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## Apology as Prosecution: The Trial of Apuleius

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THE TRIAL OF APULEIUS

Thomas Nelson Winter

Evanston, Illinois  
June, 1968

A DISSERTATION  
 SUBMITTED TO THE GRADUATE SCHOOL  
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 for the degree  
 DOCTOR OF PHILOSOPHY  
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## INTRODUCTION

The *Apology* of Apuleius, the speech which he gave when on trial for magic ca. A.D. 158, is an acknowledged literary masterpiece and deserves more study than it has received. In the speech, of course, he attempts to establish his innocence of the charge. Scholars are almost unanimously agreed that he succeeded and was declared “insons.”

It was probably inevitable, however, that someone should have attempted to show that Apuleius was actually guilty of magical practices, and that his *Apology* is not triumphant, but “nervous,” “nimble,” and “evasive.”<sup>1</sup> The attempt, curiously enough, has succeeded and is now, almost by default, the reigning interpretation of the *Apology*. Indeed, in the last sixty years, only one scholar, B. Falciatore, has attempted to show that Apuleius was really innocent.<sup>2</sup> Falciatore’s book has been so thoroughly ignored that the latest dissertation on the *Apology* does not even list it under “works consulted.”<sup>3</sup>

On the other hand, Adam Abt, in his dissertation, attempted to show that “Alle Anklagepunkten haben ihren gute Sinn,” and that, if Apuleius was acquitted, he owed it to his “flicke Zunge” and not to his innocence.<sup>4</sup> Paul Vallette, who published his dissertation almost simultaneously, tried to prove “que les explications d’Apulée ne sont

<sup>1</sup> The speech is called “nervous” by J. M. Kelly, *Roman Litigation*, Oxford, 1966, p. 54; “nimble” (*flicke*) by Adam Abt, *Die Apologie des Apuleius von Madaura und die antike Zauberei*, Giessen, 1908, p. 259, and “evasive” by Roger A. Pack, “The Adventures of a Dilettante in a Provincial Family,” *CJ*, 35 (1939), p. 78.

<sup>2</sup> B. Falciatore, *Nel Mondo del la Magica; l’Orazione di Apuleio*, Napoli, 1932.

<sup>3</sup> Cecil Paige Golann, *The Life of Apuleius and his Connection with Magic*, Princeton, 1951.

<sup>4</sup> Abt, loc. cit.

pas toujours entièrement convaincantes et que d'autre part, le philosophe tel qu'il le conçoit est presque nécessairement doublé d'un magicien."<sup>1</sup> These two are now the basic works on the problem. Fritz Norden, in his *Apuleius von Madaura und das Römische Privatrecht*, devotes much of its first fifty-seven pages to a review of the *Apology* in which he summarizes and enlarges upon the arguments of Abt and Vallette. Victor Ussani acknowledges the validity of the latter's conclusions.<sup>2</sup> Roger A. Pack, following Norden, finds it "undeniable that he had actually dabbled to some extent in the black arts," and finds the "evasiveness" of the defense "unmistakable."<sup>3</sup> C. P. Golann reviews and enlarges upon the views of his predecessors to conclude: "that his connection with magic may ... have passed from passive knowledge to active participation."<sup>4</sup>

But the arguments used to show Apuleius a magician are all analogies. Analogies do not prove. Apuleius, for instance, has occasion in the speech to use the word *edulia*, ("tidbits"). Abt found that *edulia* were sometimes used in magic rites and did not blush to include even this in his evidence against Apuleius<sup>5</sup>—even though he might himself have been snacking on an *edulum* while writing. Apuleius is known to have worshipped Mercury. Mercury's domain included magic. This is the argument which the modern accusers of

<sup>1</sup>Paul Vallette, *Apulée: Apologie, Florides*, Paris, 1922 (reprinted, 1960), p. xxii, n. 2.

<sup>2</sup>"Magia, Misticismo e Arte in Apuleio," *NAnt* (1929), pp. 137–155.

<sup>3</sup>Pack, loc. cit.

<sup>4</sup>Op. cit., p. 156.

<sup>5</sup>Op. cit., p. 136. Apuleius uses the word *edulia* in dealing with the charge that he has bought certain kinds of fish: "Why don't you also argue against me from several other purchases? For I have often bought bread and wine and fruits and vegetables. Thus you decree famine for all food dealers, for who would dare buy food from them if it were decided that all *edulia* which are purchased are intended, not for dinner, but for magic." (29.5–6) All translations in this dissertation are mine, unless otherwise noted. References to the *Apology* and to the *Florida* are to the chapter and verse numbers of Vallette's text.

Apuleius treat as their strongest: Vallette and Golann save it for last. Pack uses it alone, and Golann terms it "highly convincing in regard to Apuleius' possible practice of magic."<sup>1</sup> I have discussed the problem in the appendix (pp. 100–106).

Almost everything could be used for magical purposes. Tools of ancient magic were earth, air, fire, and water.<sup>2</sup> It is no coincidence that these are the four ancient elements of which the universe was constructed. Nor is it surprising that Abt was able to fill a dissertation with the items which Apuleius mentions which were also used with magical intent. Though the sheer number of items is impressive, Abt's compilation proves, not that Apuleius was a magician, but that desperate, would-be magicians had tried everything. The matter of argumentation against Apuleius is summarized by Golann's own admission: "it must be stressed that the evidence in favor of Apuleius' practice of magic is suggestive rather than direct."<sup>3</sup>

The contribution of the present thesis will not be to search out further magical parallels or to elaborate on those already known, but to return to the evidence of the *Apology* itself. No one has ever doubted that the core of the accusation against Apuleius (that he used magic to win his wife) was false. No one seems to have pointed out the significance of the fact that a false accusation was a serious crime. The penalty for the crime varied, but in the second century the tendency seems to have been to give the *calumniator* the same penalty which he had tried to have inflicted upon his victim. We have, for example, another instance of *calumnia magiae* within thirty years of Apuleius' trial. The *calumniator* was crucified.<sup>4</sup> This dissertation, then, will show evidence for an essentially new inter-

<sup>1</sup> Op. cit., p. 153.

<sup>2</sup> Francois Ribadeau Dumas, *L'Histoire de la Magie*, Paris, n.d., pp. 69–70.

<sup>3</sup> Op. cit., p. 153.

<sup>4</sup>"In Sicilia [Severus] quasi de imperio vel vates vel Caldaeos consulisset, reus factus, sed a praefectis praetorianis, quibus audiendus datus fuerat, iam Commodo in odio veniente, absolutus est, calumniatore in crucem acto" (*H. A. Severus* 2.3) .

pretation of the *Apology*: that the only foundation for the accusation against Apuleius was hatred and malice; that the accusers had so little faith in their charges that they had to be forced to make their accusation official; that this was done by Apuleius, with the help of the judge, so he could clear his name and expose his *calumniatores*; in sum, that the innocent philosopher met the false accusation with a *de facto* prosecution on the charge of *calumnia* as well as with a rebuttal of the charges of magic.

To support this interpretation, the present study will attempt to show that there is no reason to doubt the evidence which Apuleius presents in the *Apology*. It will then consider the origin of the trial, and, finally, it will examine *calumnia* and Apuleius' prosecution on that charge throughout the *Apology*, topic by topic.

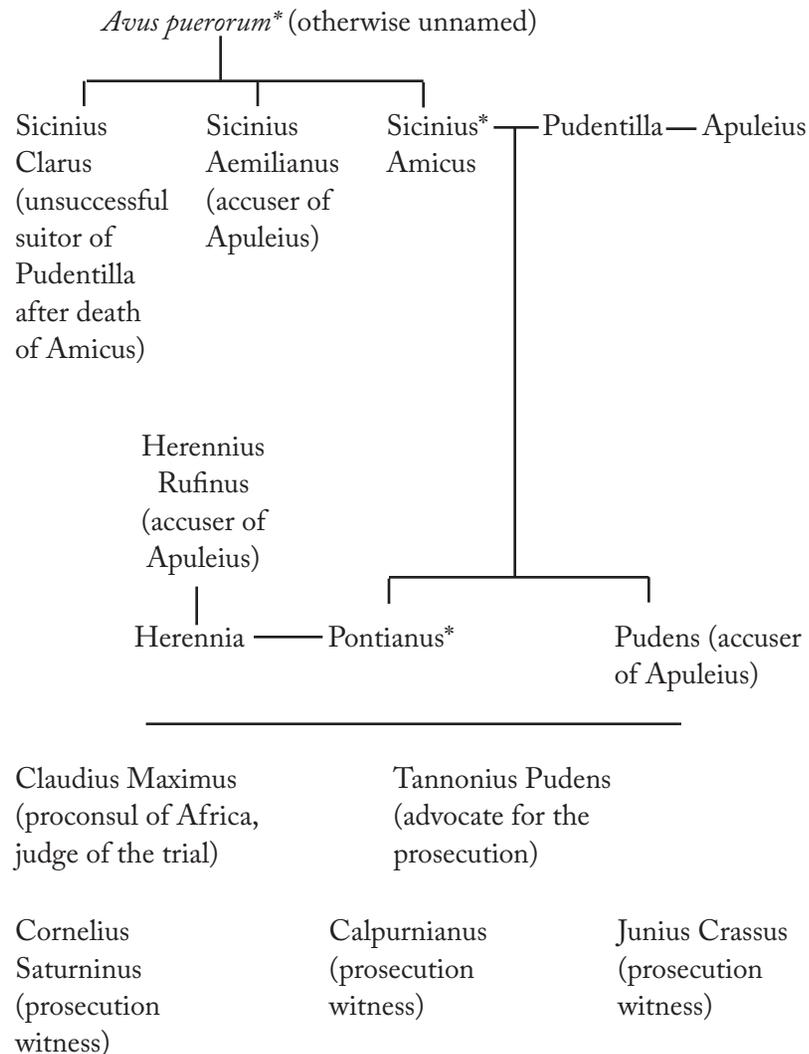
## CHAPTER I

### THE EVENTS PRECEDING THE TRIAL

The series of events which culminated in the trial began some sixteen years before it, with the death of Sicinius Amicus. He left his two sons, Pontianus and Pudens, in the *potestas* of his father, but his widow, Pudentilla, supported them, and remained single to protect their interests (68. 2–3). Her father-in-law opposed this policy. Apparently wishing to keep her property in the family, he wanted to have her marry another of his sons, Sicinius Clarus. He discouraged all other suitors, and threatened to disinherit her two sons if she should marry anyone else. Thus constrained, she agreed to have the marriage contract drawn up, but put off the marriage itself by various ruses. Thus, at her father-in-law's demise, she was still single, but her sons duly inherited his property (68. *inf.*).

This left Pudentilla, now almost fourteen years a widow (68. 2) and not yet forty (89), free to consider a second husband of her own choosing. Somehow Sicinius Aemilianus still hoped she would marry his brother Clarus. Aemilianus sent Pontianus a letter asking that he support the match. Unfortunately for his purpose, it is apparent that he had no means of dispatching a letter to Rome, for he was obliged to ask Pudentilla to have it sent (70. 4). It is a measure of her prudence that she never sent it, but sent Pontianus a letter of her own, mentioning her loneliness, and suggesting that Pontianus was himself at the age where he ought to marry. She also mentioned in this letter that the Sicinii brothers were still trying to have her marry Sicinius Clarus (70. 2,5). Pontianus came straight home—his grandfather's bequest had been somewhat slender, and his right to a share of his mother's estate, valued at four million sesterces, was not

## Relationships of the Significant Characters



\*Deceased before the trial

yet attested, but rested on an unwritten agreement (71. 5-7). It often happened that the wife's property became entirely her husband's, and an avaricious step-father, he feared, would seriously jeopardize his future (71. 5).

This was the situation when Apuleius, exhausted by a journey toward Alexandria, was obliged to stop and recover in Oea. He stayed in bed several days in the home of his friends, the Appii, intending to resume his travels on recovery (72. 1-2). Pontianus had other plans for him. He had known Apuleius when both were in Athens, and had decided that the Platonic philosopher would make a safe and suitable husband for his mother. Consequently, he called on Apuleius, convinced him that he should not leave soon, but should await the next winter before resuming his travels,<sup>1</sup> and finally persuaded him to spend the interval at his mother's house. Pontianus then pleaded with the Appii to turn their guest over to him (72. 3-6).

Apuleius, recovered from his ailment, delivered a discourse "On the Majesty of Aesculapius" in the local basilica. The oration was enthusiastically received—the crowd shouted an invitation to stay in the town and become a citizen of Oea (73. 2). Pontianus took the good will of the crowd as a divine and favoring omen, and broached his plan for Apuleius' marriage to his mother. He told Apuleius that, of all those eligible, he was the only one whom he could trust to protect his interests (73. 3). But Apuleius was still a bachelor at heart (72. 5 and 73. 5), and was not completely persuaded until a full year later (73. 7). Even then, he and Pudentilla (who might have been won over at the start [73. 8]) decided to wait at least until Pontianus should marry and Pudens should don the *toga virilis*.

Pontianus made an unfortunate choice. His intended bride was the daughter of the infamous former actor, Herennius Rufinus. Although Rufinus' father had bequeathed him three million sesterces (which he had preserved by putting the sum in his wife's name when

<sup>1</sup> Winter seems to have been the most healthful time to traverse North Africa. See below, p. 41.

he declared bankruptcy [75. 5-8]), Rufinus was now a financial and moral bankrupt whose income was largely derived from his wife's amorous adventures<sup>1</sup> (75. *passim*).

But such an income could not continue forever:

Ceterum uxor iam propemodum vetula et effeta totam domum contumeliis [lacuna] abnuit. Filia autem per adolescentulos ditiores invitamento maris suae necquiquam circumlata, quibusdam etiam procis ad experiendum permissa, nisi in facilitatem Pontiani incidisset, fortasse an adhuc vidua ante quam nupta sedisset (76. 1-2).

But Pontianus was captivated, and nothing Pudentilla or Apuleius could say would keep him from marrying this girl, even though he knew that her previous marital experience had ended with a *repudium*, and that she ostentatiously had herself carried about in an eight-man sedan chair. She was the sort who would arrive for the wedding with her lips artificially reddened and her cheeks covered with rouge, and who would, even upon such an occasion, cast alluring eyes on the young men and show too much of herself, as everyone witnessed (76. 3-5). Such had been the lessons from her mother. Her dowry had been borrowed the day before the wedding (76. *inf.*).

Why this borrowed investment? Herennius, as greedy as he was needy, had been told by Chaldaean seers that her husband would die after a short period, and the question of inheritance they answered with some lie designed to please (97. 4). It follows, then, that the solution for his financial difficulties was to seduce as rich a young man as possible. Now that Pontianus had accepted the offered bait, He-

<sup>1</sup> Apuleius' unrestrained narration of Herennius' major source of income has shocked modern critics into considering it exaggerated, or at least in bad taste. But since Roman law offered the remedies of *iniuria* to the husband of the insulted wife (Gaius 3. 2.21), Apuleius must have known his statements would make him liable if he were not telling the truth. For the matter of 'taste' see pp. 57-60.

rennius "in his presumption was already devouring the whole four million of Pudentilla" (77. 1).

The marriage accomplished, Herennius' problem became Apuleius. He railed at his new son-in-law for affiancing his mother to Apuleius, and pressured him to undo the coming match—otherwise he would take back his daughter (77. 1-3). Pontianus was convinced, but his mission to Mother was anything but a success. She, instead of complying, complained of his being inconstant and willy-nilly. The request not to marry Apuleius turned her usually most placid nature to "immovable wrath". Finally, she told him she knew perfectly well he was pleading Rufinus' case, and that she would thus need all the more the assistance of a husband to combat "his desperate greed" (77. 5-7).

Pudentilla's answer precipitated the first charge of "magic" of which we have any record. Like the one which first aroused Apuleius' indignation in Claudius Maximus' courtroom, the first instance was public and unofficial. On hearing the bad news with which Pontianus returned, "that dealer in his own wife so swelled with wrath and burned with rage that he called that most pure and chaste woman, in the presence of her own son, things worthy of his own bedroom, and, in the presence of several persons—whom I will name if you like—shouted that she was a whore, and I, a magician and a poisoner, and with his own hand he would bring about my death" (78. *init.*). (This threat, incidentally, coupled with the fact that Herennius was a mime, allows Apuleius to twit him as follows: "With whose hand? Philomela's? Medea's? Clytemnestra's?" [78. 4]).

Seeing to what extent her elder son, Pontianus, had been corrupted by Herennius' bad influence, Pudentilla wished to remove him from it. She therefore withdrew to her country villa and wrote her son, telling him to join her there. But at the time of writing, she had no suspicion of the extent of her son's lapse of filial piety: before joining his mother, Pontianus actually turned his mother's letter over to Herennius, and allowed himself to be led weeping through the

forum while Herennius, deceitfully omitting the parenthesized context, read from the letter:

( . . . now that our malicious detractors have won you over, suddenly) Apuleius is a magician; he has bewitched me and I love him too much. Come to me then, while I am still in my right mind (82. 2 Cf. 83. 1).

This declamation ended, he would display the poor boy to the crowd, claiming the while that the rest of the letter was worse yet: too shameful, in fact, for public view. He therefore hid the rest of the letter from view, but showed the deceitfully truncated sentence to anyone who wished to look (82. 1-4). The defamation was convincing, and much of Oea conceived a violent animosity toward Apuleius. Herennius Rufinus did what he could to make it grow. He continued haranging in the forum, frequently brandishing the letter and saying: “Apuleius is a magician! She says so herself who knows and suffers! What more do you want?” (82. 6).

We might wonder how Pontianus could face his mother after this, but with all Oea believing that his mother was in the clutches of a magician, public opinion might have obliged him to obey her summons and come to her aid, whether he wanted to see her or not. At any rate, come he did, and the reception was hostile. News of his performance had preceded him, and Pudentilla warned him about Rufinus, severely scoring him for his public reading and willful misrepresentation of her letter (87. 8). He stayed at his mother’s country estate about two months, in which time Apuleius and Pudentilla were married.

Unfortunately, Pontianus was not Pudentilla’s only problem, for Pudens, too, was experiencing a lapse of filial piety. While still living at home, he secretly sent a letter to Pontianus which abused his mother “nimis irreverenter, nimis contumeliose et turpiter” (84. 4).

Apuleius, realizing the source of all their problems, and apparently not cursed with a love of money himself, after some difficul-

ty persuaded Pudentilla to convey to her sons all that was properly theirs. This sum was given in real estate at the sons’ own evaluation. She was further persuaded to give them the most fruitful fields, a grand house “richly ornate,” a great supply of wheat, barley, wine, olive oil and other fruits, four hundred servants, and several flocks. This was to allow them to rest assured about the patrimony received and to entertain good hopes for the rest (93. 3-5).

Sometime earlier, when Pontianus was still in parental favor, Apuleius had written to the proconsul, Lollianus Avitus a letter in which he commended the young orator, Pontianus, to his attention. Apuleius’ next letter was full of the news of Pontianus’ incredible misbehavior. On discovering this, Pontianus humbly sought Apuleius’ forgiveness and a second letter of recommendation. Apuleius provided both, and the repentent Pontianus set off for Carthage, the proconsular seat (94. 1-5). Pontianus was not the only person to experience conversion. All Oea heard of the premature gift of the sons’ heritage, and transferred their animosity from Apuleius to Herennius (94. 1).

The interview with the proconsul passed pleasantly: on reading Apuleius’ missive, he congratulated Pontianus for his *eximia humanitate*, since he had quickly corrected his error (94. 6). The proconsul wrote Apuleius an answer and charged Pontianus with delivering it to Apuleius.

Pontianus, en route home, fell ill and died. His will left his property to his mother and to Pudens. As Apuleius names her first in describing the testament of Pontianus, she apparently received the greater share (97. 7). This fact may help explain why Pudens, on the occasion of his brother’s funeral, attempted, with the assistance of a band of brigands, to forbid his mother entry to the house she had given him (100. 6).

It is important to note that in neither will which Pontianus wrote did he make his wife an heir (97). Pontianus thus nullified the effect of Herennius’ machinations, and thereby obliged him to repeat them on Pudens. Further, Pontianus’ will—apparently the lat-

ter of the two—confirmed all that Apuleius had said of the Herennius family:

Quippe qui ei [Herennia] *ad ignominiam* lintea ascribi ducentorum fere denariorum iusserit, ut intellegeretur iratus aestimasse eam quam oblitus praeterisse (97. 6).

Isaac Casaubon interpreted this legacy as one intended to brand his wife a harlot, citing Isidore: “*Amiculum* est meretricum pallium linteum; his apud veteres *matronae in adulterio deprehensae* induebantur” (*Orig.* 19. 25).<sup>1</sup>

Pontianus’ death and testament sufficed to make Pudens a center of attention. The two legacy-hunters, Rufinus and Aemilianus, each having once failed to construct a channel through which to divert Pudentilla’s resources, set a snare for Pudens and combined their efforts. Herennius aimed his widowed daughter at Pudens, who, to further this project, was easily removed to live with his Uncle Aemilianus:

At ille puellae meretricis blandimentis et lenonis patris illectamentis captus et possessus, exinde ut frater eius animam edidit, relicta matre ad patruum commigravit, quo facilius remotis nobis coepta perficerentur (98. 1).

Apuleius points out that under this arrangement, should Pudens die intestate, his estate would go “by law but not by justice” to Aemilianus (98. 2). The latter apparently wished to secure his position, for he showed a sudden fondness for the boy, and a real willingness to please: living at home, he was still without the toga; in his uncle’s charge he is granted it immediately. He went to teachers and kept good company when at home; he now goes to brothels, carouses with the worst sort, is allowed to act as lord of house and household,

<sup>1</sup> Casaubon’s interpretation is cited by Butler and Owen, *Apulei Apologia*, Oxford 1914, p. 171, commentary.

and goes to the gladiators’ school, where the keeper himself teaches him the names, battles, and wounds of the fighters (98. 5-7).

