

THE COMPOSITION AND CIRCULATION OF CICERO'S *IN VERREM*

Cicero, like all ancient orators, committed only certain of his speeches to writing.¹ His practice inevitably invites a series of questions. By what means did he produce and disseminate the written work? What was the relationship between the delivered and circulated versions? How widely might the written text have been circulated? And, most importantly, what reasons might have prompted him to make the effort to circulate the speech in the first place? Although the lack of evidence often frustrates definite answers, Cicero's voluminous writings and his extant correspondence do, just as often, allow reasonable speculations for some, if not all, of these questions. Cicero's orations from his prosecution of C. Verres in 70, in particular, offer the historian of Roman rhetoric opportunities rarely matched. While it is true that the broader picture provided by the correspondence is dimmer here because no letters are extant before 68, the *In Verrem*, nevertheless, is a peculiarly rich source of information for an investigation into its own composition and circulation: in these speeches, Cicero describes not only the conditions surrounding the trial but his preparations for it and the manoeuvres of the opposing side as well. Moreover, because the *Verrines* contain both speeches delivered and those of the *Actio secunda* that were not, this corpus positively invites a consideration of the infamous question of the relationship between delivered and circulated versions. The excellent work of Settle, among others, has shed much light on the composition and circulation of the *In Verrem*. However, several of his conclusions stand in need of modification; more importantly, the opportunities offered by the unique situation of the *Verrines* have not been fully explored. For the question of the status of the various parts of the *In Verrem* necessarily concerns the role of *oratio* in Roman literary culture.

In this paper I argue three points. First, proceeding from the trial's chronology, I claim that the *Actio secunda* would have been largely composed before the proceedings ended so abruptly. I also argue that the form and techniques of the *Actio secunda* orations are similar to other Ciceronian speeches that were actually delivered. Finally, I reassert that Cicero put the Verrine corpus into circulation for the traditional reason,

¹ For those speeches that Cicero chose not to circulate, see J. W. Crawford, *M. Tullius Cicero: The Lost and Unpublished Orations* (Göttingen, 1984). I quote *Verr.* from A. Klotz (ed.), *M. Tulli Ciceronis Scripta Quae Manserunt Omnia. In Q. Caecilium Divinatio; In C. Verrem Actio Prima; Actio Secunda I–III* (Stuttgart, 1923), and, id., *M. Tulli Ciceronis Scripta . . . In C. Verrem Actio Secunda IV–V* (Stuttgart, 1949). I cite the *Actio prima* as *Verr.*, while, for the *Actio secunda*, I simply give the speech and section number, e.g. 2.1.20; for convenience, I distinguish the various phases of the trial (e.g. *actio prima*) from the circulated orations for the same (*Actio prima*) through capitalization.

I refer to the following works by author's name only: M. Alexander, 'Hortensius' speech in defense of Verres', *Phoenix* 30 (1976), 46–53; S. Butler, *The Hand of Cicero* (London and New York, 2002); N. Marinone, *Quaestiones Verrinae* (Turin, 1950); T. N. Mitchell (ed.), *Cicero: Verrines II, 1* (Warminster, 1986); D. J. Ochs, 'Rhetorical detailing in Cicero's Verrine orations', *Central States Speech Journal* 33 (1982), 310–18; and J. N. Settle, 'The publication of Cicero's orations', dissertation (North Carolina, 1962). I refer to the following by author's name and date: R. L. Enos, 'Heuristic structures of *dispositio* in oral and written rhetorical composition: an addendum to Ochs' analysis of the Verrine orations', *Central States Speech Journal* 35 (1984), 77–83; R. L. Enos, *The Literate Mode of Cicero's Legal Rhetoric* (Carbondale and Edwardsville, 1988).

self-promotion, that is, out of a concern to preserve and disseminate his own *laus*. This last part of my argument thus runs counter to thought-provoking recent claims that Cicero circulated the *Actio secunda* out of discomfort over his unusual manoeuvres during the *actio prima*, manoeuvres that were, according to this view, directly related to his equestrian background.

WHEN DID CICERO COMPOSE THE VARIOUS SPEECHES?

The question of when Cicero composed the various speeches of the Verrine corpus is intimately linked to the question of why he put them into circulation. I here offer some modifications of Settle's views, and my argument relies on a rehearsal of the well-known remarks that Cicero himself makes about the trial's chronology. The careful researches of Zielinski and, especially, Marinone illuminate when the various phases of the trial took place; from that base, it is possible to conjecture when Cicero may have had versions of the *Divinatio*, *Actio prima*, and the *Actio secunda* ready for delivery and for circulation.² A precise chronology is impossible; however, a few facts are known. Cicero had remarkably little time to prepare his brief against Verres. He asked, early in 70, for a *dies perexigua* (*Verr.* 6), 'only one hundred and ten days' (2.1.30), in which to sail to Sicily to collect evidence. The praetor of the *quaestio de repetundis*, M'. Acilius Glabrio, granted his request (*Verr.* 4). According to Cicero, it was extremely difficult to accomplish this feat in such a short amount of time. He stresses that he rushed to make the deadline (*mea festinatio*, 2.2.99). Moreover, he boasts of his *celeritas reditionis* (2.1.16). Given the slowness of land travel at this time, it is indeed an impressive achievement.

The *actio prima* began on 5 August (*Verr.* 31) and ended on 13 August (2.1.156). Cicero claims that the form of the *Actio prima* is nothing more than a response to one of Hortensius' ploys. To begin with, the defence tried to get an *accusator* who would be favourable to their side, Q. Caecilius Niger, instead of Cicero.³ Working back from both the August trial date and the information that Cicero gives about his preparations for the trial, it seems reasonable to assume that this *divinatio* occurred early in January. Verres could not be tried until he gave up his *imperium*. His term ended in 71 (presumably the spring or summer), so Cicero's *postulatio* may have taken place early in January of 70, perhaps 10 January, and the *divinatio* and *nominis delatio/receptio* around 20 January.⁴ Cicero defeated Caecilius in the *divinatio*. The next defence tactic was to initiate an extortion prosecution against a former governor of Achaea (2.1.30). That *accusator* asked for an *inquisitio* of 108 days, thus putting his case ahead of Cicero's on the docket (2.1.30).⁵ Cicero traversed the whole of Sicily in fifty days (*Verr.* 6). The preparations and the voyage there and back probably took from fifty to sixty days. Assuming two weeks or so of preparations, Cicero might have left around the

² Th. Zielinski, 'Verrina. (Chronologisches. Antiquarisches. Juristisches)', *Philologus* 52 (1894), 248–94 at 248–59 (Zielinski acknowledges his debts to Zumpt and Halm); N. Marinone, *Cronologia Ciceroniana* (Rome, 1977), 65–7, is a condensed version of Marinone.

