1-1-2001

Ethical Standards for Royal Justices in England, c. 1175-1307

Paul Brand

Follow this and additional works at: http://chicagounbound.uchicago.edu/roundtable

Recommended Citation
Available at: http://chicagounbound.uchicago.edu/roundtable/vol8/iss2/2

This Article is brought to you for free and open access by Chicago Unbound. It has been accepted for inclusion in The University of Chicago Law School Roundtable by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.
No legal system can operate successfully without certain standards of behavior for the judges who administer it. In the case of the fledgling English common law system of the later twelfth and thirteenth centuries, however, it is difficult to discover from the surviving evidence what those standards were, and more difficult still to find much evidence for their enforcement and application. As this paper will show, at least a rudimentary judicial ethical code certainly existed from at least the later twelfth century onwards and there is some evidence of royal justices being punished for failing to observe its prescriptions. It is, however, only during the middle years of the reign of King Edward I (King of England from 1272 to 1307), and through a series of legal proceedings brought against a group of royal justices around 1290, that we are able to see for the first time detailed norms of judicial behavior being enunciated and royal justices being punished for failure to observe them. It is no coincidence that it is also only after 1290 that we first begin to find evidence of proceedings being instituted against individuals making unjustified allegations of misbehavior against members of the judiciary. These provide additional evidence of the standards of behavior considered appropriate for royal justices. They also provide additional evidence of much greater sensitivity about such matters on the part of the king's courts and his justices.

The story of the development of judicial ethics for common law judges in England prior to 1290 is a story of the enunciation and proclamation of rela-

† Senior Research Fellow in Law, All Souls College, University of Oxford. Responsibility for the accuracy of citations to manuscript sources is mine alone.
tively simple, and for the most part general, standards of behavior, but of very little evidence for their active enforcement. The main place to look for evidence of the enunciation of ethical standards is in the oaths that royal justices took on taking office. Some such oath was probably taken by all royal justices from the time of the establishment of the first new-style permanent, or quasi-permanent, royal courts in the second half of the reign of Henry II, during the years after 1175, but no contemporary source seems to preserve their wording. The earliest source that does give the wording of such an oath (and then only for the justices of the general eyre, the justices who took royal justice to the individual counties of England) is the legal treatise known as Bracton. This probably gives the wording of the oath taken by the justices in eyre of the late 1220s or early 1230s. The oath had three main constituent elements. The first required the justices to promise “that they will do right justice to the best of their ability in the counties in which they are to hold eyres, to both the poor and the rich,” with only the last part of the clause constituting a specific reminder of the ethical duty of the justices, that of being even-handed as between rich and poor. The other two clauses spelled out the duties they were to perform as justices: “to keep the assize in accordance with the chapters below-written” (probably a reference to the “crown pleas” side of the eyre, its criminal and administrative business) and “to perform all duties and jurisdiction belonging to the crown of the lord king” (probably a reference to the civil pleas side of the eyre, its civil jurisdiction). The justice does not, Bracton tells us, also take an oath to act for the profit of the king, but immediately after taking his oath he is also instructed to keep this in mind. This is a reminder that it was (and long remained) no part of the perceived ethical requirements of the royal justice to balance the interests of the king and those of his subjects.

The justices of the general eyre were certainly not the only royal justices appointed during the first half of the thirteenth century to take an oath of office. There are specific references to the taking of an oath by Robert de Rokele on his appointment in 1234 as a justice of the Common Bench, the main central court

