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Edwin Carawan
Missouri State University

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Documents in the Case: Demosthenes 23–24*

EDWIN CARAWAN
Missouri State University

SUMMARY: In Demosthenes' speeches we find documentary versions of laws and decrees which were not included in the prepared text nor (apparently) in early versions for circulation. Recent work on manuscript stichometry suggests a pattern in what appear to be the earliest inserts. In Demosthenes 23 and 24, in cases against unlawful legislation, a significant set of documents was included in the line-count edition; these largely correspond to the *paragegrammenoi nomoi*, the opposing laws listed in the indictment. This finding suggests that the early editor either had that indictment in hand or attempted to reconstruct it.

IN THE SPEECHES THAT DEMOSTHENES WROTE FOR HIMSELF AND OTHERS TO deliver we find various laws and decrees which were not originally included in the prepared text (for the speaker to study before trial) and not ordinarily in the copies for circulation thereafter.[1] Some of these statutes were central to the case; others were merely illustrations of legal principle or incidental history. Whether trivial or crucial, all these exhibits appear to have been collected in a dossier for the clerk to read out to the court, as the speaker prompts him to do, not for the speaker himself to recite. Yet a considerable set of such documents made their way into the manuscripts, where they present a complicated set of problems. Often we can be confident of

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[1] There are bound to be exceptions, as Dover pointed out (1968: 4–5 with n3): cases where some text or excerpt of the document had to be included for publication or the argument would be unintelligible (as in Lys. 10.15–20). But, for the usual pattern, see MacDowell 1990: 43–47.

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the content, because the orator's own words confirm it, but there is some inconsistency or deviation from the usual formula, which arouses suspicion. Occasionally, where the document goes beyond the orator's summary, it may represent historical research (or the editor's recollection of it); often it is a product of sheer ingenuity. Over the centuries of modern commentary scholars have resorted to various approaches, but in the end, it often seems, we resort to one subjective strategy or another: the defects are either tolerable or not, depending on prior assumptions about what the text has to show. One approach guided by objective criteria emerged in the nineteenth century with the examination of manuscript stichometry. Major branches of the tradition show a line count that goes back to an ancient exemplar. Originally, each hundred-line section was marked alphabetically, apparently as a way to calculate how much the copyist was owed for the work.[2] That notation was retained after the line lengthened and the standard sections slipped from a hundred lines to eighty or so, and it was dutifully maintained even when later editors added documents that made some sections sprawl beyond their original length. But, by contrast, the line count allows us to see that some, relatively few of the documents were present in some form in that first "line-count edition" (as I shall call it), when the extent of the text was fixed for large-scale copying. It is that parameter of the material that is now meticulously treated in Mirko Canevaro's book (2013a) on the documents in Demosthenes' public speeches. Using a computerized letter count as a check against the manuscript line count, Canevaro has identified an important set of documents in Demosthenes' public speeches which seem to have a special claim to credibility because they were almost certainly included in that first edition for wide publication and, from close scrutiny of content and usage, they seem more reliable than the rest.

The most obvious package of these stichometric documents comes with the clearest claim to authenticity: the set of laws in *Against Aristokrates*. These can be verified from the orator's comments and in a few instances from the inscribed copy of the homicide law (*IG* i^3 104). Relying largely on such solid material, Canevaro offers an intriguing theory about the editorial process that produced an *Urexemplar* with some documents included (2013a: 329): in the generations after Demosthenes' death, his nephew Democharés and perhaps other admirers set about consolidating his legacy, and a standard

[2] On the working principle, cf. Blum 1991: 157–58 [1977: 238–39], discounting the theory that line count was also meant to serve as a check against insertions or deletions (at n213 [257]).

edition of the orator's work was part of this project; in Athens, so soon after the era of those speeches, they were able to consult original documents and made the best use of what they could find. As a theory, it is plausible enough. But in the two speeches where these stichometric documents are significant, Demosthenes 23 and 24 (hereafter *Aristokrates* and *Timokrates*), there is a pattern which suggests that the early editor worked with a particular focus: he tried to incorporate the documents that were attached to the indictment itself. This essay offers an alternative or refinement to Canevaro's theory based on that finding: we begin (in §§I-III) with an assessment of the documents indicated in the stichometry for these two speeches, informed by the orators' testimony about how that material should be treated at trial; then (§§IV-V) we consider the disparities between one speech and the other and what those differences suggest about the aims of the editor who included these documents, some perhaps verbatim from the text of record, others reconstructed rather roughly.

I. THE STATUTES QUOTED AND OTHER DOCUMENTS CITED IN DEM. 23

In *Aristokrates* the documents represent the ancient homicide law and a few fundamental laws from the early restoration era (403/2 B.C.E. and thereafter), and these are indicated in the *Urexemplar* with high probability. In this speech there are *no documents* that were *not included* (most probably) in the line-count edition. There is a large set of documents *cited* later in the speech, some that would arouse considerable interest, but none with even a fragment inserted in the manuscript. For a few of these headings there is contextual comment, perhaps sufficient to encourage the sort of "forgery" or fabrication that embellished, say, the Crown speech (Dem. 18), but without the quotation or summary that accompanied the documents earlier in this speech. Here we find only the *lemmata*.

TABLE 1. CITATIONS WITHOUT DOCUMENT IN DEM. 23

88–89, a set of decrees protecting the person of the benefactor, providing "the same retribution as if one kill an Athenian"	No further detail in orator's comment, after initial description.
115–16, letters of Kersobleptes	The orator gives context but no summary.
151–52, decree, letters, testimony	Oblique reference to content.
159–62, six letters introduced separately	Orator gives isolated details, no summary.
168–69, testimony in trial of Kephisodotos	Detailed background but no specific content.
174–78, letters, agreements, and decree regarding Thracian kings: 7 documents	Rich context but no phrasing or specific content.
183–84, letter of Chares	No phrasing or specific content.

Now, in Table 2, compare the arrangement of material for the homicide law and the early restoration laws, where documents found their way into the *Urexemplar*. The importance of these statutes is emphasized in an epilogue (215–18), and that summary provides the outline in the left column; in the middle column the documents are summarized or excerpted, showing in italics those clauses that diverge from the orator's summary; the right column cites Canevaro's comment on whether the document goes back to the *Urexemplar*.[3]

[3] The stichometry admits the possibility that the law at §22 and some material in §§51–87 may have been omitted in the *Urexemplar,* but the whole ensemble is probably original: see Canevaro 2013a: 18.