³ Caecilius may have been friendly towards one of the Caecilii Metelli, Verres' staunch allies—see E. Badian, *Foreign Clientelae (264–70 B.C.)* (Oxford, 1958), 298, 302; yet note the objections of P. A. Brunt, 'Patronage and politics in the "Verrines"', *Chiron* 10 (1980), 273–89 at 275. On all possible political implications of the *Verrines*—a Metellan 'faction' at work against Pompey, the change in the makeup of the juries, and so on—I have nothing to add to Mitchell, 10–12, with whom I am in complete agreement.

⁴ Marinone, 23–4.

⁵ Cicero claims that the *accusator* did not even reach Brundisium (*Verr.* 6).

Ides of February and arrived in Messina on the Nones of the intercalary month (15–20 days).⁶ From the Nones of the intercalary month to the Kalends of April he will have been in Sicily. The voyage back would then be from the Kalends to the Ides of April (10–12 days).⁷ The *Cerialia* lasted from 12 to 19 April, so the earliest the praetor could have received him would have been 20 April. Cicero says that the other extortion prosecution ‘robbed’ him of three months (2.1.30). That trial could not have begun until 4 May, after the *Floralia* were completed (28 April–3 May). It ended by the beginning of July. The *Ludi Apollinares* (6–13 July) will have held up the Verrine jury selection and *relectio* until 14 July, while the elections will have ended that phase of the trial by 26 July (*Verr.* 16).⁸

Both Cicero and Hortensius were standing for election this year, Hortensius for the consulship, Cicero for the plebeian aedileship. Cicero gives a chronological summary of the events that followed. Hortensius was elected to the consulship, and C. Curio at once congratulated Verres on his acquittal (*Verr.* 17–19). Then Cicero found out that Verres’ friend and ally, M. Caecilius Metellus, was chosen as the praetor *de repetundis* for the next year, 69 (*Verr.* 21, 26). Cicero’s own election soon followed; he remarks that the prosecution of Verres prevented him from giving his full attention to campaigning, while the election distracted him from the work he needed to do for the trial (*Verr.* 24–5). He did, nevertheless, win and was, at last, able to attend to the trial completely (*Verr.* 26). It is only then, after his own election, that Cicero claims he learned about the final delaying tactic of the defence: they intended to extend the case into the next year when M. Metellus would be the praetor *de repetundis* (*Verr.* 26). Moreover, Q. Caecilius Metellus Creticus, the other consul *designatus* and brother of the praetor *designatus*, in an attempt to intimidate potential witnesses, sent for some Sicilians. The provincials came at the urging of L. Caecilius Metellus, a third Metellan brother, who was at that time propraetor in Sicily and Verres’ immediate successor. Q. Metellus assured the provincials that he and his two brothers had already seen to Verres’ acquittal; thus any testimony they might offer against the accused would be useless, and, presumably, detrimental to their own careers back home (*Verr.* 27, 53).

The final delaying tactic of the defence was based on the assumption that Cicero, during the *actio prima*, would use up all the time legally allotted him to set forth the charges and his case (*Verr.* 31; 2.1.30).⁹ Hortensius counted on Cicero introducing and questioning witnesses, providing documentation, and so on, after the *oratio perpetua*, that is, the ‘standard’ procedure (*Verr.* 55). The compulsory adjournment would follow and Hortensius would therefore not have to respond until both the *Ludi Votivi* (16 August–1 September) and the *Ludi Romani* (5–19 September) were over. At that point, Hortensius and his colleagues thought they could further drag their feet until 18 November, when the *Ludi Victoriae Sullanae* (26 October–1 November) and the *Ludi Plebeii* (4–17 November) had been completed. The prosecution would then, effectively, be put on ice and the matter would go before a friendly praetor and a substantially new group of jurors (*Verr.* 31).¹⁰ Verres would thus be acquitted.

⁶ Marinone, 30–5, 53.

⁷ Ibid. 40–3.

⁸ Ibid. 17.

⁹ How much time this was in 70 is unknown. ‘[B]y 59 B.C. the legal limit for the speech of the prosecutor in an extortion trial was six hours (*Flacc.* 82). This almost certainly did not include the time taken to read documents and written evidence. The time allowed at the second hearing may have been different, though there is no reason to suppose it was. The limit . . . in 70 . . . may well have been the same as in 59. Even the extraordinary long and detailed indictment in . . . the *actio secunda* would not have taken more than eight hours to deliver’ (Mitchell, 174 *ad* 25 ‘legally allotted hours’).

¹⁰ Seven jurors, honest men, according to Cicero, were to leave the panel at the beginning of the

As Cicero was well aware of this strategy of delay, he aimed to complete the entire *actio prima*, that is both his part and Hortensius', by the *comperendinatio* (*Verr.* 34; 2.1.20; cf. *Verr.* 32).¹¹ To achieve this goal, Cicero, by his own admission, departed from the usual prosecutorial procedure. Instead of delivering a continuous opening oration followed by the supporting testimony of witnesses, Cicero simply set forth each charge against Verres and at once brought forth the witnesses to those charges. He then questioned them, explained their testimony, and offered brief argumentation (*Verr.* 33, 55).¹² Hortensius had the same opportunities for cross-examination and comment (*Verr.* 55). Thus Cicero made the points he wanted to and forced Hortensius to reply before the *comperendinatio*. Moreover, Cicero did not use up all his allotted time because the clock stopped during the testimony of witnesses.

Hortensius was caught completely off guard. During his *actio prima* speech he complained, bitterly, no doubt, that Cicero was violating Verres' due process ('*Causam enim*', inquit [sc. Hortensius], '*cognosci oportet*', 2.1.25) and, in Mitchell's words, was 'defeating the purpose underlying the practice of *comperendinatio* or *comperendinatus*, which was to have the arguments and evidence heard twice' (*Adimo* [sc. Cicero] *enim comperendinatum*, 2.1.26).¹³ On a more tactical level, Cicero's action also 'precluded a detailed rebuttal by Hortensius'.¹⁴ Indeed, as Alexander has excellently put it, Hortensius was now

put in the invidious position of having to reply to charges that had not been fully argued, and while [he] probably had a good idea of the arguments which Cicero would be making at the second hearing, he would not have wanted to give credence to them by stating them himself, and then trying to refute them.¹⁵

Cicero's last-minute strategy worked: the *actio prima* was completed before the games started.

Cicero claims that, at that time of his election, he suddenly adopted his unorthodox *actio prima* strategy; I suspect, however, that he did so from the first and simply claimed, during the trial, a sudden change in plans as a hedge against the inevitable complaints from the other side.¹⁶ To begin with, Cicero knew, back in January, before he left for Sicily, that his opponents planned delay: after fighting off Caecilius only to watch the days ebb away during the Achaean prosecution, he, no doubt, guessed that they would continue to follow their plan. He then probably decided to get as much accomplished during the *actio prima* as possible. The justification that Cicero offers for the unusual *actio prima* strategy is, in fact, less than satisfying: he claims that he did not want to be the only speaker who went before the games because then his speech would

year in order to take up new assignments (*Verr.* 29–30). Moreover, M. Metellus' place on the panel had to be filled when he became praetor (*Verr.* 30). That is, a turnover of eight out of fourteen men. Cicero implies that M. Metellus, in charge of empanelling the new jurors, would make sure they were favourable to Verres; cf. *Verr.* 31–32 and W. C. McDermott, 'The Verrine jury', *RhM* 120 (1977), 64–75 at 67.

