties of the mind" emphasizing the strong influence of human emotion over all human thought.

<sup>96</sup> *Gaius Julius Caesar Strabo Vopiscus* (131-87 B.C.) – Roman statesman and orator c. 90s B.C.

<sup>97</sup> Cicero (here, as the interlocutor Caesar), chooses to present his own personal experience with Greek works on humor and wit in oratory. Cicero spent a period studying philosophy in Rhodes, Ionia, and Athens after many years of study and service in Rome. He is emphasizing here that the ideal orator/advocate must have some natural proclivity for humor in order to excel in that area in practice.

powerful tools in order to achieve the overall goal of convincing the audience, having similar effect to the concepts of *ethos* and *pathos*.

The remainder of the section through 2.290 is somewhat tedious and contains a great many specific examples of various types of jokes and humor. Cicero dedicates a large portion of Book II to these examples of humor, which signals the importance that Cicero personally places on the wit and humor of the orator/advocate.

[Section 3 – 2.307-360]

The first part of this final selection from Book II is concerned with the ordering of many of the previously mentioned attributes of the ideal orator/advocate. By ‘an ordering of attributes’ Cicero is choosing this time to interject his ideas of *arrangement* (L. *collocatio*) – in the sense of most effectively arranging the tools of the ideal orator with regard to especially word choice (L. *conformatio*) and emotional knowledge (L. *generae mentis*; in close accordance with *ethos* and *pathos*).<sup>98</sup> The effective arrangement of words and emotions can make or break the success of an orator’s speech, and so Cicero gives due credit from 2.307-315a to the discussion of emotional order, and from 2.315b-332 to the discussion of the arrangement of particular arguments and words in a persuasive speech. Cicero also lays out the popularly accepted outline of a persuasive speech from the late republic, presenting the 3-part speech consisting of 1) a prologue, 2) a narrative, or digression, and 3) a conclusion.<sup>99</sup> Leading up to the next part of the section concerning memory (L. *memoria*), Antonius expounds on two genres of speech mentioned earlier, namely the laudatory and deliberative genres. Another technical discussion, Antonius’

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<sup>98</sup> See Steele (2006). [footnote (85), footnote (86)]

<sup>99</sup> The parallel here between the order of speech in the modern, as well as ancient, trial court proceedings can already be seen; consider 1) the Opening Statements, 2) Cross-examination, and 3) Closing arguments – outline of trial::outline of speech.

insights into these other genres (apart from *judicial oratory*) are not discussed in this research, having no apparent impact on the topic of Ciceronian legal guidelines.

From 2.350-360, Antonius wraps up Book II with a return to the essential attribute of memory (L. *memoria*), and emphasizes its importance in the lives of those seeking to speak well. Antonius references several Greek orators whose memories served them well in their lives, yet returns to the ideal orator/advocate when he specifically indicates the recollection of individual court cases for the purpose of instruction. This is what Cicero believes is the benefit of memory and emphasizes the necessity of memory by indicating the limited utility of any individual who cannot remember and recall helpful information. Memory is for Cicero, a natural ability possessed by all people at the point of birth, but it is only through experience and natural development that the utility of memory can both be increased and used effectively in practice. Antonius' commentary on memory concludes with a rather important distinction, that the memorization of words (L. *verbum*) is not necessarily the best practice for the orator, but on the other hand the memorization of concepts (detail, yet in broad strokes; L. *genera*) is absolutely essential for the ideal orator/advocate.

### Analysis: De Oratore, Book III

[Section 1 – 3.19-55]

In the final book of the work, Cicero turns to more technical stylistic aspects of oratory, getting into some of the finer points of rhetoric. Not all of these technical discussions include relevant information for the scope of this research, but from 3.19-55 Cicero gives some more important insight into word choice and arrangement (L. *collocatio conformatioque verborum*), as well as expresses what he believes to be the four (4) essential qualities of oratory style.

From what can be interpreted from the text in this section, Cicero seems to be encouraging the ideal orator/advocate to be relatively free-form with regard to speech, meaning that the orator should often draw upon his own personal style of rhetoric in order to compose the best speeches. This allows for individual elaboration on the part of the orator, and the distinction can be seen again between the stringent rules of the rhetoricians and Cicero's novel guidelines. Added in this section are the four (4) essential qualities of speaking well, and are presented almost as a caveat by Cicero, that while the orator must feel free to personally express his ability, there are still base-line rules that must be adhered to for the sake of quality. These four qualities are listed as 1) correct Latin (*L. pura Latina*), 2) clarity (*L. delucidus, planus*), 3) distinction (*L. aptus*), and 4) appropriateness (*L. congruo*).

*Pura Latina* here carries the connotations of correct pronunciation and grammar, yet with the added condition of control of one's own speech. Reflected in the other qualities contained in this section, control of one's speech is an important skill and the orator must always strive to moderate what he says in order to especially prevent criticism. *Clarity*, in the same sense as correct Latin, encourages the orator to be clear at all times – whether that means regulating breath, or simply enunciating. *Distinction*, a slightly more complex idea, deals with the overall quality of the entire speech and all the other factors add up to the orator's 'distinction' with regard to the audience. If distinction is appropriately achieved, it carries many of the same connotations as *ethos*. *Appropriateness* is a relatively straightforward quality of rhetoric and simply requires that the speaker remain on the relevant topics of the speech, without diverging into tangential arguments that do not support the main goal of the speech.<sup>100</sup>

This section (3.19-55) reflects Cicero's insight into the bare essentials of speaking well, while at the same time adding the viewpoint that an orator must have some degree of freedom

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<sup>100</sup> Steele (2006), p. 63 - 80

when composing speeches. While the essential qualities laid out here are important to note in an analysis of *De Oratore*, they are not included in Cicero's guidelines for the orator/advocate as they appear above. This is because Cicero has already presented his rules in one way or another, and this analysis of the qualities of rhetorical style are more focused on the quality of the speech itself, rather than having the broader application to the individual speaker as well.

[Section 2 – 3.56-227]

This lengthy section from Book III concludes the analysis of the *De Oratore* and continues the more technical discussions of the aspects of oratory and rhetoric. While the sections on *distinction* and *appropriateness* are worthy of note, this research is most concerned with Crassus' brief points about delivery (L. *motus corporis, etc.*) in the last lines of the section. Crassus begins this section with a discussion of the *unity of knowledge and speech* (L. *iugum cognitionis et scientiae*), which is an ancient observation that pervades into modernity, and which focuses on thinking critically about one's own knowledge and then speaking accordingly. Cicero, by means of Crassus, speaks about forming wise opinions based on previous knowledge and then speaking with distinction to that effect. Therein lies the unity of knowledge and speech – more or less, 'think before you speak.' Cicero also warns about the dangers of disregarding this advice or favoring one over the other (speech or knowledge).

From 3.63-90, Crassus continues with suggestions for those seeking to be the best orator, indicating the importance of philosophical education, contemplation, and devotion to public life. 3.91-110 returns to previous discussions on distinction and appropriateness, this time turning to the idea of a *true distinction* (L. *aptus*; here, in its ideal form) which lies in the quality of the content of an individual's speech. The most important point to draw from Cicero's introduction

of true distinction is that the quality of the content in a speech is of great importance, and is nearly all the time the deciding factor as to whether the audience is persuaded by the speech.

Antonius presents a number of lengthy technical arguments from 3.148-209, touching again upon several aforementioned topics including word choice/arrangement, voice inflection, use of rhetorical devices, and contemplation. These technical arguments from Antonius do not necessarily reveal anything new from the previous discussions of the topics, but serve as final reinforcement of several of Cicero's points.

The final section to be analyzed from 3.213-227 is concerned with the delivery of the speech by the orator/advocate. Cicero, as Crassus here, lays out the groundwork for several of his novel guidelines inferred by the research including body movement and gesture (L. *motus corporis*), facial expression (L. *vultus pudor*), and voice inflection (L. *vox spiritus*). Cicero reveals in this last section that the ideal orator/advocate must control the appearance and movement of his body so as to also use it as a tool to persuade the audience. All these attributes are key to expressing (especially *pathos*) emotion and vigor to the audience for the purpose of persuading effectively. Although these attributes are discussed close to the end of the text, these are no less important concepts and play a role in Cicero's blueprint for the orator/advocate compiled through this analysis.

#### Cicero's "Blueprint" from *De Oratore*

In this section, the guidelines for *oratores/advocati* compiled from the in-depth analysis of *De Oratore* above are listed and explained according to five (5) separate criteria: 1) the ATTRIBUTE is named 2) the LOCATION in the text is expressed 3) an INTERPRETATION of what Cicero is trying to relay 4) the LEGAL ASPECT of the attribute 5) the RULE FOR APPLICATION of the attribute.

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1. Universal Knowledge – *Scientia* (1.48)
  2. [1.48-57]; [3.52-143]; et al.
  3. With regard to the knowledge that the ideal orator possesses, it is not effective to study only limited areas, but to incorporate as much knowledge of as many different disciplines as possible. Studies in a number of areas are mentioned by Cicero in *De Oratore*, including especially the law/politics and philosophy. In order to adequately present speeches on any number of topics, the orator must have enough knowledge of those topics to present a persuasive argument with true distinction.
  4. The value of extensive education in a number of disciplines with regard to a lawyer in the legal system is readily apparent. With greater knowledge or a greater number of subject areas, the area of subjects that a legal representative would be uneducated in would be reduced, allowing for greater understanding of the many areas of life that appear either in trial court or in legislation.
  5. **The orator/advocate must have the most extensive education possible in order that he might present his argument with true distinction.**

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2. Words – Choice and Arrangement – *Collocatio Conformatioque Verborum* (1.151)
  2. [1.137-159]; [2.78-84]; [2.178-290]; [2.307-332]; [3.19-39]; [3.148-209]; et al.
  3. A primary focus of this work is most definitely rhetorical, dealing with the choice and arrangement of words in order to effectively persuade an audience. Cicero brings up the guidelines for choosing words and arranging them in the most effective manner at many points in the text, yet the most striking point Cicero makes with regard to words seems to be where he differs from the standard rules of rhetoric laid out in Book I. Cicero calls for personal expression on the part of the individual orator, rather than being confined by any narrow-minded restrictions on study or verbal expression. The only requirement of Cicero seems to be that the words must be chosen and arranged so that they are able to persuade an audience as effectively as possible.
  4. In a legal sense, as in any case of speech, word choice and arrangement are essential for effective expression. Both in legislation and in the courtroom, legal representatives are required to express themselves eloquently constantly. Whether in writing a brief or prosecuting a defendant, there is always the need for diligence with regard to the words one chooses to express oneself, and how those words are presented.
  5. **The ideal orator/advocate must choose his words carefully and arrange them diligently, so that the best possible speech may be presented with the purpose of persuasion.**

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3. Emotional Knowledge – *Generae Mentis* (1.185)
  2. [2.178-216a]; [2.178-290]; [2.307-315a]
  3. For Cicero, emotion is one of the two most effective means of persuading an audience. The use of the rhetorical tool *pathos* to swing the opinion of the audience to that of the orator is one of the most valuable and effective skills for the ideal orator. Yet in order for the orator to have the most effective utility of *pathos*, extensive knowledge of emotion is absolutely necessary. Not only is a study of the various emotional responses and triggers necessary, but also a study of human emotion itself (through such a medium as philosophy) and reflection on the personal emotions of the orator. Only through extensive

study of the human emotion and its influences will the orator be able to persuade effectively by means of *pathos*.

4. In the tumultuous, varied nature of the legal system, knowledge of human emotion is not often considered to be necessary, yet the benefits of being knowledgeable about the subject are great for representatives of the legal system. Seeing as all actors and participants in the Roman courtroom are humans that experience human emotion, emotional knowledge is entirely necessary.
  5. **The ideal orator/advocate must possess extensive knowledge of human emotion so that he might effectively persuade an audience by means of *pathos* and be aware of the emotional effect of his words.**
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4. Humor and Wit – *Facetia, Iocus* (1.178)

2. [2.178-290]; [2.216-290]
  3. Cicero refers to wit and humor in Book II as being valuable tools for social interaction, and essential qualities of the best orator. Humor is used much in the same way that emotional knowledge is implemented in oratory, for the purpose of persuasion by means of a physical response from the audience. The orator who uses humor and wit effectively will also be able to win over an audience more easily by fostering a connection through witty dialogue.
  4. In the more reserved, serious realm of the legal system, humor and wit seem to have a limited place in the courtroom and absolutely no place in legislation. Yet it is not outlandish to observe lawyers ‘lightening the mood’ in the courtroom by interjecting some sly comment or witty rebuttal. The benefits of humor and wit are well known and most oftentimes well-received, so it is the contention here that humor and wit aid in the overall expression of legal representatives, while remaining effective tools of persuasion as well.
  5. **The ideal orator/advocate must possess some sense of humor or wit so as to be receptive to an audience and conduct speeches in an uplifting, persuasive way.**
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5. Quick-thinking – *Natura* (1.113)

2. [1.113-136]; See *natural ability*.
  3. This guideline comes from the combined ideas of *natural ability* and general knowledge. Cicero states that the best orator is naturally able to think quickly in any number of scenarios, while at the same time expressing insight on any number of topics with distinction. A keen mind is a naturally occurring phenomenon, and therefore cannot be taught to an individual. Nevertheless, quick-thinking is an essential quality for the ideal orator who is expected to be swift in both attack and rebuttal.
  4. It is difficult to characterize any person as ‘quick-thinking’ without truly knowing that person, but with regard to a legal application it is clear that those who do possess keen minds are quick to acclimate themselves to new positions and consistently excel. In the courtroom setting, those lawyers that excel certainly have answers and explanations always at hand, and are ready to attack and refute at all times. Quick-thinking most definitely plays a role in the success of legal representatives, especially in the courtroom.
  5. **The ideal orator/advocate must possess the natural ability of a keen mind both to maximize the utility of his other attributes and to perform well in public debate.**
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6. Memory – Memoria (1.157)
  2. [1.148-159]; [2.350-360]
  3. At the root of all the rules here associated with knowledge, Cicero indicates that the memory of the ideal orator is another aspect of *natural ability*, yet one that develops over time through experience and practice. Cicero emphasizes the importance of learning from prior experience through the use of memory, and to recall information quickly from memory is a mark of the ideal orator. Cicero forgoes the importance of the memorization of words as essential to the ideal orator, for the ideal orator can speak freely with distinction on any topic without a written script. Rather, Cicero emphasizes the memorization of concepts as the key to the success of the ideal orator. Through memory of concepts, the ideal orator is able to recall more information, than trying to recall every specific detail.
  4. As in all things, an effective memory is absolutely essential for success in the legal system. Without recalling this or that particular case, or court decision, or election the function of the legal system would fall apart. For lawyers especially, the memory of details of the case, or words said before in court are absolutely essential. Without an effective and developed memory, there is no way to excel in the legal system.
  5. **The ideal orator/advocate must have a developed and extensive memory so that he does not forget his prior experiences and instead draw on them for guidance.**

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7. Historical Knowledge – Historia (1.158)
  2. [1.148-159]; [2.51-76]
  3. For Cicero, the importance of historical knowledge lies not only in being well-versed in the events of history, but being familiar with the process of recording history. Cicero states that the process of discernment for historians is in line with the process for orators. If an orator is seeking to be the best possible, than he must study history – both to learn from prior events and to understand the procedure for historians who also seek the truth.
  4. Historical knowledge is of great importance in the realm of law, not only in education of the law, but in practice. Without the prior knowledge of benchmark cases or legislation there can be no understanding of the core concepts of the law, or the ability to rectify the mistakes of the past.
  5. **The ideal orator/advocate must have education in history and knowledge of historiography so that he might be able to recall important details from the past.**

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8. Legal Knowledge – Omnes Leges (1.159)
  2. [1.148-159]; [1.166-203]
  3. Cicero is the ideal orator/advocate and in accordance with that claim, he places a great deal of emphasis on the study of the law as being integral to the formation of the ideal orator. Throughout the work itself, there are many examples drawn from the Roman legal arena and the importance of the law is an overarching theme of the entire text. Cicero initially calls for a deep knowledge of the civil law of Rome, but then elaborates in a later passage that knowledge of all aspects of the law to be the most beneficial to the ideal orator. With such a close relationship between politics and everything else happening in Rome at this time, it is absolutely necessary that the orator be extensively educated on the law.
  4. Obviously, legal knowledge makes up the essential backbone of the legal system and at every level, legal knowledge is required. Though specialists in certain areas of law are

more common, it is not uncommon that legal representatives will pursue other aspects of the law and become legal experts. Oftentimes, there is so much knowledge to be gained in any particular area of the law that it does not allow for overflow into other areas.

