

THE PROSECUTION OF C. MANILIUS IN 66 B.C. AND CICERO'S *PRO MANILIO*

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THE PROSECUTION of the ex-tribune C. Manilius in December of 66 is presented by our ancient sources as an indirect attack on Pompey, who had been given the command in the war against Mithridates by a plebiscite that Manilius sponsored while tribune in 66.¹ The Optimates lost no time in prosecuting the offending tribune. Soon after he ceased to hold office on December 10th, which had rendered him immune from prosecution earlier,² Manilius was indicted for *repetundae* in the court over which Cicero presided as praetor. Normally praetors granted a minimum of ten days to a defendant for preparing his case, but on this occasion Cicero took the unusual step of allowing Manilius only one day. Manilius' supporters responded in a hostile manner, and the tribunes summoned a meeting of the people at which Cicero was asked to justify his decision to deny Manilius' request for a delay.³ In defending his action, Cicero asserted that he was well-disposed towards the defendant and had wished to insure a fair hearing of the case by preventing it from being deferred until the following year when another praetor would preside over the extortion court. He argued that under the circumstances he had been forced to grant less time than usual since only one day remained before his praetorship expired.⁴ Apparently this explanation satisfied the

¹The evidence for the following account is to be found in Plutarch *Cic.* 9.4–6 and Dio 36.44.1–2. A list of modern works which will henceforth be cited by author's name is provided here for the reader's convenience: W. Drumann, *Geschichte Roms* 5 (2nd ed. P. Groebe [Leipzig 1919]); M. Gelzer, *Cicero: ein biographischer Versuch* (Wiesbaden 1969); E. Gruen, *The Last Generation of the Roman Republic* (Berkeley 1974); R. Heinze, "Cicerus politische Anfänge," *AbhLeipz* 27 (1909) 945–1010; T. N. Mitchell, *Cicero. The Ascending Years* (New Haven 1979); E. J. Phillips, "Cicero and the Prosecution of C. Manilius," *Latomus* 29 (1970) 595–607; R. Seager, "The First Catilinarian Conspiracy," *Historia* 13 (1964) 338–347; A. Ward, "Politics in the Trials of Manilius and Cornelius," *TAPA* 101 (1970) 545–556; *Marcus Crassus and the Late Roman Republic* (Columbia, Mo. 1977).

²On the immunity from prosecution that tribunes shared with other Roman magistrates, see E. J. Weinrib, "The Prosecution of Roman Magistrates," *Phoenix* 22 (1968) 32–56, esp. 33–35.

³We are not told whether this *contio* took place on the day Manilius was charged or on the day he was scheduled to appear before Cicero's court. Cicero (*Cat.* 1.15), however, informs us that on December 29th of 66 Catiline was observed with a weapon in the *comitium*, and a likely context for Catiline's presence in the vicinity of the *rostra* on this date is the assembly convened by the tribunes to protest Cicero's treatment of Manilius. See M. Gelzer, "Sergius," *RE* 2A (1923) 1697 and Seager 344.

⁴Plutarch indicates that Cicero set a hearing for the last day of his praetorship,

people, and they exacted a promise from Cicero to defend Manilius when he ceased to be praetor in the following year.⁵ He then remounted the rostra and delivered a speech in which he attacked Pompey's political enemies.

So much is generally accepted by modern accounts of this episode, but from this point it becomes increasingly difficult to reconstruct the sequel. Plutarch and Dio, who alone provide a continuous narrative, do not take us much farther. Plutarch says no more about this affair after mentioning Cicero's promise to defend Manilius, and Dio concludes by stating that soon after Cicero agreed to take Manilius' case a disturbance arose and prevented the court from convening.⁶ Asconius adds some information about the violence that erupted at Manilius' trial and reports his eventual conviction in 65 (pp. 60C, 66C). We also possess one fragment from a speech of Cicero called the *pro Manilio*⁷ and a reference in the Bobbio Scholiast (p. 119St) to a trial in 65 *de maiestate*.

Modern theories do not agree on how this evidence should be interpreted or on the precise sequence of events after Cicero committed himself to defending Manilius in 65. Further problems are raised by the very nature and timing of the prosecution of Manilius in 66. Granted that

hence December 29th in the pre-Julian calendar. Although Plutarch also states that Manilius was charged two or three days before Cicero's term expired, it is fairly certain that the *nominis delatio* occurred on the 28th since according to Dio the trial was to commence on the following day, and Plutarch claims that Cicero justified his action on the grounds that he had only one day at his disposal before his praetorship expired. Phillips (600) argues that the *nominis delatio* may have occurred on the 27th since Plutarch reports that Manilius was granted one day in which to prepare his case. As we can see, however, from the normal procedure according to which a defendant was instructed to appear on the 10th day after the *nominis delatio* (Asc. p. 59C; Cic. *QFr.* 2.12 (11).2), the one day referred to by Plutarch looks ahead to the day immediately following and not to the next but one.

⁵A possible allusion to this popular demand may be detected in a speech Cicero delivered two years later; see B. Rawson, "De lege agraria 2.49," *CP* 66 (1971) 26–29.