2. For the establishment of these courts and their differences from existing types of court, see id at 77-102.
3. For a reference to an oath taken by the justices in eyre “to preserve the king’s interest in the regions to which they were sent,” but perhaps also with other unstated clauses, see William Stubbs, ed, 1 Radulphi Dunciensis De Diceto Opera Historica 404 (Rolls Series 1876). The wording of the judicial oath given in Bracton (for which see below) uses terms that seem to have become archaic by the time that treatise was written, but closely resemble those used in the instructions given to the justices in chapter 7 of the assize of Northampton of 1176. See H.W.C. Davis, ed, William Stubbs’s Select Charters and Other Illustrations of English Constitutional History 180 (Clarendon 9th ed 1921). This suggests that the Bractonian oath may preserve, in part or in whole, the wording of the oath taken by itinerant justices in the reign of Henry II.
at Westminster for the hearing of civil litigation. His letters of appointment refer only in the most general terms to an oath “to faithfully attend to the king’s business in the Bench” (that is, to the business of the court) with the existing justices, but the oath actually taken in court may well have been a little longer and more explicit than that. It probably referred, like the oath of the justices in eyre, not just to executing the duties of the office but also in general terms to the ethical obligations of the justice in doing so. A similar, but not wholly identical, formulation is used in the letters of appointment of Robert de Ros as a justice of the same court the following month. This refers to an oath “to faithfully attend to the king’s business and activities.” The absence of specific references to such an oath in later letters of appointment of the justices of the Common Bench as enrolled probably does not mean that they ceased to be taken, merely that the letters of appointment ceased to mention what remained the normal practice. The letters of appointment of three of the justices of the Jews appointed to the Exchequer of the Jews prior to 1260 also mention the taking of an “oath that he will faithfully serve the king in the said office” before the justice takes up the office, or of the justice performing “the fealty which belongs to the king” (presumably the same thing), or the king’s prior receipt of “the oath of fealty owed to the king by reason of his office.” Again, such an oath was probably a general accompaniment to such appointments, even if it is only mentioned in relatively few of them. It also may well have been slightly more explicit about what was expected of the justice in the execution of his duties than the terse wording of the letters of appointment might suggest.

The Burton Annals for 1257 include what purports to be the wording of a form of oath taken by the bishops of London and Worcester and certain other

---

5. The mandate to the senior justice of June 11 talks of receiving him as a justice “sacramento ab eo in presencia sua corporaliter prestito quod negociis domini regis in Banco una cum eis fideliter intendet.” Close Rolls 1231–1234 445 (Stationery Office 1892). An earlier mandate of June 6 to the justices of the Common Bench as a group notified them of his appointment and ordered his acceptance “sacramento ab eo in presentia vestra corporaliter prestito quod negociis nostris in Banco una vobiscum intendet.” Id at 565. The latter also talks of the issuing of similar mandates on behalf of two other justices appointed at the same time.

6. The mandate to the justices of the Bench of July 6 orders them to accept him as a colleague “recepto sacramento ab eodem Roberto quod negociis et agendis regis fideliter intendat.” Id at 570. This replaced a similar, earlier order that had omitted any reference to the oath. See id at 468.

7. For other letters of appointment of Common Bench justices during the reign, see Close Rolls 1251–1253 at 249 (William Trussell, 1252); Close Rolls 1254–1256 at 268 (John de Wiville, 1256); Close Rolls 1256–1259 at 47 (Robert de Brives, 1257); Calendar of the Patent Rolls 1247–1258 652 (Stationery Office) (Roger of Thirlby, Gilbert of Preston and Nicholas of Hadlow, 1258); Calendar of the Patent Rolls for 1266–1272 at 530 (Robert Fulks, 1271). Most such letters were not enrolled.

8. “Recepto autem ... ab eodem Philippo sacramento quod regi in officio predicto fideliter serviet ...” Close Rolls 1234–1237 at 237 (Philip Dascelles, 1236).


10. “Et ab eo recipit sacramentum fidelitatis regi debuitum pretestu officii sui.” Close Rolls 1254–1256 at 269 (Adam de Greinville, 1256).
unspecified individuals on being chosen as members of the king’s council, together with certain additional explanatory notes relating to the specific promises made in this oath. Its opening clauses are specifically concerned with their advisory functions: promising to give faithful advice to the king, as often as they see this will be profitable; promising not to reveal the “counsel” of the king to anybody to whom it ought not be revealed and from whom loss might come; promising to consent to no alienation of the ancient demesne of the Crown. What then follows is more specifically concerned with the role, or potential role, of councilors in the running of the legal system. The new councilors promised to “procure” that justice be done to all, both rich and poor, great and small, according to the rightful customs and laws of the kingdom. They also promised to allow justice to be freely done in respect of claims against themselves, their “friends” and kinsmen, that justice would not be impeded by them “at anyone’s request or for payment, out of favor or out of hatred,” and that they would not support or defend wrongdoers or wrongdoing in deed or word.