**5. The orator/advocate must be familiar with and have education in all aspects of the law, so as to most effectively perform his political duties in public life.**

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9. Body Movement and Gesture – *Motus Corporis* (1.156)

2. [1.148-159]; [2.178-290]; [3.220]

3. Cicero draws the distinction between gesture for the purpose of indicating, and gesture for the purpose of signifying – gesture should signify broad concepts, rather than indicate specific details. He refers to the gesture as the ‘weapon’ of the orator, and that an orator should be cautious to overuse gesture, but not be hesitant to use gesture when it is appropriate or convincing. The ideal orator should not compose himself like an actor on a stage, but rather a statesman giving an eloquent speech.

4. From a legal perspective, where all of these delivery guidelines become realized in the actual courtroom, with the lawyer being the actor of these delivery tactics. With regard to gesture and body movement, lawyers oftentimes can pace about the room, gesturing, or can make direct gestures to indicate. Grand, signifying gestures do not seem to be commonly present in the courtroom, in favor of more direct, forceful gestures.

**5. The ideal orator/advocate must use gesture and body movement reservedly, and not be given to direct, harsh movements.**

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10. Facial Expression – *Vultus Pudor* (2.182)

2. [1.148-159]; [2.178-290]; [3.221-223a]

3. Cicero states that everything depends on the face of the orator, and that the eyes are the most integral component of facial expression. For the ideal orator, Cicero says that the best will control their eyes especially, and use their facial expressions to their advantage. Although the ideal orator must be cautious as to the appearance of his eyes, nevertheless Cicero emphasizes the importance of facial expression and how it can be effectively used to reflect aspects of a speech.

4. These delivery guidelines become realized in the actual courtroom, with the lawyer being the actor of these delivery tactics. Much like the body movement/gesture description above, lawyers oftentimes use facial expression to achieve some sort of response in the courtroom or to simply display their feelings to the rest of those present. Yet, there is a great deal of professionalism as well, and facial expressions are often forgone for other methods.

**5. The ideal orator/advocate must have command over his facial expression, especially with regard to the eyes, and effectively use facial expression to emphasize important points.**

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11. Voice Inflection – *Vox Spiritus* (1.156)

2. [1.148-159]; [2.178-290]; [3.216b-219]

3. Cicero, by means of Crassus, describes the usual state of those learning to speak. Those who follow the rhetoricians practice to speak quickly, but their words are often meaningless and characterized by false faith in their quickly spewed words. Cicero says that the ideal orator is not only always fully aware of what he is talking about, but also

that he places special emphasis on certain words that carry great meaning for the speech. Orators are also expected to possess the capability to manipulate their voices in order to draw attention to important words/sections of their speeches or to illicit an emotional response.

4. These delivery guidelines become realized in the actual courtroom, with the lawyer being the actor of these delivery tactics. Voice inflection is one of the most common and expressive means of placing emphasis on certain aspects of speech. When a lawyer presents his position, the language and tone are not dull or dry, but full of life and lively inflection that serve as the best expression of the lawyer's meaning and viewpoint.
  5. **The ideal orator/advocate must have command over the inflection and tone of his voice, so as to emphasize essential points or illicit emotion**
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[Chapter Three]  
Cicero the Advocate: Roman Cases

Turning from the analysis of the *De Oratore*, yet keeping in mind the valuable sections discussed in that portion of the research, this chapter is intended to return the focus to the Roman advocate, exclusively. Looking back at Chapter One of this thesis, it is important to remember the details surrounding the legal advocate in ancient Rome and his duty to the law, justice, and those he represents. In reviewing the accounts of prominent cases from the life of Cicero himself, the behavior and functionality of the Roman lawyer can be viewed not only as concepts, but take on the aspect of application in reality as well. Just as the setting for the typical Roman Republic trial court was laid out in Chapter One, readers should be mindful of the courtroom setting of each of the selected Ciceronian cases, as well as be aware of the actors present. Reviewing these concepts will allow for a more beneficial understanding of what the analyses of the cases are trying to relay in the context of this thesis – giving a better picture to the reader and allowing easier reception of the application of the guidelines for the ideal lawyer.

In Chapter Two, the detailed analysis of Cicero's *De Oratore* produced a table of eleven guidelines, accepted as being a reflection of the qualities of the ideal *orator/advocatus*.<sup>101</sup> These eleven guidelines are to be considered Cicero's 'blueprint for lawyers' which will be applied to the accounts of several of Cicero's most prominent legal cases during his illustrious career. The details of each of these cases, respectively, will be expressed through various works written about these cases, as well as Cicero's own personal recorded speeches during these trials. As for application of the stylistic blueprint, this research has established certain rules for application that will allow for the behavior of the lawyers in these cases to be analyzed according to those eleven criteria established in the previous chapter.

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<sup>101</sup> See Chapter Two, p. 23 [footnote (68)] - *orator::advocatus*

It is an unavoidable reality that in some cases, not all of the criteria may be able to be applied to the account of the individual lawyer<sup>102</sup> given by the ancient sources, this could be either due to oversight on the part of those recording the events of the trial, or the simple lack of that attribute of the ideal lawyer being present in that particular case. It is necessary to establish this fact before launching into an analysis of the events of each individual case, because when certain aspects of Cicero's blueprint do not appear to apply, it should not be automatically considered that the basis for this thesis is misplaced. Rather, the reasons why a particular attribute of the ideal lawyer do not appear must be given equal attention to those attributes which are expressed in the accounts. After all, Cicero's stylistic guidelines are for the *ideal* orator/advocate, the perfection of which may not be able to be achieved by any lawyer in any time period. The lawyer whose goal is to be the best possible must strive to follow the guidelines of Cicero as closely as possible, because perfection in all these attributes may not be a realistic goal.

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<sup>102</sup> Here, *Cicero* exclusively (Chapter 3). In Chapters 4/5, the blueprint will be applied to the generalized definition of the American lawyer, in the modern American legal system of the late 20<sup>th</sup> century and 21<sup>st</sup> century.

Brief Context:

For review, the eleven attributes of the ideal *orator/advocatus* are restated here:

- |   |                                     |
|---|-------------------------------------|
| <b>1. Universal Knowledge</b>                     | <b>7. Historical Knowledge</b>      |
| <b>2. Word Choice and Arrangement</b>             | <b>8. Legal Knowledge</b>           |
| <b>3. Emotional Knowledge</b>                     | <b>9. Body Movement and Gesture</b> |
| <b>4. Humor and Wit</b>                           | <b>10. Facial Expression</b>        |
| <b>5. Quick-thinking (<i>natural ability</i>)</b> | <b>11. Voice Inflection</b>         |
| <b>6. Memory</b>                                  |                                     |

Each case analyzed in this chapter will be evaluated according to where and how these eleven attributes become realized in the accounts of Cicero in each case, respectively. These selected cases, in accordance with Chapter One, are accepted as taking place in the typical Roman courtroom,<sup>103</sup> probably located in a building around the *forum* area or in the Senate house. These cases are accepted as being heard by either *unus iudex* (a single judge) most likely of the rank of praetor, or a panel of judges composed of Senators (*iudices*).<sup>104</sup> The laws being applied to the particular cases are accepted as having their roots in the *Twelve Tables*, and that justice is administered according to those rules as well.<sup>105</sup> But at this time in the late republic it is important to note that the charges that are commonly brought to court are distinctly politically driven, with crimes like corruption and extortion being more prominent than those crimes which are addressed in the *Twelve Tables* which are concerned mostly with crimes like theft and property-related issues.<sup>106</sup>

Despite the development of the Roman legal system since its creation, the role of the advocate remains the same, and the importance of the advocate in the courtroom setting is even

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<sup>103</sup> Unless the location for the trial is expressed in the text. e.g. *this case was said to have taken place in the curia, before the Senate fathers...*

<sup>104</sup> At this point, Senators would be the only Romans allowed to compose the jury in trials that required such a judgment.

<sup>105</sup> Metzger (Summer 2004), p. 252

<sup>106</sup> Metzger (Summer 2004), p. 251 - 253

increased with more and more litigants calling on advocates for aid.<sup>107</sup> Indeed the goal of any specialist should be the best possible performance of that one's duty, and so Cicero's guidelines for the attributes of the ideal lawyer were established in Chapter Two in order to discern what the best possible performance of a legal representative should be. When considering the individual attributes from Cicero's blueprint in the case setting, there are several questions which direct the way in which those attributes are understood:

- 1) Where in the accounts of the various selected cases are these ideal attributes expressed?**
- 2) If any attributes are lacking, which attributes are lacking and why?**
- 3) Is Cicero staying true to his own guidelines?**

By thinking critically about the answers to these questions, each case will be effectively analyzed according to guidelines set forth by Cicero in *De Oratore*, and the events of each case will be ordered according to whether or not they are in accordance with Cicero's criteria for the ideal *advocatus*.

Some attributes (such as memory, quick-thinking, et al.) are more complex conceptions that may not be able to be shown through textual support, yet are either apparent or not when the entire case is considered. For example, when discussing where Cicero effectively incorporates memory in the *Pro Caelio*, it is not possible to point to one particular statement or word in the text and indicate Cicero is using his memory effectively in that place. But if we take the case as a whole, it can easily be stated that Cicero has used his memory effectively considering the fact that he did not obviously present anything incorrectly based on the facts of the case. Therefore, it can be confidently stated that Cicero embodies the ideal attribute of memory for he has apparently remembered everything he meant to say, and was not criticized for remembering something incorrectly.

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<sup>107</sup> Crook (1995), p. 167

Thus, when reading the descriptions of how Cicero is embodying an ideal attribute, the reader must be open to the previous statement, that some of these attributes may not be able to be expressed via any particular section of a case, but may be realized following a consideration of Cicero's performance in the trial as a whole.

### Case Analyses

1. *In Verrem I, II* – (70 B.C.)

- ❖ Litigant(s): *Gaius Verres*<sup>108</sup> (defendant)
- ❖ Advocate(s): *Quintus Hortensius Hortalus*<sup>109</sup> (defense); *Marcus Tullius Cicero* (prosecution)
- ❖ Crime/Charge(s): *extortion, corruption*

The case concerning the crimes of Gaius Verres came at a pivotal point in the career of Cicero, and is actually presented in translation as two separate parts (*In Verrem I, II*). This case is noteworthy because of the swiftness and skill that Cicero conducts the prosecution, and both sections I and II contain examples of Cicero's attributes reflecting on the ideal lawyer. At this point, in 70 B.C., Cicero is still relatively inexperienced in the law courts and a newly elected member of the Senate, and this particular case served to impart a great deal of *ethos* onto Cicero's career.<sup>110</sup> And truly, Cicero gained such renown from the effective prosecution of this case, that it served to help him achieve the office of *aedile* following the case.

Cicero's style of prosecution in this early case was so effective, that following the presentation of *In Verrem I*, no further prosecution seemed necessary and even the defense counsel Hortensius saw the futility of trying to achieve a favorable verdict for Verres.<sup>111</sup> The events contained within *In Verrem I* were in response to Verres trying to escape the justice of Roman law by delaying the trial until the new elections took place so that he might receive more

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<sup>108</sup> *Gaius (Licinius) Verres* (c. 120-43 B.C.) – Prominent Roman magistrate and governor of Sicily (c.73-71 B.C.).

<sup>109</sup> *Quintus Hortensius Hortalus* (114-50 B.C.) – like Cicero, a prominent *orator/advocatus* who also served a consulship in 69 B.C. Before Cicero, he was accepted, in many ways, as embodying the ideal lawyer in the Republic.

<sup>110</sup> Powell, Paterson (2004), p. 98 ; Lintott (2011), p. 126 - 127

<sup>111</sup> Goldenhard (2011), p. 54

favorable treatment. Cicero realizes this ploy and pushes the trial forward with his speech against Verres, which reveals his attempted deception to the entire court and Verres is regarded even more negatively, giving Cicero a great advantage going into *In Verrem II*. Cicero's first speech against Verres set the stage for the second, having established the devious criminality of Verres his second speech is his more direct prosecution of Verres based on the charges levied against him as governor in Sicily. Cicero was so convincing in both of his speeches against Verres that Hortensius (Verres' own defense advocate) advised Verres to call for mercy in the form of voluntary exile. Thus Cicero closed the books on his first prosecution with skills that even Hortensius, a consul-elect who was regarded as the very best advocate at the time, could not propose a rebuttal, and Cicero ended up being the only person to speak in this case – single-handedly destroying the deceit and defense of Verres. One of the deciding factors in this particular case relied on Cicero's extensive knowledge of Sicily, not just the territory but the politics as well, and came from Cicero's involvement as *quaestor* in Sicily just preceding Verres' administration there.

#### Application of Blueprint:

1. Universal Knowledge – **The orator/advocate must have the most extensive education possible in order that he might present his argument with true distinction.**<sup>112</sup>

With the close association to the other attributes associated with knowledge and with memory, Cicero's universal knowledge is seemingly expressed every other line as he switches between a variety of topics in order to best express his arguments. From philosophy, to law, to history, to foreign policy, nothing seems beyond the comprehension of Cicero and he uses his extensive knowledge to best serve his argument without digressing at length about an irrelevant subject. For example, *In Verrem II* book 3 contains a digression from Cicero where he discusses how various Roman institutions generate money and how that money is distributed, knowledge one may not suspect a lawyer/orator to be familiar with. Cicero's expression of universal knowledge can perhaps be best represented by his seemingly limitless knowledge about the state of affairs in Sicily, ranging from the political spheres all the way down to the private lives of individual

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<sup>112</sup> *Universal Knowledge*, while essential to the ideal orator/advocate, is at times a difficult concept to pin-point given Cicero's speeches from the primary cases. There are countless times within the speech where Cicero would have been expressing his universal knowledge, though his genius in this sense is not conveyed well via surviving texts alone.

citizens. Considering Verres' role as governor in Sicily during the time he was accused of these crimes, Cicero no doubt took special care in preparing his mind for the upcoming case by becoming entirely familiar with the function of Sicilian politics and lifestyle.

[II.1.86-96] [II.2.54-61] [II.2.82-101] [II.2.120-131] [II.2.159-160] [II.3.12-21] [II.3.67-73]  
[II.3.75-80] [II.3.170-175] [II.3.179-190] [II.3.226-228] [II.4.68-72] [II.4.77-78] [II.5.80-82]  
[II.5.149-159]

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2. Word Choice/Arrangement – **The ideal orator/advocate must choose his words carefully and arrange them diligently, so that the best possible speech may be presented with the purpose of persuasion.**

Cicero's style of speech and presentation have been studied and revered throughout history, and is noteworthy for its tangible feeling of persuasion. Through the excessive use of rhetorical devices such as the tri-colon, anaphora, and the rhetorical question (e.g. *In Verrem I* 1.7, 1.11), even those reading his words can feel the energy and emotion that undoubtedly drove his presentation in the court of law. Indeed, Cicero's speech is ripe with a great many rhetorical questions which, as discussed in the point directly below, are stylistic tools of Cicero which he uses to engage the audience through the direct proposition of a question towards them. *In Verrem I* 1.40 and *In Verrem II* 1.10 contain excellent examples of Ciceronian rhetorical questions and are often seen in this case against Verres with a great deal of distinctly negative, gloomy words meant to reveal further the sinister character of Verres.