Pudentilla, suffering from her son’s outrageous conduct toward her, became ill and disinherited Pudens. But Apuleius wished to pour coals of kindness on his head, and went to the extreme of threatening to leave her to get his way, so great was her distaste for her son. Pudens was not only reinstated, but made first heir (99. 4). This was not made known to Aemilianus nor to his young ward until Apuleius announced it at the trial (99. 5).

This, in sum, was the situation at the time of the trial: Apuleius had three enemies leagued against him, Herennius Rufinus, Aemilianus, and Pudens. Their leader Herennius would allow no opportunity for defaming Apuleius to pass unused, no matter how unfair or unjust it might be. This he demonstrated beyond any question on the occasion of his public readings. The trial took place three years after Apuleius’ arrival in Oea (55. 10). The campaign of defamation, the reader will recall, had begun about two months before the wedding of Apuleius and Pudentilla, an event which took place somewhat more than a year after Apuleius’ arrival (73. 7 and 9). By the time of the trial, then, Apuleius had been subjected to two years of hatred and slander.

The next event in the chronology is the trial of Apuleius on a charge of magic. Before investigating how the trial originated, it will be appropriate, especially since Apuleius is the only source for the trial, to evaluate the trustworthiness of the *Apology*.

## CHAPTER II

## THE CREDIBILITY OF APULEIUS

But how trustworthy is Apuleius as a source? May we believe the evidence which he presents in his *Apology*? There are many who would have him, to speak frankly, a liar. For instance, Adam Abt concludes that if Apuleius was found innocent, he owed it not to innocence but to a “flicke Zunge.”<sup>1</sup> Vallette, attempting to show that Apuleius used his statue of Mercury for magic, is dissatisfied with his author as a useful source, and faces the matter squarely: “Sommes-nous forces de croire Apulée sur parole?”<sup>2</sup>

Three factors indicate that our answer must be “Yes”: 1) The accuser is a convicted perjurer who—as Apuleius has shown to the satisfaction of ancient and modern judges—committed perjury again, and on numerous occasions, during the course of the trial. It is distinctly unlikely that a perjured accusation necessitated a perjured answer. 2) Examination shows that the single instance of a “misrepresentation” on the part of Apuleius is no misrepresentation at all—a fact which leaves us with no precedent for assuming that Apuleius would lie. 3) The widespread view that the *Apology* might have been improved between delivery and publication ignores the evidence of *Florida* 9. 13, an express statement that the great orator’s speeches were customarily stenographed at delivery, a fact which makes it probable that we have the *Apology* essentially as Apuleius delivered it.

### The Credibility of Apuleius’ Accuser

If there are, as Vallette suspects, lies in the *Apology*, it will be well to

<sup>1</sup> Adam Abt, *Apologie und Zauberei*, p. 259.

<sup>2</sup> Paul Vallette, *L’Apologie d’Apulée*, p. 317.

understand who is responsible for them. Sicinius Aemilianus seems to have made a career of being caught in untruths. Here we will not consider all of them, but only the major falsehoods proven by evidence or those whose circumstances admit of no reasonable doubt. Earlier Sicinius had been punished for perjury before the prefect of Rome and a panel of consulars (2. 9f; 3. 1). The lie was the more vicious as it had been persistently and impudently maintained. Before the trial, this same Aemilianus publicly called Apuleius the murderer of his stepson. Later, when obliged to accuse officially, he conveniently omitted this charge, admitting, in effect, that it was an insupportable lie (1. 5; 2. 1). Similarly, he insisted that Apuleius kept a magic talisman hidden away. He was obliged to admit that he had never seen it, but nonetheless insisted that it was an instrument of magic (54). When the accusation had been entered, he purchased a deposition from one Junius Crassus. But Crassus effectively admitted the falsehood of the deposition by not showing up at the forum to acknowledge it as his own.<sup>1</sup> Desperate for something with some verisimilitude about it, Sicinius announced that Apuleius had searched through the whole town for ebony, and that he had had a grisly skeleton made from this rare wood, and that this was all done in secret (61). For support, he summoned the artisan who had carved the wood. This worthy craftsman declared that he had made it openly, that the wood had been the gift of Pontianus, and that the figurine in question was no skeleton, but a Mercury (61. 6–8). The accusers also charged that Apuleius had enchanted a boy, who, as a result of the incantation, had fallen down and suffered a lapse of memory (42. 3–4). Unfortunately, the slave whom they named was known to be an epileptic, and the charge was greeted with raised eyebrows and angry murmurings (46. 1).

Aemilianus had further stated that Pudentilla, until forced by Apuleius’ magic, had never given thought to remarriage. He was caught in this lie, too. His own letter to her son Pontianus, advising

<sup>1</sup> New evidence supporting this is offered below, pp. 92–95.

him of her marital plans, is produced in court. This allows Apuleius to shame his adversary: "Give it to him, let him read it, that with his own voice and his own words he may defeat himself. . . . Please, read louder" (69. 6-7). Since he has a further point to make with it, he repeats the burden of the letter, thus preserving for us the proof of Aemilianus' falsehood: "I know she ought to marry and wants to, but whom she will pick I have no idea" (70. 1).

There was likewise the letter from Pudentilla to Pontianus, reading in part: "Apuleius is a magician? he has bewitched me and I am too much in love with him. Come to me then, while I am still in my right mind." Apuleius' enemies had read this all over town (above, p. 12) and used it at the trial as proof of their main charge, that Apuleius had bewitched Pudentilla into marrying him (82). Apuleius produces this letter to Pontianus, in a copy certified by Pontianus' librarian, by Aemilianus, and by Apuleius.<sup>1</sup> He has it read, and another lie is exposed:

When you found that I was set on marrying again you yourself persuaded me to choose him over all others, so much did you marvel at the man and wish to make him a member of the family through me. But now that our malicious detractors have won you over, suddenly Apuleius is a magician; he has bewitched me and I love him too much . . . (83. 1).

To strengthen his case, Aemilianus had stated that Pudentilla was sixty years old. Apuleius produced her sealed birth certificate, showing her not yet forty (89).

Such was the fabric of the accusation against Apuleius. It does not seem likely that such bald fiction born of desperation would have required countering lies alike born of desperation. But the idea

<sup>1</sup> Aemilianus himself made the copy: ". . . quas tamen litteras tabulario Pontiani praesente et contra scribente Aemiliano nudius tertius, tuo iussu, Maxime, descripsimus (78. 6)." Cf. also 88. 1. The *tabularius* mentioned in 78. 6 seems to be identical with the *promus librorum* of 53. 8.

frequently turns up that Apuleius misrepresented the accusation.<sup>1</sup> The most succinct expression of this suspicion is that we know as much of Aemilianus' accusation from Apuleius as we know of Catiline from Cicero. At first glance, this seems an apt and neat parallel, but it has a serious failing that has led to error. As head of the Roman state, Cicero is presumably the man best informed about Catiline. Cicero knows all; his audience knows what Cicero chooses to tell them. Unlike Catiline, Aemilianus is given a hearing by the same audience which will hear his adversary. The audience is as well-informed on the points of the accusation as Apuleius is. He is therefore not free to edit or to mutilate it. He is officially on trial for his life, and such chicanery could only hurt him. Once the indictment was accepted, Apuleius was obliged to answer it; the alternative was forfeiture. Furthermore, as Apuleius himself says, to omit a point of the accusation could be interpreted as confession rather than scorn (3. 8). He was obliged to retrace its course, step by step. But as it turned out, the accusation was a patent absurdity, and step by step became one reduction to the absurd after another. We must not confuse mutilation with reduction. Circumstances forbade the one; the nature of the accusation made the other inevitable.

### A Misrepresentation?

Before discounting statements of Apuleius which displease, a critic should be able to show precedent where Apuleius has distinctly deviated from truth. Butler and Vallette have noted a single instance. The instance will bear examination.

This concerns the age of Pudens. The circumstances follow. During the period in question, a youth generally assumed the *toga virilis* at the age of fourteen or fifteen.<sup>2</sup> In a letter written before Apuleius'

<sup>1</sup> E.g., Abt, op. cit., passim; Vallette, op. cit., p. 317; L. Herrmann, "Le Procès d'Apulée," *RUB* n.s. 4 (1952) pp. 339-350.

<sup>2</sup> Joachim Marquardt, *Pas Privatleben der Römer*, Hirzel, 1886, p. 127.

arrival in Oea, Pudentilla described her younger son Pudens as *virili togae idoneus*, and Apuleius states that the trial occurred three years after his arrival (70. 1, 55. 12). This would make Pudens seventeen or eighteen. But Apuleius never refers to Pudens with any word more complimentary than *puer*. This leads to a common objection. H. E. Butler, for instance, corrects Apuleius with these words:

Apuleius always lays stress on the extreme youth of Pudens, and hints that he assumed the toga at an unduly early age. But as a matter of fact, he can scarcely have been less than 18 at the time of the trial.

He takes up the complaint in his note: "Apuleius' suggestion that Pudens' admission was premature (98) cannot be taken very seriously . . ." <sup>1</sup> Vallette makes much the same cavil:

Sicinius Pudens est toujours presente par Apulée comme un tout jeune homme, presque comme un enfant. Au moment du procès, il a avait depuis peu pris la toge virile. Il avait donc au moins quatorze ou quinze ans. Sa mere restait veuve quatorze ans.<sup>2</sup>

The misrepresentation is apparent only. Apuleius has good and valid reasons for calling Pudens *puer*. The first use of the appellation (2. 3) is justified by the fact that Pudens is under twenty five, the age of legal responsibility, a fact which the proconsul Claudius himself noticed (2. 5). Even now, we are infants before the law until twenty one.

Apuleius' allusions to the youth of Pudens refer not to his age but to his maturity. The second reference to Pudens, for instance, exposes "puerum ilium . . . curae meae ereptum, . . . in me ac matrem suam nefarie efferatum, . . . desertis liberalibus studiis ac repudiata omni disciplina . . ." (28. 7–8). These beginnings, says Apuleius,

<sup>1</sup> H. E. Butler and A. S. Owen, *Apulei Apologia*, Oxford, 1914, p. xx.

<sup>2</sup> *Apulée: Apologie, Florides*, p. xix.

show that he will not be another Pontianus (whom Apuleius styles "adultus" [69. 5], "splendidissimus eques" [62. 4], and "disertus iuuenis" [98. 9]), but rather another Aemilianus (28. 8–9).

Apuleius' next reference to Pudens (45. 7) dubs him "puerulum ilium." Here "that little boy" is mentioned as the only witness who states that Apuleius "enchanted" a boy (who happened to be an epileptic) causing him to fall. It could, of course, be said that Apuleius is attempting to discredit an opposing witness. But it must be noted that by so witnessing, Pudens discredited himself, showing sufficient immaturity to deserve the diminutive, for it was an obvious lie, and was so recognized:

Tannonius [Aemilianus' lawyer] . . . cum hoc quoque mendacium frigere ac prope iam omnium vultu et murmure explosum videret, ut vel suspiciones quorundam spe moraretur, ait pueros alios producturum qui sint aeque a me incantati (46. 1).

This lie which Tannonius used to shore up that of Pudens, incidentally, was also found out. Speaking of these *pueri alii incantati*, Apuleius says: "Sed nil amplius dico. Ut producant!" (46. 2).

Another use of the diminutive *puerulus* applied to Pudens (75. 4) is similarly explained by its context, which explains how Pudens has been corrupted by Herennius Rufinus. It seems apparent that Apuleius intends the diminutive to be a comment on the boy's immaturity: Pontianus, otherwise mentioned with honorifics by Apuleius, is subjected to a diminutive only when Apuleius sadly recounts his being duped by this same Rufinus (77. 3).

Similarly, the next reference to "that boy" has nothing to do with misrepresenting his age. It is rather, as its context shows, a justified comment on his maturity:

Cur autem praeterita conqueror, cum non sint minus acerba praesentia? Hocusque a vobis miserum istum puerum depravatum, ut matris suae epistu-

las, quas putat amatorias, pro tribunali proconsulis recitet apud virum sanctissimum Claudium Maximum, ante has Imperatoris Pii statuas, filius matri suae pudenda exprobret supra et amores obiectet? (85. 1)

The next reference to Pudens is called by H. E. Butler a “suggestion that Pudens’ admission was premature” (noted above, p. 24). It is not a suggestion, but a statement. It concerns not age, but withholding and granting an honor. Pudentilla, for her own valid reasons, had not yet seen fit to invest Pudens with the *toga virilis*. Pontianus died, leaving Pudens the chief heir to the family fortune. He was promptly and blatantly seduced by his uncle Aemilianus, who was next in line (98. 2-4). Investiture was one of his blandishments: “Investem a nobis accepisti? vesticem ilico reddidisti” (98. 5).<sup>1</sup> There is no reason why this statement should not be taken seriously. It is not inconsistent with the age of Pudens, no matter what his age at the time. In fact, there is nothing significant about the investiture except the identity of the man who granted it, and the circumstances of greed which surrounded it.

Further evidence that Apuleius does not misrepresent Pudens’ age is to be found in the penultimate reference to “that boy.” His age is admitted by the context, but his immaturity is still insisted upon by the word *puer*: “cum adulescentulis postremissumis inter scorta et pocula puer hoc aevi convivium agitat” (98. 6). These activities are entirely consistent with a boy of the seventeen or eighteen years the critics would give Pudens.

Further, would Apuleius, no fool, misrepresent the age of a boy or man whom the judge has right before him? The judge himself is called to witness on the matter:

<sup>1</sup>Apparently both the mother, while her son Pudens was still living at home, and the uncle, Aemilianus, while his nephew Pudens was living with him, would have been capable of bestowing the toga, as could any guardian. Cf. Marquard, *Privatleben*, p. 125. It was Pudentilla, however, who paid the largess which the investiture involved (87. 10).

He never speaks anything but Punic, except for what little Greek he learned from his mother, for he has neither will nor ability to speak Latin. You, Maximus, a little earlier heard (Heavens!) my stepson, the brother of the articulate Pontianus, stumbling over his few syllables when you questioned him . . . (98. 8-9).

Making a *vir togatus* of such a boy would have been an act of dishonesty. But finally, it must be noted that Apuleius made no attempt to conceal the physical maturity of Pudens. The boy’s age in years is definitely granted at 85. 5, where he is called “filius iam adultus.”

In sum, Apuleius does not misrepresent the age of Pudens. The single matter which seemed a misrepresentation on the part of Apuleius fails, leaving us with no reason for taking the orator’s word lightly.

### The Pertinence of Stenography

The *Apology* is a long speech—from my own experiments, I find that it must have taken almost four hours to deliver.<sup>1</sup> Is it possible that such a speech could have been stenographed? There is evidence to show that this is not only possible, but extremely likely. Practical use of shorthand for the recording of spoken Latin is known from 63 B.C. to the ninth century.<sup>2</sup> The technique is known from extant shorthand copies, and was once revived for experimental purposes. The modern experimenters, properly equipped with wax tablet and stylus, became proficient enough to indicate that the technique, when mastered, would have enabled the ancient *notarius* not

<sup>1</sup> The length of the *Apology* cannot be used to argue that it is an extended version of the spoken oration. The defendant was allowed one third more time than the accuser had used (Butler and Owen, op. cit., p. 72), and Pliny boasts of speaking almost five hours, despite his poor health, when accusing Marius Crispus (*Ep.*2.11).

<sup>2</sup> Weinberger in *PW* s.v. “Kurzschrift.”

only to follow the speaker, but to continue for hours.<sup>1</sup> This is consistent with ancient notices of stenography. Eunapius, for instance, speaks of τοὺς ταχέως γράφοντας . . . οἱ καθ' ἡμέραν μὲν τὴν τῆς Θέμιδος γλώτταν ἀποσημαίνονται.<sup>2</sup> This also indicates that shorthand recording was especially used for juridical speeches.

The word used to express “record by shorthand” is *excipio*. Cicero seems the first to use the verb in this sense,<sup>3</sup> and, perhaps because it is a neologism, is careful to make his meaning clear:

Tum ilium [Tages] plura locutum multis audientibus qui *omnia verba eius exceperint*, literisque mandaverint.

Cicero also provides us with the first speech known to have been stenographed at delivery and published by the stenographer, This is the *Pro Milone*. Asconius Pedianus reports that there were two speeches: the one Cicero delivered and the one Cicero published (11). How did he know? The former was “excepta,” published, and, in Asconius’ time, was still extant. Asconius chooses to study the better version not because he feels that the *oratio excepta* was unfaithfully recorded (indeed, he mentions no such possibility), but because he feels the longer version is more worth study. He seems to accept the *oratio excepta* as what Cicero actually said at the trial:

When Cicero began to speak, he was stopped by the outcries of the Clodians, who, despite the armed guards, could not restrain themselves. He therefore spoke without his usual aplomb. That recorded speech also is extant, but he wrote the one we read so perfectly that it may rightly be considered first (11).

<sup>1</sup> Louis and Eugene Guénin, *Histoire de la Sténographie*, Paris, 1908, pp. 233–234.

<sup>2</sup> *Vit. Soph.* “Prohaeresius” 4.13.

<sup>3</sup> *TLL* s.v. “excipio,” col. 1253.

From this famous beginning, stenography seems to have enjoyed wide use in the “catching” of spoken orations, and the stenography seems to have had some effect. As J. N. Settle notes “. . . this dual existence of a published oration is without parallel.”<sup>1</sup> Thus the first speech known to have been *excepta* is also the last speech known to have been improved in a subsequent version by the orator. Perhaps Cicero’s successors wished to avoid mockery. Milo, angered by the disparity between the two versions, deliberately attempted to make a laughing-stock of Cicero after Cicero had sent the banished Milo a copy of the improved version. On reading it Milo opined he was lucky that Cicero had given no such speech, for he would not then be enjoying the fine mullets of Marseilles. “This he wrote, not because he was pleased with his condition—indeed, he made many efforts to secure his return—but as a joke on Cicero, because the orator, after saying nothing useful at the time . . . had later composed and sent to him these fruitless words, as if they could then be of any service to him.”<sup>2</sup> Quintilian may reflect how Cicero’s experience with stenography affected later orators. Even though Quintilian was displeased that his orations had been published by stenographers, he did not re-do them (see below, p. 28).

Various of Caesar’s speeches in the courts might have been published by stenographers. Augustus wondered if the state of Caesar’s *Pro Q. Metello* was the result of publication by a bad stenographer: “Pro Q. Metello non immerito Augustus existimat magis ab actuariis exceptam male subsequentibus verba dicentis, quam ab ipso editam” (Suet. *Iul* 55. 3). Even this is an indication that the craft was capable of recording a forensic speech with fidelity: if all stenographers’ publications were unfaithful versions, the words “male subsequentibus” would have been superfluous.

In the Augustan age, the poet Manilius was able to describe the stenographer in these terms:

<sup>1</sup> “The Trial of Milo and the Other *Pro Milone*,” *TAPhA* 94 (1963), p. 275.

<sup>2</sup> Cass. Dio 40.54, tr. Ernest Cary.

Hinc et erit scriptor velox cui litera verbum est, quique notis linguam superet cursimque loquentis excipiat longas nova per compendia voces (4. 197–199).

Throughout the Early Empire, stenography was praised by some and taken for granted by others. Seneca, for instance, lists *exceptio* among the marvels which Reason (*Scire*) has wrought: “Quid verborum notas, quibus quamvis citata excipitur oratio et celeritatem linguae manus sequatur?” (*Epist.* 90. 25). Even more significant than this praise is the fact that two first century critics, Asconius and Quintilian, had so much faith in the ability of shorthand that they accepted “the other *Pro Milone*” as a record of what Cicero actually said. Quintilian speaks of “oratione *pulcherrima*, quam pro Milone *scriptam reliquit*” (*Inst.* 4.2.25). But later he has occasion to speak of a distinctly different *Pro Milone*:

Unde Ciceroni quoque in prooemio, cum *diceret* pro Milone, digredi fuit necesse, ut *ipsa oratiuncula qua usus est* patet (*Inst.* 4.3.17).

If Quintilian believes he possesses the *ipsa oratiuncula qua usus est*, it could only be because he believes that some stenographer faithfully recorded the words of Cicero as he spoke in Milo’s behalf. This at least indicates that stenography in Quintilian’s day was both commonplace and capable. He elsewhere complains that all but one of his court speeches have been published by *exceptores*;

Cuius actionem [that for Naevius of Arpinum] et quidem solam in hoc tempus emiseram, quod ipsum me fecisse ductum iuvenale cupiditate gloriae fateor. Nam ceterae, quae sub nomine meo feruntur, negligentia excipientium in quaestum notariorum corruptae minimam partem mei habent (*Inst.* 7.2.24).

It is conceivable that stenography became a usual part of the rhetorical education. Oratory was learned by memorizing and study-

ing orations, and there would have been no faster or cheaper way to obtain models of current excellence. Thus the Emperor Titus, who was educated with Nero in the imperial court (Suet. *Titus* 1) was a skilled *exceptor*: “E pluribus comperi notis quoque excipere velocissime solitum.” Suetonius provides this information not because it was unusual for a noble to be an *exceptor*, but apparently simply because it introduces an anecdote he wishes to tell: “et cum amanuensibus suis per ludum iocumque certantem” (*Titus* 3).

Thus the ancient notices of stenography which antedate the *Apology* of Apuleius indicate that speeches could be faithfully recorded, and that court speeches were especially liable to recording and publication by stenographers. This external evidence alone would oblige us to admit the possibility that Apuleius’ *Apology* was transcribed at delivery. The evidence which the orator himself provides turns possibility to probability.

Throughout all we know of his life, Apuleius was famous enough as an orator to attract *exceptores*, whether their motive was profit or self-improvement. At some unknown date he remarks that he is obliged to give a speech in just about every town he visits.<sup>1</sup> This was already true three years before the trial:

Nec hoc ad tempus compono, sed abhinc ferme triennium est, cum primis diebus Oeam veneram publice disserens de Aesculapii maiestate eadem ista prae me tuli et quot sacra nossem percensui. Ea disputatio celebratissima est, vulgo legitur, in omnibus manibus versatur (55. 10–11).