TABLE 2. *PARAGEGRAMMENOI* IN DEM. 23

Epilogue of laws adduced with the *graphē* = *paragegrammenoi*	Documents inserted in main argument (phrases in italics *not* in argument)	In stichometry/ *Urexemplar*
215.Trial by (Areiopagos) council: ὁ πρῶτος νόμος ἄντικρυς εἴρηκεν, ἂν τις ἀποκτείνῃ, τὴν βουλὴν δικάζειν·	22. ΝΟΜΟΣ ΕΚ ΤΩΝ ΦΟΝΙΚΩΝ ΝΟΜΩΝ ΤΩΝ ΕΞ ΑΡΕΙΟΥ ΠΑΓΟΥ. Δικάζειν δὲ τὴν βουλὴν τὴν ἐν Ἀρείῳ πάγῳ φόνου καὶ τραύματος ἐκ προνοίας καὶ πυρκαϊᾶς καὶ φαρμάκων, ἐάν τις ἀποκτείνῃ δούς.	The lemma is doubtful, but the document "must be accepted" (Canevaro 2013a: 46).
216. Not to torture or extort ransom: οὐκ ἐᾷ μετὰ ταῦθ' ὁ δεύτερος νόμος οὐδὲ τὸν ἑαλωκότ' ἀνδροφόνον λυμαίνεσθαι οὐδὲ χρήματα πράττεσθαι· ... ἀπάγειν ὁ νόμος ὡς τοὺς θεσμοθέτας κελεύει ...	28. ΝΟΜΟΣ. Τοὺς δ' ἀνδροφόνους ἐξεῖναι ἀποκτείνειν ἐν τῇ ἡμεδαπῇ καὶ ἀπάγειν, ὡς ἐν τῷ <α'> ἄξονι ἀγορεύει, λυμαίνεσθαι δὲ μή, μηδὲ ἀποινᾶν, ἢ διπλοῦν ὀφείλειν ὅσον ἂν καταβλάψῃ. εἰσφέρειν δὲ <εἰς> τοὺς ἄρχοντας, ὧν ἕκαστοι δικασταί εἰσι, τῷ βουλομένῳ, τὴν δ' ἡλιαίαν διαγιγνώσκειν.	"... part of the *Urexemplar*"(48) Penalty (not mentioned in the argument) shows "conscientious insertion" (54).
	37. Penalties for reprisal against killers in exile, ὥσπερ τὸν Ἀθηναῖον κτείναντα, ἐν τοῖς αὐτοῖς ἐνέχεσθαι, ...	"part of the stichometric edition" (56) §37 =*IG* i^3 104. 26–29
	44, ...τὰ ἴσα ὀφείλειν ὅσα περ ἂν ἐν τῇ ἡμεδαπῇ δράσῃ	"part of the *Urexemplar*" (58)
217. Lawful killing in various instances: ἔστιν ἐφ' οἷς ἀδικήμασιν δέδωκεν ἀποκτείνειν ὁ νόμος·	51, Lawsuits barred for those who act against trespassing killer, δίκας μὴ εἶναι.	51. stichometry uncertain but "must be accepted" in *Urexemplar* (62–64)
	53, Justifiable homicide in athletic contest, ἐν ὁδῷ καθελών (κτλ.), ... μὴ φεύγειν κτείναντα.	53. "in all likelihood" (65) (see §IV)
	60, Killing with impunity against reprisal or abduction, νηποινεὶ τεθνάναι.	60. "very likely" (70)
	62, Entrenchment clause: Ὃς ἂν ἄρχων ἢ ἰδιώτης αἴτιος ᾖ τὸν θεσμὸν συγχυθῆναι τόνδε, ἢ μεταποιήσῃ αὐτόν, ἄτιμον εἶναι ...	"very likely" (71)
218. Hostage taking: τὸ ἀνδρολήψιον, παρ' οἷς ἂν ὁ δράσας ᾖ, ἂν μὴ διδῶσι δίκας, κελεύουσιν οἱ νόμοι μέχρι τριῶν εἶναι·	82, Hostage taking in cases of violent death, limited to three: Ἐάν τις βιαίῳ θανάτῳ ἀποθάνῃ, ὑπὲρ τούτου τοῖς προσήκουσιν εἶναι τὰς ἀνδροληψίας, ... μέχρι τριῶν	"definitely part of the *Urexemplar*" (73)
No laws *ad hominem*: οὐκ ἐᾷ νόμον, ἂν μὴ τὸν αὐτὸν ἐπὶ πᾶσι τιθῇ τις, εἰσφέρειν·	86, ΝΟΜΟΣ. Μηδὲ νόμον ἐπ' ἀνδρὶ ἐξεῖναι θεῖναι, ἐὰν μὴ τὸν αὐτὸν ἐπὶ πᾶσιν Ἀθηναίοις.	"very likely" (74)
No decree superior to a law: οὐκ ἐᾷ ψήφισμ' ὁ νόμος κυριώτερον εἶναι νόμου.	87, ΝΟΜΟΣ. Ψήφισμα δὲ μηδὲν μήτε βουλῆς μήτε δήμου νόμου κυριώτερον εἶναι.	"very likely" (75)

Side by side, Tables 1 and 2 suggest the first and most obvious question: Why were the laws in §§22–87 copied into the main text and thus presented as authentic documents, while none of the later exhibits (88–184) merited that treatment? Part of the answer is indicated in the epilogue (215–18): the editor who included this particular set of documents saw their crucial importance in cases of this kind. This speech, like its companion piece, was written for the first speaker in a suit against wrongful legislation: *graphē paranomōn* in the case of Aristokrates; *graphē nomon mē epitēdeion theinai* in the case against Timokrates. In principle, the jury's decision should turn upon the contradiction between standing laws and the targeted measure, and it was this speaker's burden to present that case. It may also be true that an early editor had better access to this one set of texts than to the others, but let us leave that question for consideration together with the more complicated companion piece (in §§III–V). First let us consider the way this speech distinguishes those documents crucial to the case.

II. THE "LAWS IN EVIDENCE," *PARAGEGRAMMENOI NOMOI*

In *Aristokrates* the speech itself tells us that the documents included in the *Urexemplar* were crucially important. In preface, as the prosecutor outlines his arguments (18–21), he explains that he will first take up the laws that stand in direct contradiction to Aristokrates' decree, before proceeding to the questions of public interest and the dubious merit of the honorand.[4] For, whatever weight is given to the other issues, it is the conflict with standing law that proves the illegality of the decree, τὸ παράνομον (22). He begins with the homicide laws and, as he proceeds through them, he repeatedly reminds the jurors of his aim, to show that the decree is ἐναντίον τοῖς νόμοις. As he turns to the fundamental laws, against any law *ad hominem* (ἐπ' ἀνδρί) or any decree superior to a law, he refers to the laws entered in evidence as those written into the indictment or alongside the targeted law, as *paragegrammenoi*: there are many other laws that the decree has violated, which he has *not* put on the record in this way (οὓς οὐ παραγεγράμμεθα, 63). The ones he has entered in evidence pose the clearest conflict, as he recalls in the epilogue (215), urging the jurors, to think again περὶ δὴ τῶν νόμων ὧν παραγεγράμμεθα.

[4] Aristokrates' decree would have allowed summary arrest anywhere in the alliance, against anyone who might kill the commander Charidemos. The documents arrayed against it include the homicide laws and the rules barring any law for particular persons or any decree that trumps a law.