[I.7-12] [II.1.62-63] [II.1.77-84] [II.1.121-122] [II.2.12-23] [II.2.76-81] [II.2.132-142] [II.2.191-192] [II.3.48-52] [II.3.130-141] [II.3.161-162] [II.3.175-179] [II.3.205-208] [II.4.1-3] [II.4.17-19] [II.4.26-28] [II.4.72-74] [II.4.99-112] [II.4.150-151] [II.5.35-37] [II.5.113-114] [II.5.119-130]

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3. Emotional Knowledge – **The ideal orator/advocate must possess extensive knowledge of human emotion so that he might effectively persuade an audience by means of *pathos* and be aware of the emotional effect of his words.**

One of Cicero's most valuable skills is playing on the emotions of his audience through extensive use of the rhetorical question, which prompts the audience to personally reflect on his point and thus brings the audience closer to him making them more attentive and open to his argument. This tactic in particular can be seen occurring throughout *In Verrem I* and *II*, and was obviously quite effective seeing as that Cicero did not only win the case, but was not even presented with a rebuttal by the defense. *In Verrem II* 1.7-10 illustrates Cicero's command over human emotion and the emotional response, with Cicero meaning to invoke feelings of outrage with a grim description of the very worst sort of corrupt governor. Cicero does not directly associate the name of Verres with his example of the worst corrupt official, yet his speech is meant to anger good Roman citizens against the corruption of politicians – Verres is associated with that worst governor for the audience, without Cicero directly slandering Verres.

[I.7-12] [I.28] [II.1.1-4] [II.1.62-63] [II.1.86-96] [II.1.127-129] [II.1.151-154] [II.2.26-30]  
[II.2.43-46] [II.2.76-81] [II.2.102-114] [II.2.117-120] [II.2.191-192] [II.3.1-9] [II.3.48-52]  
[II.3.142-149] [II.3.151-152] [II.3.175-179] [II.3.205-208] [II.4.1-11] [II.4.17-19] [II.4.26-28]  
[II.4.78-86] [II.4.99-112] [II.5.21-22] [II.5.35-37] [II.5.97-103] [II.5.156-159] [II.5.179-189]

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4. Humor/Wit – **The ideal orator/advocate must possess some sense of humor or wit so as to be receptive to an audience and conduct speeches in an uplifting, persuasive way.**

The humor and wit of Cicero is best represented in his speeches by the Latin term *facetia*, which carries the connotations of modern sarcasm. Cicero does not often tell outright jokes in his speeches, nor are there very many instances where he makes an attempt to keep the mood somewhat light in the courtroom. Instead, Cicero's humor is consigned to snarky, backhanded remarks about the opposition – thus fulfilling the necessary attribute of humor, while still giving himself an advantage by continuing to defame the character of the opposition. For example in *In Verrem I* 1.5, he alludes to the fact that Verres would have bribed and corrupted judges numerous times before, if he were not so terrible at the actual act of corrupting people. *In Verrem II* 1.49 includes another example of Cicero's sarcastic interjection of humor when Cicero begins to address the actual criminal charges against Verres, during which he expresses to the court that he is not able to prosecute Verres for the crimes he commits on a daily basis – making Verres look like he lives a lifestyle of criminality - but rather that he will only prove those charges that are presented before the court (extortion, corruption).

[II.1.32-33] [II.1.43] [II.1.121-122] [II.1.155] [II.4.26-28] [II.4.56-57] [II.4.78-81] [II.4.86-90]  
[II.5.25-31] [II.5.97-102] [II.5.146]

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5. Quick-thinking – **The ideal orator/advocate must possess the natural ability of a keen mind both to maximize the utility of his other attributes and to perform well in public debate.**<sup>113</sup>

Given the evidence from any number of his speeches, it can be said confidently that Cicero is possession of the keen intellect required of the ideal lawyer. It can be seen clearly in his speeches with his seamless transitions from point to point and is reflected in his verbal attacks and rebuttals being presented clearly and effectively in the court of law. In accordance with memory, Cicero is able to draw on seemingly the entire sum of his knowledge in an instant if necessary, without undue hesitation or a lack of confidence. One need only read a single speech of Cicero to feel how the keenness of his words penetrates the reader, even through the medium of the written word. A proposed example of the performance of Cicero's keen intellect comes from *In Verrem I* 1.47-48, 1.55 where Cicero explains the direction of the trial and his methods for prosecuting Verres, all within the span of a few sentences. It is this ability to condense and express information clearly and without error that indicates that this is an instance where Cicero's quick-thinking abilities are apparent.

[I.28] [II.1.24-31] [II.2.1-2] [II.2.12-23] [II.2.62-67] [II.2.120-131] [II.2.132-145] [II.2.182-190]  
[II.3.1-9] [II.3.45-47] [II.3.103-105] [II.3.142-152] [II.3.209-221] [II.4.1-3] [II.4.29-44] [II.4.82-86] [II.4.115-118] [II.5.32-34]

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6. Memory – **The ideal orator/advocate must have a developed and extensive memory so that he might not forget his prior experiences and instead draw on them for guidance.**

Applied throughout both speeches by Cicero, he demonstrates the amazing ability to recall a vast amount of detail about every aspect of the charges and character of the defendant Verres, while at the same time recalling both numerous examples from concurrent and historical events that aid in illustrating his already convincing arguments. An example of where Cicero impressively expresses his skilled memory is shown in *In Verrem I* 1.5-6 where he expresses his extensive findings from his research when he was in Sicily concerning Verres and the charges. In the very

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<sup>113</sup> Like *universal knowledge*, Cicero's attribute of *quick-thinking* is not an easily translatable quality via the medium of the texts alone. Again, the quality of *quick-thinking* is no less essential to the ideal orator/advocate, only hard to pin-point given the text.

beginning of *In Verrem II* (1.1-2), Cicero uses his skilled memory effectively when he recalls that Verres was brought up on similar charges of corruption in the past, for the bribery of judges. Not only is this revelation to court serve to bolster the position of Cicero, but ascribes a natural tendency towards criminal behavior to Verres as well which aids in the finding of his eventual guilt.

[I.7-12] [I.16-20] [II.1.24-31] [II.1.34-54] [II.1.63-76] [II.1.103-106] [II.1.151-154] [II.2.12-23] [II.2.36-42] [II.2.62-75] [II.2.82-101] [II.2.161-181] [II.3.53-60] [II.3.67-73] [II.3.75-82] [II.3.170-175] [II.3.209-217] [II.4.26-44] [II.4.58-67] [II.4.106-114] [II.4.136-149] [II.5.10-20] [II.5.38-44] [II.5.60-66] [II.5.86-96]

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#### 7. Historical Knowledge – **The ideal orator/advocate must have education in history and knowledge of historiography so that he might be able to recall important details from the past.**

In this speech, it is oftentimes difficult to exactly determine when Cicero is expressly calling on his historical knowledge, and when he is simply remembering contemporaneous details. This is an unfortunate result of not knowing the exact dates of the past events that he makes reference to. Realistically, each expression of the detail of the past is probably a pleasant mixture of both historical knowledge and memory, given the close association with memory as the means of recalling knowledge. Nevertheless, *In Verrem I* 1.44-45 recalls the Roman statesmen Quintus Catulus and Gnaeus Pompeius and their respective speeches describing the spreading corruption in the Roman legal system, especially with regard to the corruption of *iudices* in particular to obtain a favorable outcome in a given trial. In addition, *In Verrem II* 1.14 shows Cicero holding up the memory of the Roman politicians Marcus Annius and Lucius Flavius as juxtaposition for the corruption of the political offices. Both Annius and Flavius were considered to be champions of the Roman citizens, and fought corruption in the legal system on behalf of the people, who ended up oftentimes being victims of the corruption of primarily upper-class judges and wealthy criminals capable of excessive bribery.

[I.38-40] [II.1.55] [II.2.3-11] [II.2.85-87] [II.2.159-160] [II.3.67-73] [II.3.75-82] [II.3.209-217] [II.4.72-74] [II.4.78-81] [II.4.115-125] [II.5.7-8]

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#### 8. Legal Knowledge – **The orator/advocate must be familiar with and have education in all aspects of the law, so as to most effectively perform his political duties in public life.**

Although the case could be made that the entirety of any speech given by Cicero in court is an expression of his legal knowledge, there are a great many examples of where Cicero expresses specific details about a wide range subjects concerning the Roman legal system and the word of the law. For example in *In Verrem I* 1.12-13 describes the state of the law in Sicily as being marked by corruption. Cicero also uses his legal knowledge to identify the guilt of Verres with regard to the charge of extortion, by thoroughly explaining the relationship between high-ranking political offices and the use of republic funds. *In Verrem I* 1.34-39 Cicero calls upon his legal knowledge to describe the devious tactic which Verres and Hortensius implemented in an attempt to delay the trial. By describing the rotation of judicial elections and the nature of the candidates in the upcoming election, Cicero is able to give a convincing argument that Verres was attempting to delay the trial until the new election in which many of Verres' friends were potential judges who would hear his case. Cicero reveals his legal knowledge of the best manner of prosecution in the sections of *In Verrem I* 1.55-56, when he describes the goal as being the best administration of justice and clear agreement between the evidence and his speech.

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[I.1-3] [I.40-56] [II.1.5-23] [II.1.86-96] [II.1.97-100] [II.1.133-138] [II.1.141-153] [II.1.156-158]  
[II.2.31-34] [II.2.36-42] [II.2.50-75] [II.2.82-101] [II.2.120-131] [II.2.161-181] [II.2.182-190]  
[II.3.1-9] [II.3.12-21] [II.3.22-47] [II.3.53-60] [II.3.81-83] [II.3.130-141] [II.3.191-194]  
[II.3.205-208] [II.3.219-225] [II.4.53-55] [II.4.68-72] [II.4.134-149] [II.5.10-20] [II.5.32-34]  
[II.5.41-47] [II.5.60-66] [II.5.132-147] [II.5.149-154] [II.5.163-178]

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9. Body Movement/Gesture – **The ideal orator/advocate must use gesture and body movement reservedly, and not be given to direct, harsh movements.**<sup>114</sup>

When Cicero initially presents the charges of judicial corruption against Verres (*In Verrem I*, 1.4-5), it is clear that this is the most serious of all other minor charges brought against him, and will be the basis of Cicero's major arguments in order to convict him. Based on the tone that is reflected in the text, this thesis proposes that Cicero would have most definitely been standing, making himself the center of attention in the courtroom. He would have physically gestured, indicating the accused, forcing a sudden shift in attention from himself, to Verres, aiding in his arguments that highlight Verres' criminality. Yet in accordance with own rule, he would have not gestured in a harsh manner, but definitely accusatory manner.

[I.4-5] [II.1.156-158] [II.3.175]

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10. Facial Expression – **The ideal orator/advocate must have command over his facial expression, especially with regard to the eyes, and effectively use facial expression to emphasize important points.**

In addition to the invective of the corruption charge levied by Cicero against Verres (*In Verrem I* 1.4-5), Cicero also chooses to include in this moment the devious scheming on the part of Verres and his defense attorney, Hortensius. They had previously tried to delay the trial in order to attain a more favorable judge to hear the case, and Cicero would have adopted a facial expression that would have shown his repulsion and disgust for such devious actions. At the same time, he would have furrowed his brow to show his agitation that such schemes were let go to such an extent.

[I.4-5] [II.1.156-158] [II.3.175]

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11. Vocal Inflection – **The ideal orator/advocate must have command over the inflection and tone of his voice, so as to emphasize essential points or illicit emotion.**

In Cicero's equivalent of opening statements (*In Verrem I*, 1.4-5), the tone inferred by the text is strictly accusatory of Verres. In like manner, Cicero's vocal inflection would have directly reflected this tone, establishing a firm base for further prosecution by harshly painting Verres in an entirely criminal light.

[I.4-5] [II.1.156-158] [II.3.175]

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Conclusions:

Even at such an early stage in his active career as an advocate, Cicero can already be seen developing into the ideal orator/advocate that he will write about in his future *De Oratore*.

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<sup>114</sup> The final (3) attributes in the stylistic blueprint are difficult to provide evidence for, given only the surviving texts. Without distinct visual representation, certain aspects of Cicero's physical movement can only be inferred as being a *possible* way that Cicero could have acted.

Already in his first prosecution case all of the attributes laid out in the blueprint can be applied to the words of Cicero, with the exception of course of the final three attributes, which without other accounts describing the actual appearance of Cicero while he gave the speech are unable to be definitively established. This research continues to maintain that even though there are no physical accounts of Cicero's motion or appearance in these cases, Cicero would have still been conforming to those attributes of delivery which he places so much emphasis on in the last arguments of the *De Oratore*. It would not make sense that Cicero would conform to all the other attributes of the ideal lawyer, only to diverge from the blueprint when it comes to delivery, especially when considering Cicero's success that could not have been established without an effective style of delivery.

2. *Pro Cluentio* – (66 B.C.)

- ❖ Litigant(s): *Aulus Cluentius Habitus*<sup>115</sup> (defendant); *Staius Albius Oppianicus (minor)*<sup>116</sup> (plaintiff)
- ❖ Advocate(s): *Marcus Tullius Cicero* (defense); *Titus Accius*<sup>117</sup> (prosecution)
- ❖ Crime/Charge(s): *corruption, murder* (by means of poison)

A benchmark defense case for Cicero, the *Pro Cluentio* serves as an excellent example of Cicero's prowess for both prosecution and defense. Still relatively early on in his career, this case along with *In Verrem* show how Cicero sought to be effective in all aspects of the legal system, without consigning himself to the individualized skills demanded for either prosecution or defense. The charges brought against Cluentius in this case are severe, especially when considering the connotations of murder in ancient Rome, yet Cicero implements a tactic for

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<sup>115</sup> *Aulus Cluentius Habitus* (c.115-? B.C.) – wealthy Roman citizen from Samnium in Southern Italy. Stepbrother of his accuser, Oppianicus Minor.

<sup>116</sup> *Staius Albius Oppianicus Minor* (c.103-? B.C.) – the son of a prominent Roman citizen of the same name, he was induced by his mother Sassia into accusing his stepbrother Cluentius of poisoning his father.

<sup>117</sup> *Titus Accius* (dates unknown, c.60s-70s B.C.) – praised by Cicero for his skill as an *advocatus*, Accius takes up the prosecution of Cluentius opposite the defense of Cicero himself.

defense that is quite genius, namely, not addressing the main charge until the very end dismissing the charge of murder as ridiculous.<sup>118</sup>

Titus Accius, a famed advocate himself, bases his prosecution of Cluentius on both the charge of poisoning his stepfather, as well as the previous charge brought against him in which he was accused of corrupting the *iudices* in order to obtain a favorable outcome. The latter charge stemmed from a previous case in which Cluentius and his stepfather he was accused of poisoning, met in a civil suit where Cluentius supposedly tried to buy the favor of the judges.

In defense of Cluentius against these charges, Cicero begins his defense extolling the moral character of his client and discredits the charge of corruption by revealing the criminality of Cluentius' stepfather. Cicero claims that Cluentius had no reason to try to corrupt the judges because there is no foreseeable way that his stepfather would have been acquitted and the judges would have ruled in Cluentius' favor anyway. Cicero continues in this manner, emphasizing the criminality of the stepfather of Oppianicus who Cluentius was accused of poisoning and eventually shifting the blame for the poisoning onto Sassia, the corrupt mother of the plaintiff. Cicero is so convincing in his argument for the criminality of Sassia and Oppianicus and the innocence of Cluentius, that Cluentius is acquitted of all charges. In this way, Cicero secured yet another victory in the courtroom relatively early on in his career, in the face of very serious charges and in defense of an individual already negatively viewed in Roman politics.<sup>119</sup>

#### Application of Blueprint:

1. Universal Knowledge – **The orator/advocate must have the most extensive education possible in order that he might present his argument with true distinction.**

In this case, Cicero may be more reserved in his defense speech here than in prosecution cases elsewhere, but his comprehensive grasp on a great many subjects outside the usually accepted realm of politics remains constant as it does in all his speeches. Expressed throughout the speech, though in different contexts, topics that Cicero touches on include knowledge of disease, the

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<sup>118</sup> See reference in Borowitz (October 1969), p. 934 - 936

<sup>119</sup> For distinctly negative consideration of Cluentius, see Lintott (2011), p. 142

effects of certain poisons, and content of public record, along with a great many other subject areas.