The speech he refers to was so read and studied that Apuleius can expect several in the audience to be able to recite the part in ques-

<sup>1</sup> *Fl.* 1. The town in question here is called “sanctissimam istam civitatem.” Though this has been taken to mean Rome, the town is compared to “aliqui lucus aut aliqui locus sanctus in via.” His punning remark “. . . quamquam oppido festinem, . . . et habenda oratio et inhibenda properatio est.” is another indication that some village is meant, rather than such a city as Rome.

tion: “Dicite aliquis, si qui forte meminit, huius loci principium. Audisne, Maxime, multos suggerentis?”

Apuleius describes his experience with stenography in the ninth section of his *Florida*. This fragment answers one of Apuleius’ critics, one of the kind “who prefer to despise their betters rather than to imitate them” (*Fl.* 9. 2). The critic is asked to look around at the huge and splendid assemblage and to consider how difficult it is to satisfy everyone in such a crowd, “especially for me” (*Fl.* 9.6). He continues with that famous remark which begins: “Quis enim vestrum mihi unum soloecismum ignoverit?” (*Fl.* 9. 7) The problem which Apuleius faces is indeed challenging: “*Meum vero unumquodque dictum acriter examinatis sedulo pensiculatis, ad limam et lineam certam redigitis*” (*Fl.* 9. 8). He explains the root of the problem: “Nam quodcumque ad vos protuli, exceptum ilico et lectum est, nec revocare illud nec autem mutare nec emendare mihi inde quicquam licet . . .” (*Fl.* 9. 13). Apuleius’ reaction to the fact of *exceptio* differs somewhat from that of Quintilian. Quintilian used *exceptio* as an excuse for the inferior quality of his published speeches. Apuleius accepted the fidelity of the *exceptores*. His solution is not better stenographers, but better speeches: “. . . quo maior religio *dicendi* habenda est” (*Fl.* 9. 13) . .

The context of the statement with “exceptum ilico” (9. 13) clearly indicates that his meaning is “Everything I have *spoken* has been *stenographed*.” The verbs describing his own part are all verbs of speaking: “*syllabam pronuntiatam*” (*Fl.* 9. 7), “*verba temere blaterare*” (*Fl.* 9. 7), “*unumquodque dictum examinatis*” (*Fl.* 9. 8), and finally, “*maior religio dicendi*” (*Fl.* 9. 14). Yet the verb which he used in the statement in question, *proferre*, generally means “to publish” when used of an oration. This is important, for it indicates that Apuleius, because of his relentless *exceptores*, has come to think of delivery itself as publication.

The ninth fragment of the *Florida* then, is a strong indication that every speech which we possess of the great orator was published

(in the usual sense of the word) not by Apuleius but by enterprising stenographers. Therefore, we probably have in the *Apology* not some augmented or “improved” pamphlet, but the *ipsa oratio* which Apuleius actually delivered at the trial.<sup>1</sup>

In this chapter, then, we have found little reason to credit Apuleius’ accusers, no precedent for distrusting Apuleius, and good reason to believe we read essentially what Apuleius said at his trial.

<sup>1</sup> The general view is opposed to this. E.g., Abt (op. cit., pp. 6–8) is so confident that the *Apology* was improved and augmented that he attempts to determine which sections were added for publication. Vallette (*Apulée*, p. xxiv) says Apuleius must have reworked it. George Misch (*History of Autobiography in Antiquity*, p. 509) writes: “Against this charge he had brilliantly defended himself . . . and he then published a long and lively version of his speech.”

## CHAPTER III

## THE ORIGIN OF THE TRIAL

How did the trial of Apuleius originate? The question is of capital importance to any interpretation of the *Apology*. The answer seems obvious and natural: the accuser almost invariably has the initiative, and accuses a man whom he believes guilty, and against whom he has prepared a case. This is the current view of the origin of the trial of Apuleius.

Yet it is probable that Aemilianus and his allies, made unwary by their unrestrained hatred for Apuleius, had no intention of legal action, but were instead trapped by the accused into making the accusation.

This suggestion is not so unlikely as it may seem. In his dissertation, Paul Vallette proposed that Aemilianus' purpose at the assize of the proconsul Claudius Maximus was not to accuse, but to mobilize public opinion against Apuleius. He would have the trial begin in this fashion:

Mais Apulée n'étend pas rester sous le coup de ces calomnies, d'autant plus perfides qu'elles n'engagent pas la responsabilité de leurs auteurs; il veut un débat contradictoire qui lui donne le moyen d'établir son innocence une fois pour toutes, et, prenant les devants, il met les faiseurs de tapage en demeure de transformer leurs médisances en une accusation en règle.<sup>1</sup>

Vallette's work was well received. The idea quoted above, that Apuleius had reason to start the trial, was singled out for acknowledge-

<sup>1</sup> *L'Apologie*, op. cit., pp. 20–21.

ment and approval, notably by Paul LeJay<sup>1</sup> and Georg Lehnert, who remarked:

dass Apuleius geradezu eine Interesse daran gehabt habe, in einem Prozess wegen Magie verwickelt zu werden, ist doch eine recht bedenkliche Behauptung.<sup>2</sup>

But Vallette did not attempt to explain how Apuleius managed to have “the noise-makers” (“fiseurs de tapage”) transform their slander into a regular accusation, and instead of developing his suggestion, chose to show that Apuleius was really in some way a magician.

Vallette's suggestion has since been completely ignored: H. E. Butler and A. S. Owen apparently assume that the accusers had the accusation prepared in advance.<sup>3</sup> Adam Abt, whose book is an attempt to show that all points of the accusation were valid, seems to base his work on the assumption that the accusation was planned in advance and even *bona fide*. Similarly, the chronology of Roger Pack has “an interval of astonishing length [a year and a half] between Pontianus' death and the *trial which it occasioned* . . . . So the accusers had ample time to marshal every possible bit of evidence before they seized the pretext, furnished by the Granii, for launching their attack”<sup>4</sup> (emphasis added). More recently, C. P. Golann has taken the accusation against Apuleius seriously enough to call it “smoke” for which we should attempt to find the “fire,” i.e., actual guilt of magical practices.<sup>5</sup>

But for one attempting to show that the trial of Apuleius occurred only because Apuleius wanted it to, there is more support than a passing sentence in Vallette's dissertation. Apuleius was a

<sup>1</sup> *Revue Critique d'Histoire et de Litterature*, vol. 2 (1909), p. 316.

<sup>2</sup> *Jahrsbericht* Bd. 175, p. 15.

<sup>3</sup> *Apulei Apologia*, pp. xv and commentary, 2.

<sup>4</sup> “The Adventures of a Dilettante,” p. 79.

<sup>5</sup> *The Life of Apuleius*, p. 141.

splendid advocate, and it is almost exclusively to him that I appeal. He said, for instance: “Ultrō eos ad accusandum crebris flagitationibus provocavi” (1. 6). There is much valuable evidence in the *Apology* of Apuleius which has been ignored or else not fully evaluated. It will therefore be fruitful to examine and analyze much of the text rather closely.

The examination will tend to show the following: The accusers had grudges against Apuleius, rather than evidence. The trial took place because Apuleius wished it; his motive for so wishing was vindication of his name and vengeance on his enemies. These had been foolish enough to give him the opportunity for vengeance—an opportunity which the proconsul helped him use. Never in danger, Apuleius was free to spend as much time exposing and destroying his enemies as he spent establishing his own innocence.

As was noted above, (p. 17), Apuleius has, by the time of the trial, been subjected to about two years of hatred and slander by his greedy in-laws, Herennius and Aemilianus. These legacy-hunters had been hoping to acquire a large portion of Pudentilla’s estate, and saw in Apuleius the failure of all their hopes. They therefore hated him so much that they threatened to kill him (see above, p. 13).

Another display of this hatred and slander vented against Apuleius occurred at the assize of Claudius Maximus, proconsul of the province of Africa. Apuleius was pleading a case in behalf of his wife Pudentilla—who does not seem to have made the trip from Oea—“when Aemilianus’ lawyers, according to plan, began to advance upon me, unsuspecting, with curses, and to accuse me of wrong-doings by magic, and even of the murder of my stepson Pontianus.”<sup>1</sup>

Was this a formal request for a trial? It has been said that the death of Pontianus “occasioned” the trial of Apuleius (cf. p. 33

<sup>1</sup> “cum me causam pro uxore Pudentilla adversus Granios agere aggressum de composito necopinantem patroni eius incessere maledictis et insimulare magicorum ac denique necis Pontiani privigni mei coepere.” (1. 5)

above). Let us see whether such a thing can be true. The *maledicta* and *insimulationes* occurred just as Apuleius was pleading his wife’s case against the Granii (1. 5). It seems incredible that a genuine request for a trial should have been cried out at the time when the intended defendant happened to be speaking for his client. It seems far more likely that what we have here is simply an interruption, as Cicero was interrupted by the outcries of the Clodians. The purpose of the interruption would be the same in each case, rather like a golfer coughing deeply just as his opponent begins his putt. Like their Clodian predecessors, the hecklers of Apuleius had no plans to prove what they shouted, or to make the speaker whom they interrupted a defendant.

Like Cicero delivering the original *Pro Milone*, Apuleius, delivering his *Pro Pudentilla*, was completely stopped, and turned his full attention to the hecklers who had broken in upon his speech:

Quae ego cum intellegerem non tam crimina iudicio quam obiectamenta iurgio prolata, ultrō eos ad accusandum crebris flagitationibus provocavi (1. 6).

This sentence confirms two points: His enemies had no intention to accuse Apuleius of anything; Apuleius’ trial originated, not because anyone suspected Apuleius was guilty, but because Apuleius desired vengeance and vindication.

When the accusation became official, the accusers had decided to drop their charge of murder (2. 1). In the interim Herennius and Rufinus, with their lawyer Tannonius Pudens, had therefore determined that they had no chance to prove their charge of the murder of Pontianus. Their initial *maledicta* and *insimulationes* could then represent a *bona fide*, prepared-in-advance case only if Pontianus’ death had been very recent. Had it antedated the trial of Apuleius by any reasonable length of time, they would have had enough time to make this decision earlier and thus avoid the embarrassment of having to retreat from such a strong statement in the presence of

the proconsul and his retinue. This is all the more evident since this decision was made in a single day (2. 3).

There is evidence which allows us to determine the interval between Pontianus' death and the trial. The proconsular term of Lollianus Avitus had all but expired when Pontianus went to visit him—he was already expecting his successor Claudius Maximus.<sup>1</sup> The proconsular term ended June 30. Since the outgoing proconsul entrusted Pontianus with returning his reply to Apuleius, his return journey, and his death, occurred within that June or July. His death may be an indication of how unhealthy it was to cross north Africa in midsummer. If one had a choice, he apparently made the trip in the middle of winter. Apuleius, for instance, chose the winter for his trip to Alexandria (“hiemps anni erat,” [72. 2]). Pontianus himself had told Apuleius that he would have to wait for the next winter for his trip to Alexandria, since his illness had lasted through the winter in which he had started (72. 5). It would seem then, that the trial, which involved a 350-mile trip from the proconsular seat on the part of Claudius Maximus, occurred some time after the start of the traveling season, i.e., in mid-winter. Thus the accusers had about six months in which to prepare their case against Apuleius for murder, time which, if it had been used for preparation, would have sufficed to show them that they had no case.

The fact that the accusers dropped their charge of murder, coupled with the fact that they had had time enough in which to develop it had their intentions been serious, tends to show that Aemilianus and his friends had no plans to accuse Apuleius of anything. Certainly they had not been busily preparing the murder charge for a year and a half. This theory seems precluded by difficulties of probability and chronology. If they had been preparing a year and a half to charge murder, one further day of preparation would not have made them think it impractical, and, as the proconsulship had an

<sup>1</sup> “Itaque acceptis litteris Carthaginem pergit, ubi iam prope exacto consulatus sui munere Lollianus Avitus, te, Maxime, opperiebatur” (94. 5).

annual term, from the end of one term to a point in time within the course of the next has to be less than a year.

This reconstruction supports Apuleius' very first comment on the accusation filed against him: “. . . accusationem mei prius apud te coeptam quam apud se cogitatam . . .” (1. 1). Its authors had not intended to start anything serious. They apparently looked upon Apuleius' court speech in behalf of his wife—presumably delivered before a large crowd in the forum of Sabratha—as but another chance to defame Apuleius in public and embarrass him. Apuleius, as we have seen, seemed disappointed that their intentions were not serious, and challenged them to accuse with repeated *flagitationes*.<sup>1</sup> The Latin word has a significance which English equivalents lack. *Flagitatio* was the aggrieved party's public demand upon the wrongdoer, “with a view to compelling him to make good or compensate for some disgraceful act.”<sup>2</sup>

The wrong which Apuleius' *flagitationes* insist be made good would seem to have come under the heading *iniuria*. Gaius, whose contemporaneity with Apuleius makes him the best source for the state of Roman law at the time of the trial, says:

Iniuria autem committitur non solum cum quis pugno . . . aut fuste percussus vel etiam verberatus erit, sed etiam si *cui convicium factum fuerit* . . . (3. 220).

*Iniuria*, he explains, consists of two degrees, simple *iniuria*, and the more serious *iniuria atrox* (Gai. 3. 225). An act of *iniuria* can be classed as *atrox* if committed in a public place, “such as a theater or a forum” (Gai. 3. 225). We may presume that the assize of Claudius Maximus was held in the forum of Sabratha, or at least in some similarly open and public place. The “faiseurs de tapage,” then, from their *maledicta* and *insimulationes* and the public place in which they

<sup>1</sup> 1.6. The passage is quoted on p. 35 above.

<sup>2</sup> J. M. Kelly, *Roman Litigation*, Oxford, 1966, p. 22.

uttered them, committed *iniuria atrox* and were liable. This would seem to be the legal fulcrum which Apuleius used to raise the latest attack in their campaign of defamation from the level of slander to the level of an official accusation. It seems apparent that the only way for them to evade liability for their remarks would be to prove them true. At any rate, this is the course which Apuleius invites them to take, and his *flagitatio* succeeds. “Tibi vero, Aemilianus, cum te quoque acrius motum et ex verbis rem factam videret . . .” (1. 7). Does Apuleius mean that Claudius Maximus frowned at Aemilianus? At least that, and probably much more, for Claudius’ reaction to Aemilianus’ loud interruption, even though represented only by the two words “acrius motum,” was the means through which Apuleius’ will is accomplished: “ex verbis rem factam.”

Indeed, one may suppose that Claudius Maximus, in sustaining the complaint of Apuleius, might even have told the offenders what he thought their *iniuria atrox* deserved; the penalty for this degree of *iniuria* depended solely on the discretion of the judge (Gai. 3. 225). What could Aemilianus do? There was only one path for him to take, and Claudius pointed him firmly in that direction: “[Aemilianus] ad subscribendum compellitur” (2. 1).

But avoiding liability for *iniuria atrox* was to jump from the frying pan into the fire: if the charges were groundless, to make an official accusation of them was to commit *calumnia*, a criminal offense.<sup>1</sup> But their accomplice Pudens, though grown up, was still below the age of legal responsibility, and putting the accusation in his name would leave all three out of the law’s reach. This they did (2. 3). It would seem, then, that the trial arose, not because Aemilianus and his friends had a case against Apuleius, but because Apuleius had a case against them: their hatred of Apuleius led them to commit a wrong. They could avoid liability for this wrong only by committing a greater one for which Pudens’ age would permit them to escape

<sup>1</sup> See the following chapter, esp. p. 41.

punishment. This hypothesis squares well with another statement of Apuleius on the origin of the trial:

Neque ulla alia causa praeter cassam invidian reperiri potest, quae iudicium istud mihi et multa antea pericula vitae conflaverit (66. 3).

Not evidence, but an obsessive hatred which trapped the obsessed precipitated the “trial of Apuleius.”

Though we refer to it as the trial of Apuleius, since he is the one officially accused, Aemilianus and his accomplices are rather the ones on trial: theirs is the only crime which has been committed. The relationship between the two parties may be compared with that between “plaintiff” and “defendant” in the following discussion of the two roles:

It follows from any definition of a lawsuit, whether referable to ancient or modern times, that only one of the parties is anxious to press ahead with the matter, while the other would be pleased if it went no further. Only the plaintiff is dissatisfied with the present state of affairs and wishes to improve his position at the expense of his opponent; the defendant would be well content to be left alone. When they appear in court together, it is because the plaintiff wants to, and the defendant has to.<sup>1</sup>

Like the plaintiff, Apuleius is the one anxious to press ahead. Aemilianus “quaerere occipit ex diffidentia latibulum aliquod temeritati” (1. 7). We have seen that Apuleius had good reason to be “dissatisfied with the present state of affairs,” and now, after two years of harassment, threats, and defamation, “wishes to improve his position at the expense of his opponent.” Specifically, Apuleius considers the

<sup>1</sup> J. M. Kelly, *op. cit.*, p. 4.

trial an opportunity, and twice says so. In the first instance, the trial is a “*copia et facultas purgandae apud imperitos philosophiae et probandi mei*” (1. 3)<sup>1</sup> and, as he rephrases it in the second instance, an *occasio* “*ut invidiam meam . . . palam restinguerem*” (67. 5). There remains only the plaintiff’s volition to appear and the defendant’s obligation: Apuleius’ comment on the event of the trial is “*gratulor medius fidius*” (1. 3); his opponent Aemilianus “*compellitur*.” (2. 1). In this sense, then, Apuleius was the prosecutor. An examination of the whole of the *Apology* shows it to be consistent with this view: If we consider it as a trial of Apuleius, the trial was something of a farce; if we consider it a trial of Aemilianus, it was devastating.

In lieu of a trial on the charge of *calumnia*, which Aemilianus has avoided, and in lieu of the established penalties for *calumnia*, which Aemilianus by that same act forestalled, Apuleius turns his “*apologia*” into a prosecution, and simultaneously provides a worse penalty: exposure.

<sup>1</sup> Although this passage, if considered alone, might seem like nothing more than good rhetoric, two factors indicate that his self-congratulation on the opportunity of the trial is sincerely meant. He has been viciously maligned with slanders which he has not before had a public chance to refute. Secondly, he has documentary proof (noted below, pp. 86–96) that the accusation leveled against him is false.

## CHAPTER IV

### CALUMNIA: CRIME AND PROSECUTION

#### The Crime

NO one seems to have pointed out that the accusation against Apuleius was a criminal act.<sup>1</sup> The crime was *calumnia*. I do not contend that Apuleius officially or technically accuses Pudens and his two helpers of *calumnia*, only that Apuleius, with justice, repeatedly points out that their accusation entailed *calumnia*, and that *calumnia* happened to be a serious offense. Paulus states: “*Calumniosus est, qui sciens prudensque per fraudem aliqui negotium comparat*.” (1.5.1) This concise definition of the crime seems to have been rather constant. It is significant that Apuleius accuses<sup>2</sup> Aemilianus in essentially these same terms: “*At tu, miser, prudens et sciens delinquis*.” (52. 4) A reference to the third key condition of *calumnia*, *fraus*, comes in Apuleius’ next sentence: “. . . *falsum pro vero insimulas*.” Gaius offers two definitions which may clarify the nature of the offense. To commit *calumnia* is “*per fraudem et frustrationem alios vexare litibus*.” (*Dig.* 50.16.233) The second offers more detail. The *calumniator*

. . . intellegit non recte se agere, sed vexandi adversa-

<sup>1</sup> It is well enough known that the motive for placing the accusation “*nomine Sicini Pudentis admodum pueri*” (2. 3) would have been to avoid indictment for false accusation. This was observed by Hildebrand, Butler and Owen, in their commentaries, ad loc., and by Vallette (*L’Apologie*, p. 31, n.6.). Hildebrand, citing Cod. Theod. 9.39. 8, further noted that Gratianus (Emperor of the West, 367–383) determined that those who accuse in someone else’s name could not thus evade liability for the accusation.

<sup>2</sup> Here, and wherever Apuleius is said to be accusing Aemilianus, Herennius, or Pudens, a veritable accusation is meant, not a technical accusation.

rii gratia actionem instituit potiusque ex iudicis errore vel iniquitate victoriam sperat, quam ex causa veritatis: calumnia in effectu est (4.173).

The penalty for the crime varied. *Infamia* was prescribed, and included loss of various civil rights: The *infamis* could not hold a magistracy, serve in the army, vote, nor appear as accuser or advocate in a criminal court.<sup>1</sup> But the *calumniator* also risked arbitrary punishment *‘extra ordinem*. This is a later development; our first source for it is Gaius, who, as has been noted, was a contemporary of Apuleius. He notes that the malicious prosecutor “extra ordinem damnatur, id est exilium aut relegationem aut ordinis amotionem patitur” (*Dig.* 47.10.43). The trend seems to have been to match the penalty to that which the *calumniator* attempted to have inflicted upon his victim, and to fit it to the offender’s rank. One hundred years later, Paulus stated: “in privatis et in publicis iudiciis omnes calumnioli extra ordinem pro qualitate admissi plectuntur.”<sup>2</sup> As was noted above (p. 7), we have an instance of a *calumniator* of a capital crime suffering the worst form of capital punishment, crucifixion, within thirty years of the time of the *Apology*. It would seem, then, that Aemilianus would have been in grave danger without a minor to hide behind.

Apuleius from time to time reminds Aemilianus that he is in a serious position. Knowing the penalties for *calumnia* as well as he knows the legal definition, Apuleius hints that the present case of *calumnia* deserves capital punishment, and at one point states outright that it deserves exile.<sup>3</sup>

Apuleius is fully aware of the crime, fully aware of how neatly the definition fits the present instance, and takes full and understandable pleasure in pressing his case against the criminals. Thus his first sentence is a statement that the accusation is a rash false-

<sup>1</sup> J. L. Strachan-Davidson, *Problems of the Roman Criminal Law* (Oxford, 1912), vol. 2, p. 137.