It was probably that description that prompted the editor to go back and recover these laws (whatever his source). And he was given singular assistance by the speechwriter: for the main content of these documents replicates verbatim or very nearly what the speaker has to say in his argument. So, as a working hypothesis, let us suppose, wherever he got the documents, the ancient editor was encouraged to include them by these two singular features: the content is readily verifiable from the argument, and it is emphatically crucial to the case, as the epilogue insists.

Here, in the *graphē paranomōn* against Aristokrates, the only documents in the manuscript belong to this set of laws adduced in the indictment itself, the παραγεγραμμένοι νόμοι that were listed alongside the targeted decree. These were the laws with which Aristokrates' decree was directly in conflict, and they were thus crucial to the case. These laws in conflict, together with the targeted decree, belonged to the full text of the *graphē*, which the prosecutor Euthykles presented to the *thesmothetai*, for them to verify or amend at the *anakrisis*; and that full text of the indictment would have been assembled on the *sanis* that was posted for public consideration before the trial and then displayed at court.[5]

In other procedures supporting documents were sometimes attached to the indictment,[6] but in any lawsuit against a law or decree the presentation of *paragegrammenoi nomoi* was critical, as attested by Aischines in his case of that type *Against Ktesiphon*. He describes how the targeted measure and the laws that contradict it are presented side by side on the *sanis*—here called *sanidion*, with the diminutive perhaps to emphasize how simple the comparison is. The jury should use that board like a carpenter's rule, a *kanōn,* to measure out justice (3.199–201):

> Ὥσπερ γὰρ ἐν τῇ τεκτονικῇ, ὅταν εἰδέναι βουλώμεθα τὸ ὀρθὸν καὶ τὸ μή, τὸν κανόνα προσφέρομεν, ... οὕτω καὶ ἐν ταῖς γραφαῖς ταῖς τῶν παρανόμων παράκειται κανὼν τοῦ δικαίου τουτὶ τὸ σανίδιον, τὸ ψήφισμα καὶ οἱ παραγεγραμμένοι νόμοι. ... (201) Ἐπειδὰν προελθὼν ἐνταυθοῖ Κτησιφῶν διεξέλθῃ πρὸς ὑμᾶς τοῦτο δὴ τὸ συντεταγμένον αὐτῷ προοίμιον,

[5] As shown by Mark Sundahl 2000: 36–50. What I call "the indictment" was assembled on the *sanis*, the painted board posted at the heroes' monument before the trial and then exhibited at court. It comprised the text of record for the *graphē* itself (the charge in its official wording) with the attachments that documented the points of law crucial to that case: text of the targeted law or decree along with the laws adduced as conflicting with it.

[6] E.g., *For Euxenippos* §30 (col. 40 Jensen): Hypereides tells how, in his *eisangelia* against Philokrates for corruption and not speaking in the best interest of the *demos*, he attached (ὑποκάτω παρέγραψα ... ὑπέγραψα) a copy of Philokrates' decree in evidence of that crime.

> ἔπειτ᾽ ἐνδιατρίβῃ καὶ μὴ ἀπολογῆται, ὑπομνήσατ᾽ αὐτὸν ἀθορύβως τὸ σανίδιον λαβεῖν καὶ τοὺς νόμους τῷ ψηφίσματι παραναγνῶναι. Ἐὰν δὲ μὴ προσποιῆται ὑμῶν ἀκούειν, μηδὲ ὑμεῖς ἐκείνου ἐθέλετε ἀκούειν.
>
> Just as in construction, when we want to know what is right and what is not, we apply a ruler (*kanōn*) ... so, too, in *graphai paranomōn,* this *sanidion* is presented as a ruler of justice (matching) the decree with the laws (in conflict) listed beside it. ... (201) And when Ktesiphon comes forward to recite that prologue that was assigned to him, then carries on with no (proper) defense, remind him, without any commotion, to take the *sanidion* and read the laws alongside his decree. And if he pretends not to hear you, refuse to hear him!

Here he calls upon the jury to demand that Ktesiphon read the *paragegrammenoi*, and if the defendant ignores their prompting, they should shout him down. That dramatic cue may have suggested to later readers that the litigants themselves were obliged to present these crucial texts of the law out loud, as though citing directly from the *sanis*; at least they were supposed to rehearse them in a fairly specific and substantial treatment.[7] After all, in *Aristokrates* the main sections of those conflicted laws are repeated, often verbatim, by Demosthenes' client.[8] Indeed, in this case the *paragegrammenoi* were so fully cited that scholars have wondered: Who would bother to insert what purports to be a separate text?[9]

III. *PARAGEGRAMMENOI* IN *TIMOKRATES*

In the companion piece, Dem. 24, the argumentation is not nearly so finished and the disposition of material may seem hardly comparable: we find many more documents inserted, many that were not in the line-count edition; the orator's comments do not reveal the content quite so exhaustively; and we have no epilogue focusing on the list of laws. But I think we can discern a similar pattern: (1) Documents that were certainly or most probably included in the *Urexemplar* correspond, for the most part, to the texts that were attached to the *graphē* itself. And (2) much of this early documentation could be constructed or verified from the orator's comments. By contrast, the material that appears

[7] Near the end of the list, Euthykles pretends to need reminding, what is the next law adduced—Is there another one (82), or is that all? (87)—to emphasize how substantial the list is.

[8] For instance, the law inserted at §60 is promptly repeated word for word.

[9] So queried Franke (1848: 3): *Quis autem in animum inducat, ut hominem doctum, qui legum, decretorum, testimoniorum carmina aliave antiquitatis monumenta conquisiverit et in margine orationum adscribenda curaverit, etiam ea, quae quilibet puerulus nullo negotio ipse ex oratione repeteret, diligenter literis consignata adscripisse credat?*

to have been added in subsequent editions does not bear so directly upon the conflict between the targeted measure and the older body of law. And those later addenda do not match quite so closely with the orator's summary. The insert for Epikrates' decree (27) is a notable exception: this measure, convening the special session of legislators where Timokrates' law was enacted, matches closely with the orator's comment and may have been concocted from it; but it is not indicated in the *Urexemplar.* That exception only reinforces the pattern: for Epikrates' decree is read to show how unscrupulously Timokrates brought his bill before the lawmakers; it has nothing to do with the matter of "repugnancy" or conflict between the targeted law and the others, and so it does not belong among the *paragegrammenoi.* Among documents that were included in the *Urexemplar* there is another important exception: the text of Diokles' law (42) goes well beyond what the orator has to say about it (as we consider in §IV). But perhaps the most notable difference between this composition and *Aristokrates*' is the treatment of the targeted measure itself.