⁶It is not clear whether this disturbance, which occurred sometime after the *contio*, took place on December 29th or at the beginning of the following month. E. G. Hardy, "The Catilinarian Conspiracy in its Context: a Re-study of the Evidence," *JRS* 7 (1917) 153–228, esp. 160–161; Seager (344 n. 25) and Gruen (262) opt for the 29th. If we assume, however, that the *contio* took place on the 29th and prevented Cicero from proceeding with the trial as he had intended, he must have been forced to cancel the hearing as part of his agreement to defend Manilius; see Heinze 996; E. Ciaceri, *Cicerone e i suoi tempi*² (Milan 1939) 142; Phillips 600; Ward (1970) 547 n. 10. Significantly, although Cicero mentions the sinister activity of Catiline on December 29th (above, note 3), he nowhere claims that his personal safety was threatened on this occasion, a surprising oversight if Catiline took part in a riot that disrupted Cicero's court; see Mitchell 224 n. 94.

⁷*M. Tulli Ciceronis Oratorum Deperditarum Fragmenta*² (ed. I. Puccioni [Milan 1972]) 29–31.

the Optimates were eager to take revenge on Manilius for supporting Pompey's interests, why did they choose to indict Manilius when the courts were about to change hands, and why did they select the charge of extortion, which is an unusual charge to bring against an ex-tribune?

It is the purpose of this paper to suggest some answers to these and other questions. The first part will examine the problems posed by the proceedings in December and advance a theory that may explain the strategy of the prosecution and Cicero's decision to press for an early hearing. In the second part several inferences that can be drawn from Asconius will be used to date the speech from which the one fragment is preserved under the title *pro Manilio* and to identify some probable themes of this oration. The evidence from Asconius will be used to show that this speech was delivered in 66 at the *contio* and not in the following year when Manilius was eventually brought to trial. Since Cicero's speech on behalf of Manilius turns out to be not a forensic oration, the title should, therefore, be changed from the *pro Manilio*, as it is commonly known today from the one source who quotes from it, to the *de Manilio*.

THE NATURE AND TIMING OF THE INDICTMENT DE REPETUNDIS

Although Sulla's *lex Cornelia de repetundis* was not exclusively designed to punish corrupt provincial administrators but also covered such offenses as bribe-taking by a senatorial juror,⁸ the *repetundae* court is described by Cicero as primarily intended to protect the interests of Rome's subjects and *socii*.⁹ It is surprising, therefore, that Manilius was indicted under this law upon ceasing to hold the tribunate, during which he could not have been absent from Rome or a member of a jury.¹⁰ By contrast, among the acts of Manilius' tribunate we know of one occasion at the beginning of his term when he violated several constitutional provisions and employed violence in forcing through a bill extending the voting rights of freedmen.¹¹ His conduct would seem to have

⁸See A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate* (Oxford 1972) 79–81.

⁹Cic. *Div. Caec.* 11, 17, and 65.

¹⁰It has been suggested, therefore, that this charge may have had reference to Manilius' quaestorship some years previously: E. G. Sihler, *Cicero of Arpinum* (New Haven 1914) 113; Phillips 597. The trial (in 69 for extortion?) of P. Oppius (Q. 74, Proq. 73–) possibly provides a precedent for such a delayed prosecution; see L. P. Hoy, *Political Influence in Roman Prosecutions: 78 B.C. to 60 B.C. with a Listing of the Trials* (Diss. Bryn Mawr College 1952) 57–58.

¹¹Not only did Manilius employ a band of slaves and freedmen to force his proposal through an assembly which met towards evening (Asc. p. 45C; cf. Dio 36.42.2), but in 67, the *Compitalia*, one of the *feriae conceptivae*, had been assigned to December 29th (Asc. p. 65C), which made it illegal to convene an assembly on that day (Varro *Ling.* 6.29). Since Cicero mentions that this law was faulted for the *celeritas actionis*, possibly

provided more than ample grounds for an indictment *de maiestate*, and it was precisely for this crime that Manilius' predecessor C. Cornelius was prosecuted in 66 when he ceased to hold office.¹² Both tribunes were apparently attacked in the courts because of their ties with Pompey and because they had antagonized the conservative faction in the senate. Yet Cornelius, who was accused of *maiestas* for disregarding the veto of his colleague at a legislative assembly, committed a relatively minor offense in comparison with the violent tactics employed by Manilius in a similar situation. Therefore, in proposing a theory to explain Manilius' indictment in 66, we must take into consideration any factors that may have caused Manilius' enemies to prefer *repetundae* to the more logical charge of *maiestas*.¹³

A further peculiarity that must also be taken into account by any theory that seeks to explain the indictment for *repetundae* is the time of year when the prosecution was launched. Normally ex-officials were accused of extortion soon after they returned from a province. Moreover, since such trials for extortion had to be conducted in two separate instalments after the *lex Servilia* introduced a compulsory *comperendinatio*,¹⁴ it was desirable to begin the first hearing early enough in the year so that the same *iudices* and praetor could follow the trial through to its conclusion.

