

The Trial of Milo and the other *Pro Milone*

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Evidence indicates that at the trial of Milo in 52 B.C. Cicero delivered an oration which fell short of his customarily eloquent style.¹ The extant *Pro Milone*, however, is acclaimed one of his finest orations.² Based on faulty interpretation of this evidence, two conjectures are current in modern references to the trial of Milo. First is the strange notion that in the defense of Milo Cicero stands convicted of a base lack of courage. The second conjecture, that Cicero's published speeches bore little resemblance to the spoken orations, is a sweeping generalization formed from an isolated instance, the circumstances of which are far from clear.

Cicero championed Milo's candidacy for the consulship of 52, defended Milo in the famous trial of April 8, of that year, and (after Milo's conviction) continued to work assiduously in behalf of the Milonian faction, all in direct opposition to the express wishes of Pompey. Cicero's persistent activity in the interests of his friend may possibly be viewed as temerity, hardly as cowardice.

With regard to the second of the two conjectures, available evidence barely admits a safe conclusion even when restricted to the speech for Milo. While various conjectures may be formed

¹ Part of the discussion of the alternate version of the *Pro Milone* was delivered as a paper before the North Carolina Classical Association held at Wake Forest College in November, 1963. I wish to thank Prof. Walter Allen, Jr., of the University of North Carolina for reading a first draft of the present paper and for his many helpful suggestions.

The fullest and most trustworthy account of the trial and related events is in the *Argumentum* to Asconius Pedianus' commentary on the *Pro Milone* (pages 30-37 in Thomas Stangl's edition: *Ciceronis Orationum Scholiastae* 2 [Leipzig 1912], referred to herein as Stangl). For the respect accorded Asconius' *Commentaries* (written between 54 and 57 A.D.) see Schanz-Hosius 1.447, 2.731-732. Other relevant references to the defense of Milo are Quintilian, *Inst.* 4.3.17; *Scholia Bobiensia*, Stangl 112; Plutarch, *Cic.* 35; Dio Cassius 40.54.2.

² Cf. Ascon. Stangl 37; Quint. *Inst.* 4.2.25.

from the evidence, none of these conjectures, even should substantiating proof be discovered, is of any value in determining Cicero's customary practice or procedure in editing his other speeches. Every aspect of Cicero's defense of Milo was extraordinary: the constitution of the court, the procedure of the trial, the delivery of the defense, and the ultimate editing and publication of the *Pro Milone*.

I.

Between T. Annius Milo and P. Clodius Pulcher a bitter feud had existed since the time of their efforts for and against Cicero during the period of his exile and recall.³ Both were candidates for office for the year 52 B.C., Milo for the consulship, Clodius for the praetorship. According to Asconius, it was equally important for Clodius to defeat Milo's candidacy and to secure his own, for in the event of his serving as praetor during Milo's consulship, his own office would be greatly weakened. Cicero was unavoidably identified with the struggle, and his position was made the more difficult because of Pompey's support of Clodius.⁴ Doubly motivated by his hatred of Clodius as well as by his obligations to Milo, Cicero employed his eloquence in Milo's behalf before and after the murder of Clodius.

The one oration we know Cicero delivered in 53 B.C., the year preceding Milo's trial, was an outgrowth of the squabble between Clodius and Milo.⁵ A mutilated commentary on this oration, known as the *Interrogatio de aere alieno Milonis*, survives among the *Scholia Bobiensia* (pp. 169-74 Stangl); this one source provides nearly all our information.⁶ In the Senate Clodius attacked Milo and Cicero jointly, charging specifically that Milo's financial straits made him unsuitable as a consular candidate. Cicero

³ Asconius is the chief source for the following relation of events.

⁴ Cf. Cicero's references to Pompey throughout the *Pro Milone*. For Cicero's ardor in supporting Milo's candidacy, cf. *Qfr.* 3.9.2: "Angit unus Milo. Sed velim finem adferat consulatus: in quo enitar non minus quam sum enisus in nostro, tuque istinc, quod facis, adiuuabis." Cf. also *Fam.* 2.6, *passim*.