Here the stichometric documents are introduced in much the same way (39): these are the laws in evidence on the charge of illegality, showing that the targeted measure is in direct conflict with standing laws (ἐναντίον ... τοῖς οὖσι νόμοις). In this case the targeted law itself is read in full (39–40) for comparison with older measures, and it is read again (at least in part) after the laws in conflict have concluded (71). By contrast, in *Aristokrates* the targeted decree was not read back in the course of the prosecutor's speech; instead, Euthykles quoted the main clauses and moved directly to the reading of laws that conflict with it. He relied on the jury to recall the first sections of the *graphē,* the charge itself and the law that it targeted, as read at the commencement of these proceedings. When he plunged into his legal argument, barely seventeen sections into the speech, the text of the targeted decree hardly needs repeating, so Euthykles simply focused on the features that stood in starkest contradiction. But in *Timokrates* the full text of the targeted law is read back at the beginning of the section listing the laws in conflict, and then part of it is repeated at the transition to the next argument. As Canevaro concludes, both readings were probably represented in the *Urexemplar.* Some of the intervening material sprawls beyond the stichometry, but it looks as though these two readings of the targeted law stood like bookends at the beginning and conclusion of a section where the early editor tried to include *paragegrammenoi* in the line-count edition.

In the following table, documents in the first column, between the first reading of Timokrates' law and the second, largely correspond once again to the *paragegrammenoi nomoi,* the laws in opposition to the measure indicted.

TABLE 3. DOCUMENTS IN DEM. 24 (WITH NOTES FROM CANEVARO, ET AL.).

Largely within the line count, with uncertainties noted	Outside stichometry, not in *Urexemplar*	Matches orator's comment, or not = Independent
	20–23, *Epicheirotonia nomōn:* elaborate protocol for review and correction of the corpus.	Independent: diverges from orator's summary; cf. Schöll 1886: 119–23; Canevaro 2013b: 150–54.
	27, Epikrates' decree for *nomothetai*, festival financing: not in stichometric edition but indicated in scholia.	Close match with orator's summary, but probably constructed from it; Piérart 2000: 245–50.
	33, MacDowell's "Repeal Law" (1975: 69–71): Τῶν δὲ νόμων τῶν κειμένων μὴ ἐξεῖναι λῦσαι μηδένα, ἐὰν μὴ ἐν νομοθέταις.	Begins abruptly, not closely constructed from comment (though partly prompted by it).
39–40, Timokrates' Surety Law, target of Dem. 24, allowing state-debtors to post bond and avoid imprisonment.		Closely matches orator's comment (Canevaro 2013a: 79, 87), sometimes verbatim.
42, Diokles' Law on the scope of laws enacted "before Eukleides" and those afterward.		Largely Independent, prompted by reference to starting dates vs. statutes valid from enactment.
45, No reprieve for *atimoi* or state-debtors without granting immunity to the proposer, by vote of 6000.		"contents ... correspond closely to the following discussion" (Canevaro 2013a: 128).
50, Law on supplication: Canevaro concludes (133), "impossible ... to determine" whether in *Urexemplar*.		Partly matches, with details from other sources.
54, Law barring reprise of *res judicata*: stichometry uncertain.		"well-informed, yet clumsy reconstruction" (142).
56, Restoration-era laws: *ne bis in idem; dikai* and *diaitai* remain valid, acts of the Thirty are invalid. Possibly in *Urexemplar* (indicated in *P. Oxy* 2.232).		Partly matching orator's comment.
59, Rule against laws *ep' andri* (Dem. 23.86) without quorum of 6000; stichometry uncertain.		"problems ...point to its inauthenticity" (150).
63, Timokrates' *habeas corpus* law —"impossible to calculate" whether in stichometry, probably in *Urexemplar* (151).		Only the last line bears comment from the orator, repeated for emphasis in §64.
71, Timokrates' Surety Law, reprised (also indicated in *Urexemplar*)		[discussed below]
	105, Laws on Theft, Abuse of Parents, and Desertion	Independent, differs or extends widely from orator's summary.
	149–51, Heliastic Oath, not in stichometry but indicated in *POxy* 2.232.	Independent, disparate elements, prompted by orator's clues.

There are a few provisions that are not strictly in conflict, and not all fall within the stichometry,[10] but the bulk of this section goes back to that line-count edition. By contrast, the middle column lists documents that were not included in the *Urexemplar*. The third column, on the right, indicates how closely the document corresponds to the speaker's description.

In this case, as we noticed, the text of the targeted law has been added, like another piece of the *sanis* (so to speak). But here again we can say (though with graver reservations), the bulk of the documentation that found its way into the line-count edition *represents* material from the *graphē* (accurately or not). Later editions have padded the material in §§ 50–71, but most of these provisions were presented in the line-count edition.

Now that pattern, prevailing in both speeches, suggests a particular focus, not a haphazard selection.[11] The documents included in the line-count edition appear to be only those that would be included in the one piece of supporting material that was likely to be kept intact for quite some time after the case: the *graphē* itself, complete with the *paragegrammenoi*. How or whether the editor had access to that text of the indictment remains to be considered (§§IV–V). There were several possible sources. The prosecutor would probably keep a reference copy of the indictment along with his copy of the speech, and the early editor may have somehow gotten his hands on it. There would also be some record of *graphai* in official archives and these may have been preserved and accessible as late as the line-count edition.[12] If not, the early editor may

[10] As Canevaro notes (2013a: 21–23), some of the documents in §§50–71 would fit the stichometry, but what we have stretches beyond the line count, as detailed below in section IV.B. By contrast, documents that fall outside the stichometry often appear to be fabricated and sometimes in error; on the legislation laws in §§20–23 and §33 see Canevaro 2013b: 150–58.

[11] Canevaro acknowledges that some documents may derive from the dossier submitted at trial, without singling out the *paragegrammenoi*. As for why some documents were included and not others, he supposes (2013a: 329), it was "mainly due to chance: Democharas added to the speeches those documents that he found among Demosthenes' papers, or those famous enough for an Athenian orator and politician like himself to remember by heart (this could be the case for the homicide laws included in the *Against Aristocrates*, and perhaps for the law of Diocles found at Dem. 24.42)"; he may have drawn upon the archive and *stelai*, but "[s]ometimes he reconstructed ... from Demosthenes' discussion."

[12] Cf. Harris 2013, esp. 149 with n24. Some record of plaint and verdict may have been kept in the Metroon, but it seems doubtful whether the full text of the indictment, complete with *paragegrammenoi*, would be preserved in the central archive, especially in moot cases such as *Timokrates*. Another resource would be the archives of the magistrates, as considered below, n42.

have consulted or relied on his recollection of historical compendia, such as Krateros made of decrees and Theophrastos made of laws.[13] In any event, the editor knew of such records and recognized the crucial importance of this particular set of documents, so he set about recovering them, one way or another.

The other documents that were handed in to the clerk to be read at other points in the speech, before and after the *paragegrammenoi* (Table 1 and the middle column of Table 3), were a much more heterogeneous and cumbersome compilation: so far as we can see, none of those items was represented in the line-count edition; and most of the documents that were later supplied, to represent those items in the dossier, are rather less reliable. To be sure, those later addenda include some valuable material, sometimes assembled by an editor with "shrewd understanding of the workings of the Athenian assembly and a remarkable knowledge of Attic official language."[14] But, after the crucial documents had been covered, those later editors faced a more difficult task.