¹¹ See Alexander, 51.

¹² 'It is easy to see why Cicero's procedure was unfair to the defence. Cicero treats the testimony at least as clear, if not as self-explanatory (*Verr.* 55), needing only some explanation, whereas in fact various points might demand some legal argument' (Alexander, 52).

¹³ Mitchell, 174 *ad* 26 'adjournment'.

¹⁴ Ibid. *ad* 25 'legally allotted hours'.

¹⁵ Alexander, 52; Hortensius and his colleagues did not examine the witnesses during the *actio prima* (2.3.41).

¹⁶ Hortensius' complaints of underhanded manoeuvres certainly seem to have stung, for Cicero mounts a vigorous defence of his strategy at 2.1.24–7.

be forgotten and all the crowds, assembled for the elections and the games, would have dispersed (*Verr.* 54). I cannot see how being the only, unanswered, speaker before the games would hurt any advocate. Indeed, without Hortensius' answers, Cicero's accusations would be the only thing the great throng of people could talk about and, if the charges were shocking enough, the only thing they would. According to Cicero, though, he positively craved a rebuttal by Hortensius.

Because he could not have known how long the other trial would last, Cicero must have been working up some *actio prima* speech from at least the latter part of April to the end of July, one different, according to him, from the *actio prima* speech that he eventually delivered. He will then have scrapped that speech when he changed his plan of attack. Thus, according to Cicero's own timetable, he had the briefest possible time in which to compose the *actio prima* speech (from 26 July to 5 August), while I would consider the possibility that he actually had more (from the end of January on).

It is highly probable that Verres fled Rome before the second phase of his trial began. Verres himself attended only the first two days of the *actio prima* (2.1.20). He apparently stayed in Rome, though, during both the obligatory adjournment and the *ludi* that followed because Cicero relates an anecdote concerning Verres' behaviour in Rome during this period. According to Cicero, Verres shamelessly fondled some silver at the home of L. Sisenna, one of his own defence counsel no less, while the house was crowded with people (. . . *nuper . . . posteaquam est comperendinatus . . . ludis circensibus mane apud L. Sisennam . . . cum pro dignitate L. Sisenae domus esset plena hominum honestissimorum, accessit ad argentum . . .* 2.4.33).¹⁷ The later scholia, wrongly attributed to Asconius, record the tradition that Verres voluntarily went into exile instead of waiting for the trial to end (. . . *ipse etiam Verres desperato patrocinio sua sponte discederet in exilium*, pseudo-Asconius 205.14–15 Stangl).¹⁸ Thus, the *orationes* that we possess under the rubric of the *Actio secunda* were never delivered by Cicero.¹⁹

Now Cicero did not know in January that there would not be an *actio secunda*.²⁰ Accordingly, he must have worked on the speech for that part of the trial from at least some point after 1 May.²¹ Composition could have continued even through the September *ludi*, because, as the Sisenna anecdote shows, the trial was still proceeding (2.4.33). Thus, he could have had from, say, May to either 1 or 19 September for work on the *Actio secunda*. I would stress, however, for both *actiones*, that Cicero had only

¹⁷ Pompey's *Ludi Votivi* took place from 16 August to 1 September, while the *Ludi Romani* were held from 5 to 19 September. It is thus impossible to know precisely which *ludi* Cicero means; I agree with Marinone (9, n. 23) that *circensibus* points to the *Romani*. On the importance of the Sisenna anecdote for possible evidence about Hortensius' *actio prima* speech in defence of Verres, see the outstanding discussion of Alexander.

¹⁸ The scholiast no doubt follows Ciceronian hints in the *Actio secunda* (e.g. 2.3.205); see also Marinone, 7, n. 18.

¹⁹ Pliny infers that the *Actio secunda* was never delivered (*Ep.* 1.20.10, quoting 2.4.5) and his comment is the 'oldest and most reliable positive evidence' that the second phase of the trial never happened (Settle, 100).

²⁰ Well put by L. Greenwood, *Cicero. The Verrine Orations I* (New York, 1928), at xix, ' . . . it does not follow that [the *Actio secunda*] was entirely composed "as a rhetorical exercise." Cicero may have hoped that such a speech would never be needed, but he could not be sure of this. He must therefore have composed a rough draft of it before the *actio prima* began; and unless he could count on a long enough *comperendinatio* to give him time for his "fair copy," he must have gone far towards making that too.' Butler finds Greenwood arguing with 'awkward insistence' here (74).

²¹ The change in tactics, if true, concerned the *actio prima*, and does not necessarily imply a complete revision of the plan for the *actio secunda*.

the end of April and the whole of May and June for uninterrupted work. How much work he could get done during July is unknown, but I would suppose a great deal less than he normally could, especially in light of his specific comments about the hindrances that the election caused him (*Verr.* 24–6). Moreover, he must have spent part of July consulting with the great number of witnesses he was shortly to use, checking, harmonizing their testimony, and so on, as well as simply organizing the mass of evidence he would introduce. August was already the trial, no doubt also slowing down work on the *Actio secunda*. Thus, Cicero had perhaps a little over two months of continuous work, and two more of interrupted, to work up what was soon to be ‘the largest single publication of [his] entire career, if not the biggest such undertaking in the first century B.C. Indeed the magnitude of the *Actio secunda* of the *Verrine Orations* dwarfs all of Cicero’s previously published works combined; no one of the philosophical works runs to such length.’²²

WHEN DID CICERO PUT THE SPEECHES INTO CIRCULATION?

As a general rule, most scholars assume that Cicero aimed to get his speeches into circulation soon after delivery.²³ *Commentaria*, or notes for speaking, may often have formed the basis for the final *oratio*.²⁴ It is also generally assumed that Cicero used the interval between delivery and circulation to ‘touch up’ those notes for he, quite casually, imagines Cato Maior doing just that.²⁵ Whether there were notes or not, it seems clear that Cicero normally wrote up the final version after delivery.²⁶ The easiest way for Cicero to circulate a work as long as the *Verrines* as soon as possible would be if he had written out a good deal of it beforehand. Thus I suppose that Cicero wrote *commentaria* for large sections of the *Verrines* before he delivered (or intended to deliver) them.