⁵ Granrud's list of orations (*Proceedings* APA 44 [1913] 27-30) includes only one speech for the year 53, this entitled "Pro T. A. Milone." See Drumann-Groebe, *Geschichte Roms* 6: *M. Tullius Cicero* (Leipzig 1929) 78.

⁶ Cf. F. Schoell, *M. Tulli Ciceronis Oratorum deperditarum fragmenta*, fasc. 29 of *Scripta quae manserunt omnia* (Leipzig 1917) 451-57.

thereupon replied, likewise in the Senate, and published his remarks in the oration which survived until the writing of the *scholia*. The fragments of this speech are too meager to afford a basis for reconstructing the original, but it may be assumed that the *De aere alieno* was published as a political pamphlet designed to champion the cause of Milo's candidacy for the consulship of 52 and to attack Clodius and his effort to gain the praetorship.

Cicero's efforts as Milo's "publicist" never bore fruit. Clodius was killed on January 18 of 52 with the elections for that year still postponed, and, before Milo's trial and conviction on April 8, Pompey was made sole consul. As for what might have been, Asconius implies that Milo's election to the consulship, at the time of the murder, was almost certainly assured. While there is a temptation to consider this a mere echo of Cicero's statements in the *Pro Milone*, Asconius' account of the murder of Clodius and the subsequent defense of Milo is far from being a reflection of Cicero's own account.

It would perhaps be impossible to exaggerate the excitement in Rome evoked by the chain of events which included the murder of Clodius, the burning of the *curia*, and Milo's return to Rome after he was thought to have decided upon voluntary exile. Both Clodius and Milo, of course, had stood at the head of violent and uncontrollable factions. Then, too, the many months of intensive campaigning by both men had created an atmosphere of unrest. Rome's most prominent and powerful families moreover were of necessity aligned, after the murder, for or against Milo.⁷ Clodius' death was a political assassination, and the fate of Milo constituted a political issue as much as a legal action. Milo's trial was in reality a specially conducted investigation resulting from legislation passed after Pompey entered the consulship and at his instance.⁸

⁷ Milo, for instance, was married to Fausta, the daughter of Sulla, and her brother Faustus worked actively in support of Milo. See note 9 below.

⁸ Three days after he entered upon the consulship Pompey referred to the Senate matters of criminal legislation which resulted in the passage of two new laws. One, *de vi*, mentioned specifically the murder of Clodius and the burning of the Senate-house. The second, *de ambitu*, dealt with corrupt campaign practices. Milo stood trial under this *Lex Pompeia de vi* and was defended in vain by Cicero. He was subsequently tried and condemned (*in absentia*) under the *Lex Pompeia de ambitu* and, in addition, under the ordinary laws both *de vi* and *de sodaliciis*. The entire story is included in Asconius' commentary; see also A. H. J. Greenidge, *The Legal Procedure of Cicero's Time* (Oxford 1901) 391-94.

Cicero's efforts in Milo's behalf were far more extensive than the speech he delivered on April 8 in Pompey's specially constituted court. Because the affair had excited great popular interest, Milo was on trial, in a sense, from the time of Clodius' murder. Cicero led the forces that were endeavoring to win sympathy for Milo. He spoke repeatedly in the Senate and probably delivered *contiones* before the mass meetings which Caelius as tribune called.⁹

The Clodians, of course, were pressing their cause with equal ardor. They too were endangered by Pompey's legislation, because of the burning of the *curia* and the general riots connected with the event. Significantly the Clodians, as both factions alternated between offensive and defensive maneuvering, generally linked together the names of Milo and Cicero.