We know, for example, that the *actio prima* in the extortion trial of C. Verres in 70 began on August 5th, several months later than Cicero would have preferred.¹⁵ On this occasion Cicero feared that his opponents would exploit the adjournments resulting from the public games in

Manilus also violated the *lex Caecilia Didia* by failing to observe the requirement that a *trinundinum* had to elapse after a bill was promulgated before it could be put to a vote. For the view that a *trinundinum* was a period consisting of 25 days, see A. K. Michels, *The Calendar of the Roman Republic* (Princeton 1967) 191–206; *contra*, A. W. Lintott, "Trinundinum," *CQ* 15 (1965) 281–285.

¹²See R. Seager, "The Tribunate of Cornelius. Some Ramifications," *Hommages à Marcel Renard* 2 (Brussels 1969) 680–686, and M. Griffin, "The Tribune C. Cornelius," *JRS* 63 (1973) 196–213.

¹³Phillips (597) speculates that Manilius was not charged for his reckless conduct at the assembly in December 67 because the optimate L. Domitius Ahenobarbus had forcefully resisted Manilius' gangs on that occasion, and Manilius' enemies did not wish to risk a counter-prosecution. One might also observe that *maiestas* was a difficult charge on which to secure a conviction, as the outcome of Cornelius' trial in 65 demonstrates; see A. W. Lintott, *Violence in Republican Rome* (Oxford 1968) 118–119, 123. While both of these factors may have influenced Manilius' enemies to select some other charge, their reason for believing that their desire for revenge could be better satisfied in the *repetundae* court has yet to be explained satisfactorily.

¹⁴Cic. *Verr.* 2.1.26.

¹⁵Cic. *Verr.* 1.31. Cicero complains that the delaying tactics of the defense deprived him of the three months that were most suitable for conducting his prosecution (*Verr.* 2.1.30). It appears that the indictment in this case was made sometime in the early part of January; see Drumann-Groebe 330–331.

August through October and cause the trial to spill over into the following year when circumstances would be more favourable to the defendant.¹⁶ It was apparently to avoid this possibility that most trials for extortion were begun early enough in the year so that they could be concluded by late summer or early fall in advance of the public games.¹⁷ Furthermore, some ex-officials appear not to have been indicted for extortion immediately upon returning to Rome, possibly because the year in which they arrived was drawing to a close.¹⁸ Since in extortion cases two or three months normally had to be granted for an *inquisitio* to allow the prosecutor sufficient time to collect evidence and summon witnesses from abroad,¹⁹ it was virtually impossible to rush through a full-scale prosecution for extortion late in the year.

The impression that extortion proceedings were not usually begun during the last few months of the year is confirmed for an earlier period in the history of the extortion court by certain provisions in the *lex Acilia*. This law specifically provided for the *nominis delatio* to be made before the first of September²⁰ and established a quite different procedure for settling cases that were initiated after this date.²¹ Unfortunately we

¹⁶Cic. *Verr.* 1.31. The evidence in the *Verrines* that it was at least theoretically possible for a trial to be continued from one year to the next is obviously relevant to the prosecution of Manilius which was initiated so close to the end of December. The evidence for civil, as opposed to criminal trials, confirms that in some cases, but not all, a trial could extend beyond the end of the year and was not limited to a magistrate's year of office (Gaius *Inst.* 4.103 ff.). I wish to thank my colleague Michael Alexander for calling this passage to my attention.

¹⁷M. Aemilius Scaurus, for instance, who returned from governing Sardinia and Corsica on June 28th of 54 (Asc. p. 18C.18), was indicted for extortion on July 6th (Asc. p. 19C.5) and acquitted on September 2nd (Asc. p. 18C.3-4). L. Valerius Flaccus' trial for extortion in 59 may have resulted in an acquittal by late August or the beginning of September (Cic. *Att.* 2.25.1), although T. B. L. Webster, *M. Tulli Ciceronis pro L. Flacco Oratio* (Oxford 1931) Appendix B, opts for a date in November, while admitting (p. v) that the accusation was made early in the year.

¹⁸This circumstance may explain why Catiline, who returned to Rome in 66 with a prosecution for extortion hanging over his head (Asc. p. 89C), was not indicted until 65 (Asc. p. 85C). The jury was not selected in this case until midway through the year (Cic. *Att.* 1.1.1, 1.2.1). Likewise, C. Calpurnius Piso (*cos.* 67), who was replaced by L. Murena as the governor of Transalpine Gaul in 64, did not stand trial until the following year (Broughton, *MRR* 2. 159, 163).

¹⁹Cicero was granted 110 days, of which he used 50, to collect evidence against Verres, while in the same year, 108 days were requested by the prosecutor in another extortion case (*Verr.* 1.6; *Verr.* 2.1.30). Sixty days were allotted to the prosecutor of Scaurus, thirty for each of the two islands (Asc. p. 19C. 8-9).

²⁰*Fontes Iuris Romani Antejustiniani*—henceforth *FIRA*—1 (ed. S. Riccobono [Florence 1941]) no. 7, line 6.