I noted above that Cicero most likely had a version of the *Divinatio* ready for

²² Settle, 83; Settle rightly stresses that ‘To bring out the *Actio Secunda*, even in a very limited number of copies, was no small undertaking. It was, in fact, the most impressive publishing venture of Cicero’s career. There was no professional publisher-bookseller to do the job for Cicero, and Atticus could hardly have been involved in the publication of Cicero’s works when the *Verrines* first appeared. Cicero himself got out the *Verrine Speeches*’ (26). Settle’s focus on Cicero himself suppresses the role that countless slaves had in the actual copying of this massive work.

²³ For example, D. H. Berry (ed.), *Cicero Pro P. Sulla Oratio* (Cambridge, 1996), 58 on *Sul.*, ‘... like most of Cicero’s speeches, it was probably published soon after delivery, and with a minimum of alteration’; W. C. McDermott, ‘In Ligarianam’, *TAPA* 101 (1970), 317–47 at 327–31 and, id., ‘Cicero’s publication of his consular orations’, *Philologus* 116 (1972), 277–84 at 277–8. For particular speeches, see Settle.

²⁴ Cicero criticized the circulated censorial speech of Crassus’ (cen. 92 B.C.) against his colleague, Cn. Domitius, because it read more like an outline and a *commentarium*: ‘... non est oratio, sed quasi capita rerum et orationis commentarium paulo plenius’ (*Brutus* 164). Quintilian even knew a work called Cicero’s *commentarii*; see Settle, 57.

²⁵ *Sen.* 38: *septimus mihi liber Originum est in manibus; omnia antiquitatis monumenta colligo, causarum illustrium quascumque defendi nunc cum maxime conficio orationes, ius augurium pontificum civile tracto*. J. G. F. Powell (ed.), *Cicero. Cato Maior De Senectute* (Cambridge, 1988), ad loc., remarks ‘Cicero clearly envisaged Cato as “touching up” some of his speeches for publication quite a long time after they were delivered; this may reflect Cicero’s own practice.’

²⁶ *Tusc.* 4.55: *Oratorem vero irasci minime decet, simulare non dedecet. An tibi irasci tum videmur, cum quid in causis acrius et vehementius dicimus? quid? cum iam rebus transactis et praeteritis orationes scribimus, num irati scribimus?* Note that here Cicero is discussing forensic speeches; cf. Settle, 54. On the unique composition and circumstances surrounding the delivery of the formal *Red. Sen.*, see Settle, 170–4.

delivery by mid-January. Settle suggests that Cicero 'may well have capitalized on the overall situation' by putting the *Divinatio* into circulation during his campaign as an advertisement for himself and his position; as Cicero used only fifty days of the adjournment after the *divinatio*, he had 'some four months in Rome before election', that is to say, 'enough time to publish his oration if he wished' (94). The elections began 26 July; Settle would thus have Cicero circulating the final version of his successful *divinatio* between 20 January and 26 July. While I grant Settle's point that victories of any kind—in the field or in the Forum—plainly helped candidates at Rome, the main trial, that of Verres, was still hanging in the balance. Circulating the *Divinatio* by itself, therefore, would involve a gamble: how helpful to Cicero's name would that speech be, if Verres were acquitted? My suggestion is that Cicero released the *Divinatio* after the successful outcome of the trial as a part of the complete corpus; a bare *divinatio* to a (potentially) unsuccessful trial would be bathetic.

Settle likewise suggests circulation of the *Actio prima* 'immediately after the parade of witnesses ceased on the eve of Pompey's games. In the event the *Divinatio* had not already been published before the actual trial . . . got underway, it probably was brought out as a companion piece'; the sensational trial 'must have created an immediate demand for Cicero's speech. He would hardly fail to capitalize on such an opportunity'.²⁷ Yet, as Alexander rightly reminds us, the trial was still in the balance after the adjournment, so my objection raised in connection with the *Divinatio* remains: I therefore think that circulation of the *Actio prima* makes most sense only after the successful completion of the trial.

As for the *Actio secunda*, Settle conjectures that 'prodded by the taunts of Hortensius which were included in a published *interrogatio*, Cicero produced under the guise of a second hearing a substitute *oratio perpetua* such as, had it been possible, he would have delivered at the first hearing'. Then, because Cicero refers to a passage from 2.4 as *in quarto accusationis* (*Orat.* 167), Settle further claims that the publication of the *Actio secunda* 'supplanted and completely overshadowed the *Actio Prima*'.²⁸ Settle goes too far here. Quintilian knew a speech ascribed to Hortensius called *pro Verre* (*Inst.* 10.1.23); as it has not survived, neither its authenticity nor its form are known. Settle conjectures that this was an *interrogatio*; I prefer to leave that unknown speech out of any reconstruction.²⁹ Settle would thus have Cicero compose the entire *Actio secunda*, presumably, only after the appearance of Hortensius' supposed work, that is, after Verres fled Rome. Cicero, as already noted, did not know that Verres would flee; it is, accordingly, nearly inconceivable that he would not have been working up material for the *actio secunda* throughout the late spring and early summer. Settle as well makes too much of the *Orator* reference: earlier in the same work, Cicero refers to the *In Verrem* as *in accusationis septem libris* (*Orator* 103). Cicero was thus inconsistent in his method of referring to the corpus; his terminological flexibility does not, however, permit the conclusion that the circulation of the *Actio secunda* 'supplanted' the *Actio prima*. I propose that Cicero circulated the *Actio secunda*, again, as soon as possible after the trial ended and I argue that he was able to do this relatively quickly because he had drafts already worked up.

²⁷ Settle, 98; McDermott (n. 10), at 74, rightly argues that the *Actio prima* was 'probably published with only the most minor changes from the delivered version', but he does not give any specifics as to when he thinks this happened.

²⁸ Settle, 108.

²⁹ *Ibid.* 102, n. 8; Settle here follows a suggestion of Walter Allen.

*DIVINATIO IN CAECILIUM/ACTIO PRIMA AND ACTIO SECUNDA:
FUNDAMENTALLY DIFFERENT?*

I therefore assume that Cicero composed all of the speeches in this corpus in the same way. In a series of stimulating works, however, Ochs and Enos argue that the rhetorical form of the *Actio secunda* is in fact different from the *Div. Caec./Actio prima* and that these supposed differences indicate that Cicero approached the composition of the undelivered speeches in a fundamentally different manner from the delivered ones. As they have convinced some recent readers of their claims, I think that I should make clear my disagreements with their assumptions and conclusions.³⁰ Ochs addresses experts in the disciplines of speech and rhetoric; he therefore sees his concept of 'rhetorical detailing', that is, 'the use of details within a narrative, systematically introduced and strategically arranged, to elicit a reader's *action* as a consequence of the story' (311, original emphasis), as but 'one step toward a better understanding of narrative suasion' in general, whether it be Cicero's or a CBS documentary's (318). He makes three points about the *Verrines*. First, without argument, Ochs claims that Cicero, unlike his practice in earlier speeches, does not organize the *Verrines* according to the precepts found in the *De Inventione Rhetorica* (311). Ochs then asserts that the wealth of material (*copia*) with which Cicero could press his case here depended 'much less on material evidence than on a suasive characterization of the persons involved' (312); accordingly, Cicero turned to the above-mentioned 'rhetorical detailing' in order to achieve the sought-for narrative suasion. Finally, Ochs conjectures that Cicero put the *Verrines* into circulation because they 'served as a rhetorical counterpart to a military triumph. His speech enables a spectator (reader) to watch a monomachist in the very act of confronting and conquering an enemy' (314, original emphasis).³¹