We come now to the trial of Milo and the procedure prescribed by Pompey's legislation. On three successive days evidence was presented. The fourth day was reserved for the selection of a final jury. On the fifth and last day, both the prosecution and the defense delivered their speeches, the former limited to two hours, the latter to three.¹⁰ During the presentation of the evidence such disturbances were caused by the Clodian faction that the Milonians (captained of course by Cicero) were forced to request troops to maintain the peace. These troops, provided by Pompey, were present both on the last day of the presentation of evidence and on the last day of the trial, the day of Cicero's speech.

Cicero's time arrived amid confusion. Asconius (p. 37 Stangl) describes the event: "When Cicero began to speak, he was 'caught up' by the shouts of the Clodians, whom not even their fear of the soldiers standing around was able to restrain. And so Cicero spoke with less than his usual self-assurance." Our earliest and most reliable source has no more than this to say of Cicero's delivery.

Plutarch (*Cic.* 35) and Dio Cassius (40.54.2) elaborate and dramatize the story but add little information. Contrary to the

⁹ Ascon. Stangl 32. Among others helping were Hortensius, M. Marcellus, M. Calidius, M. Cato, and Faustus Sulla.

¹⁰ These arrangements, admittedly hostile to Milo's interests (cf. Ascon. Stangl 34), had been opposed as a *privilegium* by the tribune M. Caelius, friend of Cicero and Milo. When Pompey finally indicated he would use force if necessary to carry his legislation, Caelius was compelled to desist.

statement of Asconius, both attribute Cicero's impaired delivery to his terror at the sight of Pompey and the soldiers. This unfavorable account of Cicero's performance is widely accepted, in spite of Asconius' testimony that Cicero was interrupted by the Clodians; that Pompey did not even attend the trial on this last day;¹¹ that the troops were stationed there at the request of the Milonians, for their protection; and that Cicero had functioned in the presence of these same troops on one if not both of the two preceding days.

What then do we know of Cicero's performance? Prior to Asconius, there is no evidence that Cicero was unable to deliver his speech entirely as he wished to. Asconius says Cicero was "caught up" (*exceptus*) by the Clodians and was not possessed of his usual self-confidence. We cannot know whether or not Cicero even finished his speech. Nothing is implied about the content of the oration. We have no evidence for assuming that the difference between the delivered and the published *Pro Milone* was anything other than stylistic.

Each of our two Greek sources names a parallel to Cicero's performance at the trial of Milo. Plutarch (*Cic.* 35) refers to the *Pro Murena*. Cicero's loss of sleep was supposed to have resulted in an inferior style. Yet other evidence indicates that Cicero at the trial of Murena displayed considerable poise.¹² Plutarch himself (*Cat. Min.* 21) records the remark of Cato made during the trial, "What a jolly consul we have." And in *De finibus* (4.74) Cicero points to his having amused the audience at Cato's expense. Here Cicero is definitely referring to the delivery of his *Pro Murena*. Yet this delivery, according to Plutarch, was impaired, even as it was at the trial of Milo.

The similar instance cited by Dio (40.54.2) was the trial of T. Munatius Plancus Bursa: "It should be said that on this occasion, too, Cicero accused Plancus no more successfully than he had defended Milo; for the appearance of the courtroom was the same, and Pompey in each case was advising and acting against him."¹³ Whatever Dio meant by *ouden beltion*, "no more success-

¹¹ Asconius (Stangl 36) states that Pompey, just as he had done earlier, stationed himself in front of the Treasury (*pro aerario*).

¹² Cf. L. Laurand, *Études sur le style des discours de Cicéron*² 1 (Paris 1925) 10-14: his remarks in effect sweep aside attempts to show that the *Pro Murena* is a reworked speech, differing greatly from the one which was actually delivered.

¹³ Tr. E. Cary, Loeb Classical Library.

fully" is hardly an appropriate translation, for Plancus was condemned, and with Cicero alone, it seems, handling the prosecution. In a letter (*Fam.* 7.2.2) written soon after that trial Cicero is far from offering any apology for the delivery of his speech. He gives himself credit for the triumph and explains at length his joy over the downfall of Plancus.