[3.7-4.9] [13.36-14.41]

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2. Word Choice/Arrangement – **The ideal orator/advocate must choose his words carefully and arrange them diligently, so that the best possible speech may be presented with the purpose of persuasion.**

A major difference to be noted between Cicero's word choice as he moves from prosecution to defense, lies in the overall tone that he is seeking to express via those word choices and arrangements. Cicero's style of word choice when acting on behalf of the defense can be summarized as being distinctly deferent to the authority and power of the judge, sounding especially in the opening sections of the speech to be almost as the entreaty of a suppliant. *Pro Cluentio* 1.4-2.5 contains excellent examples of Cicero's consistent adherence to the use of the rhetorical question as well as entreaties in the form of hortatory subjunctives. These rhetorical devices are implemented for the purpose stated above, to give the feeling of supplication so as to make the court more sympathetic to his position.

[1.4-2.5] [4.10-4.11] [14.42-14.43] [17.48-18.51] [22.59-23.62] [23.64-26.71] [30.80-30.82] [46.129] [52.143-52.145] [61.168-66.185] [66.187] [70.200-71.202]

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3. Emotional Knowledge – **The ideal orator/advocate must possess extensive knowledge of human emotion so that he might effectively persuade an audience by means of *pathos* and be aware of the emotional effect of his words.**

Following in the same thread as Cicero's word choice for this case, the entirety of this case has less of the feeling of attack that marks (especially Cicero's) prosecution cases, yet in the end is realized to be no less persuasive. The primary means Cicero uses to elicit an emotional response from the audience and the court officials lies in the tone of his speech. There are countless examples from the text that serve as representations of Cicero's knowledge of emotion when presenting his argument, based on the fact that Cicero realizes that the burden of proving innocence is squarely upon himself and decides to foster an attitude of relative sympathy for his case. Cicero accomplishes this by continually addressing the judges directly and reverently – *O iudices* – and through continued use of the emotion-inducing rhetorical questions to elicit that response from the audience that he desires.

[1.4-2.5] [4.10-4.11] [6.17] [14.42-14.43] [17.48-18.51] [22.59-26.71] [30.80-30.82] [38.108-40.111] [43.121-44.123] [46.129] [66.189-71.202]

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4. Humor/Wit – **The ideal orator/advocate must possess some sense of humor or wit so as to be receptive to an audience and conduct speeches in an uplifting, persuasive way.**

Taking into account the seriousness with which Cicero views this defense case, there does not appear to be much room for his usual sarcastic wit to play a pivotal role in his argument, if he intends to keep playing the reverent, sympathetic role which he adopts. Yet, *Pro Cluentio* 20.57-21.59 shows Cicero calling upon another example of a trial involving poison, and the debate in that case between the prosecutor Caepsius and the defense advocate Fabricius. One of the only obvious attempts at humor in the entire speech, Cicero makes light of the fact that in this particular case, the representation of Fabricius for the defense was so poor that he actually attempted to slink out of the courtroom rather than listen to Caepsius' speech which pushed a favorable verdict for Fabricius completely from possibility. While giving his speech, Caepsius

brutally attacks the character and weak argument of Fabricius, and notices that he has snuck out of the courtroom. This prompts Caepsius to go out, grab Fabricius, and drag him back to the trial to hear the rest of his harsh criticism.

[25.67] [29.80] [38.108-40.111]

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5. Quick-thinking – **The ideal orator/advocate must possess the natural ability of a keen mind both to maximize the utility of his other attributes and to perform well in public debate.**

With regard to defense cases of Cicero, he often implements an effective tactic to achieve a favorable outcome for his client which can be best described as shifting the entire focus of the blame from his defendant, to some other character not necessarily directly involved in the case proceedings. By effectively imparting the cause of the charge against his client as a direct result of the sinister behavior of another person, Cicero is able to make his audience nearly forget that his defendant was actually charged with the crime at all and that rather the wrong person was accused. This is the same tactic that Cicero uses in the *Pro Cluentio*, and can be seen in sections 4.9-11 when Cicero seeks to remove the charge of corruption by painting the entire family of the plaintiff Oppianicus as not only having a personal agenda against Cluentius himself, but also gives examples where Oppianicus and his relatives were notoriously prone to providing frequent, groundless accusations.

[5.11-6.17] [10.30-12.35][12.33-12.35] [30.83-31.84] [32.87-32.89] [43.121-46.128] [47.130-47.131] [51.142-53.148]

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6. Memory – **The ideal orator/advocate must have a developed and extensive memory so that he might not forget his prior experiences and instead draw on them for guidance.**

In *Pro Cluentio* 4.11-5.14 shows Cicero's impressive utility of memory in recalling a great amount of detail from Cluentius' personal life. Presenting Cluentius in a positive, politically-oriented life and attributing the beginning of his family's troubles as being Cluentius' father's marriage to Sassia, who in turn married into the family of Oppianicus soon after her husband's death when Cluentius was a young boy. Cicero also remembers explicit details from the prior case which was the origin of the charge of corruption against Cluentius in *Pro Cluentio* 7.19-8.25, when he further pushes his argument that these charges against him are result of a personal agenda by Oppianicus and his family. The entirety of the text contains an impressive amount of detail with regard to a great number of relevant cases, which Cicero effectively uses to achieve the most effective defense.

[5.11-6.17] [7.19-14.41] [38.105-38.107] [41.112-42.118] [47.132-50.139]

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7. Historical Knowledge – **The ideal orator/advocate must have education in history and knowledge of historiography so that he might be able to recall important details from the past.**

In *Pro Cluentio* 2.5-6, Cicero attempts to protect himself from undue prejudice due to his role as defendant in the case of Cluentius by providing an account of the historical tradition of impartiality towards the defendant, which not only being a reasonable request for the defense advocate to propose, also serves to encourage the court officials to conform to the best administration of justice. Throughout the speech, there are a great many examples of the events of relevant cases that serve to support the innocence of Cicero's client, and speak to the genius of Cicero's historical knowledge, preparation, and memory.

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8. Legal Knowledge – **The orator/advocate must be familiar with and have education in all aspects of the law, so as to most effectively perform his political duties in public life.**

In the entire body of the speech, Cicero continually displays an impressive comprehension of the various legal subtleties of the many cases that he draws on to provide support for his argument. His attention to details and value of each individual aspect of the law serves to bolster his position not only through direct support of his argument, but also through the recognition his legal knowledge drew to him from the audience for his genius. In *Pro Cluentio* 1.1-3, at the very beginning of the speech, Cicero begins by expressing his knowledge of previous cases will be applied to this case, as well as ‘instructing’ the court officials to the aspect of their duty that requires impartiality toward the guilt of the defendant.

[1.1-2.6] [3.7-4.9] [7.19-14.41] [23.62-26.71] [37.103-38.107]

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9. Body Movement/Gesture – **The ideal orator/advocate must use gesture and body movement reservedly, and not be given to direct, harsh movements.**

In this, a defense case, Cicero is in effect protecting his client, Cluentius. When representing his client in this defensive way, it is reasonable to consider that Cicero would not have strayed too far from the side of Cluentius throughout the entire trial. Cicero would have conducted his argument, standing, nearby to Cluentius; perhaps even placing a hand on Cluentius himself, showing that he is in the care of Cicero, and imparting at least a bit of his impressive ethos onto Cluentius.

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10. Facial Expression – **The ideal orator/advocate must have command over his facial expression, especially with regard to the eyes, and effectively use facial expression to emphasize important points.**

Throughout this case, Cicero is constantly providing evidence and context for the reasons why the charges were levied against Cluentius. Considering all of the detail that Cicero goes into during his in-depth analysis of the charges, Cicero would have kept a non-antagonistic facial expression, careful not to reveal any frustration. Yet when he begins arguing that Sassia is the true culprit in this case, Cicero would have most certainly adopted a facial expression that would have relayed his agitation with Sassia and her family to the entire courtroom.

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11. Vocal Inflection – **The ideal orator/advocate must have command over the inflection and tone of his voice, so as to emphasize essential points or illicit emotion.**

Cicero’s tone in this trial would have most certainly been guarded and reserved, considering that he is representing the defense, and it is not his goal to attack as he would have in a prosecution case like *In Verrem*. He would have conducted the majority of his argument in this case with a steady, reserved tone, especially when considering the content of roughly the entire first half of the argument where Cicero really is trying to set the context for the trial in exact detail. But when he launches into his invective against Sassia and her family, his tone would most likely have raised to show his anger with the devious family, painting them in an entirely criminal light.

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## Conclusions:

In yet another case taken on relatively early in his career as an advocate, Cicero possesses an equally impressive style of defense as his style of prosecution. It is important to note first of all when considering the analyses of the first two cases in this section (*In Verrem I, II; Pro Cluentio*) that in shifting between defense and prosecution, Cicero is able to maintain the same attributes of the ideal lawyer without allowing for any to fall by the wayside in the transition between sides. In this first of the two defense cases to be analyzed in this chapter, readers are made aware of Cicero's own style of defending a client which consists of shifting the focus of the blame from his client, to some other sinister figure (whether directly involved in the case or not). By means of this tactic, Cicero is able to achieve a great many victories in the courtroom for the defense and is a testament to his legal genius. As stated in the conclusion for *In Verrem*, there is the apparent disadvantage of not having accounts of Cicero's movements or appearance during this case. And just as above, the research maintains that Cicero would have conducted himself according to the delivery style laid out in the blueprint.

### 3. *Pro Caelio* – (56 B.C.)

- ❖ Litigant(s): *Marcus Caelius Rufus*<sup>120</sup> (defendant)
- ❖ Advocate(s): *Marcus Tullius Cicero* (defense); *Marcus Licinius Crassus*<sup>121</sup> (defense); *Lucius Sempronius Atratinus*<sup>122</sup> (prosecution); *Publius Clodius*<sup>123</sup> (prosecution); *Lucius Herennius Balbus*<sup>124</sup> (prosecution)
- ❖ Crime/Charge(s): *political violence (L. vis); corruption, assault, property damage*

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<sup>120</sup> *Marcus Caelius Rufus* (82-c.43 B.C.) – a Roman orator and statesman, Caelius was actually a political rival of Cicero, prior to his defense of Caelius.

<sup>121</sup> *Marcus Licinius Crassus* (c.115-53 B.C.) – considered by some historians to be the most wealthy man in Roman history, Crassus also had a legendary political career as advocate, statesman, governor, et al.

<sup>122</sup> *Lucius Sempronius Atratinus* (?-7 B.C.) – although only a young man [late teens, according to some scholarship], he joins Clodius and Herennius Balbus in the prosecution of Caelius. He became a prominent Roman politician and legal expert, he held a consulship in 34 B.C. and acts as one of the prosecutors in the trial of Caelius.

<sup>123</sup> *Publius Clodius* (c.93-52 B.C.) – a personal enemy of Cicero himself, Clodius was a Roman tribune and shrewd politician, responsible for Cicero's eventual exile.

<sup>124</sup> *Lucius Herennius Balbus* (dates unknown, c.70s/60s B.C.) – another prominent orator and lawyer, Balbus was also a senator and acts as one of the three prosecutors in the case of Caelius.

Ripe with a great amount of impressive language, this case is considered perhaps one of the most impressive in the storied career of Cicero. It is considered in this way due in part to the many serious charges brought against the defendant Caelius brought in under the general title of ‘political violence’ (*vis*). Considered closely as the Roman Republican idea of treason, political violence is regarded as the worst sort of crime in the Republic, and was almost always punished swiftly and with force. Not only was there a preponderance of criminal charges brought against Caelius, but he himself was a noted competitor of Cicero – siding with the traitorous Catiline and actually appearing as prosecution in a case that Cicero defended against.<sup>125</sup> Despite all the odds being stacked against Cicero, he undertakes the challenge and implements his commonly viewed practice of removing blame from the defendant and placing it on some other sinister character.

In this case, facing a daunting lineup of prominent Roman prosecutors, the legal team of Marcus Licinius Crassus and Cicero representing Caelius faced just as daunting a set of charges levied against Caelius. In addition to being charged with the murder of Dio of Alexandria,<sup>126</sup> Caelius was also charged with *corruption* for taking payment to assassinate Clodia,<sup>127</sup> and the minor crimes of *property damage* and *assault*.<sup>128</sup> Yet the serious charge of most interest to the court remained *political violence* for the murder of Dio and inciting rebellion in the provinces. It is important to note that there is a personal agenda behind members of the prosecution for presenting this case against Caelius, residing primarily with Atratinus, Clodius, and his sister Clodia. Atratinus is apparently seeking some sort of revenge on Caelius for previously winning

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<sup>125</sup> Powell, Paterson (2004), p. 65 - 67

<sup>126</sup> *Dio of Alexandria* (1<sup>st</sup> century B.C.) – noted philosopher and ambassador to Rome, Dio was involved in the altercations with Ptolemy of Egypt in the first century B.C., and while serving as a political emissary to Rome, he was murdered with the charge falling upon Caelius.

<sup>127</sup> *Clodia* (c.95-? B.C.) – sister of Publius Clodius, she is labelled as the mastermind behind the charges levied against Caelius by Cicero and her biography was marked by immorality and corruption.

<sup>128</sup> See Chapter One – *The Twelve Tables* [Chapter 1, p. 13 - 15]

the heart of Clodia, who was previously romantically involved with Caelius.<sup>129</sup> The agenda of Clodius and Clodia is somewhat more vague, yet most certainly sinister, and hinge on the broken relationship of Caelius and Clodia. Indeed, it seems as though Cicero was aware of these personal agendas coupled with the serious charges, and directs his speech against Clodia whom he convinces the court is the mastermind behind the false charges against Caelius.

Cicero is aided in his defense by Marcus Licinius Crassus who conducts the first defense speech, and it is actually Crassus who addresses many of the charges against Caelius. It seems given Cicero's statement in *Pro Cael.* 10, that Crassus presented a convincing argument to refute the criminal charges, which Cicero felt no need to add to it in his speech. Yet the charge Crassus did not address is the murder of Dio, the most serious charge, which Crassus leaves for Cicero to conclude in the defense.

Cicero, as alluded to above, centers his speech around the sinister nature of Clodia, who Cicero convinces the court is behind this plot to destroy the character of Caelius. Cicero seems to notice the outrageousness of this sudden murder charge brought in seemingly random fashion against one who was never before associated with the events surrounding Dio's death, or life for that matter. This is what Cicero centers his argument around, revealing the ridiculousness surrounding the charging of charging young Caelius with such a crime and indicating that it is Clodia, the sister of prosecutor Clodius, who is seeking to harm Caelius. After presenting these findings to the court, Cicero continues with an eloquent discourse painting Clodia in an entirely sinister light, to the point that the court is convinced that the charges were orchestrated as part of personal agendas to harm Caelius. Through the combined efforts and skill of Crassus and Cicero, Caelius was acquitted of all charges.

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<sup>129</sup> Lintott (2004), p. 182

Application of Blueprint:

1. Universal Knowledge – **The orator/advocate must have the most extensive education possible in order that he might present his argument with true distinction.**

The *Pro Caelio* carries with it numerous examples where Cicero draws upon his knowledge of subjects like philosophy and foreign policy to refute the accusations of the prosecution. *Pro Caelio* 3.6-8 shows Cicero giving an eloquent account of proper conduct, drawing upon his knowledge of propriety and comportment to warn the prosecution against abusive treatment of the defendant as well as the dangers of accusing a person unjustly.

[3.6-8] et al.

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2. Word Choice/Arrangement – **The ideal orator/advocate must choose his words carefully and arrange them diligently, so that the best possible speech may be presented with the purpose of persuasion.**

The word choice and arrangement that Cicero chooses to present in this defense speech is characteristic of his other defense speeches without as much of the notable reverence to the officials or the audience as in the *Pro Cluentio*. This is most likely due to the fact that Cicero is at this point a well-established lawyer and has discovered the perfect amount of deference that is necessary to achieve a favorable outcome. Throughout the speech there are still numerous direct addresses made to the judges and Cicero's prose is still heavy with rhetorical devices. In *Pro Caelio* 6.13 serves as a prime example that Cicero has not abandoned the power of the rhetorical questions, especially in his defense cases, and his proposed questions no doubt caused a powerful emotional response.