In a third such promise they promised not to receive any gift or service from someone they knew to have business in the court of the king or of the king’s bailiffs, whether in person or through another, in any way, in connection with that business. To this third “legal” promise is attached a further clause by way of commentary, stipulating a punishment for breach of this oath. This notes that if any councilor knows for certain, or hears from a trustworthy source, that any other councilor has received any “gift” other than food or drink he is to bring this to the notice of the whole council and, if this is found to be the case, the councilor is to be excluded from the council permanently and to lose one year’s income from his lands and property (or, if he has none, receive such other punishment as the council sees fit). Further promises are then required in relation to the procurement of the appointment of suitable royal officials and members of the royal household and (in the event of the king’s death) of fealty to the king’s eldest son, Edward, and to the Queen. Finally, further rules are laid down about councilors and royal officials not procuring gifts to themselves from the king or even accepting gifts made by the king without the consent of a majority of the council and stipulating a punishment for its breach, and also against the sealing of letters or grants prejudicial to the king or others without knowledge and agreement of the king and of the greater part of the council.

The introductory passage in the Annals suggests that the whole of the oath was also taken by the barons of the exchequer and royal justices who were not

11. See H.R. Luard, ed, 1 Annales Monastici 395-97 (Rolls Series).
12. “Item quod procurabunt quod justicia fiat omnibus tam divitibus quam pauperis, magnis et parvis, secundum rectas consuetudines et leges regni.” Id at 396.
13. “Amicis et consanguineis” with “amicis” perhaps bearing here its common meaning of “relatives.” Id.
14. “Prece vel precio, favore vel odio.” Id.
15. “Munus vel donum.” Id.
members of the council, but this seems to be contradicted by the text of what follows. This seems to envisage that the barons of the exchequer and royal justices and other bailiffs in the king’s service (other than sheriffs) were only to take the specific oath about not accepting payments from those with business in the king’s court and notes that breach of this oath is to be punished similarly to any breach of the oath by councilors: by removal from the king’s service and punishment by the judgment of the council. But even if the other clauses were not taken by all the justices, they do, at least by implication, suggest a somewhat more elaborate view of the ethical responsibilities of royal justices and the possible reasons for judicial misbehavior than the Bractonian version of the judicial oath. They suggest a need for even-handedness not just between rich and poor but also as between great men and small men; they show an awareness that the motives for judicial misbehavior might include the favor done at the request of a friend or other acquaintance, the bribe, and favor or hatred for one or other of the parties. It is not, however, entirely clear that such an oath really was taken in 1257 as the Annals suggest. The detailed provisions connected with the oath suggest a degree of conciliar restraint on the king’s freedom of action that would fit 1258 but does not seem to fit 1257. It may be that the oath is simply mis-dated. If not, the “oath” may represent not the actual practice in 1257 but a suggestion as to what that practice ought to be. This may be as true of the ethical expectations of royal justices (and possible punishments for their infringement) as of the ethical standards expected of royal councilors.

We are on rather firmer ground with the form of oath to be taken by the justices in eyre and by their clerks that is enrolled on the dorse of the final membrane of the Close Roll for 1277-78. This section of the roll contains material from November 1278, and it was at around that time that the justices in eyre were beginning the first major eyre circuits of the reign of Edward I. The oath they were to take starts with a rather more general promise than that contained in the Bractonian form of oath: that they “will serve the king well and loyally in the office of justice in your eyre.” The second part of the oath repeated the Bractonian promise of equal provision of justice, to the best of the justice’s ability, to both rich and poor. There then followed a much more elaborate and apparently new third clause that took up some of the themes suggested in 1257. This was a promise that “you will not prevent or delay justice by any trick or device against right or against the laws of the land, whether because of high