<sup>2</sup> *Sent.* 1.5.2 and *Dig.* 48.16.3, cited by Strachan-Davidson, vol. 2, p. 138.

<sup>3</sup> See below, pp. 91–93.

hood. Apuleius knows it for a certainty (“Certus equidem eram . . .” he begins, [1. 1]), for the simple and valid reason that he is innocent. Further, he has been the object of their malicious slander, as we have seen, for two years now, and knows it for what it is. He is therefore able to begin with assurance: his comment on the *opportunity* (“copia et facultas” [1. 2]) of the trial, “I am rather confidently glad,” may be taken quite literally. Though he was not expecting them to repeat their familiar slander before a proconsul, and so was taken by surprise (1. 4 and 5) he calls their initial charges *calumniae* (1. 4). He likewise calls their official accusation (when they finally made it) “calumnia magiae,” which, he states, “is more easily used for defamation than proven” (1. 4). As we have seen, events had already proved the first half of this statement—they had quite succeeded in defaming Apuleius. The outcome of the trial was to prove the truth of the second half.

### The Crime Recognized

Apuleius was not alone in recognizing the crime for what it was. Everyone present must have realized that the case was a clear matter of *calumnia*. Even though Aemilianus was the individual whom the judge compelled to accuse officially, the accusation was placed in the name of the *infant* Pudens. That the only motive for this would have been to avoid responsibility<sup>1</sup> for the *calumnia* which the accusation entailed was observed at the assize:

. . . novo more per alium lacessendi, scilicet ut obtentu aius aetatulae ipse *insimulationis falsae non*

<sup>1</sup> Apuleius correctly states that the accusers avoid responsibility by placing the accusation in Pudens’ name. Even though he had been given the *toga virilis*, Pudens was not yet old enough to be accountable for an accusation, for a Roman youth did not become a fully responsible citizen until 25 years old. This was a ruling of the *Lex Plaetoria*, which was in effect from ca. 183 B.C. onwards. The *Digest* specifically names *calumnia* as a charge to which minors under 25 are not liable (48.6.15.6; 4.4.37.1). See Mommsen, *Strafrecht*, p. 494 and Girard, *Manuel de Droit Romain*, pp. 229–235.

*plecteretur. Quod cum tu sollertissime animadvertis-  
tisses et iccirco eum denuo iussisses proprio nomine  
accusationem delatam sustinere . . . (2. 4-5).*

Though repeatedly ordered by Claudius Maximus to place the accusation in his own name, Aemilianus persisted in his evasion of responsibility. By so doing, he admitted that the accusation was *calumniosa*: normally, only the person guilty of a crime feels a need to evade the crime's penalties. Apuleius makes much this same point:

*Igitur et priusquam causa ageretur, facile intellec-  
tu cuius fuit qualisnam accusatio futura esset, quius  
qui fuerat professor et machinator idem fieri auctor  
timeret (2. 8).*

Everyone who had witnessed Aemilianus' incredible performance must have realized that the answer to the question "*qualis accusatio*" was "*calumniosa*."

The notable brevity of the trial (four or five days from origin to the concluding speech of the defense, [1. 5]) was a direct result of the fact that the true nature of the accusation was recognized. Apuleius, summing up about the letter from Pudentilla to Pontianus, remarks:

*Bene, quod integras epistulas matris Pontianus ex  
more adservavit; bene, quod vos festinatio iudicii  
antevortit, ne quid in istis litteris ex otio novaretis.  
Tuum hoc, Maxime, tuaeque providentiae benefi-  
cium est, quod a principio intellectas calumnias, ne  
corroborarentur tempore, praecipitasti et nulla im-  
pertita mora subnerviasti (84. 5-6).*

But "eius est actionem denegare, qui posset et dare."<sup>1</sup> If Claudius knew the charge was a *calumnia*, why didn't he just throw it out? First, if a judge denied a case, "the plaintiff could try his luck again

<sup>1</sup> Ulpian *Dig.* 50.17.102.1, cited by Leopold Wenger, Otis Fisk tr., *Institutes of the Roman Law of Civil Procedure*, New York, 1940, p. 104.

before the same or another praetor: the *denegatio* did not have the absolving effect of a judgment with 'juristic force' for the defendant."<sup>1</sup> Further, and more important, a *denegatio* would have deprived Apuleius of his *facultas probandi mei*. Knowing this, and recognizing *calumnia* when he saw it, Claudius Maximus accepted the case and hastened it to allow no time for it to gain strength through sham. Indeed, so great was his interest in speeding the case that he accepted an accusation submitted in a form which he had at least twice forbidden.

Thus the accusation was admitted not because anybody thought there was anything to it, but because the judge, like Apuleius, wished to stop, once for all, the defamation campaign against Apuleius. The trial which resulted from such circumstances may aptly be termed a farce. Apuleius seems to intend that his trial be considered a farce, and he gives reason to believe that it actually was. He makes dozens of jokes, some at the expense of the very idea of magic, most possible only because the accusation was a *calumnia*, and all directed against the accusers. Though it could be said that Apuleius is only following the advice of his model Aristotle, to answer the opponent's severity with laughter and his laughter with severity (*Ars Rhet* 3.18), yet it is more likely that Apuleius actually has something to laugh at. Laughter is one of his best weapons in his attack upon the delinquent accusers. The laughter is in all cases the laughter of disdain and scorn.<sup>2</sup>

### The Crime Prosecuted

Apuleius' interest in prosecuting his accusers as well as rebutting their accusation is shown by a number of factors. Most obvious, of course, are his frequent and direct accusations of *calumnia* (a noun which he uses only in the *Apology*, where he uses it 23 times).<sup>3</sup> Oth-

<sup>1</sup> *Ibid.* Cf. also F. Schultz *Classical Roman Law*, Oxford, 1961, pp. 13, 17.

<sup>2</sup> His jokes will be pointed out as they are met in the discussion of the text.

<sup>3</sup> Cf. B. E. Perry et al. *Index Apuleianus*, Middletown, Conn. 1934, p. 52 s.v. *calumnia*.

er indicators are his manner in dealing with each point of the accusation, the class of evidence which he chooses to use, and his repeated suggestions that such an accusation deserves punishment, in spite of Aemilianus' evasion of liability.

For example, Apuleius' very narration of their evasion, witnessed by all, and damning to his enemies, shows an interest in reminding everyone that his accusers are committing *calumnia*. He himself, of course, is innocent of magic. He spends much of the time allotted him in thus attacking Aemilianus as a *calumniator*. The first intimation that Aemilianus should be punished for *calumnia* despite his evasion occurs in chapter two. After recalling that Aemilianus had refused to sustain the accusation in his own name even though the proconsul had repeatedly ordered him to do so, Apuleius continues: "But even now he rebels against you, at second hand, through *calumniae* (2. 6)." This is a reminder that the proconsul's authority is challenged. It implies a rather obvious question: What will the proconsul do about it? Apuleius suggests an answer by telling a pertinent story in the life of Aemilianus. He, apparently cut out of his uncle's will, had claimed that the will was false. Lollius Urbicus, *praefectus urbi*, aided by a panel of consulars, had judged it valid. Unwilling to acknowledge his defeat, Aemilianus persisted against this judgment so much "that only with difficulty did Lollius Urbicus hold back from the man's utter destruction" (*pernicies*. [2. 12]). This, then, is the man's second offense of brazen repudiation of proper authority. He had missed his deserts the first time. What is to become of him now?

Another such suggestion is to be found in Apuleius' treatment of a part of the accusation. To make their accusation of *magica maleficia* against Apuleius seem more credible, his attackers had included the charge that he cut up fishes for use as ingredients in magic potions. This dissection of fish, of course, he had done on the model of Aristotle, whose works he wished to supplement and correct, in both Greek and Latin (36. 1–6). To prove this, he has one of his admirers, who has a copy of Apuleius' *Natural History* with him, look up

the chapters on fish to read to the court. "Meanwhile, as he looks for the place, I will tell a story pertinent to the case" ('*exemplum rei pertinentens*' [36. 8]).

The *exemplum* is the familiar story of Sophocles accused by his son of *dementia*. As Apuleius tells it, Sophocles, accused by his own son (emphasized in the Latin: "*filio suomet*," [37. 1]), reads from his latest work, *Oedipus Coloneus*, and tells the jurors they may convict him if they do not like it. The jurors give the reading a standing ovation, and were of a mind to condemn the accuser of *dementia* instead of the accused. This last is a major difference from the tradition recorded by Plutarch (*Whether Old Men Should Govern*, 3. 785.B) and Cicero (*De Sen.* 7.22). Plutarch and Cicero anticipate Apuleius on all points of the tale, but are silent about the mood of the jurors toward the errant son. It seems significant that Apuleius should choose a version which has the accusing son all but convicted.<sup>1</sup> Apuleius further implies that his own reading should do him a similar amount of good: "*Experiamur an et mihi possint in iudicio litterae meae prodesse*" (37. 4).

Apuleius' charge of *calumnia* makes much use of a class of evidence generally deemed necessary in a prosecution. In ancient courts it was always obligatory to show that the accused's character was consistent with the crime he was supposed to have committed. Character evidence was direct and pertinent. Aristotle, perhaps basing the statement on personal observation, declared "character is the most effective proof" (*Rhetoric* 1.2.4: *κυριωτάτην ἔχει πίστιν τὸ ἦθος*), and Roman legal practice followed his dictum.

Defending Fonteius, Cicero can repeatedly cite the prosecutor's silence with regard to the defendant's character as an indication of

<sup>1</sup>Another possibility is that Apuleius and Apuleius alone is responsible for this variation in the story of Sophocles accused by his son. It was common for speakers to edit their examples, the better to make a point. See Grundy Steiner, "Cicero as a Mythologist," *CJ* 63 (1968), pp. 195, 196, and M. M. Willcock, "Mythological Paradoigma in the Iliad," *CQ*, 14 (1964) p. 141.

innocence.<sup>1</sup> In one such instance, the language is such as to imply that omission of such evidence is a serious failing on the part of the prosecution:

M. Fonteius ita . . . accusatus est, ut obiectum nihil sit quo significari vestigium libidinis, petulantiae, crudelitatis audaciae possit (15. 40).

He deals with a similar omission in the prosecution of Flaccus

quum adolescentiam notaris, quum reliquum tempus aetatis turpitudinis maculis consperseris, quum privatarum rerum ruinas, quum domesticas labe, quum urbanam infamiam, quum Hispaniae, Galliae, Ciliciae Cretae, quibus in provinciis non obscure versatus est, vitia et flagitia protuleris, tum denique, quid Tmolitae et Lorymeni de L. Flacco existiment audiemus (2. 5).

The principal is explained in *Pro Sulla*:

Omnibus in rebus, iudices, quae graviores, maioresque sunt, quid quisque voluerit, cogitaret, admisserit, non ex crimine, sed ex moribus eius qui arguitur, est ponderatum. Neque enim potest quisquam nostrum subito fingi neque cuiusquam repente vita mutari aut natura converti (25. 9).

There follows a list of criminals convicted less by their accusers than by their own character. It is headed by Catiline (“Each of them was condemned by his own life before he was condemned by your suspicion” [71]).

The tradition of the primacy of character evidence was such that Cicero, beset by witnesses, can appeal to its greater force in the following terms:

<sup>1</sup> *Pro Font.* 15. 34 and 35; 15. 38–40.

Itaque haec causa ab argumentis, a coniectura, ab iis signis, quibus veritas illustrari solet, ad testes tota tracta est. (*Pro Caelio* 66)<sup>1</sup>

The tradition does not seem to have flagged.<sup>2</sup> In any case, at the time of Apuleius’ trial, the *animus* of the accused was still a *certus index*, and his natural bent for virtue or malice was still a “firmum argumentum accipiendi criminis aut respuendi”<sup>3</sup> (90. 3).

In the light of this tradition, it becomes important to ask, “What kind of man is Sicinius Aemilianus?” Also in the light of this tradition, it is neither unfair nor irrelevant for Apuleius to begin his speech by answering: “A convicted perjurer” (2.9–3.3). It is, on the contrary, a very appropriate beginning for a man who will accuse his enemy of *calumnia*. It is similarly appropriate that Apuleius informs the hearer in his first sentence of the fact that Aemilianus is famous for his *temeritas*. The ringleader, then, is a hardy liar. Herennius is so shameless as to traffic in his wife and daughter. Pudens is depraved to the extent that he would bar his mother’s way with thugs when she was attempting to attend his brother’s funeral. The “signs by which the truth is always shown” (to use Cicero’s term for traits of character) all suggest that this trio is perfectly capable of *calumnia*.

Thus Apuleius’ personal comments on the delinquents must be reconsidered: viewed through the lens of established Roman legal practice, the personal treatment Apuleius accords the trio is not to be thought of in pejorative terms, but rather as a necessary concomitant to his accusation and prosecution of *calumnia*.

<sup>1</sup> For a discussion on these four references to Cicero on character evidence, see J. L. Strachan-Davidson, II, 119–121.

<sup>2</sup> The jurist Callistratus (fl. 200 A.D.) wrote: “Testium fides diligenter examinanda est ideoque in persona . . . utrum quis decurio an plebeius sit; et an honestae et inculpaetae vitae an vero notatus quis et reprehensibilis . . .” *Dig.* 22.5.21.3.

<sup>3</sup> Similarly, to accuse Apuleius of winning Pudentilla by magic, Aemilianus and his allies were obliged to show that Apuleius’ character was low and his practice of magic habitual; hence their personal attacks and the accessory charges of magic fish, enchanted boys, night rites, etc. See pp. 50–85.

### Apuleius' Initial Review of the Charges (1-27)

Of principle importance to the charge of calumny, begun in the first sentence of the speech, is the demonstration that the charges are fictitious. Apuleius' attack is marked with the mordant wit of a man who enjoys flaying his slanderers. He asserts that Aemilianus can knowingly (*sciens* again) accuse an innocent man the more easily, since he has once already been convicted of perjury before the City Prefect: pride, like cloth, can be treated more carelessly when it is already worn out (3. 1-3). Their charges are *conficta* and *blaterata*, and, equally important, extemporized (*effutierunt*, [3. 6,7])<sup>1</sup> by the sort of lawyer whose custom is "to farm out the venom of his tongue for the sake of someone else's trouble" ("alieno dolore," [3. 7]). Though Apuleius is accused of "magica maleficia," his accusers are the ones who "... male facere coeperunt" (3. 10).

If Apuleius seems to be defending himself on inept and frivolous points, it is only because the accusation itself was inept and frivolous. With this principle made clear (3. 12), Apuleius spends the next several chapters in a humorous review of the entire accusation (3 - 27). Throughout this introductory section, Apuleius creates a mood of amusement. Part of this is done simply by recollecting the various "inepta . . . et frivola" (3. 12) used against him, and partly by mixing in several jokes and puns. Later the mood will change to indignant anger, as he recounts the wrongs and insults the accusers have inflicted upon him and his wife, but scornful laughter keynotes the introduction.

The accusers had, for instance, stated that he had the well-primped hair of a gigolo, apparently in support of their charge of magical seduction. This is an "open lie" as anyone may see (4. 11). He continues: "Satis, ut puto, crinium crimen, quod illi quasi capitale intenderunt, refutatur" (4. 12). This joke ends his discussion of the first

<sup>1</sup> Cf. Cic. *Tusc.* 5.88: "ex tempore quasi effutire," and Varro *L. L.* 7. 83 "*Euax* verbum nihil significat, sed effutitum naturaliter est." It has other shades of meaning, e.g. Non. p.103, 18 "Effutire—cum mendacio dicere." The word is rather uncommon; for the other usages, see *TLL* s.v.

charge of the accusation. It neatly sets the mood for the speech and prepares the reader—as it prepared the audience—for its content: The only way the accusers could come up with a capital proof of capital crime was to lie about his hair.

The accusation had begun "Accusamus apud te philo-sophum formosum et tam Graece quam Latine ["Pro nefas!" puns Apuleius] disertissimum" (4. 1). The pun is effectively repeated at 5. 5, where he uses a defence on the charge of bilingual eloquence as a transition to another topic:

Eundem me aio facundissimum esse, nam omne peccatum semper nefas habui; eundem disertissimum, quod nullum meum factum vel dictum exstet, de quo disserere publice non possim.

The next topic, Apuleius' supposedly incriminating poetry, provides some evidence that Apuleius regarded the accusation as farcical. The following quotation continues from the one immediately above:

ita ut iam de vorsibus dissertabo, quos a me factos quasi pudendos protulerunt, cum quidem me animadvertistis *cum risu* illis suscensentem, quod eos absone et indocte pronuntiarent (5. 6).

The verb is in the singular: Claudius Maximus himself is addressed. He is thus called to witness for us that Apuleius' reaction to at least this part of the accusation consisted of laughter and anger, an indication that Apuleius is at least being consistent, and that the laughter and indignation so obvious in the *Apology* were real, and not mere tools of rhetoric. Further, the eyes of judge and accused met when the accuser was exposing himself as an unlettered barbarian. The look that passed would have been one of an amused mutual understanding.

The verses had been read to show that Apuleius compounded a dentifrice from "Arabian herbs." This was apparently to attempt

to show that Apuleius was a practicing apothecary who, should the need arise, would be capable of producing a magic brew. The dentifrice and the covering verses had been sent to one Calpurnianus, at his request. Calpurnianus showed his gratitude by showing up at the trial as a witness for Aemilianus. Apuleius reads the poem, demanding to know what there is in it to be ashamed of (6. 3–4)—“unless I am perchance to be reproached for this, namely that I sent him a mouthwash of exotic herbs, when using the famous mouthwash of the Spaniards, urine, would have suited him much better!”<sup>1</sup>

The first sentence of the next chapter provides two points of evidence. One shows how seriously Apuleius regards the trial; the second, how seriously the whole assemblage regards it. The one confirms the other: “I saw certain people with difficulty restraining their laughter

cum munditias oris videlicet orator ille aspere  
accusaret—

That a pun on ‘munditias oris’ and ‘orator’ is intended seems supported by the fact that what the *orator* had read in the poem was “munditias dentium” (6. 3. line 2).

—et dentifricium tanta indignatione pronuntiaret,  
quanta nemo quisquam venenum [7. 1].

Apuleius seems here to have gone out of his way to add more humor to a point of the accusation which has already elicited laughter. The remnant of the chapter is a slight dissertation on the suitability of keeping one’s mouth clean. The absurdity of proffering mouthwash as supporting evidence of magic is justly shown when Apuleius asks Aemilianus if he ever washes his feet. Yes? Then why not wash your mouth? But a dirty mouth suits the uses he puts it to, and it is a “mendaciorum et amaritudinum praeministra” (8. 1–3). Even a beast like the crocodile has concern to keep its mouth clean (8. 6–7).

<sup>1</sup> This is not intended as a literal rendition of 6. 5. Here Apuleius fits Catullus 39.19 into the text of his speech.

In hopes of damaging Apuleius, the accusers had read some amatory verses written by him. Adam Abt believes that these were offered as incantations, assuming that what Apuleius refers to as “versus, ut illi vocant, amatorios” (9. 1) had been in the accusation a *malum carmen*, and another attempt to win love by magic.<sup>1</sup> If the poem in question had been offered as evidence of magic, the attempt met nothing but scorn from Apuleius. He made clear his contempt for the idea that verses of any sort could have supernatural power, and in so doing achieved one of his better puns:<sup>2</sup>

‘fecit versus Apuleius!’ Si malos, crimen est, nec id  
tamen philosophi, sed poetae; sin bonos, quid accu-  
sas? (9. 4)

Apuleius reads the poems, showing the accusers how poetry should be read and showing that the poems are nothing for him to be ashamed of. The poems he reads cannot be considered magical. They are verses in praise of boys, done with Anacreon, Alcman, Simonides, Sappho, Valerius Aedituus, Porcius Licinius, Q. Lutatius Catulus, Solon, Diogenes, Zeno, Catullus, Tigidas, Propertius, Tibullus, Lucilius, Vergil and Plato as precedents and models.

Since these three poems are obviously not “incantations,” Abt would like to assume that the poems he reads are not the poems he was accused of having written.<sup>3</sup> Quite apart from the fact that we may not so freely assume chicanery on the part of Apuleius (see above, pp. 18–31) it is clearly shown in 11.1 that the poems had been introduced as evidence, not of magic, but of low morals, an indication of how unlettered and desperate the accusers were:

Sed sumne ego ineptus, qui etiam haec in iudicio?

<sup>1</sup> Abt, *Apologie und Zauberei*, pp. 22–23.

<sup>2</sup> This is perhaps reminiscent of Horace, *Sat.* 2.1.81–86, where the poet humorously lets *mala carmina* mean both “libel” and “bad poetry.”

<sup>3</sup> “Allein niemand burgt uns dafür, dass sie, das *malum carmen* und die von Apuleius vorgebrachten verse, wirklich identifizierten. . . .” op. cit., p. 23.

an *vos potius calumniiosi*, qui etiam haec in accusatione, quasi ullum speciem morum sitvorsibus ludere.  
(11. 1)

This passage also clarifies Apuleius' purpose in reintroducing the poetic evidence against him: he uses it as an indication of how pointless and frivolous the accusation is, a reminder that the accusers are *calumniatores*.

Apuleius provides brief notes about his poetic models in chapters ten and eleven, incidentally preserving for us seven elegiac lines about boys written by Plato himself.<sup>1</sup> He next discusses Plato's *Aphrodite Paphdemos* and *Aphrodite Ourania* (12). The discussion leads to the following remark, which seems a witty and justified effort to shrug the entire point off as an absurdity:

Therefore, pardon Plato the philosopher for his amatory verses—or don't: I will be guilty with Plato  
(13. 1–2).