[6.13] [9.20] [15.35-15.36] [17.39-17.42] [19.45-20.48] [32.77-32.80]

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3. Emotional Knowledge – **The ideal orator/advocate must possess extensive knowledge of human emotion so that he might effectively persuade an audience by means of *pathos* and be aware of the emotional effect of his words.**

Cicero makes use of his knowledge of emotion notably in *Pro Caelio* 3.8-4.10, where Cicero chooses to emphasize the *ethos* of Caelius for the court, knowing full well that *ethos* is one of the most effective means of persuasion. On account of his knowledge that many Romans were knowledgeable concerning Caelius' political career, Cicero chooses to use this to his advantage by reminding the audience and officials of Caelius' status in Roman politics.

[3.6-3.8] [6.13] [15.35-15.36] [24.59-24.60] [32.77-32.80]

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4. Humor/Wit – **The ideal orator/advocate must possess some sense of humor or wit so as to be receptive to an audience and conduct speeches in an uplifting, persuasive way.**

In *Pro Caelio* 3.7, Cicero expresses his humor and wit through the sarcastic address of the charges brought against Caelius by Atatrinus. Atatrinus was only very young man at the time of his shared prosecution of Caelius, and Cicero makes fun of the absurdity that such a young man, not adequately familiar with the function of the legal system, could levy such charges against a noteworthy politician like Caelius.

[3.6] [8.18] [16.37-16.38] [17.39]

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5. Quick-thinking – **The ideal orator/advocate must possess the natural ability of a keen mind both to maximize the utility of his other attributes and to perform well in public debate.**

*Pro Caelio* 1.1-2.5 can be interpreted as adequately representing Cicero's ever-present, keen intellect in this defense case. In these sections, Cicero is at the very beginning of his defense and chooses to begin by painting Caelius in an honorable light by relating details of his biography to the court. By means of his intellect, Cicero evaluated the presentation of the defendant to be the priority, and the best means of achieving a favorable verdict.

[1.1-1.2] [3.6-3.8] [11.25-14.34] [18.42-19.44] [20.48-22.53]

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6. Memory – **The ideal orator/advocate must have a developed and extensive memory so that he might not forget his prior experiences and instead draw on them for guidance.**

Cicero's impressive memory can be argued to be in use throughout every example and reference that he makes in his defense of Caelius, but good examples from the text of Cicero expressing his extensive memory can be found in his explanation of the backstories behind each of his clients. In *Pro Caelio* 1.1-2.5, Cicero follows this same pattern calling upon aspects of Caelius' life and career from his memory to portray his *ethos* and nobility in the face of the prosecution.

[4.9-5.12] [6.14-7.16] [20.50-22.53] [25.61-28.66] [30.71-32.80]

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7. Historical Knowledge – **The ideal orator/advocate must have education in history and knowledge of historiography so that he might be able to recall important details from the past.**

With regard to historical knowledge, Cicero and Caelius themselves have some personal history, having been in support of opposite sides during the Catalinian conspiracy. Cicero brings this to light in *Pro Caelio* 4.9-5.12 by providing a historical account of some of the noteworthy events from that conspiracy, in the end claiming that Caelius was only involved by means of association with those already involved with Catiline.

[17.39-19.44] [30.71-31.74]

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8. Legal Knowledge – **The orator/advocate must be familiar with and have education in all aspects of the law, so as to most effectively perform his political duties in public life.**

Cicero's legal knowledge in this speech is just as impressive and comprehensive as in other cases, and his opening for this case in defense of Caelius he decides to start with an expression of that knowledge. In *Pro Caelio* 1.1, at the very opening of the speech, Cicero begins by laying out the aspects of his legal career that contribute to his now-present *ethos*. In addition to expressing to the court that he is in possession of extensive legal knowledge, he continues with a brief section concerned with the actual utility of the law and how it is applied in this case.

[1.1-3.7] [8.20-15.36] [19.45-20.48] [22.53-24.58] [29.68-32.80]

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9. Body Movement/Gesture – **The ideal orator/advocate must use gesture and body movement reservedly, and not be given to direct, harsh movements.**

Although this case is a defense case for Cicero, the way that he approaches the argument for Caelius is more reminiscent of a prosecution case. Rather than take a more passive role in defending against the particular charges, Cicero attacks the opposition, painting the plaintiff Oppianicus in a criminal way so that the court will find Caelius innocent by default of the wicked deviousness of the accusers. Caelius himself is no stranger to the Roman courtroom and

perhaps Cicero would have given him a wider berth than he would have granted to Cluentius, for example. Since Cicero is ‘on the offensive’ in this defense case, he would have conducted his bodily movements to fit the tone of his speech, perhaps even pointing fingers at the accusers, placing shame upon them, not Caelius.

[24.60]

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**10. Facial Expression – The ideal orator/advocate must have command over his facial expression, especially with regard to the eyes, and effectively use facial expression to emphasize important points.**

In the same strain as the previous attribute, Cicero’s facial expression would have matched his tone at any particular given instance in the trial proceedings. Since his tone is more critical of the accusers rather than in passive defense of Caelius, he would have kept a furrowed brow to show his disapproval of the actions of Oppianicus, Clodia, and the other conspirators against Caelius.

[24.60]

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**11. Vocal Inflection – The ideal orator/advocate must have command over the inflection and tone of his voice, so as to emphasize essential points or illicit emotion.**

From the outset of the trial, it is apparent to Cicero that his argumentation will not be tailored explicitly for the defense of Caelius, but will attempt to bring to light the criminal behaviors that brought this trial about. It was said before that the feeling that is taken from the text is not one of passive defense, but an active reprimand of the plaintiffs. Cicero’s tone of voice would have mimicked this overall tone of his argument, and would have constantly been sharply inflecting on the wickedness of the accusers.

[24.60]

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Conclusions:

In this second defense case, Cicero can be understood as implementing his classic style, removing the focus of blame from Caelius and planting it on Clodia. Although not associated with the actual events of the trial, it is a testament to a combination of Cicero’s memory, quick-thinking, and legal knowledge that he was able to identify the charge of murder against Caelius as farcical, and the true instigator of the charge to be the revenge-seeking Clodia. Although Marcus Crassus handles the majority of the defense of the criminal charges, taking a large part of the duty of the prosecution away from Cicero, the attributes of the ideal lawyer can still be seen in the text. More than other cases (other than perhaps *In Pisonem*), this speech damning Clodia is so emotionally charged that the feeling is almost palpable, and Cicero’s word choice and arrangement is similarly forceful.

4. *In Pisonem* – (55 B.C.)

- ❖ Litigant(s): *Lucius Calpurnius Piso Caesoninus*<sup>130</sup> (defendant)
- ❖ Advocate(s): *Marcus Tullius Cicero* (prosecution)
- ❖ Crime/Charge(s): *corruption*

Taking into account the details of the other selected cases here, *In Pisonem* is not necessarily conducted with the same procedure. This trial is basically a one-on-one standoff between Piso, trying to defend himself against slanderous speech, and Cicero who seeks to further destroy the career of the corrupt Piso and other undesirable governors. The events leading up to this trial included a speech made by Cicero defaming Piso and the functionality of the provincial governors while Piso was serving as governor in Macedonia from 57-55 B.C.<sup>131</sup> The speech against him prompted Piso to return to Rome and appear before the senate to defend himself, with Cicero being present in the court to refute him. Cicero, in both his previous speech and the speech against Piso before the Senate, identifies the degradation of the office of the provincial governor as becoming an office characterized by corruption and extortion, rather than the previously honorable governors who perpetually answered to the demands of Rome and its people. Piso in particular is referred to as being a symbol of this new corruption in the provinces and Cicero calls for the removal of such corrupt politicians in favor of those who will serve their republic.<sup>132</sup>

The initial speech which prompted Piso's return to Rome, was Cicero's work *De Provinciis Consularibus* which was presented before the Senate as a plea by Cicero for the reform in the office of proconsul. In that speech, Cicero refers directly to Gabinius<sup>133</sup> and Piso as examples of the worst kind of governor, expressing exasperation at their policies and lifestyle.

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<sup>130</sup> *Lucius Calpurnius Piso Caesoninus* (c.100-43 B.C.) – wealthy Roman statesman who conspired with Cicero's enemies (most notably, Publius Clodius) to have him exiled. He governed the province of Macedonia from 57-55 B.C. until Cicero bewailed the state of the provinces in a public speech and Piso was recalled to Rome.

<sup>131</sup> Usher (2008), p. 194

<sup>132</sup> Lintott (2004), p. 203

<sup>133</sup> *Aulus Gabinius* (?-c.47 B.C.) – Roman statesman of the late republic. Gabinius achieved the office of proconsul in Egypt and, with Piso, is the target of Cicero's critical *De Provinciis Consularibus*.

This speech resonated with the Senate, and when Piso heard of it, he quickly returned to Rome both to defend the validity of his office and face his accuser, Cicero, directly. Upon his appearance before the Senate, Cicero is waiting for him, and both present a speech before the Senate. Piso speaks first, attempting to defend himself against the accusations made by Cicero in *De Provinciis Consularibus* by weakly arguing for the prominence of his family name and his length of time in Roman politics.

Following the weak defense of his position, Cicero launches into a brutal speech directed towards Piso and his pollution of Roman politics. *In Pisonem* is much more harsh in its word choice than *De Provinciis Consularibus*, and it is ironic that Piso was brought back to Rome by a defaming speech, only to return to an even more graphic speech this time physically standing before Cicero and the Senate. Cicero refutes Piso's weak claims that his family grants him a certain political *ethos*, saying that though being from a respectable family, Piso is not respectable at all. Making more light of Piso's political short-comings, Cicero draws into his speech a criticism of Piso's consulship, indicating instances that reflected poorly on his public image. He follows up the criticism of Piso's consulship immediately with some of the same material contained in the *De Provinciis Consularibus*, this time directed entirely at the corrupt maintenance of Macedonia under the governorship of Piso. Cicero reveals aspects of Piso's Epicurean<sup>134</sup> lifestyle as not befitting of one charged with the governing of a Roman province, such as that he was taken to getting drunk too frequently and was seldom present at important political gatherings because of laziness.

In addition to these charges against Piso's hedonistic lifestyle and corrupt management of Macedonia, Cicero reveals to the Senate that while Piso was in command of Roman legions, the

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<sup>134</sup> Not to be taken as a negative statement about living an Epicurean lifestyle; For Cicero, Piso's form of Epicureanism was more in line with hedonism, and less in line with the classical ideals that Epicureans excel in politics.

soldiers under his command would refer to him as *imperator* and would often carry the *fascēs*, symbols of Piso's underlying opposition to the Roman politics of the time, as well as opposition to the fundamental values of the republic. Throughout the speech, which is quite lengthy, Cicero continues to attack the character of Piso, in much the same way that he would break down the criminality of a defendant as in any other criminal case. After the conclusion of this event, Piso faded into the background, removed from his office and confronted with a great amount of public and political criticism due to Cicero's speech. And although Cicero's speech did not prompt immediate reform in the provinces or in the election of the governors, Cicero had succeeded in drawing attention to a real political issue of corruption that was becoming more and more common each day in the late republic. At the very least, Cicero was successful in removing Piso from a position where he could further harm the republic.

#### Application of Blueprint:

1. Universal Knowledge – **The orator/advocate must have the most extensive education possible in order that he might present his argument with true distinction.**

In this prosecution of Piso, Cicero more conforms to the use of legal and historical knowledge than any other subject area, yet there is something to be said about Cicero's knowledge of the current state of affairs in all corners of Rome. *In Pisonem* 14.31-32 illustrates the summary of Cicero's conception about Roman society at the time as being marked by both corruption and an overwhelming depression which Cicero fears to be the decay of the republic.

[1.1-2.3] [15.33-15.36] [19.45-20.48] [23.53-23.55] [27.66-29.71]

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2. Word Choice/Arrangement – **The ideal orator/advocate must choose his words carefully and arrange them diligently, so that the best possible speech may be presented with the purpose of persuasion.**

Cicero's word choice and arrangement here is almost entirely personal attacks on the character and behavior of Piso, making him out to be an example of everything that is wrong with Roman politics and accusing him of a great deal of criminal activity throughout his entire career in politics. *In Pisonem* fragments 1-15, although incomplete, represent the opening statement of this graphic speech of Cicero and so it can be thought to have contain some of the most forceful of Cicero's points. From what remains of the first lines of the speech, the forcefulness of the words is apparent in some instances, especially with the first like invocation of the gods presumably against the wickedness of Piso.

[4.8-5.11] [9.19-10.24] [11.24-12.28] [16.37-22.53] [24.58-27.66] [36.87-38.94]

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3. Emotional Knowledge – **The ideal orator/advocate must possess extensive knowledge of human emotion so that he might effectively persuade an audience by means of *pathos* and be aware of the emotional effect of his words.**

The emotional impact of this graphic speech against Piso is apparent in every consecutive section of the text, with descriptions of Piso and his actions illustrated in not only a negative, but even evil way. Throughout the entirety of the speech, Cicero does not cease in calling Piso a number of different insulting names, that surely would have drawn the attention of the Senators every time a new insult was spoken. *In Pisonem* 10.22-23 is an especially graphic section of the speech and through the use of the ever-present rhetorical question, Cicero attempts to provoke outrage and the deeds and character of the corrupt Piso.

[fr.1-fr.15] [9.19-10.24] [11.24-12.28] [16.37-22.53] [24.58-27.66] [36.87-38.94]

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4. Humor/Wit – **The ideal orator/advocate must possess some sense of humor or wit so as to be receptive to an audience and conduct speeches in an uplifting, persuasive way.**

It is difficult in this case in particular, to discern exactly where in the text Cicero is meaning to apply his humor, and where he is being seriously insulting. Yet, *In Pisonem* 1.1-2 at the very beginning of the speech seems to be an expression of Ciceronian wit when he makes Piso seem insignificant and worthless by citing numerous places in history where ‘a Piso’ had achieved some sort of political fame. Cicero does this only to return to Piso himself, and indicate that while so many of his family name had achieved political greatness, Piso had no fame or respect himself.

[10.24] [18.41-18.43] [25.59] [30.73] [40.96]

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5. Quick-thinking – **The ideal orator/advocate must possess the natural ability of a keen mind both to maximize the utility of his other attributes and to perform well in public debate.**

In order to make Piso’s criminality even more apparent, Cicero chooses to contrast Piso’s corrupt career with his own legendary career in politics in the sections *In Pisonem* 1.2-3.7. By laying out for the Senators an overview of his own personal career in law and politics, juxtaposed with Piso’s career, Cicero is employing quite an effective tactic – for even if Piso was not a corrupt politician, his career would have still paled in comparison to Cicero’s mighty resume.

[1.2-7.14] [16.37-17.41] [22.51-22.53] [31.75-31.77] [40.97-41.99]

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6. Memory – **The ideal orator/advocate must have a developed and extensive memory so that he might not forget his prior experiences and instead draw on them for guidance.**

It is an impressive feat that Cicero was able to remember all of the various instances of Piso’s corruption from different points in his political career, and he seems to do so with ease as if all he has done in Piso’s absence from the capitol was study the events of Piso’s life. *In Pisonem* 4.8-5.10 reflects Cicero’s impressive memory in this regard when he recalls all the various events of Piso’s consulship that lead to his widely accepted characterization of wickedness. In addition to this criticism of Piso’s consulship, Cicero also attacks his behavior as proconsul in Macedonia as well, saying that it was tainted by similar corruption.

[2.4-3.7] [6.12-9.18] [13.29-13.31] [21.48-22.53] [27.66-28.69]

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7. Historical Knowledge – **The ideal orator/advocate must have education in history and knowledge of historiography so that he might be able to recall important details from the past.**

*In Pisonem* 7.14-16 shows Cicero's once again impressive historical memory of the Catilinian conspiracy, only this time, he ascribes the behavior of Catiline and his compatriots as being similar to the evil conduct of Piso. Given this distinction, Cicero continues with the speech to elaborate on this point, giving instances where the corrupt deeds of Catiline are mirrored by Piso and goes so far as to claim that Piso would have been a high-ranking member of the conspiracy if presented with the opportunity.