16. “Hoc idem juramentum, quoad illum articulum facient barones de scaccario, justiciarii et omnes ali ballivi regis, exceptis vicecomitibus: et idem observabitur quoad ipsos, quod de consiliaris munus accipientibus dictum est, ita quod amoveantur a servicio regis et alias puniantur secundum arbitrium consiliorum.” Id.
17. Manuscript in Public Record Office, London, C 54/95, m 1d. Hereafter, manuscripts available in the Public Record Office will be cited as PRO.
18. “Qe bien e leument servirez le Roy en le office de Justecerie en vostre eyre.” Id.
19. “E dreiture a vostre poer freez a tus ausibien as povres com as riches.” Id.
status or wealth, nor out of hatred or favor, nor for the power or position of any person, nor for any benefit, gift or promise made by anyone to you or which could be made, but that without regard for position or person you will loyally have right done to all in accordance with the laws that have been customary.\textsuperscript{20}

It thus combines a promise of good behavior with a reminder of the variety of possible motives for misbehavior and is perhaps to be seen as a reminder to justices of the various temptations that they must avoid. The fourth and final clause was a very general promise not to receive anything from anyone. It appears to be a general prohibition on the receiving of gifts that was not specifically tied to gifts made in connection with business that was before the court.\textsuperscript{21} Although the specific form of the oath, in particular the wording of its first clause, makes it suitable only for the justices in eyre, it is difficult to believe that the rest of the oath was a particularly elaborate form of words specially developed for use only by such justices. It seems likely therefore, even if not demonstrable on the basis of the surviving evidence, that a form of words close to this was also taken by other royal justices on their appointment by this period.

Judicial oaths were little more than promises of future good behavior without any specific sanctions attached to their infraction (except in the doubtful case of the 1257 oath given by the Burton Annals) and no obvious mechanism for their enforcement, other than dismissal from office. But from 1275 onwards there were also some specific statutory rules governing the behavior of royal justices that did have specific sanctions attached to them or specific mechanisms to ensure their enforcement.\textsuperscript{22} The first of these was enacted in 1275. Chapter 25 of the Statute of Westminster I laid down a general rule in respect of all the king's officials (including the king's justices) that prohibited them from "maintaining" (a general term, meaning giving any kind of support to) pleas, cases or business in the king's court.\textsuperscript{23} The prohibition was drawn quite widely. It related not just to litigation concerning lands or tenements but also concerning all other matters. "Maintenance" was prohibited not just where the arrangement between royal official and litigant took the form of a champerty agreement (with the royal official standing to obtain part of what was at stake in the litigation) but also where the royal official stood to make any other form of gain if the litigant succeeded. The prohibition covered not only "maintenance" given in person but also "maintenance" provided through a third party (like a justice's clerk or ser-

\textsuperscript{20} "E qe put hautesce ne pur richeyce ne pur hayne ne pur favur ne pur poer ne pur estat de nuli persone ne pur biefet, donu ne promesse de nulli qe fet vus soit ou vus purra estre fet ne par part ne par engyn autre dreiture ne desturberez ne respitezre cuntres resun ne cuntres les leis de la terre, mes saunz regard de nuli stat ne de persone leaument freez fere dreiture a chescun solum les leis usees." Id.

\textsuperscript{21} "E qe nule rien ne prendirez de nuli." Id.

\textsuperscript{22} For a partial discussion of these rules, see Brand, The Making of the Common Law at 151-52 (cited in note 1).

\textsuperscript{23} See 1 Statutes of the Realm 33: "Nul ministre le Rey ne mainteingne par li ne par autre les plez, paroles ou bosoinques que sont en la court le Rey de teres, tenemenz ou de autre chose, por aver part de eeo ou autre profit par covenant fet entre eaus, et qui le fra soit puni a la volonte le Roy."
Anyone convicted of a breach of the statutory prohibition was to be punished at the king’s discretion.

A second piece of legislation, chapter 49 of the Statute of Westminster II, enacted in 1285, also applied to a wider group of royal officials than just the royal justices. Anyone who contravened this prohibition (again whether in person or through an intermediary) and anyone entering into an agreement to do this was to be punished at the king’s discretion; and this was to apply both to the acquirer and the person from whom the rights were acquired.