The focus of Enos's argument, on the other hand, is the so-called *letteraturizzazione*, a 'shift of rhetoric from its primary function of immediate, oral persuasion to rhetoric in a secondary function, the use of rhetorical techniques for effective literary expression'.³² Enos accepts the claims of Ochs that the argumentative structuring of the *actio secunda* speeches is 'incorrect' and he proposes to make good Ochs's earlier lack of argumentation by an outline labelled 'The structuring of the *In Verrem*'.³³ Enos claims that this outline shows that, while the *Divinatio* and *Actio prima* are 'paradigms of highly structured forensic argument', the speeches of the *Actio secunda* are 'little more than detailed narratives' that are not structured according to (Ciceronian) theory.³⁴ Because Cicero did not deliver the *Actio secunda*, the structure of those speeches thus 'reveals an increasing specialization—and separation—of oral

³⁰ A. Riggsby, *Crime and Community in Ciceronian Rome* (Austin, 1999), 179; Butler, 84; 139, n. 17 ('Enos's rich and subtle arguments'); 149, n. 78.

³¹ Butler has thoroughly rebutted Ochs's claims about the lack of material evidence available for Cicero; Ochs's suggestion of circulation as a 'counterpart' to a triumph has not been widely accepted.

³² Enos 1984, 81 = 1988, 74. Enos here develops G. Kennedy, *Classical Rhetoric and its Christian and Secular Tradition from Ancient to Modern Times* (Chapel Hill, 1980), 5, who himself (247, n. 1) adopts the term from V. Florescu, *La Retorica nel suo sviluppo storico* (Bologna, 1971). Enos 1984, 80, it might be noted, is confused about some of the *Verrines*; the confusion is gone by Enos 1988, 71, though.

³³ Enos 1988, 63–72. I could not recommend this outline, however, to either students or scholars because Enos does not provide section numbers; it is thus impossible to know how his structural analysis (the pivot of his argument) lines up with the Latin.

³⁴ Enos 1984, 81 = 1988, 74.

and written genres',³⁵ that is to say, *letteraturizzazione* is, quite possibly, already at work in the late Roman Republic.

Enos and Ochs unfortunately ignore ancient evidence highlighting those parts of the *Actio secunda* that cohere precisely to rhetorical theory. For example, Cicero clearly articulates the two parts of 2.5 (1–138, 139–end) through the speech of Verres' père (2.5.136–8). The father's words are, in fact, nothing more than a final (nearly verbatim) repetition of Cicero's own charges against Verres in the first section of 2.5 (compare 2.5.59 with 131). Such verbatim repetition was known as *enumeratio* and it was a recognized part of the *conclusio*. The *Rhetorica ad Herennium* lists three parts to the *conclusio*: *enumeratio*, *amplificatio*, and *commiseratio*. Under *enumeratio*, this treatise offers the following:

Enumeratio est per quam colligimus et commonemus quibus de rebus verba fecerimus, breviter, ut renovetur, non redintegretur oratio; et ordine ut quicquid erit dictum referemus, ut auditor, si memoriae mandaverit, ad idem quod ipse meminerit reducat. (2.47)

Cicero himself comments on *enumeratio* at *Inv. Rhet.* 1.99:

Atque haec aliis actionis quoque modis variare oportebit. Nam tum ex tua persona enumerare possis, ut quid et quo quidque loco dixeris admoneas; tum vero personam aut rem aliquam inducere et enumerationem ei totam attribuire.

Cicero's 'attribution' of his own charges (2.5.59) to Verres' father (2.5.136–8) is clearly an example of *enumeratio* and, not surprisingly, coincides with the end of the first section of 2.5. Quintilian, in fact, considered specifically the words of Verres' father here to be an *enumeratio*: *Sunt autem innumerabiles* [sc. *figurae*], *optimeque in Verrem Cicero: 'si pater ipse iudicaret, quid diceret cum haec probarentur?'* [= 2.5.136] *et deinde subiecit enumerationem; aut cum idem et in eundem* [= 2.5.184ff.] *per inuocationem deorum spoliata a praetore templa dinumerat* (*Inst.* 6.1.3).³⁶ It is clear that Cicero's practice at 2.5.136–8 agrees with his own and others' theory about conclusions and, moreover, that Quintilian read this section in the same way. Thus parts of the *Actio secunda* do, plainly, 'follow the rules'.

In fact, the assumption that each speech of the *Actio secunda* must follow the organizational guidelines offered, say, in *De Inventione Rhetorica* is far too rigid: every time Cicero loses marks for 'breaking' a rule, he can be given one back. The structural precepts should be viewed as guides, not laws, as, for example, Berry's admirable analysis of the structure of the *Pro Sulla* reveals. That speech does not 'follow the rules' because of the peculiar exigencies of the case; why can't the second action of the *Verrines* be accorded the same consideration?³⁷ As if Cicero must 'state the issue' for

³⁵ Ibid.

³⁶ See also *Inst.* 6.1.54 and F. Rohde, *Cicero, Quae de Inventione Praecepit, Quatenus Secutus Sit in Orationibus Generis Iudicialis* (Königsburg, 1903), 133; note that ancient orators did not confine closural techniques to the end of an oration, but employed them 'locally' as well.

³⁷ Berry (n. 23), 42–8; cf. A. Vasaly, *Representations: Images of the World in Ciceronian Oratory* (Berkeley and Los Angeles, 1993), 124: 'The extraordinary length of the Second Action of the *Verrines* made it impossible for Cicero to structure the speech in the ordinary way, that is, by dividing the whole into proem, narration, argument, and peroration. I believe, however, that the Second Action accurately represents the kind of speech that might actually have been made in a complex trial when a single orator presented the case for the prosecution'; Riggsby (n. 30), 179: 'Each individual speech contains only a few of the conventional parts. . . . The force of arguments can be subtly affected by their arrangement, but again the basic argumentative repertoire is not changed. Furthermore, in the *Verrines* it is largely nonargumentative material which is displaced.'

each *oratio* of the *In Verrem*! The individual works of the Verrine corpus hang together; their collective brief is to prove Verres guilty of extortion. Moreover, each successive work of the *Actio secunda* builds on the themes and arguments of all that preceded. Finally, an exclusive focus on organization obscures the fact that the content of the *Actio secunda* is no different from other, delivered (and later written down) Ciceronian orations. To pick just one example, the excellent work of Schmitz has shown that Cicero's treatment of witnesses throughout the *In Verrem*, that is, in both the *Divinatio in Caecilium*/*Actio prima* and *Actio secunda*, follows both rhetorical theory (his own and others') and, more importantly, his own practice in his other speeches.³⁸