²¹*FIRA* 1.7, line 7. Several lengthy gaps in the text cause the precise provisions in this section to remain uncertain, but according to the supplement proposed by Mommsen, instead of a jury trial, the praetor is instructed to entrust such cases to a body of *recuperatores*, and any award of damages is to be simple rather than double.

do not know what restrictions, if any, Sulla's *lex de repetundis* imposed upon the discretion of the praetor in accepting a case such as Manilius' after the end of August. The extortion trial in 54 of A. Gabinius, who returned to Rome from Syria on September 19th, demonstrates, however, that under the *lex Iulia de repetundis*, at least, ex-officials could be indicted as late as October.²² Yet the fact remains that apart from the accusation of Manilius in 66 no trial for extortion is known to have been set in motion during the last month of the year.

One factor in the case of Manilius that has received particular attention in modern discussions of this affair is the awkward position in which it placed Cicero. Since earlier in the year Cicero had publicly endorsed Manilius' bill for Pompey and hoped to secure the backing of Pompey's supporters in his future bid for the consulship, he would find it difficult to refuse to defend Manilius once he ceased to be praetor. On the other hand, Manilius' conduct at the beginning of his tribunate had branded him as a radical prone to violence, and Cicero would run the risk of alienating the more moderate factions in the state by serving as Manilius' advocate and identifying himself too closely with the policies of his client. The assumption is commonly made, therefore, that Cicero's decision to press for an early hearing is best explained by his desire to avoid being asked to defend Manilius after the expiration of his praetorship.²³ A further recent refinement of this argument suggests that Manilius' enemies may even have been guided by the desire to deprive Manilius of Cicero's services in choosing to indict the ex-tribune while Cicero was still praetor on a charge that would come before Cicero's court.²⁴

Both of these theories are attractive, but closer inspection reveals certain fatal weaknesses. First, since it was within Cicero's power to go ahead with the case while he was still praetor or allow the case to fall to his successor by granting the normal period to the defendant for preparing his case, the prosecution could not count upon tying Cicero's hands by indicting Manilius for *repetundae* while Cicero was still the president of this court. Secondly, since another praetor would preside over Manilius' trial if it had to be continued in 65, as we can see from the strategy attributed to Verres in 70,²⁵ Cicero could not hope to avoid being asked

²²The prosecution was delayed for a short time after Gabinius' return by the ill-health of M. Cato who was the *praetor de repetundis* in 54 (Cic. *QFr.* 3.1.15). Ultimately the *divinatio* was scheduled for October 12th (*QFr.* 3.2.1).

²³This view is widely held: e.g., Heinze 996; Gelzer 60; Ward (1970) 547; Mitchell 158. Gelzer's assertion that Cicero had previously committed himself to defend Manilius in his *de imperio* (69, 71) is rightly rejected by Phillips 599.

²⁴E. Fantham, "The Trials of Gabinius in 54 B.C.," *Historia* 24 (1975) 425-443, esp. 439-440 n. 34.

²⁵Cic. *Verr.* 1.31.

to defend Manilius simply by scheduling a hearing on the last day of his praetorship unless he had some reasonable expectation that the case could be concluded on one day only.²⁶ We must seek to explain, therefore, why both Cicero and the prosecution wished to go ahead with this case before the court changed hands.

There is, in fact, one type of prosecution for extortion that might have led the prosecutor and Cicero to press for an immediate disposition of the case. It was a process that could apply to individuals who had taken no part in the administration of a province and should be tried promptly. The charge was covered by the *QUO EA PECUNIA PERVENERIT* clause of the *lex Cornelia de repetundis* which provided for subsidiary trials arising out of evidence produced at the *litis aestimatio* in a previous trial for extortion.²⁷ The purpose of such indictments was to recover embezzled money which had been handed over by a convicted ex-official to a second party.

If we assume that the case of Manilius was to be tried under this provision, the action of the prosecution in bringing their indictment before the courts changed hands is perfectly understandable. Since these subsidiary trials were held before the same *iudices* who had given a verdict in the initial case to which it was related,²⁸ it was advantageous to the prosecutor to indict Manilius while members of this jury were still

²⁶Even if the trial had commenced on December 29th and both parties had been willing to expedite the matter, the compulsory *comperendinatio* would have caused an ordinary case for extortion to result in a second hearing in the following year after Cicero's successor had assumed charge of the extortion court. Ward (1977) 138 n. 36 appears to be alone in thinking that it might have been possible for both the first and second *actio* to be completed on the same day on the pretext that the year was drawing to a close. This assumption is unwarranted and flies in the face of the meaning of the term *comperendinatio*.

²⁷Gruen 261 n. 3 suggests this possibility without, however, reviewing the various features of the indictment that support this assumption. Cicero states that the *QUO EA PECUNIA* provision was contained in the *lex Cornelia* (*Rab. Post.* 9), and he indicates that the proceedings in an inquiry of this nature took the form of a separate trial which was set in motion as a result of evidence brought out at the *lites* of a previous trial (*Rab. Post.* 36–37; cf. *Clu.* 116). Apparently cases of this type took precedence over other extortion cases (*Cic. Fam.* 8.8.2–3) and could be concluded rather swiftly since it was not customary to call new witnesses (*Rab. Post.* 36) or to introduce evidence which had not been brought out at the *lites* of the main trial (*Rab. Post.* 9–12). The description of Rabirius as *de pecuniis repetundis reus* (11; cf. 12) makes it clear that the defendant in such a case could technically be described as being prosecuted for extortion, and there is, therefore, no obstacle to interpreting the prosecution of Manilius *de repetundis* as such a subsidiary trial. It is impossible, however, to identify the specific case to which the indictment of Manilius may have been related since our sources mention only one other extortion trial over which Cicero presided, that of C. Licinius Macer (see below, note 35).