The accusing trio had apparently tried to present Apuleius as a poor fortune hunter, adducing as evidence that he had come to Oea with a single slave (17. 2). But later in the same speech, the lawyer for the plaintiffs had said Apuleius had manumitted three slaves in one day. On the basis of these remarks, Apuleius makes a joke against the accuser and against magic itself:

What I want you to tell me is this: when I have one slave, how can I set three slaves free, unless this too is magic? (17. 3)

Such a joke, whose point depends on the presupposition that there is no such thing as magic, would hardly seem suitable in a serious trial in which some danger existed. The joke would fit rather neatly

<sup>1</sup> 10. 8–10. Plato was traditionally a poet as well as a philosopher (Diog. Laert. 3. 29–33; Suidas s.v. Plato), and the two love epigrams quoted here by Apuleius are generally accepted as genuine works of Plato. Cf. Butler and Owen, *Apology* ad loc. and J. M. Edmunds, *Elegy and Iambus*, II, 4–11.

into a farcical trial on magic, however. The joke was made possible by the absurdity of the accusation, a fact which Apuleius duly and promptly points out:

Should I call this the blindness of lying, or the habit? 'Apuleius came to Oea with one slave!' Then, after a few babblings more [pauculis verbis intergarritis], 'Apuleius freed three slaves one day in Oea' (17. 4).

It is significant that he should couch his query in such terms: Whether their contradictory claims involve a lie is not in question; it is obvious. What is in question is merely how the lie is to be classified. The charge would have been unbelievable enough, he asserts, if he had had only three slaves and freed all of them, and, for that matter, why should even three slaves be a sign of poverty rather than three freedmen a sign of opulence? There follows a list of famous men who held few slaves, a list whose point is that if Pudens knew his history, he would prefer to reprehend three slaves as too opulent for a philosopher than to reprehend them as a sign of poverty (17. 2) which is nothing to be ashamed of (18).

As a further contumely, they had charged that his whole patrimony consisted of wallet and walking staff. Apuleius would have been satisfied with such a legacy, as the two items constituted the insignia of the philosopher. But, as it turns out, the charges of poverty are false as well as pointless. Apuleius' father had left his two sons two million sesterces (23. 1). They had complained that he was some barbarian, half-Gaetolian, half-Numidian (4. 1). Apuleius deals with this in much the same way, but, as it is apparently true, he settles for merely showing that it is no reproach. Was Cyrus the elder reproached for being half-Mede and half-Persian? (24. 2) Provenance has little to do with human virtue (25. 5); Anacharsis the Wise was from the dullard Scyths, and Meletides the Fool was from the keen Athenians (24. 6). Apuleius gives a brief history of Madaura and his father's place in it ("in qua colonia patrem habui loco principis" [24. 9]). "Why have I dragged in this? So that you, Aemilianus, may not

be so angry with me hereafter, or that you might even forgive me, if by some negligence I did not choose to be born in that Attic Zarath of yours" (24. 10).

He summarizes his reduction of the minor points of the accusation by showing that they are as absurd considered as a whole as they were when considered singly. The summation begins with an offensive:

Aren't you ashamed, adducing such charges so strongly before such a man . . . ? Aren't you accusing contrary things? Wallet and walking stick for austerity, but mirror and verses for dissipation; one slave for poverty, but three freedmen for prodigality, and finally, eloquence in Greek matched with provenance for a barbarian! (25. 1–2)

Apuleius' next question implies that such an accusation as this has no place in a real law court: "Why don't you wake up?"—a question whose obvious point is that the accusing trio are dreaming. With consciousness regained, they are asked to take cognizance of the seriousness of their situation, and realize that they are in the presence of Claudius Maximus, "before a severe man, before a man busy with the *negotia* of a whole province" (25. 3). Many of his *negotia*, of course, were court cases, for by this time the word had taken on that meaning: Apuleius so uses it twice (41. 7; 51. 21). The Proconsul is busy enough with *bona fide* cases that he ought not have to bother with this one.

The challenge continues. "Why don't you stop these empty mouthings [*vana convicia*]?" They have no other support, "Why don't you prove what you pretended, your 'monstrous crimes, forbidden evils, unspeakable arts?'" (25.4) They cannot, as Apuleius implies with the verb "insimulavistis," which I have translated as "pretended." The verb was especially used of a false accusation.<sup>1</sup>

<sup>1</sup> Ernest Wolf, in the *TLL* s.v., summarizes a list of such usages with the definition "accusare . . . (maxime falsis criminibus)."

Apuleius next turns to the central charge of magic, "which was ignited with a great tumult in order to defame me, frustrated everyone's expectations through some old wives' tales, and burned out" (25. 5). He compares the accusation to a straw fire with its crackling noises, fast spread, radiant heat, and sudden end for lack of a more substantial fuel, leaving not a trace:

Em tibi illa accusatio, iurgiis inita, verbis aucta, argumentis defecta, nullis post sententiam tuam reliquiis calumniae permansura (25. 5,6).

Since all the straw arguments of the *calumnia* were intended to show him a magician, he asks his "most learned" accusers what a magician is. The question leads to a joke at the expense of the accusers, a joke designed to show them as *calumniatores*. First, with some assistance from Plato (*Charmides* 157 A) Apuleius claims that in the Persian, *magus* means priest, *sacerdos*, and "Quid tandem est crimen sacer-dotem esse?" (25. 9) Or, if they do not like the Platonic *magus*, perhaps they prefer the common one, "who, by communion of speech with immortal gods, holds power over everything he wishes, through the incredible force of some incantations" (26. 6). If this is their preference, he continues, "I marvel that they would dare accuse someone so powerful."

For such secret and divine power cannot be guarded against like anything else: whoever hails an assassin into court comes with a bodyguard; the accuser of a poisoner eats with care; the accuser of a thief guards his goods. But when you put their kind of magician on trial for his life, what escort, what precautions or bodyguards could keep off blind and inevitable destruction? None. Therefore this kind of accusation is not his to make who actually believes it (26. 7–9).

If they do not believe their own accusation, it follows that the accusation is *calumniosa*. It is also to be noticed that this reduction to

the absurd is a further indication that Apuleius is not a believer in magic. The word he applies to the power of incantations is *incredibilis* (26.6; tr. above).

Their arguments, he repeats, are “vana et inepta” (27. 5). For the sake of excoriating his enemies he lets them pass in review:

“Why,” he asks, “were you looking for certain types of fish?” As if you must not do for philosophy what you may do for gourmandizing. “Why did a woman fourteen years a widow marry you?” Why not? “Why, before the marriage, did she write such an opinion in a letter?” As if I am responsible for someone else’s opinion. “But even though older, she did not spurn the young man!” As if it took magic to make a mature widow wed a young bachelor. And others of the same ilk: “Apuleius has something at home which he worships.” As if it were better to worship nothing. “A boy fell down in the presence of Apuleius!” What of it . . . ? Are these the arguments you prove magic with, a boy falling down, a woman getting married, fish being sold? (27. 6–12)

## CHAPTER V

## THE ACCESSORY CHARGES

After the early summation of chapter twenty seven, Apuleius confidently states that he could safely end his speech (28. 1). This confidence is not noted by Apuleius’ modern accusers. Abt found the *Apology* “nimble,”<sup>1</sup> and since the publication of his *Apologie und Zauberei* (which, with Vallette’s *L’Apologie* forms the point of departure for studies of the *Apology*), others have described the speech as “nervous,”<sup>2</sup> “scarcely convincing,”<sup>3</sup> and “evasive.”<sup>4</sup> The purpose of this chapter is to test these judgments by checking them against the sections of the *Apology* where Apuleius handles specific charges of magical practices (chapters 29–65). A fair reading of these sections suggests not guilty nervousness, but indignant retaliation; not evasiveness, but vindictive sarcasm, and finally, in return for the baseless accusation of magic, an often repeated counter-accusation of *calumnia*, justified, but unofficial.

Despite his statement that he could safely end his speech, Apuleius continues, possibly because he feels his enemies have not yet been sufficiently roasted. Indeed, in view of the way the accusers are exposed and their *calumnia* proven after this summation, the accusers would have been pleased if the matter had gone no further and they had been left alone, like the defendants of Kelly’s definition, in which “. . . only one of the parties [the plaintiff] is anxious to press ahead with the matter, while the other [the defendant] would

<sup>1</sup> Abt, *Apologie und Zauberei*, p. 259.

<sup>2</sup> Kelly, *Roman Litigation*, p. 54.

<sup>3</sup> A. J. Festugiere, *Personal Religion among the Greeks*, p. 76.

<sup>4</sup> Pack, “Adventures of a Dilettante,” *CJ* 35 (1939), p. 79.

be pleased if it went no further . . .”<sup>1</sup>

Apuleius has two years of constant defamation and harassment to repay with this speech, and he will not let them off so easily. He toys with each point of the accusation rather unmercifully before administering the *coup de grace*. *Ambulando*, he continues making jokes and reductions to the absurd. Such an obvious case of *calumnia* elicits and deserves them. It is important to notice this technique of Apuleius, for his sport with the charges has led to modern accusations of “evasion,” and the evasion has been used to argue that Apuleius was really in some way a magician. After the work of Abt, Vallette, Norden, and Ussani, Pack can say: “It seems undeniable that he had actually dabbled to some extent in the black arts . . . . The evasiveness with which he handles this first part of the accusation is unmistakable.”<sup>2</sup> But Apuleius’ treatment of the charges is better thought of as disdainful humor than as guilty evasion.

### Allegedly Magic Fish

This disdainfully humorous manner in toying with the accusation, and attacking it, is evident as Apuleius begins with the charge which the accusers had treated as their strongest support, the matter of the fish. They had demanded to know why he purchased and dissected fish if it was not for the making of philtres. Even though Apuleius had a perfectly good answer to the question, he refuses to let it out until he has done all he can to make sport of the accusers and their absurd charge. Like all the other charges, it is a *deliramentum* (29. 1):

. . . beginning with the charge which, as you noticed, they treated from the start as the strongest argument for the suspicion of magic, that I bought some species of fish from fishermen for a price. But

<sup>1</sup> J. M. Kelly, *Roman Litigation*, p. 4. The text is more fully cited above, pp. 45–46.

<sup>2</sup> Pack, *op. cit.*, pp. 78–79.

which of these pertains to magic? that I sought the fish from fishermen? But of course—I should have sought them from a seamstress or a carpenter if I had wanted to avoid your *calumniae*, and had them change jobs, so the carpenter would catch my fish, and the fisher do my woodwork (29. 1–3).

In the attack, Apuleius “touches all the bases,” holding the charge up to ridicule from every point. This is done climactically, with each argument a little more cogent and a little more damning than the last:

But perhaps it was from this that you understood a crime, that I sought the fish for a price? I do believe if I had wanted them for a party I could have got them for nothing. Why don’t you argue against me from several other purchases? For I have even bought fruits and vegetables and bread and wine (29. 4–5).

Who would dare shop for groceries if it were decreed that all edibles gotten for money were intended for magic instead of for dinner?

He leaves the matter of purchase, and attacks the charge on another front, to charge that the accusers are either magicians or *calumniatores*:

But I ask you, is a man a magician for seeking fish? Certainly I do not think so, any more than if I were hunting rabbits, boars, or birds. But perhaps fish have something secret from others, and known to magicians? If you know what it is, you are a magician; if you do not know, you are obliged to confess that you do not know what you are accusing me of (30. 1–2).

Apuleius informs us that the accusers provided no precedent of fish being used for magic.<sup>1</sup> This indicates that even among the four of

<sup>1</sup> They are challenged to produce one at 29. 9.

them, Pudens, Aemilianus, Herennius, and the lawyer Tannonius, there was no precedent known—which in turn indicates that the second of the two alternatives is the correct choice.

They could have come up with a more likely story if even they had read Vergil (e.g. *Ecl.* 8. 64–67; *Aen.* 4. 513–516). Apuleius fills two chapters with precedents for the magical use of terrestrial plants and animals (30 and 31), to show how much better a fabrication they could have made if they were only literate. The purpose, of course, is to remind everyone that the accusation is a false one. He especially reminds the audience of the deceptive basis of the accusation in chapter thirty (the reader will recall the fraudulent use of Pudentilla's letter):

I would recite similar passages from Theocritus, Homer, Orpheus, and I could recite several from Greek comedy, tragedy, and history, except that I noticed a short time ago that you could not read Pudentilla's Greek correspondence. Therefore, I will cite just a Latin poet . . . (30. 11–12)

He then quotes Laevius, but proceeds to add two snippets of Homer anyway (31. 5–7). The whole series of models prepares the way for another *reductio* leveled against the “*piscium insimulator*”:

Therefore, as magicians summon Mercury . . . Venus . . . and Hecate, henceforth, *on your authority* they will transfer Neptune, Salacia, Portunus and the whole chorus of Nereids from the storms at sea to the storms of love (31. 9).

As if the authority of such a cheat were fit company for that of Vergil, Theocritus, Orpheus, Greek comedy, tragedy and history, Laevius, Pythagoras and Homer!

Apuleius grants that fish may be used for magic. “Let's believe it.” Does it then follow that every purchaser of fish is a magician? By such reasoning, “the buyer of a swift ship is a pirate? the buyer of

a crowbar, a burglar; the buyer of a sword, an assassin” (32. 1). This leads to another challenge whose point is that the *piscium insimulator* is guilty of a *calumnia* which ought not be tolerated:

‘Why do you seek fish?’ I don't want to answer and I don't have to. You answer. If I bought hellebore, hemlock, or poppy juice . . . whose moderate dosage is salutary, but which are poison in overdose or mixtures, who would allow it with tranquillity, if you were on this count to charge me with poison, because the items are potentially lethal? (34. 7–8)

It is apparent that the refusal to answer is not evidence of evasiveness, but rather the act of a man who is in no danger and is attacking his accuser, who should be in danger.<sup>1</sup>

He attacks the charge on another front. He had, according to them, especially sought three species of fish. “one of these was mistaken; the other two were lies” (33. 2). They had incorrectly identified one. His “most clever accusers” had thought up the other two “*ad finem calumniae*” (33. 5). The charge was that he had taken fish called *virile* and *feminal* for a philtre. Tannonius Pudens, the opposition lawyer, affected shame on approaching the utterance of the word “feminal” and pointedly took refuge in a work (*quodam libro meo*) of Apuleius, where, as Apuleius explains, a statue of Venus is described: “She hides her *interfeminium* with raised thigh and veiling hand” (33. 7). This part of the accusation, as Apuleius points out, tells us something about the accusation and the accusers. He calls it “a charge which fits your stupidity as well as it fits your tongue.”

For what is more stupid [*stultius*] than the similar force of things supposed from the likeness of their names?

<sup>1</sup> Apuleius has a valid answer to the charge (cf. p. 64 below); if he were being evasive, it would only be through fear: if he is afraid, why does he not give his valid answer straight out? His extreme delay of the answer shows that he was unafraid, and more interested in condemning enemies than in giving the satisfactory proof of innocence, which he can do whenever he wants to.

Perchance you think yourselves clever . . . . But remember that the argument of obscene fish for love affairs is as laughable as if you had said the seacomb was sought for better grooming, or the hawk-fish for falconry, or the boarfish for hunting wild pigs, or the calvary fish for raising the dead (34. 5–6).

The point is, in sum, “non minus insulse quam absurde commentum” (34. 7). Even the more, since the “frivolous fish” which they name lie in heaps on the shores, and Apuleius might as well have paid fishermen “a great price” to collect smoothed stones, worn potsherds, crayfish claws, and algae (35. 3). Even such rubbish as this would have served them equally well: “Qui minus possit ex eodem litore calculus ad vesicam, testa ad testamentum, cancer ad ulcera, alga ad quercerum?” (35. 6)

There immediately follows some praise for Claudius Maximus, who can stoically endure even a farce like this without losing his composure:

Ah, Claudius Maximus, you are a very patient man, and surely of the greatest refinement, since you have endured these argumentations of theirs so long; indeed, when these topics were argued as if serious and cogent, I was laughing at their stupidity, and admiring your polite restraint.

Finally, Apuleius explains his perfectly legitimate interest in fish: he has been supplementing and correcting Aristotle, who served as a model for his own investigations. He proves this by bringing in his publication, *Quaestiones Naturales* (36). The manner in which he introduces this work is of some importance: “Please allow certain sections to be read from my magic book . . .” (“de magicis meis,” 35. 7). This is the sarcasm of indignant scorn, and is not consistent with the fear of punishment which leads to evasiveness.

After the *exemplum* of Sophocles and his all-but-condemned accusing son (treated above, p. 47), a summary of his own contribu-

tions to ichthyology, and his preservation of the only extant passage of Ennius’ *Hedyphagetica*, Apuleius returns to ridicule. It is ridicule, however, in which we may see evidence of a long built up, indignant anger which may approach virulence: “You cut up a fish! Who would tolerate such a charge against a philosopher, which would be no charge at all against a butcher or a cook? ‘You cut up a fish!’ Are you blaming me because it was raw? If it were cooked and I prowled through its belly and stabbed its liver—as that boy Pudens learns to do on his own fish at your example—you would not think that actionable” (41. 2).

The remaining remarks on the topic of fish all insist that the accusation is, at best, substandard. “You blame in me, what Maximus and I admire in Aristotle? Unless you burn his books in the libraries and wrench them from the hands of students, you cannot accuse me” (41. 1). The circumstances of the trial obliged some haste, and the accusation was apparently beset with chronological problems:

See further, how they contradict themselves: they say I sought after a woman with magic and the seductions of the sea, at a time when they will not deny I was in the mountains of Gaetulia—where fish are to be found from the deluge of Deucalion! (41. 5)

He is especially pleased—since his fondness for Aristotle was the root of his problem with fish—that they do not know he has read Nicander’s *Θηριακά* and Theophrastus’ *Περὶ Δακέτων καὶ Βλητικῶν*, or they would have accused him of poisoning as well (41. 6). His last word on the matter of fish is a punning transition to the next topic: “Now, since these people’s fish have lain in the open long enough . . . .”<sup>1</sup>

<sup>1</sup> *Nunc quoniam pisces horum satis patuerunt . . .* 42. 1.

### Two “Enchanted” Epileptics

Raw fish, sufficiently exposed, are very properly abandoned, and Apuleius turns from them to “another charge of equal stupidity [pari stultitia], but much more vainly and wantonly thought up” (*multo tanta vanius et nequius excogitatum* [42. 1]). This charge was that he had enchanted a boy in a secret place, in the presence of lamplight and few witnesses. As a result, they claimed, the boy had fallen and, on being wakened, remembered nothing. “Nor did they dare go any further in the lie, for to finish the tale, they should have added that the same boy uttered several oracles” (42. 3). This, he explains, is a traditional emolument for enchantment; presagement and divination, recorded not only by the credulous commons, but also by the learned. He then cites two examples of such divination from Varro. One boy staring at a Mercury, set in a basin of water, predicted the outcome of the battle of Tralles in the Mithridatic war. Other boys inspired by Nigidius were able to tell Fabius where to find his lost five hundred denarii (42. 5–8).

Apuleius offers a polite disclaimer<sup>1</sup> of credence, and then propounds a theory on the basis of divination from Plato (*Sym.* 202E, *Apol.* 43. 1–2), and describes the kind of boy suitable for divine inspiration:

debet ille . . . puer providus . . . corpore decorus  
atque integer, et animo sellers et ore facundus  
. . . (43. 4).

In short, the requisite is a worthy abode for the “divine power:” “It is not of just any wood, as Pythagoras used to say, that a Mercury should be made” (43. 4–6).

If that is the case, name that boy sane, flawless, brilliant, handsome, whom I deemed worthy of initi-

<sup>1</sup> Stoics generally put much faith in divination (Cic. *De Div. passim*) and if Claudius Maximus was the Stoic tutor of Marcus Aurelius, there was no point in antagonizing him.

ation by enchantment; for that Thallus you named needs a doctor more than a magician. The poor thing is so worn by epilepsy that he often collapses three or four times a day without enchantments. He is weak in all his limbs from spasms, his face is full of sores, his head is scarred from concussions, his eyes are listless, his nostrils are flared, his feet are unsteady. The greatest magician on earth is one in whose presence Thallus would stand firm (43. 7–10).

Thallus’ ailment was known to the slaves of accuser and accused. No one dared to eat or drink from a plate or glass which Thallus had used. The accusers were themselves aware that Thallus was epileptic, and that he had customarily been shown to doctors even before Apuleius’ arrival (44. 1–3). Thus the accusation that Apuleius had resorted to magic to effect the boy’s fall the one time he fell in Apuleius’ presence was no innocent mistake.

This magical act was witnessed—or at least the accusers wished to give this impression. They had summoned fifteen slaves to testify at the trial, including Thallus, even though they knew he had long since been quarantined far off in the country. Apuleius had sent a carriage for him, but this had not arrived in time. But the fourteen other slaves, who were all in town, were present and capable of verifying everything Apuleius had said about the boy Thallus (44. 4–7). Apuleius makes much of the fact that they had not put the fourteen slaves to the question. It is with some justice that he does: refusal to put to the question slaves who have pertinent information had been a standard argument of bad faith (if Greek precedent may be included) for more than six hundred years.<sup>1</sup>

<sup>1</sup> The earliest instance I am aware of is Lysias, 4. See Robert J. Bonner, *Evidence in Athenian Courts*, p. 70. Cf. Cic, *Pro Rosc.* 41. 120: “Quod a vobis oppugnari video, ne in quaestionem dentur [servi], suspiciosum est; quod vero apud vos ipsos in honore tanto sunt, profecto necesse est sciant aliquid, quod si dixerint, perniciosum vobis futurum sit.”