Thus I see the *In Verrem* as a perfect example of the 'unity of oral and written expression', that 'unquestioned' assumption of ancient rhetorical theory.³⁹ Such unity can be seen even in terminology. Take the sensational trial in which one of the main figures involved writes and circulates an *oratio* that attracts attention from every quarter even one year after the events took place—I refer not to Cicero's prosecution of Verres in 70, but to Verres' condemnation of the Sicilian *navarchi* in 71 (2.5.106–22). These men were first imprisoned (106), then a sham *accusator*, Naevidius Turpio, was got up, the parents of the accused men came to Syracuse for the trial (*adsunt, defendunt*, 108), Verres pronounced the men guilty *de consilii sententia* (114), they were thrown back into prison (117), and, finally, executed (121). Cicero knows a good deal about Verres' illicit handling of the naval administration in Sicily in general and the bold trial statements made by Furius of Heraclea, one of those wrongly condemned *navarchi*, in particular, because Furius composed an *oratio* after the trial:

In quo homine (sc. Furio) tantum animi fuit non solum ut istum libere laederet—nam id quidem, quoniam moriundum videbat, sine periculo se facere intellegebat—verum morte proposita, cum lacrimans in carcere mater noctes diesque adsideret, defensionem causae suae scripsit; quam nunc nemo est in Sicilia quin habeat, quin legat, quin tui sceleris et crudelitatis ex illa oratione commonefiat. in qua docet quot a civitate sua nautas acceperit, quot et quanti quemque dimiserit, quot secum habuerit; item de ceteris navibus dicit; quae cum apud te diceret, virgis oculi verberabantur. (2.5.112)

Butler has called Furius' *oratio* an 'extraordinary written text', one that 'was not merely an exposition of facts but also an aggressively rhetorical attack on Verres' character'. Indeed, Butler even suggests that he considers Cicero to be using *oratio* in a metaphorical sense here.⁴⁰ If Furius' oration is for some reason deemed 'not quite a real *oratio*', then the very claims of the *In Verrem* itself to be an *oratio* might be called into question: both are aggressive, written attacks on Verres circulated after a trial and both are a primary source of information for readers who were not at the trial proper. Furius' *defensio* is, in short, an emblem for our relationship to the *Verrines* themselves.⁴¹

Cicero's classification of Furius' text as an *oratio*, however, is perfectly ordinary; as

³⁸ D. Schmitz, 'Zeugen im Verres-Prozeß nach Ciceros Darstellung', *Gymnasium* 96 (1989), 521–31; id., *Zeugen des Prozeßgegners in Gerichtsreden Ciceros* (Frankfurt am Main, 1985).

³⁹ I quote Enos 1984, 78, approvingly, even though he argues that the *In Verrem* is precisely an exception to this rule.

⁴⁰ Butler, 53–4; he refers to Furius' *oratio* as a "speech" of a ship's captain' with the word 'speech' in quotation marks (53); cf. 'Such, perhaps, were Antony's thoughts when a copy of this latest "speech" (sc. *Phil.* 2) at last made its way into his hands. . . . The speech was a tissue of insinuations, misrepresentations, exaggerations—even its delivery was a lie' (122).

⁴¹ Note that Cicero even prefers to portray his own prosecution of Verres as a *defensio* of the

is well known, *oratio* is a standard Latin term for a written work.⁴² Cicero, for example, uses *oratio* in the *Brutus* for works that he knew only through writing. In that dialogue, as Douglas stresses, only from 90 are we 'within the period of Cicero's own recollections'. Thus, Cicero's discussion of many earlier Roman and Greek orators is based on his readings of works that he, again and again, calls *orationes*.⁴³ While Cicero himself may very well have been unusually interested in old speeches, he still assumes, in his prosecution of Verres, that his contemporaries have had at least some experience, most likely in their schooling, with such *orationes*: *tu horum nihil metuis . . . siquid ex vetere aliqua oratione: 'Iovem ego optimum maximum' aut: 'vellem, si fieri potuisset, iudices' aut aliquid eiusmodi ediscere potueris, praeclare te paratum in iudicium venturum arbitraris?* (*Div. Caec.* 43). Those same *iudices* were, presumably, not surprised later to read Cicero referring to Furius' written *defensio* (*defensionem . . . scripsit*) as an *oratio* (*ex illa oratione commonefiat*) that everyone was reading (*quam nunc nemo est . . . quin legat*).

Orationes, in fact, had just as much ontological legitimacy, as it were, for Romans as *actiones*: both 'spoke'.⁴⁴ For example, Cicero in the section quoted above, quite effortlessly, describes Furius as both 'showing' (*in qua docet*) and 'telling' (*dicit*) of Verres' outrages through his *oratio*. Cicero, accordingly, moves back and forth from that written work to Furius' earlier trial before Verres: (*sc. in illa oratione*) *de ceteris navibus dicit; quae cum apud te diceret, virgis oculi verberabantur. ille morte proposita facile dolorem corporis patiebatur; clamabat, id quod scriptum reliquit . . .* (2.5.112). *Orationes*, in short, allow us to see what was said (*deinde etiam illud video esse dictum quod . . .* 2.5.113)—whether at the trial of Furius or of Verres himself.

WHY DID CICERO PUT THE SPEECHES INTO CIRCULATION?

The final, and most important, question to consider is why Cicero made the enormous effort to put the Verrine corpus into circulation. I here reassert that Cicero most probably circulated these orations in order to disseminate his great achievement. I have already explained my reluctance to follow Settle and identify Hortensius' 'pro Verre' as the goad for Cicero's composition and circulation of the *Actio secunda*. Butler, on the other hand, offers a challenging hypothesis that is nothing less than a revisionist reading of the corpus as a whole. In fact, Butler proposes what may perhaps be the most radical break between a delivered Ciceronian *oratio* and its written version seen since the days of Humbert.⁴⁵

Sicilians: *Quo in negotio tamen illa me res iudices consolatur, quod haec quae videtur esse accusatio mea, non potius accusatio quam defensio est existimanda* (*Div. Caec.* 5).

⁴² Well remarked by R. G. C. Levens (ed.), *Cicero. The Fifth Verrine Oration* (London, 1960), ad 2.5.112 (*oratione*): 'used especially of a written speech or plea, as *actio* of one delivered in court' (original emphasis).

⁴³ A. E. Douglas (ed.), *M. Tulli Ciceronis Brutus* (Oxford, 1966), li; for *oratio*, see *Brutus*, e.g. 48 (Greek), 83, 91, 94, 104, 111 (Roman), and so on.