Cicero does not help us assess the failure of the *Pro Milone* (if such it was) when he writes (*Opt. Gen.* 10):

Ita fit, ut Demosthenes certe possit summis dicere, elate Lysias fortasse non possit. Sed si eodem modo putant, exercitu in foro et in omnibus templis, quae circum forum sunt, collocato, dici pro Milone decuisse, ut si de re privata ad unum iudicem diceremus, vim eloquentiae sua facultate, non rei natura metiuntur.

It is barely conceivable that Cicero, if he was conscious of any such disgrace and humiliation as is frequently implied, could have written these words.

The picture of Cicero after the trial of Milo is by no means that of a broken man. On the contrary he proceeded to wrest three significant victories from the Clodians (and from Pompey). Cicero successfully defended M. Saufeius, "qui dux fuerat in expugnanda taberna Bovillis et Clodio occidendo," indicted under the same Pompeian legislation, and then, again, under the regular *lex Plautia de vi*.¹⁴ The successful prosecution of Plancus has been discussed above.

Asconius (pp. 45-46 Stangl) ends his commentary on the *Pro Milone* thus: "Multi praeterea et praesentes et cum citati non respondissent damnati sunt: ex quibus maxima pars fuit Clodianorum." Of his forensic activity in general, Cicero wrote (*Fam.* 7.2.4) sometime in 52 after the trial of Milo, "Nos hic in multitudine et celebritate iudiciorum et novis legibus ita distinemur ut cotidie vota faciamus ne intercaletur, ut quam primum te videre possimus."

This continuing strife between the Clodian and Milonian factions, this series of trials following that of Milo, suggests that Cicero may well have published the *Pro Milone* not long after the trial when it might have been of some practical value.¹⁵

¹⁴ Ascon. Stangl 45-46. For these and other cases Cicero pleaded in the courts during the remainder of the year 52, see Drumann-Groebe (above, note 5) 83-86.

¹⁵ I cannot think Cicero failed to publish the oration before leaving Rome for his

Pompey's legislation had called for a thorough cleansing of the state. The entire chain of incidents of early 52 B.C. was to be investigated, and the trial of Milo was apparently only the first of a series arising from Clodius' murder and the subsequent acts of violence committed by the Clodians. The conviction of Milo would seem to have boded ill for his faction. Cicero had failed, Milo was in exile; and Pompey, if we may trust Dio (40.55), redoubled his efforts in behalf of Milo's enemies.

Nonetheless, the tables were turned and it was Cicero who turned them. In spite of Pompey's influence, the Clodians fared quite poorly, the Milonians well, in the subsequent trials, and these trials seem to have continued throughout the year 52 B.C.¹⁶ It is not impossible that Cicero's published *Pro Milone* had, and was intended to have, some bearing on their outcome. Cicero was very far from being crushed by his misadventure at the actual trial.

II.

In the first century A.D. there existed two versions of Cicero's defense. Asconius, Quintilian, and the author of the *Scholia Bobiensia* refer to an alternate version, identified as the speech

province. Cicero departed Rome in the spring of 51 on a leisurely journey which ended in Laodicea in early summer (cf. Tyrrell and Purser, *Correspondence*² 3 [Dublin 1914] page xii). Immediately upon his return Cicero was to be thrust into the civil conflict. If the publication of the *De republica* is to be fitted into the last months before Cicero's departure (cf. *Fam.* 8.1.4; see Schanz-Hosius 1.494), the *Pro Milone* may well have been published not long after its delivery.

Dio's (40.54.2) unfavorable account of Cicero's defense of Milo includes Milo's reaction upon reading a copy of the *Pro Milone*: "... lucky for him those words had not been spoken in that form in the court; for he should not be eating such mullets in Massilia (where he was passing his exile), if such a defense had been made." (Tr. E. Cary, Loeb Classical Library.) Whatever credence one places in this story, Dio seems oblivious to the possible impact Cicero's published speech might have had on the continuing forensic struggles between the partisans of Milo and those of Clodius. Dio explains Milo's *bon mot* as "... a joke on Cicero, because the orator, after saying nothing useful at the time of the defense, had later composed and sent to him these fruitless words, as if they could then be of any service to him." (Tr. Cary.)