IV. DIVERGENT MATERIAL IN THE LINE-COUNT EDITION

For much of the stichometric material the early editor may have simply seized upon "low-hanging fruit," the measures that were most fully discussed in the speech or most easily (re)collected. He recognized that these texts were crucial to the lawsuit, as the epilogue to *Aristokrates* emphasizes, but in many instances he was not obliged to consult any official record or historical authority. In each speech, however, there are a few notable exceptions, passages where the document could not be concocted from the orator's comment. Some divergence may be a product of the editor's ingenuity, but, on balance those outliers weigh in favor of Canevaro's finding: the stichometric documents tend to be more reliable because the editor could draw upon credible sources outside the speech.

(A) In *Aristokrates,* again, very little of the documentation in the *Urexemplar* required any independent research; the bulk of it is readily constructed from the orator's comment. One might even suppose that an early researcher, inspired by Peripatetic collection of constitutional material, gathered in the margin laws that could be easily extracted from Demosthenes' account;

[13] For Krateros's work as part of the Peripatetic project, see esp. Erdas 2002: 38–46.

[14] As Canevaro 2013a: 332 explains some of the more plausible features in Dem. 24.20–23; cf. Scafuro 2005, on Dem. 24.105. The most striking comparandum is the composite in *Makartatos* (Dem. 43.57–58), from Drakon's homicide law (= *IG* i^3 104. 20–23) and the later law for demarchs to dispose of bodies (considered largely reliable by Whitehead 1986: 137–38), neither indicated in the stichometry (Burger 1892: 25).

and then another hand, prompted by the epilogue and other testimony on *paragegrammenoi*, went back and copied those marginalia into the speech.[15] I mention this possibility to emphasize how closely these documents track the argument, and as a reminder that the conjuring of hypotheses and supporting materials, which inspired an industry of fabrication in later tradition, was well under way in the era of the *Urexemplar*.[16] But there are discrepancies that seem to derive from a reliable source.

In the very first law cited, at §22, the stichometry is indecisive and the only deviation is the phrase in the document identifying the court for intentional homicide (and the like) as the council "(the one) on the Areiopagos." When the speaker comments on the law, he assigns jurisdiction simply to "the council," probably because everyone knew that the council in question was not the democratic body of five hundred. Indeed, this law assigning murder jurisdiction to the full body of former archons was probably a Solonian adaptation.[17] In that context, "the council (the one) on the Areiopagos," marked a new and important distinction. Of course it is also the kind of clarification that could have been added by the same hand who supplied the lemma, "A Law from the Homicide Laws of the Areiopagos."[18]

But the next document (§28) is squarely within the stichometry and shows a more substantial deviation from the argument: this is the law allowing retributive killing or capture of a homicide "in the homeland" (ἐν τῇ ἡμεδαπῇ), but barring brutality or extortion (λυμαίνεσθαι δὲ μή, μηδὲ ἀποινᾶν). That prohibition is as far as the speaker goes in his recitation, but the insert has clauses specifying the remedy and the penalty: the violator is to repay two-fold the damage he has done; anyone willing may take his case to the competent magistrate, depending on the nature of his claim (damage, assault, or abduction); and the *heliaia* will decide the case.[19] Here we have another plausibly

[15] Thus in *Leptines* (Dem. 20), a speech that proved otherwise immune to such intrusion, we find the one-line document (27–28), "no one shall be exempt from the trierarchy except the nine archons."

[16] The regular use of hypothetical cases goes back at least to the time of Demosthenes (Quint. *Inst.* 4.41–42), when, we are told, Aischines pioneered such exercises in invention (Philost. *VS* 481). On this sophistic genre, with fabricated laws to frame the more provocative case, cf. Carawan 2001: 19; Canevaro 2013a: 355 n60, citing Theon *Progymnasmata* 103 Patillon, with Kennedy's translation, 2003: 67.

[17] Cf. Wallace 1989: 11–22; Carawan 1998: 89–91.

[18] The lemma is less likely to have been included in the line-count edition; see Canevaro 2013a: 44–45.

[19] Some of the phrasing may be muddled: Schelling's emendation (1842: 68), εἰσφέρειν δὲ <εἰς> τοὺς ἄρχοντας, is most probably right (accepted by Dilts; δ' ἐ<ς> Butcher); and

Solonian law, but with significant material that could not be extracted from the speaker's summary.

The next two documents, §37 and §44, agree with the orator's recitation almost verbatim; the first matches the inscription of Drakon's law (*IG* i^3 104. 26–27). But then, in Dem. 23.53, we find a notoriously problematic text of the law on justifiable homicide[20]: "If one kill (another) in athletic contest unwillingly, or overtaking (him) on the road or in warfare unwittingly ... the killer is not to flee (or face exile) for such killing."[21] Most troublesome is the vague phrase ἐν ὁδῷ καθελών, "overtaking on the road," which receives no comment from the orator.[22] So short a phrase could have been added at a later stage of transmission, without affecting the line count, or this disparity might actually indicate revision in the law.[23] The ancient lexicographers give an explanation at least as old as Didymos, who commented extensively on this speech in the first century B.C.E.,[24] but that explanation proves doubtful. The Didymian lexicon says that ἐν ὁδῷ καθελών refers to "ambush or lying in wait," and it compares the Homeric formula, "going the road or fighting ... full force." Harpokration's version derives from the same tradition.[25] If that

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one wonders whether καταβλάψῃ is the right word for doing calculable damage. But, allowing for such defects, Canevaro 2013a: 48–54 makes a good case for the authenticity of this Solonian amendment.

[20] Ἐάν τις ἀποκτείνῃ ἐν ἄθλοις ἄκων, ἢ ἐν ὁδῷ καθελὼν ἢ ἐν πολέμῳ ἀγνοήσας, ... τούτων ἕνεκα μὴ φεύγειν κτείναντα. Modern editions usually punctuate with a comma after καθελών, and most commentators treat the phrase as independent of ἀγνοήσας.

[21] Sosin 2016 has offered an attractive explanation for this cryptic phrase and I translate to allow for that meaning: in the archaic law ἐν ὁδῷ καθελών covered roadway encounters including reckless violence such as Oidipous describes, *OT* 800–13.

[22] Of course the fault may lie in the orator's summary (*utrum memoriae an exemplarium vitio?*), as Taylor considered (1774: 349); he reasoned that ἄκων implicitly governs the phrase that follows it, or καθελών results from οὐκ ἐθέλων. Conversely, it is often assumed that ἀγνοήσας governs ἐν ὁδῷ as well as ἐν πολέμῳ: discounted by Franke 1848: 9–11.

[23] Drerup 1898: 277 allowed for some divergence in the tradition resulting from ancient revision of the laws. On a similar assumption, Carawan 1998: 92–96 emphasized the disparity between Drakon's original and the later law for the Delphinion court. Flament 2009: 120–21 also traces persistent deviation in the tradition back to revision of archaic laws.