²⁸*Cic. Rab. Post.* 36.

available. Once the year ended, many of the jurors would presumably be called away by other duties,²⁹ and of course the immunity from prosecution that Manilius enjoyed until December 10th, when he ceased to be tribune, forced his enemies to delay their indictment until the final weeks of December.³⁰ If this prosecution failed, there would still be ample opportunity to initiate a trial for *maiestas* or some other offence at the beginning of 65, but if the charge for *repetundae* was to stand any chance of success, it would need to be tried promptly.³¹

Cicero's decision to schedule a hearing on the last day of his praetorship is also better explained if Manilius' case formed an appendage of a previous trial in Cicero's court and Cicero did not anticipate the usual lengthy process which characterized an ordinary prosecution for extortion.³² Since no new witnesses or evidence would have to be introduced,³³ and since the jury was already picked, it would be possible to proceed right away with the arguments. It is significant that the prosecution apparently did not object to opening their case so soon after the indictment.³⁴ If it had been necessary to gather new evidence and summon witnesses from abroad, Cicero's decision to hear the case after a delay of

²⁹Cic. *Verr.* 1.30.

³⁰The reason why the prosecution waited until the 27th or 28th of December, rather than bringing their indictment soon after the 10th, is less easy to divine. It is true that a series of *feriae*, marked *NP* in the calendar, occupied many of the days from the 11th to the 23rd of the month, but these festivals did not ordinarily interrupt judicial business (Michels [above, note 11] 78 n. 54). Possibly, however, the prosecution was led to delay their indictment until near the end of the month by the occurrence of these festivals, particularly the *Saurnalia* which was widely observed as a three-day public holiday (17–19 Dec.; Cic. *Att.* 5.20.5; 13.52.1) during which serious business was not normally conducted and great license was permitted to the lower classes. In such an atmosphere, it would have been difficult to conduct a judicial inquiry.

³¹A somewhat different set of circumstances caused Rabirius Postumus to be charged under the *QUO EA PECUNIA* provision of the extortion law probably towards the end of December 54. He was indicted after Gabinius was convicted of extortion and his assets proved inadequate to meet the award of damages. Fantham (above, note 24) 439–440 argues that Gabinius' trial for extortion did not get under way until December and that the whole procedure, including Rabirius' prosecution, probably lasted until the middle of January 53. In his speech for Rabirius (42) Cicero indicates that the trial took place during the winter.

³²Cicero (*Rab. Post.* 8) refers to a trial such as Rabirius' as *quasi quaedam appendicula causae iudicatae atque damnatae*.

³³Usually the sworn testimony of the witnesses at the former trial proved sufficient (Cic. *Rab. Post.* 32).

³⁴Phillips (600–601) assumes that the prosecution prepared its case in advance so as to avoid the need for a lengthy delay to gather evidence after the indictment. He argues that Cicero set an early hearing to benefit Manilius by the inevitable adjournment after the end of the year that would have interrupted the prosecution's case. Ward ([1977] 138 n. 36) rightly questions whether Manilius could have gained any advantage from this devious strategy.

only twenty-four hours should have been a greater disadvantage to the prosecutor than the defendant, yet our sources do not indicate resistance from any party other than Manilius' supporters.

Under these circumstances, however, Cicero was in a good position to justify his treatment of Manilius when he was summoned before the people by the tribunes. He may well have considered it his duty to conduct an investigation into a matter that had previously been brought before his court in the *litis aestimatio* of another case. Viewed in this light, Cicero's explanation of his conduct on the day he addressed the assembly takes on added significance. According to Plutarch, he emphasized his fairness towards defendants in previous cases tried before his court and argued that he did not wish to deprive Manilius of the same fairness.³⁵ If the case against Manilius arose from a previous trial, Cicero could maintain that he had acted in the best interests of the defendant when he pressed for an early hearing before his praetorship expired, since his familiarity with the facts of the case made him best qualified to preside over this separate but related instalment of a prior prosecution.