Apuleius summarizes the matter with another accusation of *calumnia*:

Fourteen servants whom you demanded I exhibit. Why don't you have them questioned? One boy you require, and that one an epileptic whom you know as well as I to have been long absent. What more obvious proof is there of *calumnia*? (45. 1)

Do they wish to prove that the boy fell in Apuleius' presence? Apuleius admits it. Do they wish to prove that the boy fell because of enchantment? Nonsense. Why attribute the fall to charms rather than to disease? Why cannot the same thing happen in the presence of Apuleius which has so often occurred in the presence of others? Why use charms to fell an epileptic when a jetstone or a turning potter's wheel would do it so much more easily?<sup>1</sup>

The lie was not only generally recognized by the assemblage, but was met with raised eyebrows and audible displeasure: “. . . cum hoc quoque mendacium frigere ac prope iam omnium vultu et murmure explosum videret . . .” (46. 1). Thus cut short, Tannonius Pudens, speaker for the accusers, attempted to calm the audience by promising to produce other boys also enchanted by Apuleius (46. 1), and so quickly stepped to another argument. But Apuleius will not let this point pass. ‘Quod quamquam dissimulare potui, tamen, ut omnia, hoc quoque provoco’ (46. 2). He then twice requests that they produce their enchanted boys. His third request takes the form of an official summons: ‘Postulo igitur et flagito, Tannoni Pudens, ut expleas quod pollicitus es’ (46. 3). *Postulatio* technically is the word given the initial act of a procedure, and was also the word used of summoning evidence into court.<sup>2</sup> As has been noted above (p. 37),

<sup>1</sup> Slave dealers used this stone to “weed out” epileptics; the turning wheel was to induce vertigo, and to upset the already unstable balance of the epileptic—*Apol.* 45. 4-5.

<sup>2</sup> The word is used both ways by Apuleius. Cf. *Apol.* 2. 9; 41. 6; 54. 3; 74. 5; 79. 3, and 90. 2 for *postulatio* as indictment. For *postulatio* as the summoning of evidence into court, cf. *Apol.* 45. 1; 45. 6; 47. 1 (*bis*), also P. Collinet, *La Procédure par Libelle*, pp. 244-245, where he cites Justinian *CI* 7. 39. 9. 1.

*flagitatio* is a public denunciation of a delinquency (in this case, the statement that he can produce several boys enchanted by Apuleius) whose purpose was to shame the delinquent into restitution or to submit to litigation. Of course Apuleius does not expect them to produce their boys. Clearly his purpose in putting emphasis on his demand, and couching the demand in official terms, is to punish them for the perjury with long moments of embarrassed anguish. He repeats the request a fourth, fifth, sixth and a seventh time:

Cedo pueros istos quibus confidistis; produc! Nomina qui sint. Mea aqua licet ad hoc utare. Die, inquam, Tannoni! (46. 3)

The answer was important, and Apuleius delights in pointing out what it means. It was an embarrassed silence: ‘Quid taces? Quid cunctaris? Quid respectas?’ (46. 4) Tannonius has apparently forgotten his lesson; Apuleius turns upon Aemilianus: ‘But if he does not know what you taught him, or has forgotten the names, you, Aemilianus, come here, tell us what you turned over to your lawyer. Exhibit your boys!’ (46. 4) Aemilianus gives the same answer and receives the same treatment: ‘Quid expalluisti? Quid taces?’ His commentary on their answers is worth reviewing in full:

Is this accusing? Is this prosecuting a great charge? Or isn't it rather treating Claudius Maximus, a great man, with mockery and harassing me with *calumnia* (46. 5).

But if they “misspoke” and have no boys to show, why don't they use the fourteen which Apuleius exhibits? (46. 6) They summoned fifteen slaves for an accusation of magic. How many would they have summoned for an accusation of inciting to riot? This introduces another dilemma: ‘Fifteen slaves know something, and yet it is secret. Or is it not secret and yet magic? You must allow one or the other. Either the deed in which I did not fear fifteen *conscii* was legitimate, or it was illegal and they shouldn't have been

there” (47. 2). There follows a brief disquisition on the necessity of keeping illegal magic secret (47. 2–4), which is in turn followed by a series of questions:

. . . and you want fifteen slaves to have been present?  
Perhaps it was a wedding? Some crowded solemnity?  
A party? *Did fifteen slaves take part in a magic rite,  
as if enrolled as ‘Quindecimviri Sacris Faciundis’?*(47. 5)

They had added that a free woman—suffering from the same ill as Thallus—was brought to Apuleius, and, at his incantation, fell. To which he remarks: “It seems to me you came to accuse a wrestler, not a magician—according to you, everyone who comes to me has a fall” (48. 2). Themison, the physician who brought her to Apuleius for consultation (47. 3; 48. 11; 51. 9) was questioned by Claudius Maximus himself about the incident. He reported that Apuleius had asked if her ears rang, and if so, which one the more. She answered that they did, and that the right one rang so much it bothered her. This satisfied Apuleius that her case was incurable, and ended this particular patient–physician relationship.<sup>1</sup> The proconsul questioned Tannonius, too. Apuleius praises his perspicacity in the matter, thus preserving for us the following dialog:

Claudius Maximus: Why did Apuleius charm her?

Tannonius: So she would fall.

Claudius Maximus: What then? Is she dead?

Tannonius: No.

Claudius Maximus: Well, what are you saying, then?

What good would it do Apuleius if she fell? (48. 6–7)

After reminding Claudius Maximus (who knows) of the philosophical and medical basis for his questioning of the epileptic woman—from Plato, Aristotle, and Theophrastus (49–51. 8)—he returns to the attack:

<sup>1</sup> The abrupt end of her treatment is appropriate to a Platonist physician. Plato would have his physicians waste no time “coddling” incurables (*Republic* 3 406C f.).

Therefore . . . let them either establish that caring for the sick is characteristic of a criminal magician [ *magi et malefici hominis* ] or, if they will not allow this, let them admit that in the matter of the epileptic boy and woman they have proffered vain and epileptic *calumniae* (51. 9).

Apuleius has by this time constructed a rather strong case against his *calumniatores*, and he now devotes an entire chapter to the accusation of *calumnia*.

But if you want the truth, Aemilianus, you are yourself the epileptic, as you have now slipped and fallen on so many *calumniae* (52. 1).

It seems unlikely that Apuleius could say this if it were not by this time obvious to all that the accusation was *calumniosa*. Indeed, the good effect of Apuleius’ exposure may be seen in the next sentence:

For it is no more serious to be failing in body than to be failing at heart; better to lose one’s footing than one’s mind; better to be spat upon in the sick-room than to be detested [*detestari*] in this most splendid assemblage (52. 1).

He continues, showing how Aemilianus’ falsehoods leave him in worse and more serious condition than Thallus:

But perhaps you think yourself healthy because you are not confined at home, but are free to follow your disease wherever it leads you. But, if you please, compare your ill with that of Thallus. You will find that there is not much difference, except that Thallus rages against himself; you, against others as well. Thallus rolls his eyes; you roll the truth. Thallus is spastic in his limbs; you are spastic with your lawyers. Thallus falls on pavements; you fall on forums. Finally, whatever he does, he does in innocence and

ignorance. But you, miser, consciously and knowingly commit wrong, so great is the strength of the rabidity which drives you: You insist that the false is true; you charge what was not done was done: Whom you clearly know innocent, you accuse as guilty (52. 2–4).

Apuleius continues this accusation of *calumnia* in his next chapter, where the topic for discussion is something that Apuleius kept hidden in a handkerchief.

### The Mysterious Handkerchief

The critic who finds Apuleius' evasiveness "unmistakable" finds Apuleius' handkerchief "for a time almost as incriminating as Desdemona's."<sup>1</sup> Desdemona's handkerchief, one recalls, was strong enough evidence to condemn its owner (falsely) to death. But there is little damning in these chapters—or at least nothing damning of Apuleius. The section on the handkerchief is rather a multifarious reduction, entertaining and acid, but no more vitriolic than valid. The absurdity of the charge is clearly shown from the start:

What you admit you do not know you accuse me of anyway, as though you did, for you say I had something wrapped in a kerchief at Pontianus'. You grant your ignorance of the identity of the enveloped objects, and grant likewise that you know no one who has seen them; yet you declare that they were instruments of magic . . . . Before such a grave and perspicacious judge, you used practically these very words: "Apuleius had something wrapped up in linen before the Lares of Pontianus. Since I do not know what this might have been, I therefore contend that

<sup>1</sup> R. A. Pack, "Adventures of a Dilettante in a Provincial Family," *CJ*, 35 (1939), 78. Pack does, however, seem satisfied with A.'s explanation that its contents were souvenirs of initiation to the mysteries of Dionysius.

it is magical in nature. Trust therefore what I say, because I speak of what I am not sure." What an argument! What a paradox! "This was, because I don't know what it was!" (53. 1–5)

As though not satisfied with this, Apuleius attacks the matter on another front: the handkerchief lay in Pontianus' library; the librarian had the key to the room, and was alone in it as often as not. The handkerchief was not sealed, nor was it tied. "Why not? magical things were hidden in it—that is why I kept it negligently; that is why I exposed it so anyone could see it, inspect it, or steal it; that is why I entrusted it to someone else's care and someone else's judgment" (53. 8–9).

He attacks again: Pontianus had been his closest friend. Yet Pontianus never saw the contents of the handkerchief; neither did his librarian. "Do you expect us to believe that you know the contents, you whom I never see except in court?" (53. 10) .

Even if they could think up something that might seem magical, they could get nowhere with it: it could have been substituted, taken as a remedy, received at a sacrament, or commanded by a dream, or any other of "a thousand things widespread and in current usage" (54. 1–2).

Still not satisfied, Apuleius puts to his accusers another dilemma, one whose point is that they do not know what they are talking about. They do not know what is in the kerchief? Why don't they ask?

I suppose you might say again, after your custom, "What was it, then, that powerful thing covered in linen, which you placed before the Lares?" Isn't this the way it is, Aemilianus? Thus you accuse, that you may learn everything from the defendant, while you offer nothing yourself which is known for sure. "Why did you hunt fish? Why did you examine a sick woman? What did you have in your kerchief?"

Did you come to accuse or ask? If to accuse, support what you say; if to ask, don't prejudge what your ignorance forced you to ask about (54. 4–5).

Apuleius' next argument is that everyone can be accused if the *calumniator* is allowed to ask at will without being obliged to prove. There is nothing so innocent that an insinuating question cannot be asked about it: "You wrote a vow on the leg of a statue; therefore you are a magician or why did you write it? In a temple you said silent prayers to the gods; you are therefore a magician, or what did you pray for?" Or, on the other side of the coin, "You made no prayer in the temple; you are therefore a magician, or why didn't you pray to the gods?" By this same line of reasoning," Apuleius concludes, "whatever is kept at home shut, shelved, or sealed will be especially cited as magical, or brought from its safe into the open and up for judgment. "The day would not last long enough for me to list all the similar charges a *calumniator* could make" (54. 6–8).

He continues teasing and twitting Aemilianus, in whose accusation, Apuleius has told us, there is only "furor infelix acerbi animi et misera insania crudae senectae" (53. 3). He finishes by simply explaining that the kerchief contained the official souvenir of his Dionysiac initiation, and every initiate knows what *that* is (55. 8 and 56. 1). A judge less lenient than Claudius Maximus found this explanation itself quite sufficient.<sup>1</sup> Why, then, all the preliminary and perhaps even superfluous argumentation? Perhaps because (as was suggested above, pp. 7–8) Apuleius has been offered an opportunity to horsewhip, publicly and verbally, his most vicious enemy. He did not let the opportunity pass, and is now doing a thorough job of it. As the trial offered Apuleius no danger, he was quite free to devote more of his oration to the destruction of Aemilianus than to the establishment of his innocence, innocence which the judge never doubted.

<sup>1</sup> Pack, *op. cit.* p. 78.

### Nocturnal Rites

We may sympathize with a man who was accused of magic because his enemies did not know what he had in his handkerchief. Indeed, if Aemilianus' techniques were allowed, "What a field would be open for *caTumhial*" (55. 1) As is his custom, Apuleius switches from one topic to another with a bit of levity:

As I believe I have satisfied even the most prejudiced, and—with regard to the handkerchief—scrubbed away every spot of accusation, I will now turn, *bono periculo*, to that testimony of Crassus, which they read as though it were rather serious (57. 1).

This testimony was that Apuleius "was constantly conducting nocturnal rites" with Appius Quintianus, his friend who had at one time rented a room from one Crassus. Crassus knew this because when he returned from Alexandria, he saw smoke on the walls in the vacated room and feathers scattered over the floor (57. 2; 58. 2). He asked his slave, whom he had left in Oea, the reason for the soot and feathers, and was told of the magic rites of Apuleius and Appius. Thus, through his written testimony, Crassus explained how he knew of rites performed in Oea when he was in Alexandria.

Since Crassus' letting a room to Appius was probably his only connection with Apuleius, any story he could compose would necessarily have concerned events allegedly taking place while Appius stayed there, even if he, Crassus, were absent for the duration of Appius' stay. Any story he could compose, then, would necessarily be founded on the condition of the room on his return.

Because Apuleius' arguments against the testimony are entirely matter of ridicule, his modern accusers have freely taken the testimony as valid, and have, like Sicinius Aemilianus, seen dire and magical things in the soot and feathers,<sup>1</sup> as though soot and feathers

<sup>1</sup> See, for example, Abt, *op. cit.*, pp. 217–221, and Herrmann, "Le Procès d'Apulée," pp. 332–333.

had actually been left in the room. But is it not possible that Apuleius subjects the testimony of Crassus to ridicule and reduces it to the absurd precisely because the testimony of Crassus was ridiculous and absurd? If the testimony was worth the credence of Claudius Maximus—and of modern critics—and was offered in good faith out of conviction rather than for cash out of greed, why did not Crassus show up at the trial to acknowledge the testimony as his own and to defend it?

In the Athenian courts, the evidence of witnesses was written and deposited beforehand, read at the request of the orators, and validated by its author, who acknowledged it as his own.<sup>1</sup> The Roman system was somewhat different, though it, too, had its safeguards against outright manufacture of written evidence. Written testimony of an absent witness could be brought into evidence if accompanied by the seals of seven witnesses, who swore, not to its truth, but to the fact that the person named actually had made the deposition in their presence. The *signatores* were but a substitute for the presence of the witness.<sup>2</sup> Procedure became more rigorous with time. Even during the Republic, when the author of written evidence happened to be present, he was expected to stand in acknowledgement that the testimony being read was his own.<sup>3</sup> But in the Empire, unacknowledged testimony became more suspect, and eventually, unacceptable. Quintilian, for instance, states that it is open to the advocate to impugn the testimony of absent witnesses, for three reasons: such evidence is always given willingly, and so the witness might be supposed to be the enemy of him against whom it is given; a man will lie more readily before his seven witnesses than before a full court, and his absence may be attributed to his not daring to stand the test of cross-examination (*Inst.* 5.7.1–2). Such evidence had become unacceptable as early as the time of Hadrian; a would-be accuser bas-

<sup>1</sup> Dem. 45.44; 47.48; Isae. 6.11. Cf. also G. P. Bristol, *Ten Orations of Lysias*, pp. 166–167, and Bonner, *Evidence in Athenian Courts*, pp. 46–47.

<sup>2</sup> Strachan-Davidson, p. cit. vol. 2, p. 116 and n.

<sup>3</sup> Cic. *Pro Cluentio* 60.168; 69.196.

ing his case upon depositions of absent witnesses met a *denegatio actionis*. The *Digest* (22.5.3.3) cites Hadrian's explanation:

... because he produced neither proof nor witnesses, but wished to employ written statements, *which I do not admit, for my practice is to question the witnesses themselves.*

It is possible that Hadrian's own courtroom practice was prescribed for general use in his lost *Edictum Perpetuum*. This we cannot know; it is more important that Claudius Maximus had this recent imperial precedent to follow, and seems to have followed it. Apuleius provides evidence throughout the *Apology* that the proconsul himself has questioned all the witnesses.<sup>1</sup> The witness like Crassus would have known from this precedent that his absence would have the effect of denying his deposition. Crassus' failure to appear thus suggests what he thought of his own testimony. Two questions of Apuleius support this view by implying that the accusers were out of order in reading an unacknowledged deposition:

But why did you read the deposition? Where is Crassus himself? (59. 1)

In sum, the original and the modern accusers of Apuleius ask us to disdain the honesty of Apuleius in favor of an unknown who thought so little of his own testimony that he did not bother to come and defend it. Merchants best know the value of their own wares, and if Crassus put no faith in his own testimony, why should we? Even if we could assume that Crassus' deposition was offered in good faith, it would remain one man's report of something that his slave had told him.

It would be better, then, to credit Apuleius, and assume that this charge, like the others, is *confictum ac blateratum*. Like the others, it is treated with caustic humor. The first chapter on the nocturnal rites attacks it on the grounds cited above, i.e., that it is a second-hand re-

<sup>1</sup> E.g., 48. 3; 48. 5-8; 48. 10; 61. 5; 62. 1; 98. 9; 101. 7.

port. “This Crassus states, even though he had been in Alexandria at the time, he nonetheless found out about the soot and feathers. Perhaps when he was carousing there—for this is the same Crassus who frequents brothels in broad daylight—he managed, in the redolence of a saloon, to recognize the feathers plucked at his own hearth, and the smoke rising from the paternal roof” (57. 2–4). What a talent! He had the eyes the captive Ulysses prayed for. But Ulysses scanned the sky for years, Apuleius recalls, without seeing the smoke of the home fires. “But Crassus can see the same smoke after a few months’ absence, and without getting up off his bar stool!” (57. 4). Such a nose allows Apuleius to compare him favorably to a dog or a vulture (57. 5). But this is unfair, for Crassus has the advantage of them, as he is an “expert gourmand and a connoisseur of every smell” (57. 6). “But,” muses Apuleius, “considering the study of drink, which is his field, the aura of wine had a better chance to reach him at Alexandria than the aura of smoke” (57. 6).

The second chapter on the nocturnal rites (58) is devoted to demonstrating the absurdity of the testimony. Like most chapters of the *Apology*, it is filled with challenging questions. Why should Apuleius have performed the “magic” in Appius’ room rather than at home? Supposing there were feathers from either a dinner, or, as they would have it, from a nocturnal rite, did Appius have no slave to sweep them up? (58. 3–5). The walls were blackened with the soot. Would Appius have tolerated this while he lived there? (58. 6) How did Crassus’ clever slave figure out that the smoke was from a night-time fire? Is night soot darker than day soot?<sup>1</sup> Why did this slave, at once so suspicious and diligent, allow Appius to move before cleaning up? Why did the feathers, as if leaden, await so long

<sup>1</sup> 58. 8. L. Herrmann would invalidate this question: “Pourtant, il est clair que c’est seulement la nuit qu’en a eu a servir de flambeaux qui ont encrassés les murs.” “Le Procès d’Apulee: fut-il un Procès de Christianisme?” *RUB* n.s. 4, (1951–1952), p. 333. Does Professor Herrmann know that the apartment had windows so it needed no flames during the day? Does he know that cooking fires were burned only after dark?

the arrival of Crassus? “But Crassus ought not blame his servant on this account, for he himself lied about soot and feathers because, even in giving testimony, he is unable to wander far from the kitchen” (58. inf.).

The third chapter on the rites (59) is the one which twits the accusers on the non-appearance of their witness. Apuleius begins it with the two questions cited above (p. 77), “Why did you read the deposition?” and “Where is Crassus himself?” Apuleius provides some answers.

Did he grow tired of home and return to Alexandria? Is he home washing his walls? Or is our gourmand—as is more likely—nursing a hangover? (*ex crapula adtemptatur* [59. 1]).

This last answer is supported by the fact that Crassus had been seen in town the day before, in the company of Aemilianus, and none too sober (“tibi, Aemiliane, obructantem” [59. 2]). He is either, Apuleius suggests, long since drunk and snoring, or sweating off his stupor at the baths, preparing for the drinking of dinner. Or perhaps Aemilianus, in a prudent moment, decided to keep him away, lest Claudius Maximus should see him (59. 3–5), for he is quite a sight (59. 6). He has long since “drained his patrimony down his throat” and has nothing left except his house, where he keeps shop as a *calumnia* dealer. His most recent transaction was the best of his career, for he sold “that intoxicated lie” for three thousand sesterces, and everyone knows it (59. inf.).

Apuleius’ concluding chapter (60) on the matter of the nocturnal rites is very important, for it states that Apuleius’ concern in dealing with the charge is not establishment of innocence, but exposure and harm for his *calumnious* enemies. He begins: “Omnes hoc, antequam fieret, cognovimus . . . .” “We all knew this before it happened.” This is tantalizing. Who are “we all”? This is not the first person plural of the editorial or Ciceronian type. It seems actually intended as the plural; when Apuleius refers to himself alone, he uses the singular.

He shifts to the singular with his very next verb:

et potui denuntiatione impedire, nisi scirem mendacium tam stultum potius Aemiliano, qui frustra redimebat, quam mihi, qui merito contemnebam, of-futurum (60. 1).

His concern is to expose and to harm his enemies, and if they wish to help him, he will gladly let them. His motive for allowing the testimony to be read, even when he could have prevented it, would seem to be part of his motive for precipitating the whole trial. If so, we should add the following explanation to his “opportunity . . . to justify philosophy and vindicate myself,” and to his “opportunity to extinguish publicly the defamation against me:”<sup>1</sup>

I wanted Aemilianus to be afflicted with the loss, and Crassus to be prostituted by the disgrace of his testimony (60. 1).

Apuleius knows the date, place, parties, and price of the transaction. It had taken place, he explains, the day before yesterday in the home of Herennius Rufinus. Calpurnianus was there, too; he and Herennius pleaded with Aemilianus to make the purchase. “Rufinus did this the more willingly since he was relatively sure that much of the cash would end up with his wife, whose infidelity he conscientiously ignores” (60. 2). The matter ended, however, with the good effect desired by Apuleius: everyone, including even the accusers, at last realized the futility of the “nocturnal rites.” “Finally, even though they are of the most insolent audacity and importune impudence, they saw that Crassus’ testimony smelled of empty wine bottles. They neither read it in its entirety, nor did they put any weight on it” (60. 4). This sentence seems to imply that Tannonius looked up from the text, saw the reception accorded his reading, and decided to change the subject. Apuleius summarizes in this fashion:

<sup>1</sup> *Apol.* 1. 3; 67. 5. Cf. also pp. 39–40 above.

To tell the truth, I mentioned it not because I fear the dreadfulness of feathers and the stain of soot, especially with you as judge [*te praesertim iudice*] but so that Crassus would not go unpunished for selling smoke to that farmer Aemilianus (60. 5).