[24] P.Berol. inv. 5008. Much the same entry is found in an anonymous lexicon on Dem. 24 that relies on Didymos: Blass 1882. Gibson 1997 and 2002: 158 argues persuasively that Harpokration and the lexicon that cites Didymos follow a common intermediary and cannot derive directly from Didymos.

[25] For text and commentary see Gibson 2002: 160, 165–66. Cf. Harpokration (O 2 Keaney = 217.12 Dindorf), Ὁδός: Δημοσθένης ἐν τῷ κατ' Ἀριστοκράτους φησὶν "ἢ ἐν ὁδῷ καθελών" ἀντὶ τοῦ ἐν λόχῳ καὶ ἐνέδρᾳ. τοιοῦτον δὲ εἶναι καὶ τὸ Ὁμηρικόν φασιν "ἢ ὁδὸν ἐλθέμεναι."

was Demosthenes' reading, perhaps he neglected to comment because (he thought) this instance was part of a broader exemption, for killing mistakenly in the course of hostilities. But the lexicographers are just guessing, and Demosthenes himself may have passed over this puzzling phrase because its meaning was already uncertain or unpopular.[26] Whatever its original sense, this cryptic clause is attested early in the tradition, was not prompted by the orator's comment, and probably derives from the law itself.

Yet, if we had only divergent phrases such as these in *Aristokrates*, we would hardly insist that the early editor must have relied on an independent source for the wording of the laws that he inserted above the orator's recitation. The odd clause or jumbled phrasing may be simply due to later processing. In *Timokrates*, however, we find a more significant pattern of deviation. As we consider in §V, that disparity may have something to do with the speechwriter's predicament: *Timokrates* is probably a speech for circulation in a case that never went to trial; the argumentation wanders. But it begins with a similarly documentary focus.

(B) Immediately after the first reading of Timokrates' law (§§39–40), which seems largely reliable and falls within the stichometry, we find another text that fits that description: Diokles' law on the application of statutes in the early restoration era. Laws enacted under the old democracy were again valid; those that were enacted and recorded in Eukleides' archonship (403/2) were valid from that date; those that were enacted thereafter were not retroactive but valid "from the day of enactment, unless a starting date has been attached" (ἀπὸ τῆς ἡμέρας ἧς ἕκαστος ἐτέθη, πλὴν εἴ τῳ προσγέγραπται χρόνος ὅντινα δεῖ ἄρχειν, 24.42). The inserted document then concludes with a plausible provision for the council secretary to make systematic notation in the standing laws, as to which time frame applies.[27] Of all these rules, Demosthenes gives a paraphrase only for the clause requiring that laws be valid from the day of enactment unless there is a time specified; he wants to suggest that the rule is thrown into confusion because Timokrates' law ignores such distinctions. But the critical conflict seems to be that Timokrates made his surety law without

[26] Sosin 2016 concludes that justifiable homicide for roadway encounters would have favored the horse-driving elite. Perhaps with regard to such relics, Demosthenes anticipates the objection (23.64) that "these rules are worthless and wrongly devised and what (Aristokrates) has authored is just fine."

[27] The very last clause seems superfluous: must the secretary thereafter designate every *new law* as valid from enactment, unless there is a starting date?

any limitation; it would alter the application of old laws and might mitigate penalties prescribed long ago. Demosthenes points up the conflict (44) but gives no summary of the old law that this contradicts.

Whatever text Demosthenes and his client actually included here among the *paragegrammenoi*, it must have indicated some principle of statutory limitation. There was no more famous statute of limitations than the one that was vital to the restoration of democracy, not to apply public remedies to any offense before the year of Eukleides.[28] So the ancient editor would naturally look back to that era, if he did not have the actual document in hand. If he had any doubt of the context, the restoration-era laws cited later in this argument (54, 56, and 59) would point in that direction.

Thus in Diokles' law we have a solid case for a document that (1) was included in the line-count edition,[29] and (2) could not have been concocted from the orator's comment, but (3) belonged to a set of laws that was particularly well known and accessible. How, then, did the early editor come to introduce this document?

Here again it is certainly possible that the editor had access to a copy of key documents from the indictment itself. That full text of the *graphē* would include the targeted measure and the laws in conflict with it, and copies were preserved for many years in the officers' archives and, perhaps for generations, among legal papers important to the client and his family, if not also in the speechwriter's collection. Perhaps in the course of gathering a corpus, that documentary preface was attached to its speech. Then, at some point in the third century B.C.E., an early editor saw fit to write those documents (or significant excerpts) into the main text. Small deviations might result from careless or officious hands in the later tradition. That scenario seems to me a reasonable possibility in the case of *Aristokrates*. But in *Timokrates* there are more troublesome disparities, and these seem sufficient to disprove any direct access to the *paragegrammenoi* as assembled for the official record.

In the targeted law itself, Timokrates' Surety Law (Dem. 24.39–40 and 71), the content is problematic at beginning and end. In the first reading, the document concludes with a surprising flexibility: those who owe in the ninth prytany are to pay (or have their sureties pay) by "the ninth *or* tenth prytany of the next year." As Schöll supposed, the tenth prytany makes more sense for the end of the first year (when debtors are in default), and the ninth prytany, for the next year (by which sureties must pay); but the original would have

[28] With Andoc. 1.82–89, see Carawan 2013: 186–93, and (on Diokles' law) 266–67.

[29] Canevaro 2013a: 121, "definitely part of the *Urexemplar*."

alphabetic numbers which are easily reversed; the dubious "ninth *or* tenth" prytany was a feeble attempt to make the garbled version more plausible. In the second reading (71) a name is added in the prescript for the chairman of the *proedroi*, who put the matter to a vote: τῶν προέδρων ἐπεψήφισεν Ἀριστοκλῆς Μυρρινούσιος. His demotic indicates that he belonged to Pandionis, the tribe in prytany, which cannot be.[30] So Schöll suggested, again, a common sort of corruption: Aristokles belonged to the less familiar deme, Myrrhinoutta, up the coast from Myrrhinous, from a different tribe (Aigeis). But that would not explain why, if both documents were copied from the same record, we have that feature in one reading and not in the other.

These two readings of Timokrates' law allow one of two explanations: either the documents were haphazardly added into the *Urexemplar*, or significant alterations crept in with later tradition.[31] The latter seems the more likely. For surely the line-count editor would follow the same text for both inserts, and there is no obvious reason why he would include details from the prescript in one reading and not in the other. The stichometry makes it all but certain that most of the material was included in both passages, but for the second reading of Timokrates' law (71) there is room for a small expansion beyond the stichometry, and that may account for the extra line identifying the *epistatēs*.[32]

In view of these difficulties, it seems sensible to reserve judgment on the odd set of contradictions that emerge among the documents that come after Diokles' law, especially in §§50–63, as these fall within the sections (E–Z) where the manuscripts show a notable expansion beyond the line-count edition.