⁴⁴ Butler, 74, disagrees: 'It is more than a little disconcerting that the best evidence for (*sc.* the interaction of the Roman crowd and ruling class) . . . should come from speeches first addressed to an audience not from . . . the Forum but from the columns of a papyrus book' (cf. 76).

⁴⁵ J. Humbert, *Contribution à l'étude des sources d'Asconius dans ses relations des débats judiciaires* (Paris, 1925); id., *Les Plaidoyers écrits et les plaidoiries réelles de Cicéron* (Paris, 1925). A. C. Clark, in his review of both works, 'Cicero and Asconius', *CR* 41 (1927), 74–76, fired the opening salvo against Humbert's theses, the most infamous claim of which was that Cicero radically revised his circulated judicial orations from their delivered version; W. Stroh demolished

To begin with, Butler argues that Cicero's change of tactics in the *actio prima* was only part of the surprise waiting for Hortensius: the innovation of dropping an *oratio perpetua* 'combined with the vastness of his body of written evidence to subject the trial to a startling—and probably unprecedented—domination by the written word' (65, cf. 70). Butler claims that Cicero's role in the *actio prima* was 'not that of an orator . . . but rather that of an extremely clever collector, organizer, and presenter of evidence, especially written evidence' (82). Butler suggests that such an abiding interest in writing and documentation may have come from the orator's Arpinate upbringing: in that 'tightly run equestrian household, Cicero must have learned to keep accounts with scrupulous care; perhaps he also acquired a loathing for thieves' (59–60). It was that very equestrian background, however, that embarrassed Cicero and thus, according to Butler, stimulated him to shape the *orationes* of the *actio secunda* into the form they now have.⁴⁶ In other words, Cicero, the aedile *designatus*, deliberately chose actions during the *actio prima* that might be construed as beneath the dignity of a senator in order to win his case, but then turned around at once and, through the circulation of the *Actio secunda*, hoped to replace that earlier self-projection with a different, more socially acceptable one (82). Cicero 'most wanted to be appreciated' for elegance of 'a kind not only suitable but necessary for a Roman senator: in a word, *eloquentia*'; it is precisely that quality, however, that Butler claims was lacking from Cicero's presentation in the *Actio prima* and is embodied so masterfully in the *Actio secunda*.⁴⁷

On the question of writing, Butler has done a great service in emphasizing the essential role it plays here and, no doubt, in all *repetundae* prosecutions (35–63).⁴⁸ Indeed, the infamous, and constant, efforts of Verres to tamper with written evidence during his Sicilian tenure, so well discussed by Butler (65–8), only make sense if written evidence always had a central role before the extortion *quaestio*; Verres himself was plainly aware of the possible role that documents might play against him. I would thus reckon that the 'domination by the written word' seen in the *Verrines* was probably a feature with very many precedents indeed. Now the majority of Verres' 'rewriting' schemes are so notorious precisely because Cicero chose to include them in the *Actio secunda*. Butler, quite reasonably, argues that their presence in these *orationes* is qualitatively different from the way Cicero used them in the *actio prima* because Cicero now incorporates them into his eloquent narratives rather than letting the details of

this argument once and for all (*Taxis und Taktik. Die advokatische Dispositionskunst in Ciceros Gerichtsreden* [Stuttgart, 1975], 31–54).

⁴⁶ Butler, 81: 'Cicero as a *novus homo* was a social climber. . . . These potentially uncomfortable analogies lurk behind a better explanation for the publication of the undelivered speeches than any discussed thus far.' Butler here is in sympathy with J. May, *Trials of Character: The Eloquence of Ciceronian Ethos* (Chapel Hill and London, 1988), 41–2, 46–7: 'We catch a glimpse (sc. in *Verr.*) . . . of Cicero the *novus homo*, seeking acceptance among the nobles . . . we are made to sympathize with him as he struggles and succeeds to mold a persona that can counteract their inherent prejudices.'

⁴⁷ Butler, 84. Butler argues that Cicero's remarks in the *actio prima* were characterized by 'clarity rather than eloquence' (64); if he finds the *Actio prima* also lacking in eloquence, it may be asked why (to say nothing of when) Cicero then took the trouble to put it into circulation. May (n. 46), on the other hand, finds Cicero's narrative at *Verr.* 16–23 'remarkable for its subtle yet effective methods of revealing the ethos of Verres, Verres' supporters, and himself' (42).

⁴⁸ K. Hopkins, 'Conquest by book', in M. Beard et al. (edd.), *Literacy in the Roman World*, *Journal of Roman Archaeology Supplementary Series* 3 (Ann Arbor, 1991), 133–58, for example, stresses that Roman provincial governance and the tax system absolutely depended on writing—one need only think of 'scriptura'.

the many illegal exactions and frauds 'speak for themselves'. Whether Cicero's ease with such documents, on the other hand, should be reckoned a peculiar equestrian virtue is less certain; surely accounts and documents were also 'part of daily life' for senators.⁴⁹ Indeed, in light of the work of Brunt and Wiseman, for example, it is misleading to posit a great gulf between the ambitions and the ethos of the equestrian and senatorial orders. These scholars have emphasized that the orders were fundamentally united, especially after Sulla, not simply in their economic interests, but, most importantly, through a 'comparatively homogeneous social background' and a 'common social milieu'.⁵⁰ As Brunt judiciously remarks, though, 'To some extent the arrogant exclusiveness of the Roman nobility must have irritated Equites . . . and this resentment may well have contributed to breaches between the orders' (155); Cicero, a *novus homo*, certainly experienced his share of that arrogance. Thus all would agree that Cicero's decision to circulate the Verrine *orationes* is tied up with his lifelong, complex negotiation of *novus homo* status, yet Butler's rather reductive explanation does scant justice to the range of the self-portrait that Cicero offers here. For he famously revels in that very status in the *Actio secunda* itself—whether to contrast himself with Verres (for example, 2.3.7) or some of the *nobiles* (for example, 2.5.180–2)—while, at the same time, proudly proclaiming his new senatorial dignity (for example, 2.5.35–7).⁵¹ Thus Cicero's self-presentation in the *Actio secunda* (or indeed anywhere) is not easily categorized as a uniformly 'senatorial' as opposed to 'equestrian'—a hallmark of *novus homo* status, perhaps.