Manilius, however, was apparently unwilling to rely upon Cicero's promise to defend him when his case came up for trial in 65. By encouraging his supporters to disrupt the court, he followed the example of Cornelius who had successfully employed this tactic at the beginning of 66 to quash his indictment for *maiestas*. The strategy backfired on this occasion, possibly because the new consuls were not as complacent as their predecessors had been in allowing this type of violence to go unchecked.³⁶ The matter was referred to the senate, and steps were taken to restore order. Soon afterwards, the court brought in a guilty verdict when Manilius failed to put on a defence.³⁷

Not all scholars can agree, however, on whether Cicero took any part in these proceedings. The one citation from a speech called the *pro Manilio* has led some to conclude that Cicero may have had some role in Manilius' trial in 65 despite the disruptions.³⁸ It will be useful, there-

³⁵Cicero claims that he won a surprising degree of popular approval for his fairness in conducting the trial of C. Licinius Macer (*pr.* 68?), an ex-tribune and noted *popularis* who was convicted of extortion during the first half of 66 (*Att.* 1.4.2). The only possible link that can be established between Manilius and Licinius Macer is that both may have counted on the support of Crassus to escape conviction: on Macer, see Plut. *Cic.* 9.1-2; on Manilius, Ward (1977) 138-40.

³⁶Asconius (p. 60C.1-2) indicates that the consuls of 66 had attended Cornelius' trial to aid in his defence. Possibly they were quite happy to see Cominius desist from his accusation when he was intimidated by Cornelius' supporters.

³⁷Asc. p. 60C.9-15. I hope to show in a separate article how this corrupt passage may be better restored, and that it describes the conviction of Manilius for *maiestas* after he had quashed the charge for *repetundae* by disrupting his trial in 65.

³⁸E.g., Ward (1970) 552 and Drumann-Groebe 400-401 n. 8.

fore, to establish the probable occasion on which this speech was delivered and to recover, if possible, some of its content.

THE OCCASION AND SOME THEMES OF CICERO'S "PRO MANILIO"

Asconius reports that the eventual conviction of Manilius in 65 led to a renewal of the prosecution of Cornelius for *maiestas* (p. 60C). The fragments of Cicero's *pro Cornelio* show that the prosecution tried to link his client with Manilius, and Cicero alludes to the tribunate and trial of Manilius on several occasions. Asconius' comments on these passages are revealing. Three of the references concern the *lex Manilia de libertinorum suffragiis* which was passed in 67 on December 29th (p. 64C.17–23; p. 65C.3–5; p. 65C.16–20). Asconius indicates that he has already discussed this piece of legislation in a commentary on a speech that was delivered before the *pro Cornelio*. A fourth reference alludes to the assembly at which Cicero agreed to defend Manilius. This too Asconius claims to have mentioned on a previous occasion (p. 65C.8). Lastly, there is a remark on the violence that Manilius employed to disrupt his trial. Here Asconius does not state, as he does on the other topics, that his readers may recall this incident from his description of it in an earlier commentary (p. 66C.7–14).

We know from his introductory remark on the *pro Cornelio* that this was the first speech in Asconius' collection under the year 65: *hanc orationem dixit L. Cotta L. Torquato coss. post annum quam superiores* (p. 57C.1–2). The words *post annum quam superiores* demonstrate that Asconius annotated several of the speeches which Cicero delivered in 66, and it is to one or more of these lost commentaries that Asconius must allude in his notes on the *pro Cornelio*. Of the four cross-references to the earlier portion of his work, two of the three that concern the *lex de lib. suff.* suggest the existence of a commentary on Cicero's *de imperio Cn. Pompei* of 66 (p. 65C.3–5 and p. 65C.16–20). In the latter passage, Asconius explicitly states that he has discussed both the voting proposal and the bill for Pompey, and it is quite possible that he mentioned Manilius' first legislative act in a sketch of the historical background which would have formed the *argumentum* to a commentary on the *de imperio*.³⁹

The remaining reference in Asconius to Manilius' voting measure, however, is not so easily explained as an allusion to a commentary on the *de imperio*. His comment explicates a passage in which Cicero claims that his client had no part in providing a master plan for Manilius' *lex de lib. suff.* The passage reads in part: *attulisse ridiculum est, quasi legem*

³⁹As we can see from the *in Cornelianam*, Asconius (pp. 57–59C) adopted this procedure in tracing the course of Cornelius' legislative program from the senate's rejection of his first proposal.

aliquam aut ad scribendum difficilem aut ad excogitandum reconditam: quae lex paucis his annis non modo scripta sed etiam lata esset (Asc. p. 64C). On this Asconius remarks: *P. Sulpicium in tribunatu hanc eandem legem tulisse iam significavimus*. In this context the reference to Sulpicius is justified, but Asconius indicates that he has already (*iam*) mentioned Sulpicius' proposal in a previous commentary. Significantly, this particular law happens to be one of the least discussed components of Sulpicius' legislative program. Apart from Cicero and Asconius, the epitomator of Livy (Book 77) is the only other source to record Sulpicius' proposal to extend the voting rights of freedmen. One wonders in what context Asconius could have treated this topic on a previous occasion. Nothing in the text of the *de imperio* demands such a discussion, nor is there any reason why Asconius should have mentioned this precedent for the *lex Manilia* in his account of the events leading up to the delivery of the *de imperio*. Asconius is seldom prolix, and his notes tend to observe the bounds set by the text of the speech which he is annotating.⁴⁰