[19.43-19.45] [24.58]

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8. Legal Knowledge – **The orator/advocate must be familiar with and have education in all aspects of the law, so as to most effectively perform his political duties in public life.**

By way of expressing his legal knowledge in this speech, Cicero describes many of the complex violations of various laws which he accuses Piso of, as well as interprets the findings of the courts in other cases that he references. *In Pisonem* 3.6-7 presents one of the better expressions of the scope of Cicero's legal knowledge and relates to a description of Cicero's consulship. In this section, Cicero describes the factors which made him a great consul and points out that Piso is severely lacking in those behaviors which would have gained him popularity and political *ethos*. In way of an example, Cicero claimed that it was attributes like his perpetual deference to the Senate and constant guardianship of the Roman people that marked him as a great consul.

[1.1-3.7] [7.15-9.18] [11.24-13.31] [27.66-28.69] [34.83-39.95]

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9. Body Movement/Gesture – **The ideal orator/advocate must use gesture and body movement reservedly, and not be given to direct, harsh movements.**

The entirety of this prosecution given by Cicero is basically an invective condemning Piso and his actions. As a result, the tone of the argument is overwhelmingly aggressive, and the words that Cicero uses to describe Piso are often insulting and his metaphors are hateful. It can be easily imagined that Cicero was much more active during this speech, perhaps even pacing about the courtroom, and approaching the judges. Gesturing towards Piso would not have been necessary considering the lack of an audience, only the judges, Piso, and Cicero were present during this trial.

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10. Facial Expression – **The ideal orator/advocate must have command over his facial expression, especially with regard to the eyes, and effectively use facial expression to emphasize important points.**

Cicero's facial expression would have emulated the frustrated, harsh tone of the entire speech. This is the second oration that Cicero is presenting directly against Piso, and he would have most certainly been frustrated that nothing had been done to alleviate the crimes and pains caused by the criminality of Piso while he administered to the provinces. Speaking loudly, he would have opened his mouth wide as he uttered every word, and his anger with Piso and frustration with the judges would have been evident on his face.

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11. Vocal Inflection – **The ideal orator/advocate must have command over the inflection and tone of his voice, so as to emphasize essential points or illicit emotion.**

The harsh invective of Cicero's speech here against Piso demands that Cicero presented this speech loudly and irately in trial before the judges. Special emphasis would have been placed on words that were particularly insulting to Piso, or when relating the details of his many crimes. Overall, the tone of the speech would have been harsh and violent, mimicked by his vocal inflection.

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#### Conclusions:

Cicero's speech given in the Senate against Piso, is one of the most brutal and graphic expressions of all of Cicero's collected works. Following from his speech *De Provinciis Consularibus*, Cicero takes it to the next level of severity when Piso appears back in Rome to defend himself before the Senate, seemingly attempting to humiliate Piso straight out of the political life all together. Cicero's speech here is full of elaborate metaphors and descriptions used to describe the corruption of the office of the proconsul and Piso expressly, and seems so driven by emotion that it is difficult to discern the attributes which the analysis is attempting to identify. Nevertheless, it seems as though Cicero has yet again achieved the status of ideal lawyer based on meeting the guidelines laid out in the blueprint. Near the height of his career at the point of this speech, it is perhaps no surprise that Cicero has effectively mastered what it takes to be the best lawyer possible.

## [Chapter Four]

### Crossing Time and Space: Applying Cicero's Blueprint in Modern America

With the various analyses of the four benchmark cases of Cicero being completed, the attention of the research now seeks the realistic application of the eleven aspects of Cicero's blueprint in a modern American trial setting. The goal of this research is aimed towards a sense of relative utility, so that those seeking to practice law even in modern America may be able to draw upon the timeless guidance of one of the greatest, most successful lawyers of all time. In a sense, this research not only serves to enlighten scholars as to the genius of Cicero, but provides a guiding light to aspiring lawyers as well, who, by following in the footsteps of the legal practice of Cicero, perhaps will be able to achieve an even greater success in the courtroom.

Until this point, there have been no clear-cut expressions of Cicero's style of law practice that would allow for direct application in the modern world.<sup>135</sup> By outlining these eleven elements of Cicero's ideal *orator/advocatus* into the comprehensive blueprint, aspiring lawyers now have a touchstone by means of which to emulate his legendary style in their own careers.

### Crossing Time and Space

Following the detailed analysis of Cicero's cases in Chapter Three, it is important to note how Cicero is received in modern times.<sup>136</sup> His reception in his own time is not in question and will not be contested in this research due to the evidence of his legal success and homage from so many contemporaneous authors who praised his works and deeds.<sup>137</sup> Students who study the classics do not do so without consulting the works of Cicero, and as stated before numerous times in this research, he is often praised in modernity for his legal skill and rhetorical prowess.

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<sup>135</sup> This statement refers directly to the lack of a comprehensive list of Cicero's stylistic guidelines for the ideal *advocatus*. It does not intend to read as though there has been nothing written on Cicero's style of legal practice.

<sup>136</sup> In this section, the word *modern* represents the time period in America ranging from the 1990s through the present day. (20<sup>th</sup>/21<sup>st</sup> century)

<sup>137</sup> See Remer, Cantor, Powell, Paterson, et al. [persisting theme throughout scholarship]

With regard to his general reception in the modern era, modern scholars and authors praise Cicero for not only his legal style and rhetoric, but his philosophy and humanistic attitudes expressed in his extensive works.<sup>138</sup> But the best expression of his legal style is not forgotten, and is a constantly discussed topic in law school classrooms, to the point that an adequate study and comprehension of Cicero becomes necessary in order to fully achieve the best means of expression.<sup>139</sup> This is a driving force behind the research, accepting that Cicero and his works are held in such high regard for those wishing to pursue a career in law.

The stylistic blueprint, which in many ways is the highlight of this research, embodies that emphasis on the importance of the best comprehension of Cicero as the best means of expressing oneself. Cicero's respect in the law community demands the attention of any and all who seek to achieve the best possible means of advocacy. The positive modern reception, the continued study, and eternal reverence for Cicero reinforces the aspect of this thesis with regard to realistic modern application. There is no reason to consider that Cicero's stylistic blueprint would be not applicable in the modern American legal system, due to the consideration he is given even in the present day by lawyers, law professors, and legal experts alike. Application in the modern legal system of America does not seem to be a difficult task with regard to comprehension or relatability, compared to other ancient concepts that seek expression in modern times.

Yet whenever scholars seek to apply ancient concepts in a modern environment, the transition is difficult due to a number of factors brought on by the sheer amount of time separating the ancient civilizations from the interpreting scholars themselves. In a modern world in a state of seemingly constant development and evolution, certain aspects of human life

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<sup>138</sup> Cantor (1997), p. 15 – 16 ; Powell, Paterson (2004), p. 10 – 11 ; et al.

<sup>139</sup> Cantor (1997), p. 14 – 17: Cantor discusses the importance of Cicero in all law classrooms, placing special emphasis on his own law school classes at NYU, as means of an example.

unavoidably develop past where ancient practices are no longer applicable. The world of the ancient Romans seems unique in many ways, looking back from a 21<sup>st</sup> century standpoint, in a country that is in many ways so evidently founded on similar principles revered at the height of the Roman Republic. Within the modern trial court, the procedure is carried out in strikingly similar ways to those trials of the ancient Roman Republic, where the great lawyer Cicero conducted his famous legal practice for both the prosecution and the defense.

This research applies the previously outlined eleven attributes in the stylistic blueprint to the proceedings of a modern American courtroom, establishing how a lawyer would emulate Cicero's style in the modern courtroom setting to align himself with the guidelines for the ideal lawyer.<sup>140</sup> Application of these Roman legal attributes in the courtroom setting of modern America does not present as many difficulties for application as Roman ideals in other areas of American life, due to the previously stated relationship between the Roman Republic and America with regard to political and legal procedure.<sup>141</sup> At the root of this relationship between ancient Rome and modern America lies the very foundational principles which are distinctly Republican ideas, values, and institutions.

Polybius, in his *Histories*, describes the Roman constitution as a constantly changing and developing legal creation, from its inception following the reign of Tarquinius Superbus, to its continued (though drastically different) development through the Roman Empire. But of all the ages of Roman law, Polybius describes the time period during the Second Punic War (218-201 B.C.) as the most complete, perfected expression of the Roman legal system, and focuses on the state of political affairs surrounding especially the crushing defeat at Cannae in 216 B.C. for his

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<sup>140</sup> See Introduction, p. 1 – 2: *Thesis Statement*.

<sup>141</sup> See Chapter Four, *American Legal System: Foundational Principles* (p. 77 – 80)

analysis of the Roman constitution.<sup>142</sup> Much like the triple-division of modern American government, Polybius indicates that there were three major divisions in the Roman constitution as well surrounding the events of the Second Punic War, composed of 1) the consuls, 2) the Senate, and 3) the people of Rome, which he calls the *three constitutional forms*.<sup>143</sup> These three ‘rings’ of the Roman government functioned in accordance with each other at a level that Polybius describes as near perfection, and that the Roman Republic was conducted with such effectiveness that Rome could hardly be considered a republic at this time, for the Roman people of all offices and levels played a role in producing the best functionality of the Roman state. This cooperation at all levels of government came about as a direct result of each of the three rings being directly involved in the administration and duties of each other, acting as necessary for the betterment of the Roman Republic as a whole. Polybius shows this relationship between the three constitutional forms as either acting *in accordance* with each other, or *in opposition* to each other, indicating the Roman system of ‘checks and balances’ that persists into American modernity.<sup>144</sup>

Given the descriptions of the Roman government at the time of the Republic, one of the best ways to express the reciprocal nature of the two cultures of ancient Rome and modern America, lies in the relationship that the *Constitution of the United States of America*<sup>145</sup> has with the previously outlined *Twelve Tables* and the Roman constitution outlined by Polybius.<sup>146</sup> Both outlines for government were drafted upon the creation of a ‘new nation,’ with America having solidified its official separation from the oppressive British government, and the Roman people having established the Roman Republic in the face of the oppressive rule of the Roman

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<sup>142</sup> Sections of Polybius’ *Histories* are taken from Book V, sec. 31 – 33, and Book VI, sec. 11 – 18.

<sup>143</sup> *S.P.Q.R. – Senatus Populusque Romanum*: representative of the governmental structure of Rome during the Republican period. Came to be the slogan for the Republic and represented the cohesiveness of the Roman people.

<sup>144</sup> Polyb. VI.

<sup>145</sup> Includes *United States Bill of Rights* as well.

<sup>146</sup> See Chapter One, *Formation of the Twelve Tables of Roman Law* (p. 13 – 15).

Monarchy. Of course the similarities do not end with their relative places in history, and truly the most telling, lies with the core fundamental values which both the American constitution and the Roman constitution conveyed to a people unsure of their future.

### American Legal System: Foundational Principles

Recalling the foundational principles of the Roman Republic contained in Chapter One under the analysis of the *Twelve Tables*,<sup>147</sup> similar principles can be found in the *Constitution of the United States of America*. Much in the way that the *Bill of Rights* outlines the rights and freedoms of the American citizens, so does the *Twelve Tables* present an outline by which Roman citizens may freely operate within their society. Both documents were written with the improvement of life for the citizens in mind, yet there is significance to the fact that these documents were both publically oriented and widespread throughout the citizens themselves, for they made the citizens directly aware of those values that were being written for them by the respective governments. With respect to the Romans, the government that they established for themselves following the Roman Monarchy was dubbed the Roman Republic (*res publica*), and the fundamental principles describes in part by the *Twelve Tables* came to be realized as the ages progressed as the socio-political concept of *republicanism*.<sup>148</sup>

Where the foundational *Twelve Tables* bear some resemblance to the foundational values contained within the American constitution, perhaps a more relatable comparison can be drawn when considering the Roman constitution outlined by Polybius in Book VI of his *Histories*.<sup>149</sup>

The American government is ordered into three forms, just as the Roman government at the time

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<sup>147</sup> See Chapter One, *Formation of the Twelve Tables of Roman Law* (p. 13 - 15).

<sup>148</sup> Cantor (1997), p. 4 - 5: *republicanism* here, refers to the socio-political concept of social interaction when a representative body of the citizens formulate a republic for the betterment of all citizens. [America::Roman Republic]

<sup>149</sup> The following information on the comparison between the Roman Constitution and the *Constitution of the United States* (comparison of governments) is a result of comprehension of Polybius' *Histories*, Book IV and the basic structure of American government.

of the Second Punic War, as 1) the executive branch, 2) the judicial branch, and 3) the legislative branch. In the same way that the Roman consuls, Senate, and people cooperated for the best courses of action for their great nation, the three branches of American government have the procedure of *checks and balances*, by means of which the respective levels of government may take a more active role in the other governmental spheres. Considering again the descriptions of the respective offices within the Roman government given by Polybius, clear connections can be made between the roles of the ancient Romans and modern Americans involved in these governmental spheres. The consuls represented the highest of the three levels in Roman society, and took upon themselves many of the duties that the members of the executive branch of government have in modern America, instructing the Senate and the people of Rome towards the most beneficial ends for the nation. Also, in accordance with the modern ideas of the American president being *commander-in-chief*, the Roman consuls led the armies and dictated their movements. Following with the comparison, the Senate body in the Roman Republic is represented in modern America in the judicial branch of government, with the Senate body either representing the Roman justice system as a whole, or appointing judges over particular *unus iudex* cases. The parallel can clearly be seen then, with consideration of the role and duties of the U.S. Supreme Court which represents the judicial branch of American government, in so much as the Roman Senate was composed of elite legal and political minds that presided over the administration of justice during the Republic. In the same way, the elite attorneys that make up the American judicial branch preside over the administration of justice and answer to the checks and balances of the other branches, seen to be true in the Republic as well. Even the name of ‘Senate’ persists into modernity, with the American Senate responsible for the judicial aspects of governmental procedure.<sup>150</sup> As a means of concluding this governmental comparison, what is left

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<sup>150</sup> Although it is important to note that in modern America, the Senate makes up the legislative branch of

is the legislative branch of American government, and the actual body of citizens in the Roman government. Recalling previous chapters that explicitly stated that the Roman legal system was created with the sum-total of the Roman people in mind, it makes logical sense that the Roman people themselves would dictate the legislation that would have been placed over them. Given this observation from the previously stated research, the legislative branch in modern America is the law-making branch of government that composes national legislation with the goal of improving the lives of all Americans. Therein lies the relationship, for the people of Rome are the direct recipients of Roman legislature, and the voice of the Roman people carried much weight in the passage or dismissal of various pieces of legislation. The reciprocity between the two governmental, legal systems has been firmly established.<sup>151</sup>

Rome embodied the first republic on values that would be reflected in every republic from that day forward. America itself was founded on explicitly republican principles and did not defer from those principles as the country realized its full potential as a democracy; the country was essentially rooted from its very founding in the republican values similar to ancient Rome.<sup>152</sup> This makes sense considering the state of the American government during the Revolutionary War, comprised of political representatives making up a governing ‘senate.’ With the needs of all citizens at heart, that governing American ‘senate’ during the Revolutionary era bears striking similarity to the goals and process of Brutus and the Senate upon the creation of that first Roman Republic. This truly gets at the essence of republicanism, when a representative body of the citizens evaluates what is best for the entire society and establishes laws for living the most just lives.

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government. Yet the U.S. Supreme Court which is representative of the judicial branch in modern America carries out many of the duties of the Senate-proper in the Roman Republic.

<sup>151</sup> For further descriptions of the three forms of Roman government, Polybius, *Histories*, Book VI should be read.

<sup>152</sup> Remer (October 2010), p. 1080

- The American founding fathers, rejecting the oppressive rule and representing the best political minds of the colonists, established a common document that would serve as the template for the best life for all citizens in America, taking on a three-branched government to administer to the nation.
- The Roman conscript fathers, rejecting the oppressive rule and representing the best political minds of the citizens, established a common document that would serve as the template for the best possible life for all citizens in the Roman Republic, taking on a three-formed government to administer to the nation.

