

## How to Bribe a Roman Jury

Ever since the Gracchan-era statute on embezzlement (*de repetundis*) created the first criminal court juries in Rome ca. 122 BCE, the names of potential jurors became a matter of public record. They were either senators or equestrians, whose names were chosen and published every year by a praetor. This practice of publishing an album of jurors provided transparency and assured that only qualified jurors served, but it had the undesired consequence of making it easier to bribe prospective jurors. The stakes were very high in every Roman criminal trial--the defendant's reputation, career, standard of living, and all his property were at risk. So, it should perhaps come as no surprise that litigants tried to bribe jurors, especially since the jurors' identities were a matter of public record. Indeed, we have evidence of several such attempts, including the infamous trials of Oppianicus Sr. in 74 BCE and Clodius in 62 BCE. While defending Cluentius in 66 BCE (*pro Cluentio* 129), Cicero mentions that a censor would naturally brand with infamy and thus expel from the senate all jurors whom he suspected had taken bribes. Cicero maintains that it is wrong for a censor to punish only a select few corrupt jurors, if he knows that more participated in the plot. This and other examples indicate that wholesale bribing of jurors was a practice known and guarded against: even the groundbreaking Gracchan-era statute goes to great length to specify the voting procedure in the new criminal courts. Jurors are required to bare their arms and hold up their ballots for all to see before casting them into the voting urn (*lex repetundarum* lines 49-54 = Crawford 1996, vol. I, p. 70).

Although the composition of juries and electoral bribery in the late republic have been studied at length (Gruen 1968; Jones 1972; Lintott 1990), the evidence for bribing a criminal court jury in the Ciceronian era has gone largely unexamined. Cicero specifically mentions

tampered ballots at *in Caecilium* 24 and 129-30 and at *in Verrem* 1.17 and 40, but the details are murky. In the former, Cicero refers to ballots with illegitimate wax used in a previous trial. In the latter, he asserts that Verres has become despondent because the jurors in his trial would not tolerate any mark (*nota*), color (*color*) or smudge (*sordes*) on their ballots. What makes the wax illegitimate? Why exactly were ballots marked? What sorts of markings were these? Where on the ballots? How might we imagine that such a bribing scheme operated?

In this paper, I will analyze the extant evidence regarding the bribing of jurors from the Gracchan era to Cicero's *pro Milone*. I will outline the schemes employed to bribe jurors and clarify the unusual *divinatio* voting procedure mentioned by Cicero in his speech against Caecilius. No scholar since Strachan-Davidson (1912, vol.II, especially pp. 128-37) has considered in detail all this evidence for criminal court voting procedures. Using my own reconstructed voting ballot and Crawford's text and commentary (1996, vol. I, pp. 39-112), I will refine Strachan-Davidson's interpretation of the voting procedure outlined in the Gracchan legislation. I will also argue against his understanding of what Cicero means when he refers to illegitimate wax found on ballots used in corrupt voting. Given the evidence and the open configuration of Roman criminal courts (Bablitz 2007, pp. 27-9 and 59), I suggest that the scheme referred to by Cicero was effected by distributing marked ballots to jurors before they even entered the court to vote. The briber's agents could discretely mark the side edges of ballots in order to hold bribed jurors accountable for their votes. Each ballot would be marked in a unique way, so that the ballots could then be tracked back to individual jurors after the voting was completed and the crowd had dispersed. Ultimately, however, it is clear that different bribing schemes were employed over the decades of the late republic. As one bribing method was uncovered, another would be devised to take its place.

## Bibliography

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