For many delicts, exposure itself is a suitable punishment, if not the only one allowed by law. It is significant that Apuleius’ stated purpose in dealing with a part of the accusation is the punishment of a *calumniator*. Although Apuleius does not so clearly announce his purpose in dealing with the other points of the accusation, one may see the purpose reflected in the effect. In the next topic, for instance, his joy in exposing the delinquents is clear, even though not stated.

### The Mercuriole

This topic comprises one of the more effective exposures of *calumnia* in the *Apology*, for it is one of the places in which Apuleius has concrete and visible proof that his accusers are inventing vicious lies against him. He starts by summarizing the charge. He had had a statuette made, it was claimed, in secret, for use in “magica maleficia” (61. 2), This was in the form of a *sceletus*, a “shameful and horrible” skeleton, and Apuleius was able to worship even this, to the extent of calling it “basileus” (62. 2). The special wood of which it was made had been very carefully, painstakingly sought out (61. 2). “I believe I follow their every step, and, picking up the threads one by one, reweave the entire fabric of their *calumnia*” (61. 3).

That the statuette had been secretly made is effectively refuted by the fact that the accusers know who made it (61. 5–6), and is denied by the artisan himself (61. 5–6). Apuleius reminds the audience of the artisan’s testimony, which was given in answer to the questions of the proconsul himself (61. 5). Apuleius presents the whole story of the construction of the figurine as an indirect quotation of what the artisan has sworn:

. . . that I, when I saw many geometric forms cleverly and neatly done in his shop, and was pleased by his craftsmanship, asked him to do some *mechanica*, and, at the same time, to do some figurine of whatever deity he should wish, for me to worship after my custom, of any material so long as it was wood; that he therefore had first tried boxwood: that my stepson Pontianus, to please me, had brought him a coffer of ebony obtained from Capitolina, a most honorable lady, and urged him to make it of this more rare and durable material, saying it would be especially pleasing to me; that he followed these instructions, so far as the coffer allowed; that he was able, from the combined thickness of its carefully joined boards, to complete a Mercuriole. *Haec ut dico omnia audisti* (61. 6–62. 1).

The son of Capitolina is present to corroborate this testimony, saying that Pontianus obtained the ebony; Pontianus took it to the artisan and later gave the completed Mercuriole to Apuleius as a gift (62. 1–2). “With all these items openly and clearly established, what is there, in which any suspicion of magic may be hiding? Nay, rather, what is there that does not refute you in this obvious lie?” (*quod vos manifesti mendacii non revincat* [62. 3]).

Apuleius next complains that they were not even ashamed to state falsely that he had looked for the wood all over town—even though they knew he had been away at the time. “*Tertium mendacium vestrum*,” Apuleius continues, was that the figurine was a fleshless cadaver, dire and ghastly. “But why,” he asks, “if you had found so evident a sign of magic, did you not subpoena me to exhibit it? So you could lie about something absent?” Unfortunately for Aemilianus and his friends, Apuleius’ religious habits will not allow Aemilianus such a privilege. Apuleius takes a figurine of some deity with him wherever he goes, and he has thus brought the one in question with him to Sabratha. So, sometime earlier in the day when he heard “this impudent falsehood of the skeleton” being recited, he had someone run back to the hotel and get it. As it is exposed and hand-

ed to the panel of judges, Apuleius addresses his enemies: “Do you hear the indignant outcry of the whole assemblage? Do you hear the damnation of your falsehood? Are you not finally ashamed of each of your *calumniae*? *This* is a skeleton? *This* is a ghost? Is this what you call a demon? Is this something magic, or is it something religious and common?” (63. 6)

Apuleius asks that Claudius himself examine it, calling to his attention certain points which would make it impossible to consider it a skeleton:

See how noble the face, how full it is of youthfulness,<sup>1</sup> note the cheerful appearance, and how neatly the down grows on each cheek, how the unruly hair sticks out under the sunhat, how pleasantly little wings spread out over both temples, and how festively his garment is thrown back around the shoulders. The man who would dare call this a skeleton either has seen no idols of the gods or neglects them all . . . (63. 7–9).

Thus Apuleius has caught his victims in three rather clear lies. The figurine was not secretly made; Apuleius did not ransack the whole town for the special wood, and, as is unexpectedly and dramatically shown, the statue was nothing infernal, but in fact a religious one of a very common type.

The type was so common, in fact, that—so far as Apuleius’ description goes—there is no difference between Apuleius’ Mercuriole and the figures which Pompeiian tradesmen, in hopes that the *numen* would bless their enterprises with profit, had had painted on

<sup>1</sup> “Of youthfulness” translates “*suci palaestrici*.” The “*sucus*” of a human being was the “vital sap” possessed by the young and the healthy. Its absence leaves a man dried up, old, and shriveled. See Richard B. Onians, *Origins of European Thought about the Body*, Cambridge (1951), pp. 192–212. He points out, appropriately enough, that “skeleton” is from *σκελέω*, “to dry up.” That the figurine’s face is full of the “sap of exercise” would seem to mean a boyishly full face, not the desiccated face of a “skeleton.”

the walls of their shops. Typically, such painted figures have small wings spread over the temples, the sun-hat, the shaggy hair visible underneath it, the youthful face, and the “garment festively thrown back around the shoulders.”<sup>1</sup> The modern accusers of Apuleius, who find “Hermes Trismegistus the god of magic” in the Mercuriole description do not account for the fact that all points of Apuleius’ incidental description can be matched in wall paintings of Pompeian shops (see appendix). Mottoes in these shops, e.g., LUCRUM GAUDIUM and SALVE LUCRUM,<sup>2</sup> leave no doubts about the entirely innocent nature of the worship of Mercury which these figures involved.

Apuleius’ worship of Mercury was not quite so crass. He makes unmistakably clear in explaining why he refers to his idol as βασιλεύς that through it he worships the supreme deity:

For who might that “Lord” be, the original cause, reason and origin of all nature, the greatest father of the spirit, the eternal safeguard of living things, the assiduous artisan of his own world, but an artisan without labor, a safeguard without worry, a father without propagation, confined by no space, time nor change, intelligible to few, ineffable to all (64. 7).

He calls this deity “Lord” on the precedent of Plato.<sup>3</sup> Golann, one of those who consider the “Lord” some anonymous, magical demon whose powerful name Apuleius will not reveal, has tried to deprive Apuleius of Plato’s support by the curious expedient of “doubt[ing] that Plato was in the habit of calling the supreme deity *basileus*.”<sup>4</sup> But what Plato says twice we cannot expect a Platonist like Apuleius to

ignore. Apuleius’ request that his statue be made only of wood also stems from Plato (*Laws* 12. 955 E).

It is more important, however, to note that the Mercuriole when produced inspired an indignant outcry against the accusers (see above, p. 83), and that the sections devoted to the Mercuriole constitute a triumphant exposure of a series of malicious falsehoods.

Thus, whether discussing “magic” fish, “enchanted” patients, a linen handkerchief, soot and feathers, or a figurine of Mercury, Apuleius’ mood is gleefully vindictive, not nervous. It appears that the arguments which are scarcely convincing are those lodged against Apuleius. He credibly presents them as inane supports for unsupportable lies, hastily collected and easily destroyed. That these arguments were to prop the lies which had been viciously circulated against him for two years makes it the more enjoyable for Apuleius to deal with them so tauntingly. Far from providing any cogent reason for believing Apuleius a magician, the sections of the *Apology* dealing with the accessory charges of magic give good reason to believe Apuleius when he congratulates himself for the opportunity of clearing his name and extinguishing the defamation against him.

<sup>1</sup> For reproductions of two such wall paintings, see Amedeo Maiuri, *Pompeii*, n.d., Novara, pp. 116, 132.

<sup>2</sup> Amedeo Maiuri, *op. cit.*, p. 114.

<sup>3</sup> *Ep.* 2. 312 E and *Laws* 10. 904 A.

<sup>4</sup> Golann, *op. cit.* p. 155.

## CHAPTER VI

THE CENTRAL *CRIMEN*: WINNING A WIFE WITH MAGIC

In the second half of the oration, the aggressive and prosecuting manner found in the first sections grows even more remarkable. It has been noticed by Pack, one of those who would have Apuleius really guilty of magical practices:

In any case, when he leaves this subject [magic] and turns to his relations with Pudentilla, we see that there is nothing on his conscience: now, with solid proofs at his command, he speaks forth-rightly, *as if himself the accuser*. As one *hapax legomenon* after another comes purling so richly from his lips we realize that while ostensibly defending himself he is really achieving a most devastating excoriation of his prosecutors.<sup>1</sup>

This, he further notes, is done with a “merciless insistence.” Though Pack, whose interest lay in other areas, does not develop this theme, examination of the *Apology* shows his observation to be true, and Apuleius to be a quasi accuser, a plaintiff developing a charge of *calumnia*.

The theme of the first section (66) of the so-called “book two” is that Aemilianus’ motive for the accusation was not any *bona fide* belief that Apuleius was guilty of magic, but was simply hatred.

No other cause for this trial and for several other earlier dangers to my life can be found except mere hatred (66. 3).

<sup>1</sup> Pack, *op. cit.* p. 79, emphasis added.

Even if Aemilianus had discovered that Apuleius were a magician, what could have moved him to accuse, since Apuleius had in no way harmed him? This is a question Apuleius raises, and it is the only instance in the chapter where the possibility of good faith is broached: “etsi vere magum me comperisset . . . .” The point is, they had not discovered him to be a magician, a fact which must have been evident to everyone. They had, in sum, made their accusation official only because they had to; they showed what kind of accusation it was when they risked the anger of the judge by putting the accusation in the name of an infant so they would not be responsible for it. The reader will recall that Claudius Maximus ordered them to place the accusation in the name of an adult. Had their case been *bona fide*, they would have guarded their chances of victory closely: they certainly would not have disobeyed the man who would judge it. Or, if they had known their case to be a patent fraud, they would care nothing of what the judge thought of their case, so long as their safety were assured. They could with no loss disobey the judge, especially if it were a means to secure their safety from a condemnation of *calumnia*. Further, when questioned by Claudius Maximus, their own answers revealed the nugatory nature of their charges (46. 6–7). Their failure to use the rather large number of witnesses they had summoned was similarly revealing. Finally, as we have seen, their accessory charges of magical practices were exuberantly demolished.

And now, when Apuleius wonders out loud why they would have done such a thing, listing the possible motives for the accusation, belief in its truth is not among them: Did they accuse for vengeance? He has done them no harm. Did they accuse to gain glory and fame, as noble youths were once accustomed, to initiate their careers by gaining a showplace for their eloquence? No. The custom has long since died out, and “the parading of eloquence does not befit a rough illiterate, nor does desire of glory befit a country barbarian, nor does a debut before the bar befit a greybeard” (66. 3–6). Did Aemilianus accuse to give proof of his own *severitas* or *integritas* out of his disdain for *maleficia*? Such a motive is not to be looked for in

such a man. Apuleius says it with a pun:

At ego hoc Aemiliano, non huic Afro, sed illi Africano et Numantino et praeterea Censorio vix credidissem (66. 8).

The possibilities have been considered and rejected. By elimination one motive remains:

What is it then? It is plainer than day [*clarius die luceat*] to everyone that nothing other than hatred provoked this man, his instigator Rufinus—about whom I will soon speak—and my other enemies to devise these *calumniae* of magic (67. 1).

It is to be noticed that in this section Apuleius' interest is not to show *calumnia*. This has already been sufficiently established, leaving Apuleius now free to show that their motive for it was of the basest sort. But Apuleius is still not satisfied. They had made five further charges. Each of them is either patently falsified or pointless, and will therefore serve to demonstrate further that their slanders and the action which resulted from them were raised *vexandi gratia*.

Of these five, four were outright lies. As Apuleius lists them, the first was "that Pudentilla had never wished to remarry, but was compelled by my incantations" (67. 3). Pudentilla had remained a widow fourteen years the better to rear her sons and protect their heritage, for she had no intention of remarrying within her husband's family, and her father-in-law had threatened to disinherit her sons if she married outside the family. On his death, she had made it clear that she wished to remarry. Furthermore, her health had been failing, and remarriage was the prescribed remedy of her doctors (68–69).

Aemilianus especially approved of this, the same Aemilianus who not too long ago was swearing to that most confident lie that Pudentilla had never given a thought to marriage until I compelled her to it by means of evil-doing magic . . . I have often heard it

said—and wisely said—that a liar should have a good memory. But you, Aemilianus, did not recall that before I had come to Oea, you had sent a letter to her son Pontianus, saying that she would marry (69. 4–5).

Apuleius has the very letter, and he has apparently already introduced it into evidence:

You, bring the letter . . . or better yet, give it to him? have him read it, that with his own voice he may correct his own words.

Aemilianus is shown the letter, but apparently balks at reading it aloud:

Is it your letter? Why are you growing pale? Perhaps it is because you are incapable of a blush. Well, is it your seal? [Silence. Apuleius has the letter read.] Read it louder, please, that everyone may understand how much his tongue disagrees with his pen, how he disagrees with himself much more than with me! (69. 6–8).

After thus wittily and publicly embarrassing his adversary, Apuleius points out the absurdity of Aemilianus' position. He introduces this part by quoting from the letter: "She ought to marry and wants to, I know, but whom she will choose, I do not know." He certainly did not. Pudentilla knew his hateful malice, and would tell him nothing of the candidates, leaving him still hoping she would marry his brother. "Therefore, if she had married Sicinius Clarus, a rustic and decrepit old man, you would say she married willingly, without magic. But since she married a young man, and one such as you describe, you say she did it under duress and furthermore that she was always a scorner of marriage. You did not know that your letter was kept? you did not know that you would be convicted by your own testimony" (70. 3–4).

With the first charge exposed as a falsehood, Apuleius turns to

the second, “concerning Pudentilla’s letter, which they think acknowledges magic” (67. 3). As we have seen (pp. 13–14 above), the letter of Pudentilla had long been used by Apuleius’ enemies to discredit him. They further appealed to this letter when forced into the courtroom with their slanders. Claudius Maximus ordered a witnessed copy to be made (78. 6) and with this done, Apuleius, so to speak, has them within his power. Even though he could simply read the letter and be done with the whole matter, he prefers to toy with them.

He begins by pretending that the letter actually contains what they had been saying it contains. Is he a magician because Pudentilla said he was? He makes this point with a taunting reminder of how poorly they have done so far: “With so many arguments, with so many witnesses and even with such a speech you have not proved me a magician: Would she prove it with one sentence? And how much more seriously is an indictment in court to be taken than what “is indited in a letter!”<sup>1</sup> This last would seem to be a reference to their accusation, for this indictment had not been taken seriously at all. Since this was the fate of their indictment, how seriously could they expect their letter to be taken?

‘Magum te scripsit Pudentilla: igitur magus es.’  
What, then, if she had called me ‘consul’? I am a consul? What if she had styled me ‘painter,’ or ‘M.D.,’ or ‘innocent’? Would you think any of these if she had said it? of course not (79. 4).

He continues in the same vein, mining his accusers’ path with dilemmas and showing the absurdity of their case:

‘But she loved you madly!’ I will, for the sake of argument, grant this . . . . But it seems she did not love me, if at that time she wrote something which would obviously be to my harm.

<sup>1</sup> The unusual choice of words (indict, indite) is an attempt to render the pun: *Et quanto tandem gravius habendum est quod in iudicio subscribitur quam quod in epistula scribitur*—89. 2.

Finally, would you have her sane or insane when she wrote? ‘Sane,’ you say? Then she had suffered no magic. Will you answer ‘insane’? Then she did not know what she was talking about and is not to be trusted (79. 6–80. 1).

We must not yield to the temptation to pass off this last dilemma as “mere sophistry.” Apuleius is simply using his wit to reveal a basic improbability in their accusation. If the magician has her so much under his power that she cannot but say “yes” to his proposal of marriage, he controls her will. This being the case, how is she free to say she is bewitched? Perhaps he let his spell lapse long enough for her to write the letter? If we examine the portion of the letter which the accusers quoted, we observe that this will not do. “Apuleius is a magician: I am bewitched by him and I love him too much.” She was still under his spell at the time of writing. Even the text of their criminally truncated evidence is absurd, and there is no means of escape from the validity of Apuleius’ reduction. Or, as Apuleius puts it:

. . . he commits absurdity, who declares that he is keeping silence . . . the act of professing denies what is professed. This is even more contradictory: “I am insane” because it is not true unless knowingly stated: but then the speaker is sane, for he knows what insanity is. Therefore a person cannot know he is insane, any more than he can see that he is blind.

Thus, if what they say is true, it is absurd. This established, Apuleius, by the simple expedient of having the letter read, proceeds to show that their statement was false anyway. But he interrupts the reader first to point out that the text of Pudentilla’s letter to Pontianus corroborates his narration of the family situation. A second purpose of his interruption of the reading is to preface the most important part of the letter with the following accusation and request for punishment:

There remains the part of the letter which . . . was sent for the single purpose of driving from me that charge of magic. It is to the lasting glory of Rufinus that this letter changed to the extent that it sought to convince the Oeenses that I am a magician . . . . What Palamedes, Sisyphus, or even a Eurybates or a Phrynonidas could have conceived such a thing? All whom I named, though renowned for fraud, would, if compared with this one deceit of Rufinus, appear clowns and bunglers. How marvelously contrived! How subtle! *How worthy of prison and dungeon!* (81. 1–5).

After quoting the “damning” passage in its context to show that its meaning has been fraudulently perverted, Apuleius again raises the matter of punishment: “Your arts are exposed, Rufinus, your frauds are in the open, your lie is found. Truth once tripped arises, and *calumnia*, so to speak, falls to the bottom of the *barathron*”<sup>1</sup> (83. inf.).

The third point listed by Apuleius is likewise a falsification: “deinde sexagesimo anno aetatis ad lubricum nupsisse” (67. 3). Like the rest of this lying, calumnious accusation, this falsehood, too, Apuleius insists, deserves punishment. Its point was apparently to demonstrate that Apuleius’ sole interest in the marriage was financial gain. But her father, following the prescribed custom, had filled out a statement of her birth in duplicate, one copy for the public archive, another for keeping at home. The “birth certificate” was recorded on tablets tied together with linen cord; sealing wax had been poured over the cord, and on this, her father had placed his seal (89. 2). The certificate is produced, and it shows that Pudentilla is not yet forty (89. 5). Here is Apuleius’ comment: “O falsum audax et nimium, o mendacium viginti annorum exsilio puniendum!” (89. 6). Even though the twenty-year exile is suggested by the twenty-year lie, and is rather clearly a witticism, the fact remains that it was

<sup>1</sup> The name of a cliff in Athens, the barathron was also a means of punishment: the condemned were thrown over its edge.

“falsum audax et nimium” and therefore “puniendum.” But if this is a joke, there is a vicious sting to its point, for by this time, custom had added new risks for the *calumniator*. The judge could, at his own discretion, add to the legally-prescribed penalty, *infamia*. Apuleius’ contemporary Gaius records that the malicious prosecutor “extra ordinem damnatur, id est exilium aut relegationem aut ordinis amotionem patiatur” (*Dig.* 47.10.43).<sup>1</sup> Thus exile, the penalty Apuleius says Aemilianus has merited, is actually the penalty which at that time was deemed appropriate for a maliciously false accusation. Although Apuleius could not hope to have the penalty imposed, since the accusation which deserved it was entered in the name of an infant, he does seem to have used the current penalty for *calumnia* as a barb in his punning remark “mendacium viginti annorum exsilio puniendum.”

Alone of the five, the fourth point, “et quod in villa ac non in oppido tabulae nuptiales sint consignatae” (67. 3), is true, but it is also pointless and provides further ammunition for Apuleius’ attack. He deals with it briefly and acidly. Apuleius and Pudentilla had determined upon a marriage in the country “so the citizens would not again fly in for free dinners.”<sup>2</sup> Pudentilla’s expenses for public largesse on the day of Pontianus’ wedding had come to fifty thousand sesterces, and a repetition would not have been welcome. Further, they wished to avoid “the several banquets and nuisances which are all but *de rigueur* for newlyweds.”

You have, Aemilianus, the whole reason why the marriage took place not in town, but in a country villa: to avoid the necessity of again throwing away fifty thousand sesterces and to avoid dining in your presence or in your home. Is this reason enough? (88. 1)

The last of the five was by far the worst, as Apuleius makes clear:

<sup>1</sup> Cf. J. L. Strachan-Davidson, op. cit. vol. 2, p. 138.

<sup>2</sup> “ne cives denuo ad sportulas convolarent,” 87. 10.

“novissima et eadem invidiosissima criminatio de dote fuit” (67. 4). They had been especially insistent on this point. “Here they struggled with all their strength and poured out all their venom? here they were most anguished, saying that I, at the start of the union, in the country far from all witnesses, extorted an oversize dowry from this woman in love.” At the end of this list of five points, Apuleius promises the treatment which we have, in large part, already witnessed:

I will show each of these to be so false, inane and full of nothing so easily and unanswerably, that I am actually afraid, Maximus, and you, his advisors, that you might suppose I have brought in and suborned an accuser, so that, with the opportunity [*occasione*] offered, I might extinguish the defamation leveled against me (67. 5).

Thus, in his repetition of his charge that the accusation is calumnious, he repeats the statement of the introduction (‘copia et facultas,’ [1. 3]) and enlarges upon it. It is now so obvious to everyone that the accusation was to Apuleius’ advantage that Apuleius now fears charges of collusion. His blundering enemies, by publicly offering insults and then being obliged to turn their slanders into an official accusation, have obligingly spared Apuleius the expense of hiring an accuser to give him the chance to clear his name. He explains:

You may believe me, for I speak what is self-explanatory: I should convince you, lest you deem so frivolous an accusation rather cleverly thought out by me than stupidly undertaken by them (67. 6).