This leads one to speculate that Asconius may have discussed Sulpicius' proposal in an earlier commentary because it was strictly relevant to a particular passage in Cicero which he wished to explicate for his readers. If so, room for such a passage can readily be found in the speech that Cicero is said to have delivered on behalf of Manilius, the so-called *pro Manilio*. Since the fragment of the *pro Cornelio* shows that Cicero was conscious of the precedent for Manilius' proposal that was provided by Sulpicius' legislation, he is unlikely to have overlooked the possibility of drawing a comparison between the two tribunes when he wished to portray Manilius in a favourable light. Sulpicius and Manilius were similar in more than one respect, and the similarities, as well as the differences between them, could be exploited to Manilius' advantage by a skilful orator like Cicero. Not only did both tribunes attempt to extend the voting power of freedmen, but both were best known for proposing a change of command in the war against Mithridates. In his *pro Cornelio* Cicero praises Manilius for dropping his first proposal and advocating the bill that assigned the conduct of the Mithridatic War to Pompey (Asc. p. 65C.11–15). What better line of argument could he have employed in a speech on behalf of Manilius himself? By reminding his audience of the historical precedents for both of these acts, Cicero could cast Manilius in the role of a moderate in comparison with his prede-

⁴⁰Instructive for assessing the economy of Asconius' remarks is his comment on a passage from the *pro Milone* (87) in which Cicero obliquely alludes to Clodius' proposal in 52 to distribute freedmen in all thirty-five tribes. Asconius (p. 52C) explains the nature of this proposal but does not pad his discussion by referring to the previous attempts of Sulpicius and Manilius to pass such a measure, although he could have reminded his readers of his note on the same oration where Manilius' bill is described (p. 45C).

cessor. Unlike Sulpicius, Manilius had eschewed violence when the senate annulled his voting measure for freedmen, and had rallied wide support for his second proposal. The more unsavoury reputation of the earlier tribune was ideally suited for stressing Manilius' restraint.⁴¹

The likelihood that Asconius wrote a commentary on Cicero's *pro Manilio* is also indicated by the fourth and last cross-reference to events connected with the tribunate and subsequent prosecution of Manilius. The note explicates an allusion in the *pro Cornelio* to the *contio* in 66 at which Cicero was asked to take Manilius' case. Cicero remarks: *petiuit tamen a me praetor*⁴² *maxima contentione ut causam Manili defenderem* (Asc. p. 65C). Asconius tells us that the request was made by C. Attius Celsus, and he reminds his readers that they should recall the name of this individual from a previous commentary: *C. Attium Celsum significat, sicut iam ante dictum est (ibid.)*. This is hardly the type of information that we would expect Asconius to have included in his discussion of the *de imperio*. There is no reason why he should have mentioned the much later prosecution of Manilius in his historical sketch of the events leading up to that speech. As we can see from his note on the disturbances at Manilius' trial in 65 (p. 66C), this information was apparently supplied for the first time in his commentary on the *pro Cornelio* since there is no cross-reference. Therefore, Asconius did not offer in the lost portion of his work a complete biographical sketch of Manilius from the beginning of his tribunate to his trial in 65.

Furthermore, even if Asconius mentioned in his commentary on the *de imperio* that Cicero was later asked to defend Manilius when he was prosecuted by Pompey's enemies, one has to wonder where Asconius learned that this request was made by Attius Celsus. None of our other extant sources mentions the name and role of this individual. It is apparent from his comment that Asconius did not find the name of Attius Celsus in the *pro Cornelio* since he normally alerts his readers

⁴¹One can observe Cicero employing the same technique in his defence of Cornelius when he challenges Q. Catulus, one of the witnesses against Cornelius, to compare the conduct of his client, while tribune, with the actions of Cn. Domitius (tr. pl. 104) who was Catulus' uncle (Asc. p. 80C.7-14).

⁴²This is the reading adopted by all modern editors. It should be pointed out, however, that the three principal manuscripts offer the abbreviation *p̄r* which could equally stand for *praetore* (so Manutius) and refer to Cicero rather than the subject of *petiuit*, whom Asconius identifies as C. Attius Celsus. More theories have been erected on the presumed praetorship of Celsus than our text warrants. Phillips (604), for instance, who assumes that Celsus presided at Manilius' trial in 65, is led for this reason to reject the statement of the *Schol. Bob.* (p. 119St) concerning a trial for *maiestas* since Q. Gallius was the praetor who presided over Cornelius' *maiestas* trial in 65. Even if we accept the praetorship of Celsus, it is possible, however, that he held this office in 66 rather than 65, as Ward ([1970] 548 n. 15) rightly observes.

when a given piece of information may be found in the speech before them.⁴³ Likewise, the *Acta* may be eliminated as Asconius' source since these records were not available for this period and did not commence until Caesar arranged for their publication in 59.⁴⁴

This leaves the text of the *pro Manilio* itself as the one place where Asconius is most likely to have commented previously on the *contio* and even discovered the name of the individual who urged Cicero to undertake Manilius' defence. In the *pro Cornelio* Cicero briefly alludes to the *contio* because the prosecutor had tried to make the activities and recent condemnation of Manilius an issue in Cornelius' trial.⁴⁵ There would be even more justification for elaborating on the request of Attius Celsus in the speech that Cicero delivered on Manilius' behalf.