First of all, the same superfluous detail was probably added at the end of the laws in §§45 and 59: both laws call for a quorum of 6000 in the assembly voting by ballot (for a more accurate count than show of hands)[33]; but some

[30] Cf. Canevaro 2013a: 119–20, with Schöll 1886: 132–33. *Proedroi* were chosen from the tribes not in prytany, an innovation of the decade or so after 392, and identifying the *epistatēs,* the official who put the law to a vote of the *nomothetai,* actually rings true. Presiders were probably chosen for the *nomothetai* in the same way as for council and assembly; in *IG* ii^3 452 = *IG* ii^2 222 the *epistatēs* for the *nomothetai* is not the one who presided in the assembly at the enactment of the decree because from one session to the next new *proedroi* were selected.

[31] As Canevaro acknowledges (2013a: 118): "It is not impossible that clauses and further specifications were added to the older documents when the newer were eventually inserted."

[32] Burger, counting lines (1891: 10), finds that the section is right on average (83), if the document is included. Canevaro's count of letters (2013a: 21), allows for a small expansion of a line or two (3614 characters, against an average of about 3550).

[33] On methods of voting in the assembly see Hansen 1977.

scribe or editor has added, that the vote must be "by *secret* ballot," κρύβδην. In the first instance, in §45, we find a law allowing proposals to benefit *atimoi* and *opheilontes* (disfranchised and indebted to the polis) only if the proposer is given permission or immunity (*adeia*) by "secret" balloting. The same procedure is indicated in §59, in an exception to the rule against laws affecting particular persons (*ep' andri*) and not applicable to all.

In both documents (§§45 and 59) the phrase οἷς ἂν δόξῃ κρύβδην ψηφιζομένοις seems doubtful (as also in Andokides 1.87),[34] and by discounting those clauses, the line count is a little closer to the original.[35] In the first instance (45), the inserted document follows precisely the sequence of features summarized by the orator, in much the same language, until we get to that last detail, which seems redundant after ψηφισαμένων. Indeed, the call for *secret* ballot seems pointless in a rule regarding *permission to offer proposals*, when the vote on the proposal itself would not require ballot voting at all.[36] In any event, it is not the sort of departure from the orator's words that proves authenticity. It seems to me more likely that the detail, "voting by *secret* ballot," was added by someone who knew the phrase from other citations (such as [Dem.] 59.89). In the searchable corpus of Attic inscriptions there is no instance of the formula κρύβδην ψηφιζόμενοι referring to the citizen assembly or any such forum of thousands.[37] So brief an expansion would not in itself affect the line count, but the sum of many such intrusions could certainly contribute to the surplus for §§50–63. And that process, whereby the text expands beyond

[34] In Andoc. 1.87 the exception is also doubtful: cf. Canevaro and Harris 2012: 117–18.

[35] By Canevaro's calculation based on letter count (2013a: 21), the two sections E–Z = §§47–68 fall short of the average without the documents but seem too long with all included (by roughly 6 lines or less). Burger 1891: 10 suggested a larger expansion: he counted 175 lines total for the two sections, where the average per section is 83.

[36] The epigraphic comparanda that Canevaro cites for secret ballot (2013a: 132 n166) actually deal with voting in much smaller groups where secrecy and sanctity of ritual were a hedge against undue influence (*IG* ii² 1141 = Agora 16.44, special meeting of the tribe Kekropis on the acropolis; *IG* ii² 1183, the ten *euthynoi* for the deme). Add to those *IG* ii² 1237 (decree of Demotionidai) 82–84: in voting on inductees the phratriarch is not to give the ballots to all until members of the candidate's own *thiasos* have voted "secretly, taking their ballots from the altar."

[37] Ψηφίζεσθαι usually means "vote by ballot," without qualification, in opposition to χειροτονεῖν. But the scholiasts seem to seize upon κρύβδην as showing that the assembly functions like a court: in comment on this passage (111 Dilts), one explains the quorum of 6000 as meaning "not *dikastai* but (chosen) from the demos, imitating *dikastai* (μιμουμένων δικαστάς); wherefore [Demosthenes] introduces the proper feature of *dikastai,* τὸ 'κρύβδην.'"

the old line count simply because officious hands are constantly improving upon it, must make us cautious about the details, even where line-count and verifiable content would otherwise indicate original and reliable documents.

The law inserted at §54, barring reprise of *res judicata,* is an even more clumsy fabrication (as Canevaro concludes, 2013a: 142). That is especially significant for our inquiry because we might expect that law (along with those that follow in the same vein, §56) to be central to the *paragegrammenoi,* the list of laws in conflict with Timokrates' surety law; for the latter would effectively cancel or mitigate the penalties imposed by the court, thus (arguably) contradicting the old rule that settled cases not be decided anew. And yet it looks as though there was no documentary text of this law in the line-count edition. It is perhaps the clearest of several indications that the early editor was left to his own devices.

Now Timokrates' *habeas corpus* law[38] is a second instance (after Diokles' law) where the inserted document seems plausible and well crafted but goes well beyond anything the orator says in his argument. This intriguing text is still within those sections (47–68) where manuscripts have expanded beyond the line count; some of the documentary material would fit, but not all. The content of this law is of considerable interest: it requires that "all who ... by impeachment" (κατ᾽ εἰσαγγελίαν) of the council are currently under arrest or in custody but not yet remanded to the *thesmothetai* for trial, the Eleven are to bring to court within thirty days or as soon thereafter as practicable; anyone willing may prosecute; if the defendant is convicted at trial, the *heliaia* is to assess whatever penalty he deserves to suffer or pay: "And if a fine is assessed, he shall be imprisoned until he pay whatever judgment has been given against him." But this earlier law by the same legislator is cited only for that last clause, as it poses a conflict with the targeted law which would allow those burdened by fines to post sureties and remain at liberty. Indeed, Demosthenes has that last provision repeated for emphasis and says nothing more about the other content of that earlier law.

In this instance we can see quite clearly how later alterations have muddled the tradition. It is only within the last century (or so) that scholars have accepted the reading of S, the tenth-century Parisinus, as practically certain: "Be

[38] As dubbed by Rhodes 1979: 107, Timokrates' earlier measure (§63), against jailing a defendant impeached by council. Canevaro suggests that this may be one of the intrusive texts (that stretch the line count), and indeed, it seems incidental to the major laws in conflict. Another likely intrusion, not confirmed by the orator's comment, is the penalty attached to the law against petitioning the assembly for some reprieve (§50): if the *proedros* puts it to a vote, he shall be *atimos.*

it decided by ***nomo****thetai*" (δέδοχθαι νομοθέταις). Aside from one corrector, the other manuscripts introduce this law with ***thesmo****thetai* in the place of ***nomo****thetai* (a confusion common among the scholia). There may also be some garbling of the clause introduced with "all who," ὅποσοι, followed first by present indicative and then by subjunctive without ἄν.[39] And it is surprising that Demosthenes did not deal with the main provisions of this law, if the document conveys those accurately: it provided relief to men already jailed (νῦν εἰσι ἐν δεσμωτηρίῳ) and to anyone in custody henceforth. Those features might have provoked the same objections that Demosthenes raises against Timokrates' surety law, suggesting a pattern of illegal legislation: this, too, is a law for the benefit of particular persons and without limitation. On balance, it seems reasonable to suppose that this text *represents* an authentic law framed to introduce something like *habeas corpus* for those jailed summarily by council, though the version we have is dubious on the details and it is doubtful whether any or all of it was included in the *Urexemplar*. At best, as in the law on *res judicata* (54), the early editor may have supplied a kernel of historical value, only to have it spoiled by later processing.