As for the final charge of extorting a dowry *grandis et uber*, it receives as unchallengeable an answer as anything in the *Apology*. Apuleius produces the table of the marriage contract, in which it is found that the dowry was three hundred thousand sesterces (92. 1–

2). It was not an outright gift, but was more in the nature of a promise.<sup>1</sup> Should Pudentilla bear Apuleius no surviving children, the sum would revert to the offspring of her first marriage. Otherwise, it would be halved between the offspring of Sicinius Amicus and of Apuleius (91. 8).

This established, Apuleius proceeds to put his enemies to shame for their lying and their audacity. To Aemilianus he says, “take the contract in your own hands, give it to your instigator Rufinus; let him read it, let him feel shame for his swollen spirit and his ambitious lying” (92. 2). Their boldness is thoroughly underscored in the following passage:

And who is there, even if he is only slightly experienced in affairs, who would dare find guilt, if a once-married woman of moderate appearance and age should tempt a young man, sound of body, character and fortune, with a large dowry and with good terms? (92. 5)

Not only is this established practice, but Pudentilla would have had to do it, “had she not found a philosopher who scorns dowries” (92. 11).

Among the last five points dealt with by Apuleius, there are two lesser ones which further show the calumnious nature of the accusation. The first is a forged letter: “Fuit et ilia commenticia epistula neque mea manu scripta neque verisimiliter conficta” (87. 2). As for the first point of his description, Apuleius has perhaps offered countering samples of his own handwriting. Fortunately, Apuleius explains his second point more fully, and with his customary wit: “qua [epistula] videri volebant blanditiis a me mulierem sollicitatam. Cur

<sup>1</sup> We cannot be certain of the exact nature of the dowry, for a key word seems to have dropped out of our text: “modicam dotem neque eam datam, sed tantummodo . . .” (91. 7). Textual critics have supplied “commodatam” (Purser), “creditam” (Helm), and “dictam” (Norden). The last seems best. Cf. 102. 1: “uti dotem mihi . . . diceret.”

ego blandirem, si magia confidebam?” (87. 2) He puts several questions to his accusers about the credibility of their letters: “Why was the letter written in such low [“vitiosis verbis”], barbaric Greek, if it was written by the man whom they say is skilled in that language? (87. 4) Why would the man whom they say knows well enough how to write amatory verses try to ingratiate himself with the grotesque language of the taverns?” (“absurdis tabernariis blanditiis” [87. 4]). Such a letter as this would oblige a man to send it by the most trustworthy carrier he could find. So how did *they* get it? (87.3) The answer is clear to anyone: “The person who could not read Pudentilla’s letter, though it was in the best Greek, could easily and suitably esteem this letter as his own” (87. 5).

The second of these unlisted charges is the last one dealt with in the speech, and seems something of an afterthought. They charged that he had purchased, in his own name, a “beautiful estate” for a huge sum of Pudentilla’s money. Like several other matters, this seems an outright lie. Corvinus Celer, *vir ornatus, quaestor*, had sold the land, and Cassius Longinus, acting as Pudentilla’s *tutor auctor*, had authorized the transaction. Both are present to support Apuleius’ statement that Pudentilla purchased the property for sixty thousand sesterces, and in her own name.

## CONCLUSION

It is now perhaps clear that the trio of accusers committed a rather gross criminal *calumnia*, and that Apuleius’ interest in the *Apology* was as much to establish their guilt as to disprove his own. To support the main charge that Apuleius had won Pudentilla by means of magic, the accusers were obliged to resort to no less than fifteen falsehoods:

1. That Apuleius had the well-kept hair of a gigolo (4. 12)
2. That he arrived with one slave or freed three in one day (17)
3. That he used *virile* and *feminale* fish for a philtre (33)
4. That he enchanted a boy (42)
5. That they would provide other boys “likewise enchanted by Apuleius” (42)
6. That he enchanted a woman (47)
7. That the unknown items in the handkerchief were magical (53)
8. That he habitually performed nocturnal rites (i.e., the testimony of Crassus [57])
9. That he worshipped a skeleton, calling it “Basileus” (61)
10. That Pudentilla had never wished to remarry (67)
11. That Pudentilla herself wrote that Apuleius was a *magus* (67)
12. That Pudentilla was 60 years old when they married (67)
13. That Pudentilla was forced by magic to grant a huge dowry (67)
14. That Apuleius wrote an unsavory letter to Pudentilla (87) and

15. That Apuleius used much of Pudentilla's funds to buy himself a large estate.

The first we may forgive the accusers. The others are more grave.

The second (that Apuleius came to Oea accompanied by a single slave) is necessarily false if, while staying in Oea, he shortly after freed three in one day. The alternative to counting this a lie is to count Apuleius guilty of chicanery. Even if Apuleius were not an honest man (I assume throughout that he is), the fact that Claudius Maximus had heard the speech he refers to would necessarily have deterred him from misrepresenting it.

The third, that Apuleius used obscene fish for a love potion, is one charge which several would have true. But if one would have Apuleius a practitioner of sympathetic magic, one must somehow account for chapters thirty-four and thirty-five—it seems beyond credence that the man who can laugh at such stupidity should have tried it himself.

The fourth and fifth go together (Apuleius enchanted a boy; the accusers will produce other boys also enchanted by Apuleius). If the fourth is not a lie, the fifth would never have arisen. And if the fifth is true, where are the enchanted boys? The sixth is no more likely than the fifth (why shouldn't an epileptic fall?). The seventh is rather clear: if one does not know what is in a handkerchief, one cannot honestly state that the contents are magical.

The eighth, the deposition of Crassus, may safely be taken for a falsehood. The judge, the accused and the accusers all had the precedent of Hadrian upon which to distrust the testimony of absent witnesses.

The ninth, the "hideous skeleton" Apuleius is supposed to have worshipped, is safely counted a lie. All critics save one<sup>1</sup> are convinced that the figurine in question is a Mercury, not a *sceletus*. The tenth through the thirteenth, which formed the basis of the entire case against Apuleius, were proved lies by incontrovertible documentary

<sup>1</sup> L. Herrmann sees a crucifix in the "sceleti forma turpe et horribile." "La Procès d'Apulée," op. cit., p. 334.

evidence, as was the fiteenth. As for the fourteenth, the forged letter, to call it genuine is to ascribe to Apuleius the language of a barkeeper (*tabernarius*). The accusation, then, was a fabric of fifteen hardy lies, in sum, *calumnia*.

Could the accusers have entered such an accusation as this willingly? No. Therefore, the standard assumption, that the accusers accused intentionally, leads to the opinion that Apuleius falsifies the accusation and that it was not at all as Apuleius represents it. But if one credits Apuleius—as we have good reason to do—one finds evidence that Apuleius' enemies accused much against their will, and that "the Trial of Apuleius" can be accounted for by something like the following:

Briefly, the accusers of Apuleius came to the forum of Sabratha with only the intent to embarrass Apuleius in public once again. But their publicly shouted insults constituted an act liable to punishment, *iniuria atrox*, and this time it was committed in front of a judge. Apuleius, affronted much less by the interruption of his speech than by the slanders with which he was interrupted, challenged his tormentors to defend the truth of their charges in an official accusation or face liability for the publicly offered insults. The judge supported him. The hecklers were obliged to accuse. The *calumnia* which this involved did not disturb them, as they were able to evade liability for this crime by placing the accusation in the name of a teammate who happened still to be an infant before the law. Apuleius, far from "nervous," considers this trial which he has precipitated an opportunity (*copia, facultas, occasio*) to end the defamation mounted against him and to restore his good name. As the *calumniatores* have protected themselves against prosecution and punishment for their crime, Apuleius also used his speech to accuse, prosecute, and punish. Though he suggests several penalties which they deserved, none could be applied, since an infant accused. He therefore ruthlessly meted out the penalty of external exposure.

## APPENDIX

THE MERCURIOLE AS AN ARGUMENT FOR APULEIUS'  
GUILT OF MAGICAL PRACTICES

As has been noted in the introduction to the present dissertation (above, pp. 6–7), the Mercuriole forms the strongest argument for Apuleius' modern accusers. But even this argument, however, has short-comings. The fact that Apuleius worships a Mercury is seen as “highly convincing with regard to Apuleius' possible practice of magic”<sup>1</sup> for two reasons. First, Mercury is a god of magic: “Denn dass Merkur Zaubergott ist Apuleius selbst hat uns gesagt, er nennt ihn unter den in Kap. 31 aufgezählten Zaubergottheiten an erster Stelle.”<sup>2</sup> Golann remarks that “possession of a statue of Mercury might ordinarily have been an incriminating admission.”<sup>3</sup> Second, the particular Mercury worshipped is really Hermes Trismegistus, the god and founder of magic:

But here, as elsewhere, Apuleius unguardedly tips his hand, for Norden, following Abt, has shown that the “Mercury” was really a Hermes—Hermes Trismegistus, the very patron of magicians; characteristic was his chlamys (63. 26f.: *quam autem festive circa humeros vestis substricta sit*) and significant the fact that ebony, a magic wood, was chosen. It seems undeniable that he had actually dabbled to some extent in the black arts.<sup>4</sup>

<sup>1</sup> C. P. Golann, *The Life of Apuleius*, p. 153.

<sup>2</sup> Adam Abt, *Apologia und Zauberei*, p. 233.

<sup>3</sup> Golann, op. cit., p. 154.

<sup>4</sup> Pack, “Adventures of a Dilettante,” p. 78.

That Hermes Trismegistus is the founder of magic is seen especially in a papyrus, cited by Vallette and Norden, which calls Hermes π ἄντων μάγων ἄρχηγενής.<sup>1</sup> Abt, Norden, and Pack identify the little statuette as a Hermes Trismegistus on the basis of the fact that Hermes in the “magical hymns” is often addressed as Χλαμυδηφόρε, and the “cloth festively thrown around the shoulders” of the statuette is seen as a χλαμύς, making Apuleius' Mercuriole a Hermes Chlamydephoros.<sup>2</sup> But as we have seen above (pp. 83–84), the Mercuriole as described by Apuleius distinctly matches wall paintings of Mercury commissioned by Pompeiian tradesmen. We note also that the *vestis circa humeros substricta* is literally represented in the Pompeiian paintings. No one has accused the Pompeiian tradesmen of magic.

It is also regarded as suspicious that Apuleius worships the god as βασιλεύς. Golann points out that Trismegistus was addressed this way.<sup>3</sup> Abt states concerning the title βασιλεύς: “Wir können die Erklärung des Apuleius ganz aus dem Spiel lassen.<sup>4</sup> Wir müssen hier fragen, was die Gegner mit der Angabe dieses Names Schlimmes aussagen wollten.”<sup>5</sup> He then notes that Melech was styled *basileus*, as was Hades in the papyri.<sup>6</sup> But in his attempt to find something incriminating in the name *basileus*, Abt, perhaps in keeping with his denial of the relevance of Apuleius, ignores *Apology* 61. 1, where the word *basileus* first appears: “. . . quod me aiunt . . . cum sit sceleti forma turpe et horribile, tamen impendio colere et Graeco vocabulo βασιλέα nuncupare.” Clearly, *was Schlimmes* in

<sup>1</sup> Vallette, *L'Apologie*, p. 312; Norden, *Apuleius und das Römische Privatrecht*, p. 44.

<sup>2</sup> This magical significance of the *chlamys* is noted in Abt, op. cit., p. 228; in Norden, op. cit., p. 45, and Pack, op. cit., p. 78.

<sup>3</sup> Golann, op. cit., p. 154.

<sup>4</sup> This cavalier attitude toward the evidence of the *Apology* is typical of Apuleius' modern accusers.

<sup>5</sup> Abt, op. cit., p. 225.

<sup>6</sup> Ibid.

the accusation was simply that Apuleius worshipped this monstrous skeleton assiduously despite its gruesomeness: “. . . which they say . . . I worship zealously and call ‘Lord’ in Greek, even though it is a disgraceful and frightful skeleton.” Calling a skeleton “Lord” would have been a clear sign of magic, for praying to impious gods seems to have been specifically proscribed.<sup>1</sup> If Apuleius called a skeleton “Lord,” it would have indicated he worshipped it devotedly. Addressing a divinity by a title instead of by proper name was a token of religious awe of long standing. Homer had often called various of the Olympian gods “Lord” or “Lady” (ἄναξ, πότνια), and had commonly had his characters address them respectfully by a title rather than by a proper name.<sup>2</sup> Presumably, the accusers of Apuleius, by saying he called the skeleton *basileus*, simply wished to indicate the extent to which he worshipped it. But Apuleius’ idol was not some horrible goblin, but an Olympian god who could properly be addressed by some such title as *basileus*.

It is also seen as an indication of magic that Apuleius makes a point of keeping his *basileus* anonymous—an indication that the true name had magical powers which the orator does not want to lose.<sup>3</sup>

But if others used figurines of Mercury for magic, this is no indication that Apuleius did: we cannot make Apuleius responsible for the acts of anonymous authors of papyrus texts. If person X uses his figurine—and his *edulia* and his earth, air, fire, and water—for magic, this tells us nothing about what Apuleius uses his for. And if it were really incriminating to admit to Mercuriolatry, Apuleius would not have been such a blunderer as to “tip his hand” twice about Mercury as a god of magic (31. 9 and 42. 6).

Apuleius’ syncretism, his extreme readiness to assimilate one god to another, points to a religious, rather than to a magical, significance in the Mercuriole which he worships as *basileus*. We must recall that

<sup>1</sup> Servilia, accused of *magica sacra*, specifically denies invoking impii dei—Tac. *Ann.* 16. 31.

<sup>2</sup> E.g., *Il.* 1. 1, 36, 37, 75, 110, 202, 310, 451, 528, 529, 551, 552.

<sup>3</sup> Norden, *op. cit.*, pp. 44–45.

Apuleius had commissioned (and the craftsman swore to the fact that he had commissioned) a statue of any god (61. 6). This indicates that it did not matter to Apuleius which god was represented, that Apuleius would have treated the representation the same way, and called it by the same title, regardless of its identity: it is Apuleius’ habit always to take with him “a statue of some god” (63. 3). These two statements are entirely consistent with Apuleius’ syncretism, a consistency which should have made these two statements difficult to disregard. Apuleius is an initiate in several cults or mysteries, and very proud of this fact: “Sacrorum pleraque initia in Graecia participavi” (55. 8). One which he gives by name is the mystery of Dionysus (*Ibid.*). He enlarges upon his initiations in this manner: “At ego, ut dixi, multiuiga sacra et plurimos ritus et varias cerimonias studio veri et officio erga deos didici” (55. 9). A further measure of his pride in his widespread faith and religious participation is that he had noted it three years before the trial, and had even listed the various initiations:

nec hoc ad tempus compono, sed abhinc ferme triennium est, cum primis diebus Oeam veneram publice disserens de Aesculapii maiestate eadem ista prae me tuli *et quot sacra riossem percensui* (55. 10).

There is further evidence of this religious syncretism outside the *Apology*. In the *de Deo Socratis*, for instance, Apuleius equates Amphiarus, Osiris, and Mopsus; Pessinuntia, Cecropian Artemis, and Isis (15). A notice more significant and pertinent is to be found in his *de Mundo*, where Jupiter is acknowledged as “deorum rex omnium et pater,” and, in Greek, Ζεὺς βασιλεύς. Ζεὺς ἀρχὸς ἀπάντων ἀρχικέρανος (37), which may serve as a comment upon the βασιλεύς of the *Apology*: “. . . Basileus totius rerum naturae causa et ratio et origo initialis, summus animi genitor . . .” (64. 7). The *basileus* of the *de Mundo* and the *basileus* of the *Apology* are apparently the same: the one is the “origin of all things,” the other is the “initial cause, reason, and origin of all things of nature.” Beyond the degree

of conciseness or prolixity, there is no real difference between the two. The “Basileus Zeus archos hapanton” also corresponds well with Apuleius’ identification of the basileus on the basis of Plato: *περὶ τὸν πάντων βασιλέα πάντ’ ἐστὶ καὶ ἐκείνου ἕνεκα πάντα* (Apol. 64. 5–6; Ep. 2 312 E). The “Zeus basileus” from the *de Mundo* is at least an indication that Apuleius was consistent about calling the supreme deity “Lord.”

It is possible that this particular manifestation of Deity which Apuleius happens to worship through his idol of Mercury was revealed to him in an initiation. His god is “paucis cogitabilis, nemini effabilis,” “known to few, speakable to none” (64. 7). This knowledge of God by few is curiously consistent with both Hermeticism and Plato. According to the major document on Hermeticism, the *Poimandres*, Hermes’ “name is secret and unspeakable among men” (ἄρρητον ἐν ἀνθρώποις) (1.2, p. 15, Reitzenstein). The pertinent passage of Plato is cited by Apuleius himself in his *de Platone et eius Dogmate*:

innumerabilem et, ut ait ipse ἄρρητον, ἀκατωνόμαστον, cuius naturam invenire difficile est, si inventam sit, in multos iam enuntiare non posse. Platonis haec verba sunt θεὸν εὐρεῖν τε ἔργον, εὐρόντα δὲ εἰς πολλοὺς ἐκφέρειν ἀδύνατον (*de Platone* 1. 5; Timaeus 28 C).

The proper name of God—or God himself—is known to the initiates, or to those who have taken the trouble to know Him. This is a secret that they are bound to keep, or are incapable of divulging. In the light of these possibilities, Apuleius’ famous refusal to identify his “Lord” can be better understood. The refusal immediately follows his description of the god in question, which ends with the words “... not comprehended in space, in time or in any way, and therefore intelligible to few, speakable to no one.”

En ultro augeo magiae suspicionem; non respondeo tibi, Aemiliane, quern colam βασιλέα quin si ipse proconsul interroget quid sit deus meus, taceo (54. 8).

The liberal Claudius Maximus was not about to ask, and if it is a question of initiation, it would have been an impiety for Apuleius to tell. In this case, this proudly announced reticence would be a boast of yet another mystery in Apuleius’ list, and a boast that he will not commit the impiety of divulging the religious secret. Or, if he was thinking here of Plato’s Timaeus (which he has cited earlier and feels sure Claudius Maximus has read—Apol. 48. 12 - 49. 1), he is simply attempting to delight those who know what he is talking about, and to tease and mystify his accusers, who certainly do not. Either or both of these alternatives could apply; neither would rule out the other.

Even if Apuleius was a worshipper of Hermes Trismegistus, ὁ βασιλεύων τῶν οὐρανῶν καὶ τῆς γῆς καὶ πάντων τῶν ἐν αὐτοῖς ἐν διατριβόντων,<sup>1</sup> even, as is suggested above, an initiate, does this mean that he is a magician? No. Despite various papyri, there was more to both Mercury and Hermes than magic. Hermes as Trismegistus may have had a cult flourishing in Rome before the end of the first century A.D.<sup>2</sup> Further, to say that “possession of a statue of Mercury might *ordinarily* have been . . . incriminating” (emphasis added) is to ignore a remarkably large body of evidence in favor of an incredibly small one. For even when one considers Trismegistus, magic was but a small portion of the god’s domain. “Hermes Trismegistus the god and founder of magic”? One must add “of literature, poetry, medicine, algebra, geometry, astronomy, draughts, and dice.” It is, in fact, possible to write an excellent general essay on Hermes Trismegistus without once using the word “magic.” St. George Stock has done it.<sup>3</sup>

When considered in its context of Apuleius’ religiosity, the Mercuriole hardly seems suspicious. But the essential difference between religion and magic is seldom observed by Apuleius’ modern accus-

<sup>1</sup> Richard Reitzenstein, ed. *Poimandres*, Leipzig, 1904, p. 17.

<sup>2</sup> Mart. 5. 24. Cf. also R. Reitzenstein, *Hellenistischen Mysterienreligionen*, p. 11, where he looks upon the line “Hermes omnia solus et ter unus” in the same way.

<sup>3</sup> St. George Stock, *Encyclopedia of Religion and Ethics* s.v. “Hermes Trismegistus.”

ers, who often assimilate the one to the other. Vallette, for instance, takes as significant of magic a sentence from Reitzenstein's edition of the *Poimandres* which Richard Reitzenstein himself had taken as a statement of a goal of the cult.<sup>1</sup> Similarly, A. J. Festugière cites Apuleius' worship of Mercury as evidence of piety: "Now we know that Apuleius was pious; he speaks in the *Apology* of a statuette of Hermes [sic] to which he addressed his prayers . . . ."<sup>2</sup> One must be very circumspect before naming someone else's religion "magic." The church father Athanasius was himself falsely accused of magic. His enemies, conspiring together, arranged that one of their number should go into hiding. The others accused Athanasius of murdering the fellow and dismembering the corpse for magic. Fortunately, Athanasius' followers managed to find the "victim" and present him to the court.<sup>3</sup> No one supposes that Athanasius had ever practiced magic in any way. But what if Julian had conquered instead of the Galilean? Might we not see suspicions about Athanasius' possible practice of magic? Though Athanasius was without doubt innocent of the central charge of magic, it may be significant that the recondite god he worshipped is recorded to have changed water into wine, and even on one occasion to have raised the dead. Is this not comparable to what is suspected of Apuleius for his worship of the supreme deity through his figurine of Mercury? Every era has offered to its people spiritual assistance, for the people to accept and enjoy, or to reject. If Apuleius worships the origin and cause of all nature in his Mercuriole or in Hermes Trismegistus, it is an indication that he accepted a spiritual aid which his era offered him, and not an indication that he attempted to perform magic.

<sup>1</sup> Vallette, *L'Apologie*, p. 321; Reitzenstein, *Hell. Myst.*, p. 11. The line in question is μαθεῖν θέλω τὰ ὄντα καὶ νοῆσαι τὴν τούτων φύσιν καὶ γινῶναι τὸν θεόν, *Poim.*, 1. 3.

<sup>2</sup> A. J. Festugière, *Personal Religion among the Greeks*, Berkeley, 1960, p. 76.

<sup>3</sup> This is related in Athan. *Apo* 1. 63; Socrates (the Church historian) 1. 27; *Soz.* 2. 25, and *Theod.* 1. 30.

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