Having established some of the basic similarities between the two respective cultures with regard to their beginnings, the evolution and development of the American legal system must be addressed as well. It is beyond the scope of this paper to give even an abbreviated historical outline of the progress that has been made in the American legal system since its creation, yet it cannot be assumed that the similarities between the origins of the American and Roman systems prove applicability in modern America.<sup>153</sup>

Although there was obvious development within the American legal system over the years, it is of utmost importance to note that those Roman Republican fundamental values upon which the American system was founded have not lost their significance even in today. Since there will be no discussion of the complex evolution and development of the American legal system over the several hundred years of its existence, the research will continue with a description of the current state of the American legal system and its actors and offices. This description provides the context for the courtroom comparison between the ancient Roman Republic of Cicero, and the modern American trial court.

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<sup>153</sup> It is not feasible to present a history of the American legal system in this thesis. Rather, the *current* state of affairs in the legal system will be addressed in this section; a historical analysis is beyond the scope of this thesis.

Just as in the Roman Republic, modern American criminal or civil trials (*individual v. individual*) have their own basic outline to which they conform, including the staple courtroom participants and relative layout. Recalling the analysis of the Roman Republican courtroom from Chapter One, it was said that the physical layout of the courtroom was not necessary to describe for the purposes of this research.<sup>154</sup> The modern American courtroom layout will receive the same treatment, for no matter what the position of the furniture or the dimensions of the room itself, it is up to the actors in the courtroom to administer justice correctly and efficiently. These actors in the American courtroom, as will be shown, align themselves with counterparts in the Roman Republican courtroom, yet again showing the reciprocal nature of the two systems.

In the typical American trial court case (*individual v. individual*), there are five (5) primary actors that participate in the actual courtroom proceedings: 1) the presiding judge, 2) the litigants, 3) the representing attorneys, 4) the witnesses, and 5) the jury.<sup>155</sup> Here, in the modern American courtroom, a slight divergence from the Roman outline can be seen with regard to the exclusion of the actor(s) of the audience, and the addition of the jury of peers to the list of courtroom actors. Although some trials in the Roman Republic would have been presented before a panel of Senators (here acting as *jurors*), this was more common of the more high-profile trials carried out in the *curia*.<sup>156</sup> Nevertheless, the focus of this research is on the advocate-actors in this courtroom, and when viewed from the standpoint of the advocate, the jury in modern court cases fills partly the same role as the audience-actors in the Roman courtroom;

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<sup>154</sup> Chapter 1, *Introduction to the Roman Courtroom*, p. 16 - 19

<sup>155</sup> Berg (Summer 2005), p. 12 - 13

<sup>156</sup> Bablitz (2007), p. 39

becoming themselves witnesses of the proceedings and the object of persuasion for the advocate.<sup>157</sup>

The modern American lawyer is a complicated individual, and as a result, the characterization of the lawyer in 21<sup>st</sup> century America can be a difficult task. Yet the research will show the modern American lawyer to be similar in many ways to the Roman Republican advocate through the application of Cicero's stylistic blueprint, and the persisting, common goal of every lawyer to succeed in the courtroom.

### Advocacy in Modern America

Trimming away all the bias expressed against the moral character of lawyers in modern times (especially towards defense attorneys), the characterization of the modern American lawyer is, in broad terms, analytical.<sup>158</sup> Scholars consulted over the course of this research have been for the most part either entirely supportive of modern legal practice or vehemently against what is often characterized as 'corruption in the system.'<sup>159</sup> It is the overarching consensus from the consulted materials that the American lawyer in the 20<sup>th</sup>/21<sup>st</sup> century is characterized as doing everything to the letter of the law, entirely devoted to the correct and appropriate administration of justice. Although this is an admirable description from the consulted scholarship, this is known to not be the case for some attorneys, who may possibly be more devious or negligent in their practice.

Unlike the advocates of the Roman Republic, the modern American attorney is operating more like a businessman, collecting strictly monetary payment for services. The *patronus/clients*

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<sup>157</sup> Feeney (Spring 1987), p. 151 - 152: describes the behavior/purpose of the jury of peers. The comparison with the Roman audience is inferred through the research. [See Chapter One, *Introduction to the Roman Courtroom*, p. 16 – 19]

<sup>158</sup> Berg (Summer 2005), p. 9 – 11 ; Murphy (Winter 2006), p. 102

<sup>159</sup> Over the course of this research, several rather harsh invectives were discovered regarding the 'devious nature' of attorneys. Such expressions are most certainly the result of some personal bias and were therefore not considered for consideration in this work.

relationship is not an aspect of the legal system in 21<sup>st</sup> century America, being made no longer necessary by the addition of advocacy rights which allows the court-appointment of a defense attorney for destitute/incapable litigants. In general, modern lawyers in this capitalist American society operate much more like a business than the Roman advocates, championing monetary wealth over an establishment or increase of *ethos*.<sup>160</sup> While the resulting reward of a particular case may differ from the Roman Republican idea, the overarching goal of the advocate is always persuasion, because through persuasion, victory is achieved.

Defense attorneys make up a large portion of the sum total of lawyers in modern America, and are continually available for hire by anyone in need of legal representation. Representing the defense is how the vast majority of young lawyers gain the necessary courtroom experience to become the most effective advocate possible. Prosecuting attorneys of course still represent the position of the plaintiff, and it is a common occurrence in the modern American legal system that the prosecution represents the larger body of the state-citizens, when the case requires.<sup>161</sup> With greater numbers of perspective lawyers joining the ranks on a daily basis in American society, there is an enormous amount of variation from individual lawyer to individual lawyer. Thus, it is important to establish instead a generalized idea of the modern American lawyer to whom Cicero's stylistic blueprint will be applied.

Aside from what the true moral nature of each individual modern American lawyer might be, this research is concerned with how the American lawyer is most generally characterized. Therefore, the research will maintain the popularly expressed notion that lawyers are characterized as analytical; holding true to every particular word of the law. Defining the modern lawyer according to general characterization in society is essential to determine how effectively a

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<sup>160</sup> See Chapter Two, *Advocacy Arises: Patronus and Cliens*, p. 23-25 ; Chapter Two, *The Roman Advocate*, p. 25-29.

<sup>161</sup> Robinson (Spring 2013), p. 711 – 713: Information on defense and prosecution come from this source.

modern lawyer is able to express Cicero's stylistic guidelines. Based on the previous analysis of the modern image of the advocate, it has been shown that the 'office' of *lawyer* is generally well received in modern society, fostering relatively the same environment that Cicero would have been accustomed to during the Republic.

Since it has been established that the modern American lawyer is characterized as analytical, the discussion can now turn to the general behavior of the lawyer in the modern trial court. Through this identification, and recalling the bulk of the information contained within this chapter, this section of the research is concerned with establishing the context for the modern lawyer so that similar context may be given to the modern aspect of the research as was given to Cicero. The American lawyer is characterized as analytical overall, so certain inferences can be made about the behavior and comportment of the lawyer in the courtroom.

Given the description of an analytical person, in both word and deed, their behavior would be also characterized as conforming expressly to the word of the law and appropriate public conduct. From the standpoint of an analytical lawyer, general inferences can be made about their speech, tone, and body movement during a trial (representing either the prosecution or defense, this has no bearing at the moment). Based on the aforementioned information, the modern lawyer conducts himself *reservedly*, speaks only when it is necessary and beneficial, and is not prone to emotional outbursts or harsh language.<sup>162</sup>

Regardless of this description, the goal of the advocate remains constant: aligned with the wisdom of Cicero in *De Oratore* which shows the goal of the *orator/advocatus* as effective persuasion.<sup>163</sup> In Chapter One and Chapter Two, the state of affairs surrounding the characterization of advocates in the Roman Republic was analyzed so that the best image of

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<sup>162</sup> Berg (Summer 2005), p. 11 - 15

<sup>163</sup> See Chapter Two, *Analysis of De Oratore*, p. 33 - 44. [Book-by-book analysis provides relevant context].

‘Cicero the advocate’ could be expressed in the research. Looking back on the analysis contained within this section of Chapter Four, the research has adequately provided context for the modern lawyer, just as was provided for Cicero. Now that the general outline of the modern American lawyer has been established, the research may continue with the application of Cicero’s stylistic blueprint in modern America.

[Chapter Five]

Applying Cicero's Blueprint in Modern America

As stated in the introduction, one of the primary goals of this research is the realistic application of Cicero's stylistic blueprint for the best style of advocacy in a modern American court setting. In the previous chapter, the context for this application has been established through the definition of the modern American parameters. The basic outline of the modern American courtroom, complete with primary actors, has been expressed in accordance with the analysis of the Roman Republican courtroom outlined in Chapter One. The role and popular reception of the modern American lawyer has also been established in the previous chapter and was shown to bear striking similarities with Roman advocate counterparts.

Given this modern context, the stage is set for the realistic application of the stylistic blueprint laid out in detail in Chapter Two in the modern setting. Given the unavoidable difficulty of encountering some disparity between the modern and ancient worlds, there may be points in the application where the relationship may not be readily apparent. If this is the case, previous chapters should be consulted again in order to clarify the means of application.<sup>164</sup>

With that caveat in mind, there are aspects of Cicero's blueprint that are abstract and will not be able to be expressed by a generalized 'modern lawyer' through a description of that lawyer in the modern courtroom setting; e.g. *Quick-thinking* – a natural ability not easily expressed without dialogue. Therefore, a preceding section on the education and training of perspective lawyers is necessary, where these more abstract attributes will find a means of expression. For the sake of clarity, this chapter deals with the application of Cicero's stylistic blueprint to a *generalized version* of the modern American attorney. Given the context in

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<sup>164</sup> Support is given throughout the research for each claim made in the stylistic blueprint. If a concept does not seem readily clear, then perhaps by means of consulting the various places where the particular concept is mentioned, clarity will be achieved.

Chapter Four, this research has established adequate means of defining the generalized American attorney according to public perception and descriptions of legal practice in modern America.

### Legal Education and Training

Reflecting on the contents of Cicero's stylistic blueprint for this final chapter, it is apparent that several of the attributes may not be able to be applied in the modern courtroom setting, but may be expressed through the education and training of those aspiring to become attorneys. Cicero demands that the best advocate be in possession of a great deal of prior knowledge, acquired through extensive study. Cicero shows that it is not at all easy to become the best advocate possible, and it is certainly not done overnight; extensive study in a wide range of subject areas is absolutely necessary.

The emphasis on education in Cicero's *De Oratore* is never forgotten throughout the analysis which produced the stylistic blueprint of the ideal lawyer. In the Introduction and Chapter One, when discussing the biography of Cicero, the research briefly outlined his extensive education.<sup>165</sup> In order for any individual to be the absolute best at anything really, education in the necessary fields must begin early in life and be emphasized throughout the critical stages of growth and development. Just as Cicero in the first century B.C. diligently studied those aspects of human knowledge that are required of his ideal *orator/advocatus*, so too the American lawyer in the modern era must also have had extensive education and training in those same aspects. Even from early schooling, the modern American lawyer described in this research will have education in those same aspects as Cicero, so as to have the ability to express the attributes described in the stylistic blueprint.

The sum of the best lawyer's knowledge is contained within the attribute of universal knowledge, which represents the previously stated diligence in studying a great many subjects,

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<sup>165</sup> See *Introduction*, p. 1 - 3

rather than only a single specific subject area. Aspects of the attribute of universal knowledge are broken down in the form of other attributes and included in the blueprint, these areas are specified especially apart from universal knowledge, highlighting their significance and importance. Emotional knowledge, historical knowledge, legal knowledge, and memory are all described separately by Cicero from the attribute of universal knowledge, yet all four attributes can be expressed under the overarching theme of universal knowledge. Each is defined separately and adds its own unique contribution to the goal of achieving the status of best advocate.

Seeing as the analysis in this chapter deals with the generalized version of the modern American lawyer, the attribute of quick-thinking will be taken as a given for the American lawyer; it will be inferred by the research that the modern lawyer in question is in possession of the level of natural ability required by the attribute of quick-thinking. All the other attributes in the blueprint may be achieved through instruction or experience, but Cicero nevertheless emphasizes the importance of at least some level of natural, quick-thinking ability and it is included as a requirement for the best advocate.<sup>166</sup>

Now armed with the necessary knowledge to comprehend the application of Cicero's stylistic blueprint in a modern American setting, the remainder of the chapter is dedicated to the establishment of Cicero's eleven (11) attributes for the best *orator/advocatus* in the form of the representative, generalized modern American advocate. The process by which the blueprint will be applied follows a method that will show how the given attribute *might be expressed* in a realistic modern context. Where it applies, separate distinctions will be made where the American lawyer is representing the prosecution, and where he is representing the defense.

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<sup>166</sup> Consider this, thinking abstractly about the idea of the best lawyer, is it possible to be the epitome of legal prowess and be dim-witted? The other requirements for the best possible orator according to Cicero does not leave room for slow thinking or a lack of capacity to retain knowledge.

Through such a general application, the hope is that the research will provide a guide for those seeking to pursue a career in law in present-day America, and that the generality of the description will allow for emulation in the lives of those who read this thesis.<sup>167</sup>

### Application of Stylistic Blueprint

On understanding the application process: - as stated above, the blueprint of Cicero's ideal lawyer is applied to a generalized representative of an American lawyer operating in the legal system of the late-20<sup>th</sup>/21<sup>st</sup> century America. Under the heading which contains the particular attribute from the blueprint (e.g. *1. Universal Knowledge*), the restatement of Cicero's criteria for application of the attribute appears first. Second, the means by which the American lawyer expresses the attribute in a modern setting will be supported, both from the side of the prosecution and the defense where applicable. Third, support will be given from the nature of the modern legal system that aids in the comprehension of the second point. Finally, a general statement of how modern lawyers can emulate Cicero's attribute is expressed as an easy reference for those seeking to apply this blueprint in their own legal practice.

#### 1. Universal Knowledge

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- Cicero says: *The best advocate must have the most extensive education possible in order that he will present his argument with true distinction.*
  
  - In accordance with Cicero's emphasis on education, the American lawyer would have extensive education in a great many subject areas, achieved most likely through a liberal arts education. The American lawyer ideally a well-educated individual, based on the requirement of satisfactory performance on the bar exam, as well as the preceding education which consists of law school, undergraduate study, and high school in order to even gain the title of attorney. The American lawyer's comprehension of *universal knowledge* is expressed in the modern courtroom through the intelligence of his speech and logical arguments. When addressing the court, his distinction and persuasive power are increased dramatically through the application of his previously acquired *universal knowledge*.

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<sup>167</sup> Rather than denote a specific court case, the application in the modern sense is presented in general instruction of the American lawyer in those practices that Cicero emphasizes in the blueprint. Specific cases may be found uninformative for some, whereas a generalized application is valuable to all who comprehend its utility.

- American law schools are held to a very high standard in modern America, due in part to the nature of the education that one receives there. Oriented towards producing successful attorneys who tirelessly administer the very best justice to benefit all Americans, only select numbers of the best students are chosen to continue in such a prestigious form of education, and so, it is realistic to say that the generalized modern attorney to whom the blueprint is applied has the necessary education to allow for the best expression of Cicero's attribute of *universal knowledge*.
- Through diligent study throughout primary and secondary education, those seeking to represent the best expression of the ideal lawyer must engage a great number of subject areas in order to obtain the most well-rounded education possible. As well as maintain a high level of educational success so as to be considered for, and excel in, American law schools held to such a high standard in the modern era.

## 2. Word Choice and Arrangement

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- Cicero says: *The best advocate must choose his words carefully and arrange them diligently, so that the best possible speech may be presented with the purpose of persuasion.*
- Just as Cicero is praised for his eloquence and rhetorical genius, the American lawyer thinks before he speaks: choosing the best words and arranging them accordingly for the best possible means of persuasion. In accordance with aspects of the ideal lawyer's *universal knowledge*, the American lawyer's education reflects a strong background in English grammar and rhetoric, as well as practiced experience with public speaking. Drawing on this knowledge of grammar and rhetoric, the American lawyer is able to formulate eloquent thoughts, presenting them in a comprehensible and persuasive way. When representing the prosecution in the trial court, the American lawyer may choose words that emphasize the criminality of the defendant, or arrange harsher invectives in order to achieve a conviction. For the defense, the American lawyer may choose more compassionate or soothing words, orienting them so as to remove any sense of guilt towards the defendant. No matter what role the lawyer takes up in the trial, the American lawyer will always choose the best words and rhetorical devices to persuade the court and achieve the desired verdict.
- Throughout high school, college, and law school education, the importance of public speaking and speaking well is continually emphasized, with many classes including presentation exercises or even focused exclusively on the subject of oral presentation itself. Just as in the Roman Republic, modern America acknowledges the fundamental value of speaking well as a basic aspect of human social interaction. The focus on writing must also not be forgotten, for through an abundance of written rhetorical training, verbal eloquence is increased.
- Those seeking to represent the best expression of the ideal lawyer must be eloquent in both speech and written word. This is achieved through repeated practice in grammar, rhetoric, and oral presentation so that the lawyer is able to express himself in the most persuasive and eloquent way possible. Words must support the tone and logical structure of the argument being presented, and is subject to change based on the events of respective cases.