Butler sees the *Actio secunda* as Cicero's preferred specimen of his eloquence and such a judgement would not, I think, be gainsaid by anyone (Cicero and Quintilian, first and foremost). Butler's hypothesis, however, like Settle's, ultimately relies on some event happening that then, suddenly, spurs Cicero to compose the *Actio secunda*. Moreover, it is unclear what both scholars think Cicero would have done in the *actio secunda*, if it had taken place, and how different, or not, it would have been from our *Actio secunda*. Because I have assumed, on the other hand, that the material for the *actio secunda* would have been substantially composed before the trial ended so abruptly, I imagine much less of a time lag between the end of the trial and the first appearance of copies available for circulation—Cicero's preferred practice, according to today's consensus. In addition, I view Cicero's decision to drop the *oratio perpetua* and rely on witnesses and documentation for the *actio prima* as a bold tactic meant to

⁴⁹ Documents were a 'part of daily life' for the 'business-oriented equestrian order' (Butler, 82). Pliny, for one, is comfortable letting the public know about the particulars of his *alimenta*, matters that necessarily reflect his abilities in handling complex financial accounts; such documents were very much a part of Cicero's daily life (e.g. *Att.* 6.4 and 6.5, from the year 50). By the same token, equestrians were not the only people, perhaps, who loathed thieves! Brunt's famous paper, originally from 1962, 'The Equites in the late republic' (reprinted in *The Fall of the Roman Republic and Related Essays* [Oxford, 1988], 144–93, at 162–79) thoroughly refuted the old conception of the Equites as the 'business' class, in contrast with the landed senatorial aristocracy.

⁵⁰ T. P. Wiseman, *New Men in the Roman Senate 139 B.C.–A.D. 14* (Oxford, 1971), 50; note, especially, Wiseman's discussion of intermarriage (the 'real test of social acceptability', 53) between the municipal *domi nobiles* (Cicero's milieu) and their 'social equals' (63), the Roman nobility (53–64). Brunt's paper (n. 49) is fundamental; I would highlight his remarks on jurists and advocates of equestrian status or origin (147, n. 7); his emphasis that, during Cicero's day, the two orders did not vote 'in blocks' at trials (160–1); and his demonstration of the fundamental convergence of economic interest between the two (*passim*).

⁵¹ Brunt (n. 49) carefully observes that Cicero's heated words at 2.5.180–2 are an attack 'on the *pauci*, not the Senate' (155, n. 41).

obtain him an advantage, not a vestigial equestrian habit that needed to be glossed over as soon as possible.

That Cicero won his case at all, to say nothing of the resounding way in which he did so, was no small feat. I suggest that the primary reason for Cicero to circulate the *Actio secunda* (as well as the *Divinatio* and the *Actio prima*) was to capitalize on such an overwhelming success.⁵² Cicero used these *orationes* as self-promotion; they preserved and disseminated the *laus* that he had obtained. Indeed, the care and detail that Cicero plainly lavished on the *In Verrem* show how important this case was to him. Modern readers, on the other hand, often find the *Actio secunda* to be unusually long, and attribute this feature to their undelivered state. It is an open question, however, whether Cicero's contemporaries necessarily thought that the *Verrines* were remarkable in this regard. For if Mitchell is correct that, in an extortion trial, the prosecution speech alone could take six hours and that eight hours is a reasonable guess for time of delivery of the *Actio secunda* (174), then reading the *Actio secunda* could well have matched the actual experience of Cicero's contemporaries at a complex trial in the Forum.

What may in fact be unique about the *In Verrem* might not be its length, but simply Cicero's decision to circulate, and thereby re-create, a full *Actio secunda*. It must be admitted, however, that our ability to contextualize Cicero's choice here is thwarted by the lack of evidence about the circulation practices of other Roman orators. Moreover, our own perceptions of the length of the *In Verrem* are perhaps influenced, consciously or not, by the well-known, bantering questions that Tacitus writes for Aper in the *Dialogus*: *quis nunc feret oratorem de infirmitate valetudinis suae praefantem, qualia sunt fere principia Corvini? quis quinque in Verrem libros exspectabit? quis <de> exceptione et formula perpetietur illa immensa volumina quae pro M. Tullio aut Aulo Caecina legimus* (20.1). Aper is commending the 'progress' of contemporary tastes and his remarks are predicated precisely on the assumption that the particular speeches he mentions were not, at one time, considered gauche or tedious by readers. Thus, unless we imagine that Tacitus writes a completely improbable argument for Aper, we must grant that there were some readers in Cicero's day (to say nothing of Tacitus') who did eagerly 'sit through' the five books of the *In Verrem*. Indeed, if we possessed 'illa immensa volumina' of the *pro M. Tullio*, for example, instead of the fifteen or so OCT pages that we do, our own opinions on the length of the *In Verrem* would most likely be rather different.⁵³

CONCLUSION

Again and again, scholars write of the *Verrines* that Cicero 'sustains the literary fiction' of a trial, that he uses the techniques of 'oratory', or that the *Actio secunda* is somehow 'suspect' for not being delivered, somehow less than a 'real' *oratio*.⁵⁴ I have

⁵² It is entirely possible that, already in 70, Cicero also saw circulation as an opportunity to reach an interested 'student' market. Settle (128) perceptively notes that such a practice was 'already established' at some point before June 60, the date of Cicero's well-known letter about the circulation of his consular orations: *oratiunculas . . . mittam, quoniam quidem ea quae nos scribimus adolescentulorum studiis excitati te etiam delectant* (Att. 2.1.3).

⁵³ The day-long speech is admittedly not to modern tastes, but the phenomenon does have parallels even today: the sermons central to certain religious sects, for example, or the harangues of some political leaders (Castro, in his prime, was notorious for extended speeches).

⁵⁴ For example, P. MacKendrick, *The Speeches of Cicero. Context, Law, Rhetoric* (London, 1995), vii: 'Even though five of the seven *Verrines* were never delivered orally, their rhetorical

argued, from the trial's chronology, that the speeches of the *Actio secunda* are valid expressions of Cicero's plans; the fact that some of the *orationes* of the *In Verrem* were not delivered should never be a hindrance to their study. More broadly, I have tried to situate *oratio* in Roman literary culture and, by emphasizing the unity of oral and written expression, to show that this form had as much legitimacy for Romans as *actiones*.⁵⁵ Indeed, because every preserved Ciceronian *oratio* (save one) exists as a document written after the fact, it is more correct to say that all of them 'sustain the fiction' of a trial or *contio*, and so on. The range of *oratio* at Rome might thus profitably be compared, for example, to 'sermon' in English: both comfortably exist in oral and written kinds and both approach the composition of oral and written versions in terms of 'occasionality', as it were. Finally, I hope that my discussion of the composition and circulation of Cicero's *In Verrem* serves as a mild reminder that the trial of Verres actually happened and that Cicero spoke at it. The *orationes* from this event should never be treated as somehow 'fictive'—the *manes* of Furius, murdered at Verres' command, demand nothing less.⁵⁶

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devices are those of living speech'; Butler, 28: some scholars 'have preferred to discuss the words Cicero never spoke in court (sc. the *Actio secunda*) rather than the evidence he actually presented'; 35: 'I ... accept the fiction of ... delivery (sc. of the *Actio secunda*)', cf. 76.

⁵⁵ I intend to discuss this topic in more detail elsewhere.

⁵⁶ I thank the learned reader for this journal and, especially, the Editor, Dr Griffin; I have benefited a great deal from their valuable comments and suggestions.