Several important conclusions follow from this discussion. If some of the remarks on the *pro Cornelio* which refer to an earlier commentary suggest that Asconius was familiar with Cicero's *pro Manilio* and included this speech in his collection, it must have been delivered in 66. This is guaranteed by the fact that the *pro Cornelio* is the first speech treated under the year 65 and followed several speeches that belonged to the preceding year. Since Cicero was still praetor, the speech cannot have been delivered at Manilius' trial for extortion. Therefore, it cannot have been a forensic oration but must have been delivered at the *contio* when Cicero is said to have expressed his good will towards Manilius and agreed to take his case.⁴⁶ If so, the title of the speech had better be altered from the *pro Manilio* to the *de Manilio*.⁴⁷ The grammarian Nonius, who is the only author to cite this work by name, may well have used the words

⁴³E.g., p. 5C.1-2 *quis fuerit socer Pisonis patris ipse supra dixit his verbis*; 7C.9 *quos et ipse Cicero supra memoravit*; cf. 84C.5; 91C.2.

⁴⁴Suet. *Iul.* 20.1. On the content of these records and their use by Asconius, see G. V. Sumner, "Asconius and the *Acta*," *Hermes* 93 (1965) 134-136.

⁴⁵At one point Cicero appeals to the jury not to allow the *temeritas* of Manilius to influence their attitude towards Cornelius and the tribunal in general (Asc. p. 76C).

⁴⁶This view is held by Gelzer (60 n. 72) and Phillips (606), but it has been questioned recently by Ward ([1970] 552) and Gruen (262 n. 7). R. G. Schettler, *Cicero's Oratorical Career* (Diss. U. of Pennsylvania 1961) 107, assigns the *pro Manilio* to 65 and thinks that it was probably delivered at the trial for extortion. The inference that can be drawn from Asconius provides the best evidence for dating this speech and should dispel further doubt about the year in which it was delivered. The content of the one surviving fragment is compatible with the assumption that it was delivered at the *contio* in 66: *hic ego non solum confiteor verum etiam profiteor* (Nonius 434.24M, p. 700L). These words could conceivably be an admission by Cicero that he had adopted an unusual course of action in setting a hearing for so soon after the indictment.

⁴⁷This speech will have resembled the address which Cicero delivered at a *contio* in 63 on behalf of the ex-tribune L. Roscius Otho and later published under the title *de Othone* (Cic. *Att.* 2.1.3). Schettler ([above, note 46] 167-168) recognizes the existence of such a speech in 66 under the title *de C. Manilio ad populum* but distinguishes it from the *pro Manilio*.

pro Manilio incautiously or carelessly, more as a description than as a title.⁴⁸

A passage in the *Commentariolum Petitionis*, which purports to have been written by Cicero's brother Quintus, seems to confirm that the *contio* is the only occasion on which Cicero may have delivered a speech in support of Manilius since the riots prevented him from keeping his promise to defend Manilius in 65. The author states that Cicero gained good will among the urban populace *in Pompeio ornando, Manili causa recipienda, Cornelio defendendo* (51). If Cicero did in fact defend Manilius at his trial in 65, it is surprising that the *Comm. Pet.* draws a distinction between the services that Cicero rendered to Manilius and Cornelius.⁴⁹

Two of the three acts by which Cicero is said to have pleased the *urbana multitudo* are known to have been recorded in published speeches. A rather practical consideration may have induced Cicero to publish his address at the *contio* in December. In view of the violence that erupted at Manilius' trial, it would have been to Cicero's advantage to clarify the extent of his support and involvement in this case. In the *pro Cornelio* he dissociates himself from the disruptive tactics that Manilius employed in the hope of warding off prosecution (Asc. p. 66C). In the *de Manilio* Cicero is likely to have counselled moderation. As we can see from the *de imperio* and *pro Cornelio*, Cicero took great care to avoid offending the Optimates by presenting a moderate defence of Pompey's interests.⁵⁰ The same tact and discretion was probably to be found in the *de Manilio*, despite the assertion of Plutarch and Dio that Cicero lashed out against the conservatives when he addressed the assembly in 66.⁵¹

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⁴⁸If the sole surviving fragment of this speech formed part of Cicero's justification for denying more time to Manilius (see above, note 46) these words were perhaps preserved in a more extended account of the *contio* than we possess today. Nonius, therefore, may have been quoting at second hand, and his evidence for the title will not carry much weight.

⁴⁹*Causam recipere* properly describes the act of merely agreeing to take a case (*ThLL* 3.694.37–39), despite the assertion of Gruen (262 n. 7) that the language is ambiguous.

⁵⁰His treatment of Hortensius and Catulus, who opposed the Manilian rogation, is beyond reproach (e.g., Cic. *de imp.* 51–53, 59). For Cicero's tact in handling the five distinguished witnesses who testified against Cornelius see Asc. p. 61C.

⁵¹I wish to thank my colleague Michael Alexander for reading an earlier draft of this paper and for many pleasant discussions about the extortion process in general and the trial of Manilius in particular. I also wish to acknowledge the helpful suggestions that were made by the referees of this article for *Phoenix*. The blemishes that remain are the responsibility of the author.