Briefly to summarize the findings of this section: In *Aristokrates* the only significant deviations, in §§28 and 53, have reasonable claims to authenticity. But in *Timokrates*, while much of the documentary material fits the same reliable pattern (as in Diokles' law, §42), there are divergent details that were probably added in later tradition (in §§45, 59, 63, 71), and some that point to the editor's unaided recollection, as in the restoration-era laws presented in §§54 and 56.

V. THE EARLIEST DOCUMENTS IN *ARISTOKRATES* AND *TIMOKRATES*

From this survey, I conclude that the stichometric documents in each case either derived from the indictment, the full text of the *graphē* listing laws in conflict, or were inspired by that model. In *Aristokrates* either explanation is possible; the first is at least as likely as not. In *Timokrates,* only the second explanation seems viable, as the disparities show that the early editor was sometimes trying to reconstruct documents that he did not have in hand.

[39] Canevaro 2013a: 155 finds a parallel in the Demotionidai decree, where the "all who" refers to cases already pending, "which have not been adjudicated," with ὅποσοι followed by the aorist indicative; on the delay in adjudication and complications that resulted, see Carawan 2010: 384–88.

This approach answers the first two questions: (1) Why did the early editor include this particular set of documents in the stichometric edition and not the others? And (2) in the case of *Aristokrates,* why would anyone bother to present as a separate text what is promptly repeated by the orator?

(1) The editor focused on this set of documents (in both speeches) because he knew that these measures were crucial to the case: whether he had the indictment in hand or had to reconstruct it, he was prompted by the epilogue to *Aristokrates* and other passages emphasizing the *paragegrammenoi.* (2) In *Aristokrates* he matched the excerpts of law with the speaker's comments rather closely for much the same reason, because the orators themselves demonstrated that technique: in this kind of case, where the verdict should turn upon clauses in conflict, the orator would rehearse them for the jury, just as Euthykles does. But then there is the question (3), why are the documents in *Timokrates* not so well tailored to the argument as in *Aristokrates*?

In *Timokrates* the early editor included material that ranges well beyond the orator's comment. He refrained from the sort of rank fabrication that marred the later tradition,[40] and one might suppose that this early editor endeavored to recover those documents from official records or reliable historical sources. But I doubt that he did much more research than his successors; he worked primarily with what he had at hand or in mind.

In *Aristokrates* we can imagine a conservative process at work. If, in fact, the editor inherited a copy of the *graphē* itself, complete with *paragegrammenoi nomoi*, he would be inclined to salvage the relevant laws when the indictment was no longer of much interest as a separate text. Originally the client probably kept that text of the indictment together with his copy of the speech; the speechwriter may have kept another, and it may even have been attached to an early version for limited publication. But when the corpus had to be converted to a more marketable format for a much wider readership, there was no demand for that indictment in the papyrus roll, as an appendix to the speech. Whatever interest there was in such artifacts of the law, that commodity was repackaged to meet the prevailing interest in Demosthenes' brilliance. So, rather than simply dispense with the indictment altogether, an enterprising editor saw fit to copy the laws-in-evidence into the main text. That consolidation of the material made for a measurably longer speech that would fetch a little better price. Thus the incorporation of these documents came

[40] Some of the most obvious concoctions appear in Demosthenes' *On the Crown*: for instance, the flimsy excuse for a decree regarding Demosthenes' Trierarchic Law at 18.105; see Canevaro's thorough analysis, 2013a: 267–71.

together with the creation of the line-count edition. In the case of Dem. 23, that consolidation would be prompted or justified by the epilogue recognizing the crucial importance of those laws-in-conflict for this minor masterpiece of argumentation. Of course that scenario is just a conjecture, but it offers an attractive answer to Franke's nagging question about the documents in *Aristokrates*: Why would any editor bother?

In the case of *Timokrates* the process was rather different. Much of the material from the *paragegrammenoi* seems to fit the same stage of transmission, but these inserts are not so well tailored to the orator's words. Of course some variation may result from the difference in issues: the case against Aristokrates was squarely based on a solid set of procedural laws; the case against Timokrates, not so much. Indeed, the speech against Timokrates seems unfinished. So MacDowell concluded, from major incongruity and haphazard arrangement in the latter half of the speech; he suggested that the case never went to trial (2009: 194–96). In other cases of this kind—notably in *Leptines*—the speech dealt with points in dispute that emerged on the way to trial (Dem. 20.98–101). In *Timokrates* it is only acknowledged near the end (187–89)[41] that Androtion and his associates have paid over to the polis the 9½ talents they owed and thus preempted much of the outrage that prosecutors were hoping to stir up. Ordinarily, in a more finished oration, we would expect that maneuver to be countered more squarely.

If the lawsuit against Timokrates was abandoned before it ever got to trial, that would help to explain why the *paragegrammenoi* are neither so compelling nor so closely matched by the orator's commentary as in *Aristokrates*. In a moot case, it is rather less likely that any draft of the indictment was kept among the client's papers or the speechwriter's, or that it made its way into the Metroon to be accessible generations later.[42] The text we have is a version of

[41] Added to the rambling conclusion, along with the invective against Androtion (160–86) that is largely borrowed from Dem. 22.47–78.

[42] On the dubious evidence for archiving verdicts in the Metroon, see Sickinger 1999: 131–33. But as Harris points out (2013: 155), even in abandoned cases a copy of the indictment was kept on file by the officers in charge and might be retrieved from them even years later. Thus in the case of Theokrines against Mikon ([Dem.] 58.7–10), we learn that Theokrines had brought a *phasis* to the *grammateus* for the port authorities who posted it for public notice; Theokrines then dropped the case, before it got to *anakrisis*. Yet that *phasis* was presented in the later case against Theokrines and witnessed by the officer who probably kept a copy among documents of his tenure, on guard against charges at *euthynai* or thereafter; cf. Faraguna, ed. 2013: 168–69. But abandoned indictments were probably not included in the central archive and thus rather difficult to retrieve at a much later date

the speech for circulation, not a speech for trial but one that the author seems to have freely expanded. And the enterprising editor seems to have made the most of that commodity for his market: he recognized the importance of the laws-in-conflict from their use in *Aristokrates* and from Aischines' insistence upon them in *Ktesiphon*; and presumably he realized that those documents could add a nice premium to the total line count. But without the documents in hand, he had to recover them from other resources. He could get the gist from the orator's comment, but much of the content had to be (re)collected from research or common knowledge.

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