For Dio's marked prejudice against Cicero, see Fergus Millar, "Some Speeches in Cassius Dio," *Mus. Helv.* 18 (1961) 11-22. Millar (page 15, note 48) quotes—with tacit acceptance—from Conyers Middleton, "Dio Cassius... is observed to have conceived a particular prejudice against Cicero; whom he treats on all occasions with the utmost malignity."

¹⁶ Ascon. Stangl 45-46; Dio 40.55.1. Cf. Drumann-Groebe (above, note 5) 83-86.

Cicero actually delivered for Milo.¹⁷ The Ciceronian scholar Laurand has pointed out that these uncommon reports do not prove a discrepancy generally between the published and the spoken orations of Cicero. Laurand's contention was that the very attention drawn to the two versions indicates an exception rather than the rule.¹⁸ There is, I think, a stronger case against the validity of the evidence afforded by the other *Pro Milone*.

It hardly need be said that this dual existence of a published oration is without parallel. Modern scholarship has explained that the origin of the alternate version lay in stenography. The story of this tradition begins with the interpretation of a passage in Asconius (p. 37 Stangl):

Cicero cum inciperet dicere, exceptus acclamatione Clodianorum, qui se continere ne metu quidem circumstantium militum potuerunt. Itaque non ea qua solitus erat constantia dixit. Manet autem illa quoque excepta eius oratio: scripsit vero hanc quam legimus ita perfecte, ut iure prima haberi possit.

Asconius means, I should think, only that Cicero was *exceptus* and that his *excepta oratio* survived. That is to say, the term *excepta* probably does nothing more than designate the spoken oration by repeating *exceptus*.

On the other hand, *excepta* can mean of course "written in shorthand."¹⁹ And this is the interpretation generally placed on Asconius' statement. Corroboration of this meaning is sought in the *Scholia Bobiensia*. Included in the mutilated commentary on the lost *Interrogatio de aere alieno Milonis* is this fragment (p. 173 Stangl): "legis mentio fit in oratione quae habita est pro Milone atque per (here occurs a gap in the MS.)." There follows a quotation of two lines otherwise unidentified. One of several suggestions for filling the lacuna noted above is *notarios excepta*. Without attacking this proposed reading it may be emphasized that a disputed conjecture constitutes the only reference to the presence of stenographers at the trial of Milo. The author for whom the conjecture is necessary is of a later date than either Asconius or Quintilian.

¹⁷ Ascon. Stangl 37; Quint. *Inst.* 4.3.17 (but see note 25 below); *Schol. Bob.* Stangl 112.

¹⁸ *Op. cit.* (above, note 12) 14.

¹⁹ Cf. Suet. *Tit.* 3: "E pluribus comperi, notis quoque excipere velocissime solitum, cum amanuensibus suis per ludum iocumque certantem."

The same two lines are quoted by Quintilian (*Inst.* 9.2.54) without attribution. Omitting the conjectured *notarios excepta*, this fragment may be assigned as conveniently to one lost oration as to another. Though Quintilian does not identify the quotation at all, the *Scholia Bobiensia* attribute it simply to a "*pro Milone*." It is possible that the passage belongs to the *De aere alieno* itself, the subject of the commentary in *Scholia Bobiensia*. This commentary is too mutilated to allow an assumption that the scholiast would not have referred to the *De aere alieno* as "*Pro Milone*." For that matter the quotation may belong to some totally different "*Oratio pro Milone*" that was published but lost.

The *Scholia Bobiensia* (p. 112 Stangl) are our sole source for a description of the alternate version of the *Pro Milone*: "Et exstat alius praeterea liber actorum pro Milone: in quo omnia interrupta et inpolita et rudia, plena denique maxime terroris agnoscas." These are puzzling terms. The putative editor of the alternate version would seem to have enjoyed a flair for the dramatic. We must wonder how the interruptions were indicated, or what genius was required to capture an emotion such as panic (obvious enough in a delivery) and transform it into the written word. Even if these were unusual stenographers, some clever hand would have been needed to revise the bald notes taken at the trial.