### 3. Emotional Knowledge

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- Cicero says: *The ideal advocate must possess extensive knowledge of human emotion so that he will effectively persuade the audience by means of pathos and be aware of the emotional effect of his words.*
- Essential not only for effective persuasion, but for basic human social interaction, comprehension of emotional response and how to emotionally sway an audience is no less important to the modern American lawyer than to Cicero himself. Through his life experience and study of subjects like philosophy and psychology, the American lawyer knows which arguments are beneficial to his position, and which ones are not. The American lawyer orders his argument and respective points in the best way possible to persuade the court with emotionally charged statements, that in turn illicit an emotional response that supports his position. For the prosecution, the American lawyer may play on the criminality of the defendant, making the court despise the defendant while establishing support for a conviction. When considering a role as defense counsel, the American lawyer may draw on his knowledge of human emotion to illicit pity on behalf of the defendant. Regardless of the specific tactic used, the American lawyer draws on that *emotional knowledge* obtained through experience and education to effectively persuade.
- Criminology and psychology courses in modern American secondary education are prime examples of the value of Cicero's attribute of *emotional knowledge* in the present day. Going beyond what can possibly be learned in an individual's personal life experience, such educational programs that instruct students in human emotion serve as a testament to the value of comprehending the vast number of subtleties and nuances reflected emotionally by individuals. With human action and reaction being so fundamentally based in emotion, those oriented towards a career as a lawyer must especially be able to comprehend the essence and value of human emotion.
- Those seeking to embody the attributes of the ideal lawyer, must effectively establish themselves as effective with regard to persuasion through comprehension of human emotion and its effect on the every-day activities of every individual. By directly engaging socially with as many individuals as possible, knowledge of human emotion increases and becomes more developed towards the ideal. Arguments are supported through the correct application of emotionally charged statements or concepts, and should include some effect on the emotional state of the courtroom in order to benefit the means of persuasion.

### 4. Humor and Wit

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- Cicero says: *The ideal advocate must possess some sense of humor and wit so as to be receptive to an audience and conduct his speeches in an uplifting, persuasive way.*
- Only when it is entirely, absolutely beneficial to the support of the lawyer's argument does the American lawyer implement the Ciceronian ideals of humor and wit. Considered relatively taboo in an arena as serious and analytical as the modern American courtroom, outright expressions of humor and wit from either the prosecution or defense are oftentimes more detrimental than helpful in modern cases. Whereas outright jokes and innuendos are seldom incorporated, the modern American lawyer is nevertheless aware when sarcasm can

be effectively used. A sarcastic comment can undermine credibility of an opposing argument when presented in the right moment, in the right way. Yet humor and wit fall short on the list of priorities for the American lawyer, in favor of more analytical, direct practices.

- The onus of the correct administration of justice, in an era where the legal system falls under a significant amount of criticism from the general population, is of utmost importance for all those who represent the modern American legal system. That being said, there is a high standard of comportment and professionalism that must be maintained when acting as a representative of the American legal system in the public eye. The behavior of the American lawyer in the modern courtroom must conduct his speech and actions according to this best administration of justice and be aligned towards contributing towards the betterment of society. That being said, courtroom deportment demands a certain air of severity and seriousness which oftentimes may not allow for the addition of humor on the part of the advocates.
- When applying Cicero's aspect of humor and wit in the modern trial setting, those seeking to embody this attribute should conform to the appropriate, serious tone of the case, yet still evaluate the proceeding arguments for times when an aspect of wit like sarcasm could aid in persuasion. Building from the aspect of *quick-thinking*, coupled with life experience, the modern lawyer evaluates the tone of respective cases mindful of opportunities where humorous input will help his argument.

## 5. Quick-Thinking

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- Cicero says: *The ideal advocate must possess the natural ability of a keen mind both to maximize the utility of his other attributes and to perform well in public debate.*
- The American lawyer is a well-educated individual, evidenced previously embodying attributes such as *universal knowledge* built from extensive education and overall life experience. It is accepted by this research that in order to simply achieve the goal of becoming an American attorney requires an above-average level of mental skill and development; the natural ability of the keen mind that Cicero refers to in *De Oratore*. Throughout the growth and development of the modern lawyer, a keen mind with well-developed senses of discernment and critical thinking is the groundwork for success in legal practice. The American lawyer expresses his intelligence and mental acuity in the courtroom in everything he says and does; conforming to a level of professionalism and quick-thinking befitting of the high standard of American justice.
- As stated in the analyses of previous attributes, in order to achieve the distinction and title of attorney in modern America, rigorous legal training and extensive education are both required in order for consideration. The achievements and success of the perspective lawyer throughout his education and development in the practice of law are testaments to the keen intellect of those seeking to become attorneys.
- Realistic application of this attribute of *quick-thinking* requires a level of scholarly study and dedication to the formation of the mind. Throughout studies in law school and at the preceding levels of education, courses that improve critical thinking and encourage

thoughtful discussion aid in the development of the keen intellect expected of the ideal lawyer.

## 6. Memory

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- Cicero says: *The ideal advocate must have a developed and extensive memory so that he will not forget his prior experiences and instead draw on them for guidance.*
- Based yet again on prior experiences and attributes such as *universal knowledge*, the attribute of *memory* is expressed constantly by the American lawyer. As in all things, the recollection and application of knowledge from past events is absolutely essential to presenting the very best expression: offering a relatable point of reference for those who are the target of the lawyer's speech. The American lawyer is able to recall important information with ease, whether from prior cases, education, and other various instances of life experience. Whether representing the prosecution or the defense, detailed memory is one of the most effective weapons in the lawyer's arsenal, and absolutely essential for success in expression.
- Once again relating back especially on education, complete comprehension and success in course work is absolutely essential for the modern American lawyer. Following from this, the perspective lawyer's *memory* can be evaluated based on performance in school and relation back to life experiences such as previous applicable cases in order to aid in overall expression.
- Perspective lawyers in modern America must be mindful especially of comprehension. It is one thing to simply experience events, and another to completely comprehend the meaning of an experience. Development of critical thinking and other skills associated with discernment are absolutely essential to the other attributes of the ideal lawyer. In order to embody this ideal, careful discernment and comprehension of the world (e.g. *universal knowledge*) and recollection of those experiences is absolutely necessary for the American lawyer.

## 7. Historical Knowledge

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- Cicero says: *The ideal advocate must have education in history and knowledge of historiography so that he will be able to recall important details from past events.*
- Stemming mainly from education, the American lawyer has extensive *historical knowledge*, especially concerning American history as well as the foundational principles and development of the American legal system (i.e. *legal knowledge*). In accordance with the research, the American lawyer in this analysis also has extensive knowledge of ancient history as well, as evidenced by the application of Cicero's blueprint in this case. The American lawyer can recall the details of benchmark cases in the American legal system, and draw upon this historical knowledge to support his arguments.
- The education of the modern American lawyer has a great deal of historical study associated with it. Whether this be in the subject areas of American history, European history, ancient history, or any other, the American lawyer can recall events and details from these areas to support arguments in the present. Historical references in speech provides a reference that lends support the argument as a whole, whether by aiding in comprehension of a specific

point, or even presented with the intention of eliciting some emotional response. History in its many forms is an integral part of modern American education and makes up a fundamental attribute of the American lawyer, who is a testament to his education and practice.

- Perspective lawyers must embody this attribute of the ideal lawyer by studying history diligently in as many time periods as possible to achieve the most well-rounded comprehension of past events. It should be always kept in mind that the *historical knowledge* gleaned from extensive study in the subject of history has value in realistic application. Here, in support of arguments/points integral to the legal argumentation of the American lawyer.

## 8. Legal Knowledge

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- Cicero says: *The ideal advocate must be familiar with and have education in all aspects of the law, so as to most effectively perform his political duties in public life.*
- In preparation for entrance into the arena of the legal representative, the American lawyer achieves a specialized education in the law through graduate-level law school. Here, more than at any other stage of education, the focus of the education of the perspective lawyer shifts from a broader range of subject areas (see application in e.g. *universal knowledge*, *historical knowledge*, etc.), to focus on *legal knowledge*. In the modern courtroom, the American lawyer represents more than any other form of knowledge, *legal knowledge*, characterized by the unavoidable association between lawyers and specialized legal knowledge. Through the correct, best administration of justice, the American lawyer achieves the best expression of his legal knowledge, recalling the details of law school studies and drawing upon relevant experiences associated with the American courtroom. Whether for the prosecution or the defense, the American lawyer strives for the best expression of the sum of his legal knowledge – represented in the most fair, correct administration of justice.
- Modern American law schools are where the perspective lawyer receives training in the specialized *legal knowledge* required for successful performance in the field of legal practice. Repeated, in-depth analyses of noteworthy legal cases ingrains the fundamental principles of legal knowledge into those pursuing a career in law. The public views American attorneys as embodiments of the sum of American legal knowledge, and as such, the high standard of professionalism and justice is expected of each American lawyer. The legal knowledge that they express through their words and deeds in the modern courtroom must reflect extensive study and comprehension in those areas of the law necessary for the best function as representatives of the American legal system.
- Diligent study and comprehension of those aspects of American law, achieved through success in graduate-level law school, is absolutely necessary for those seeking to embody the ideal attribute of *legal knowledge*. It must be constantly kept in mind that the American lawyer directly represents the American legal system for the public, so a very high level of professionalism and educational success in all areas of the law is essential to the ideal lawyer.

## 9. Body Movement/Gesture

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- Cicero says: *The ideal advocate must use gesture and body movement reservedly, and not be given to direct, harsh movements.*
- The American lawyer performs appropriate gestures and moves according to the flow of the modern courtroom. Certain occurrences demand certain movements, where others may not, depending on the mood, tone, and content of certain speech. When it is beneficial for comprehension, the American lawyer may make indicating gestures, such as a pointed finger, to direct the attention of the courtroom actors and at the same time emphasize a point in his argument. For example, when examining/cross-examining a witness relevant to the case, the American lawyer may physically approach the witness, or move reservedly before the judge's bench. Defense attorneys would stay close to their client, a physical representation of defense against the prosecution, whereas the prosecution may be prone to approaching the defendant or behaving in a way that may establish greater severity. Overall, the physical movement of the American lawyer is not overly dramatic, but conforms to the events of the case and the tone/content of the speeches.
- American lawyers can be criticized if their actions reflect poor personal conduct in a court case. This can be represented in many forms by overly antagonistic gestures or invasion of personal space on the part of the attorney. It is more common then, for the American lawyer to conduct his body's movement more reservedly, according to the professional nature of the court proceedings. Yet body movement and gesture should not be dismissed so readily, for as stated above, gesture and movement can aid both in overall comprehension or persuasion, either through indication or establishing personable distances from the courtroom actors.
- In order to embody this attribute in the modern setting, the perspective American lawyer must follow Cicero's suggested criteria and maintain relatively reserved bodily motions, so as not to over-step the boundaries of acceptable courtroom conduct. When it is beneficial to an argument to indicate by means of gesture, or to physically approach a courtroom actor, then the American lawyer should do so, for the best form of persuasion reflects the best embodiment of the attribute of the ideal lawyer.

## 10. Facial Expression

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- Cicero says: *The ideal advocate must have command over his facial expression, especially with regard to the eyes, and effectively use facial expression to emphasize important points.*
- The American lawyer acknowledges the power of suggestion that can be expressed through the manipulation of facial features. Harsh words are made all the more stunning coupled with a furrowed brow and a grimace, and sadness can be allowed to show through the eyes to show sorrow. Mindful of the subtleties of human social interaction, especially with regard to *emotional knowledge*, the American lawyer has complete control over his facial features, and how they can either reveal his reaction or insinuate. For the prosecution, the American lawyer may adopt a more critical, or angry expression with which to express outrage towards the defendant. And for the defense the American lawyer keeps his expression relaxed, so as not to appear threatened by the prosecution or to maintain some sense of calm control over the case.

- The American lawyer must guard against letting facial expression get out of hand, and must be controlled so as to only support the words/position of the advocate. Eye-contact is emphasized as a fundamental aspect of human social interaction in the modern era, and so roving eyes must be checked, and a purposeful manner of facial expression must be maintained: oriented towards the goal of persuasion. In order to best reflect this attribute, the American lawyer should conform to Cicero's criteria of mostly reserved facial expression, only allowing for suggestive expressions when clear support is given to his words or argument as a whole.

## 11. Voice Inflection

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- Cicero says: *The ideal advocate must have command over the inflection and tone of his voice, so as to emphasize essential points or to illicit emotion.*
- The American lawyer speaks with clarity and at a volume that befits an individual with distinct purpose and confidence. Not prone to mumbling or useless comments, the American lawyer establishes himself as an eloquent, intelligent individual from his very first words and maintains a high level of comportment in speech throughout the court proceedings. Every word that he speaks bears importance so that his words can never be considered to be dismissed as meaningless. The American lawyer elicits emotional responses from the courtroom actors through the inflection of his voice, with the purpose of making them more receptive to his argument/position. For the prosecution, he may adopt a more harsh tone of voice, placing special emphasis on specific words or phrases that highlight the criminality of the defendant. From the position of the defense, the lawyer may adopt a more remorseful tone, or establish more critical voice inflection in response to various accusations from the prosecution. At all times, the American lawyer is completely aware of how his voice is being received by his audience of courtroom actors, manipulating his tone and inflection in order to support his position and sway that audience emotionally.
- The tone of voice one uses, especially in a courtroom setting, can be very suggestive. Whether the suggestion is beneficial to the argument of the American lawyer or not, hinges on the lawyer's command over his own voice's tone and inflection and how the lawyer expresses his points. Through the life experiences and education of the American lawyer, the research accepts the lawyer as having control over his voice, knowing expressly how his voice can be used to elicit emotional responses and support his arguments.

### Conclusion:

At the conclusion of this thesis, the claims that were laid out in the introduction were met, and supported through the extensive analyses of ancient and modern sources. The unique style of legal practice embodied by Cicero himself has been established according to the guidelines set forth by Cicero in his *De Oratore*, yielding the blueprint of eleven attributes of the ideal lawyer. The reciprocity of the Roman Republican legal system and the modern American legal system of

the present day has also been firmly established, with explicit relationships between the two systems having been established in this chapter.

While realistic application in the modern world is not necessarily guaranteed through a reading of this thesis, it nevertheless provides the necessary information for any lawyer seeking to embody Cicero's ideal in the modern world. This research represents a generalized blueprint so that this application is made more manageable. Reflecting back upon the extensive research, there is the overwhelming feeling that the best expression of these attributes lies primarily in the education of the future-lawyer. Life experience, coupled with extensive education in a wide variety of subject areas, is absolutely necessary to practically express Cicero's attributes. With that in mind, this thesis is most beneficial to those still being educated and are passionate about formation into the best possible legal representative possible. If these attributes contained in Cicero's stylistic blueprint are adhered to throughout education and development of an individual, that individual is more likely to achieve the ideal expression of what it means to be an advocate.

In addition, given this stylistic blueprint and these attributes, there is room for each individual wishing to embody the ideal to input their own personal style into their own law practice. There is no need for each ideal lawyer in modern society to emulate each other exactly, rather these attributes are open for personal, nuanced application. The only caveat being that these attributes must not be ignored in favor of some other style, but always kept in mind and interpreted to fit any given situation.

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