The unnatural reading of the passage in Asconius and the conjectured reading for the later scholiast would be less awkward if available evidence did not argue against assuming an effective system of shorthand at the time of Milo's trial. Shorthand was doubtless being developed during Cicero's lifetime. It was greatly improved during the age of Augustus, and by the time of Seneca the Philosopher was apparently in common use. Arthur Mentz' history of Latin stenography disclaims, for the year 52, a perfected system of shorthand necessary to record verbatim a spoken oration.²⁰

²⁰ "Die Entstehungsgeschichte der römischen Stenographie," *Hermes* 66 (1931) 369-86.

There were members of the senatorial class who were known for their *celeritas scribendi*; cf. Cic. *Sull.* 42: "quos sciebam memoria, scientia, consuetudine et celeritate scribendi facillime quae dicerentur persequi posse." Plutarch (*Cat. Min.* 23) records a tradition that during the last month of his consulship Cicero introduced shorthand at Rome, where it had formerly been unknown. According to the tradition Cato's speech of December 5 was copied by the hands of clerks (*tôn grapheôn*) whom Cicero himself had trained and stationed throughout the Senate. Plutarch's account barely fails to contradict Cicero (*Sull.* 41-43), who deemed it worthwhile, on December 3,

In spite of modern interpretation, including even occasional reference to *court appointed* stenographers, the theory that shorthand was responsible for the other *Pro Milone* is hardly tenable. The most we may assume is that *contiones* and speeches delivered in the Senate were on occasion written down by persons other than the orators who spoke them. We have evidence that sometimes these non-literary orations were in the hands of various readers very quickly after their delivery.²¹ But ancient testimony does not indicate stenography even here, and nowhere in the career of Cicero is there any indication that forensic speeches were thus recorded.

Conjectures other than stenography may be offered as the source of the other *Pro Milone*. There would seem to have been little literary motive for writing out this version. It would not have been the type of forensic effort desired by aspiring young orators, who were among Cicero's more avid readers. The piece was certainly not intended to honor Cicero. Perhaps it was written by a Clodian expressly to embarrass Cicero. In this event, Cicero's delivery probably suffered thereby as much as it is thought to have improved in Cicero's own publication. An interesting corollary to this possibility is the fact that M. Brutus

to appoint senators, men of good memories and a penchant for rapid writing, to record the proceedings of that day. One cannot avoid a suspicion that the story which reached Plutarch was an elaboration of Cicero's statement.

Plutarch's terminology (*dia sêmeiôn*) is that of Cicero in *Att.* 13.32.3; on this latter passage see Tyrrell and Purser, *Correspondence*² 5.102: "'in abbreviations': or it might be 'in shorthand.'" While Cicero was in Cilicia, Caelius (*Fam.* 8.1.1-2) secured the services of someone "to follow all the events" in the Forum (*qui omnia persequeretur*); thereupon, his men (*operarii*) were to write detailed reports to be sent to Cicero. Similarly Cicero, on December 3, 63, had chosen senators who would "be able to follow what was said" (*quae dicerentur persequi posse*).

Although the evidence of ancient shorthand manuals edited by modern papyrologists proves conclusively the widespread use of shorthand (both Greek and Latin) in the time of the Roman Empire, there is yet no proof of an effective system of stenography in Cicero's day. See, in addition to Mentz (*op. cit.*), H. J. M. Milne, *Greek Shorthand Manuals* (London 1934) 1-3.

With regard to the famous *Notae Tironianae*, see for Tiro's (limited) contribution to Latin stenography Mentz, *op. cit.* 371-72.

²¹ Apparently Cato's *laudatio* of Cicero, delivered in 50 B.C. in the Senate, reached Cicero in Cilicia in summary form from Cato, but from Cicero's friends in its entirety and in more copies than one. Cf. *Fam.* 15.5.3, 6.1. On several occasions copies of *contiones* were available when both the political turmoil attendant and the apparent absence of any literary pretensions argue against the assumption that the speeches were edited and published by the authors. Cf., e.g., *Att.* 7.3.5; 14.2.1, 17a.7, 20.2 and 5, 21.4; 15.2.3; 16.5.3.

did publish a *Pro Milone*.²² Brutus, who supported Cicero in championing Milo's cause, nonetheless took this means of expressing his opposition to the basic argument Cicero insisted on using in defending Milo. Brutus' effort Quintilian (*Inst.* 3.6.93, 10.5.20) dismissed as little more than a rhetorical exercise. But whatever suggestion is offered concerning the source of the alternate version will have modest claim to validity in view of the fact that this version is unheard of until three quarters of a century after Cicero's death.

The alternate version, whatever its inception, would not have undergone publication in the same sense as Cicero's legitimate writings. The supposed game of embarrassing Cicero could hardly have created a demand in literary circles. Because of the cumbersome situation with regard to acquiring any texts in Cicero's day, only a positive desire for a genuine article would readily have overcome the customary expense and trouble. Pieces of evidence from the span of Cicero's forensic career indicate that Cicero himself was responsible for the dissemination of his speeches. He both wrote and "got out" his forensic orations, and this in response to a demand which was at once literary and professional.²³ Certainly Cicero did not publish the unauthorized *Pro Milone*, and the demand for it was surely negligible. We may not assume in the middle of the first century B.C. scholarly interest manifested a century or so later by the scholiasts.

The true perspective with regard to the publication of orations in the late republic is brought into focus by the following situation. It was no secret in Rome that the orations circulated under the name of P. Sulpicius Rufus (tribune 88 B.C.) were not his writings, for Cicero knew that there was not a speech from the hand of Sulpicius. Cicero recorded (*Brut.* 205) the rumor that P. Cannutius, his own contemporary, had written these orations after the death of Sulpicius. It is furthermore clearly indicated (*Orat.* 132) that Cicero did not regard these works as the speeches of Sulpicius.

Ultimately, the other *Pro Milone* must be considered not in the

²² Ascon. Stangl 37: "Quam formam M. Brutus secutus est in ea oratione quam pro Milone composuit et edidit, quasi egisset." (Note the precise language.)

²³ Evidence, too extensive to list here, I hope to publish soon in an article which will treat the publication of Cicero's orations and which will include the demands, by Cicero's readers, for his published speeches.

light of modern practices, or even those of the first century A.D., but in the environment of Cicero's day and age. The alternate version, if it was anything, was a forgery in the sense that it was not the work of Cicero. There is, moreover, the undemonstrable possibility that the piece was pseudo-Ciceronian in the usual sense, a forgery compounded, so to speak. If the alternate version was in fact a later *oratio suppositicia*, we would be relieved of at least one problem, namely, the survival from the time of the trial of the two versions side by side. Upon the publication of Cicero's official, literary *Pro Milone* its inferior double could be expected to have become passé rather than a collector's item.²⁴

There is, as I think, reason to question whether Quintilian did in fact refer to an alternate version of the *Pro Milone*.²⁵ Assuming, however, that Quintilian did accept the other *Pro Milone* as the speech Cicero actually delivered,²⁶ both he and Asconius were

²⁴ If one assumes (as I do not) the alternate version to have been an exact copy, by whatever means, of Cicero's words at the trial, then the piece could possibly have provided Cicero a source of literary embarrassment, but not of political embarrassment. Cicero certainly did not at the trial *attack* the Milonian faction. Thus it can hardly be thought that the Clodians hoped to profit greatly by the dissemination of this putative piece. Such subtle attacks are not in accord with our report of the overall struggle between the Milonians and the Clodians, nor typical of Roman invective that is preserved to us. It is true that discussion and criticism of Cicero became literary rather than political (see Millar, *op. cit.* [above, note 15] 21), but in the first century, not in 52 B.C.

²⁵ The evidence that Quintilian knew and accepted the other *Pro Milone* is ultimately reduced to *Inst.* 4.3.17: "Unde Ciceroni quoque in prooemio, cum diceret pro Milone, digredi fuit necesse, ut ipsa oratiuncula qua usus est patet." The uncommon (in the sense of "deliver an oration") phrase *usus est* is the strongest justification for assuming that Quintilian was not referring to the (now extant) *Pro Milone*. The phrase is indeed strange, but hardly so strange as has been thought. In the *Scholia Bobiensia* (Stangl 170) the word *utor* carries the simple meaning of "deliver an oration": "orationis eius quam usus fuit, si eum P. Clodius legibus interrogasset." A more meaningful parallel occurs in *Ad Brut.* 2.3.4 (written by M. Brutus): "Legi orationes duas tuas, quarum altera Kal. Ian. usus es, altera de litteris meis quae habita est abs te contra Calenum." (Cf. Tyrrell and Purser, *Correspondence* 2 6.110: "The word *uti* is strangely used of 'delivering a speech.' We cannot quote a parallel.") Here Brutus assuredly was not implying by his use of *usus es* any distinction between the speech (*Philippica* 5) Cicero delivered and the one he wrote and sent to Brutus in Greece. In view of these two parallels it is suggested merely that the evidence for Quintilian's cognizance of the alternate *Pro Milone* is less conclusive than has been supposed. There remains, of course, the (ever-elusive) diminutive in the presence of *oratiuncula*. Finally, a comparison between this passage (*Inst.* 4.3.17) and *Inst.* 4.2.25 would be more meaningful if twenty-three Teubner pages did not separate the two.

²⁶ Quintilian's judgment, in any event, was not infallible. Cf. his acceptance of the pseudo-Sallustian *In Ciceronem* on the subject of Cicero's verses: see Walter Allen, Jr., "O fortunatam natam . . .," *TAPA* 87 (1956) 133-36.

faced with an uncommon, not to say unique, testing of their scholarship. The other *Pro Milone* was emphatically not Ciceronian in the same sense as all other Ciceronian orations they knew. Our two scholars, insofar as they exercised critical judgment at all, were compelled to determine the authenticity of a "Ciceronian" piece solely on the basis of its "non-Ciceronian" style. Seneca the Elder (*Controv.* 3, *praef.* 16) informs us that the trial of Milo afforded appropriate subject matter for declamation in the schools of rhetoric. If the tradition was well established that Cicero's delivery of his defense of Milo was impaired, some student or teacher could be thought to have tried his hand at recapitulating, in writing, Cicero's effort. In Dio Cassius (46.7.3) Calenus' imagined invective against Cicero included the charge of delivering and publishing discrepant orations.

There is no support for any one of these conjectures. All we can know with certainty is that Cicero's *Pro Milone* is the one that is extant: he quoted from it (*Orat.* 165), he liked it. Insofar as we can judge from Cicero, he considered the extant *Pro Milone* the one he delivered at the trial of Milo. He nowhere indicated the existence of an alternate version. Whatever the exact situation with regard to the delivery of the speech, there is no contemporary evidence to show that Cicero took his defeat very seriously, nor is there a contemporary reference to the existence of two written versions.

Laurand (above, note 16) has indicated the minimum fallacy involved in maintaining the traditional view. But Laurand was too restrained, for he need not have so completely accepted the theory of two versions. We do not know that there were any differences, other than stylistic, between the other *Pro Milone* and the one we read. We do not know how much Cicero was able to speak at the trial. We do not know what the other *Pro Milone* was, who wrote it, or when it was written. We cannot assume, if it differed greatly from our *Pro Milone*, that it reproduced the spoken oration more faithfully than the one we read. In the overall discussion concerning the differences between Cicero's published speeches and the spoken orations, the other *Pro Milone* is, or should be, of very small significance.