Neither of these two chapters was specifically aimed at the royal justices. They were simply among those covered by the statutory prohibitions. But both kinds of behavior were self-evidently especially blameworthy where the offender was a royal justice. A justice supporting one particular litigant with litigation before the court in which he was sitting as a justice with a hope or expectation of profiting from his success was clearly inappropriate behavior for an impartial judge. Supporting such a litigant in another royal court was perhaps less blameworthy but still serious enough when royal justices regularly consulted their colleagues in other courts for advice and sometimes sat in on the hearing of individual cases outside their own courts as advisers. Acquiring property the subject of litigation in the justice’s own court was also a particularly serious matter for a royal justice since this would also inevitably prejudice the justice to act partially in his own favor; again this might be less serious when the litigation was in another royal court.

One other clause of the Statute of Westminster II (1285) can also be seen as laying down an appropriate norm for judicial behavior. Chapter 31 of the statute attempted to deal with the difficult problem of exceptions put forward in argument in litigation by serjeants acting for defendants that were rejected by the

24. See 1 Statutes of the Realm 95: “Chaunceler, Tresorer ne Justice, ne nul de Consayl le Roy ne clerk de la Chauncelerye, del Escheker, ne de Justice, ne autre ministre ne nul del hostel le Roy, clerk ou lay . . . .” The clause is the only whole clause of the statute in French rather than Latin and it appears only in certain texts of the statute.

25. See 1 Statutes of the Realm 95: “Ne puisse receivre eglise ne avoeson de eglise, ne tere ne tenement ne fee ne par doun ne par achat ne a femme, ne a chaumpart ne en autre manere; taunt come la chose est en plee devaunt nous ou devaunt nul de nos ministres; ne nul loer ne seyt prit.”
Exceptions were reasons why the claim or complaint made by the plaintiff ought not to succeed in the form in which it had been presented and the making of exceptions by counsel was at the heart of the process of pleading in the later thirteenth-century courtroom. Most exceptions were put forward by counsel only on a tentative basis and waived when the justice indicated that they were not sufficient and advised them to “answer over.” Such exceptions did not normally form part of the formal plea roll record of the case; we know of them only if there happens to survive a parallel unofficial law report of the case. The problem arose when counsel put forward an exception and was sufficiently confident to ask for judgment on its basis but the justice still treated it as if it were tentative, refusing to give judgment on its basis or to allow it to be enrolled. There was no means of challenging this even on a writ of error because the exception and the justice’s refusal of it did not form part of the formal record. The remedy did not punish the justice for refusing to enroll the exception and the judgment. What it provided was an alternative mechanism for allowing the exception to be reconsidered later. Counsel could write down the exception and ask for it to be sealed by the justice hearing the case or, failing that, by one of the other justices of the same court. If the case was then evoked by writ of error, and the justice agreed that it really was his seal attached to the record of the exception, the court reviewing the case was to proceed to treat the exception as though it had been made in court and give judgment accordingly.

The foregoing statutory prescriptions and the judicial oaths taken by royal justices on taking office are the only direct evidence for judicial ethical standards being enunciated prior to 1290. Their evidence cannot be much supplemented by the evidence of ethical standards being invoked or applied in specific cases in proceedings brought against royal justices during the same period or in complaints made against them. This is because the evidence for any kind of invocation or enforcement of judicial ethical standards during this period is very limited. The earliest such evidence appears to come from early February 1251 when Henry of Bath, formerly the senior justice of the court of King’s Bench and at that time senior justice of one of the eyre circuits then holding sessions in Suffolk, was the subject of an appeal, a private criminal prosecution, brought by a Lincolnshire knight, Philip d’Arcy, the son of Norman d’Arcy, lord of the barony of Nocton. The appeal appears to have charged him with infidelitas and

---

26. 1 Statutes of the Realm 86-87: “Cum aliquis implacatus coram aliquibus justiciariis proponat excepcionem et petat quod justiciarii eam allocent quam si allocate noluerint si ille qui excepcionem proponit scribat illam excepcionem et petat quod justiciarius apponat sigillum suum in testimonium, justiciarius sigillum suum apponat, et si unus apponere noluerit apponat alius de societate. Et si forte ad querimoniam de facto justiciarii venire faciat dominus rex recordum coram eo et illa excepcion non inventari in rotulo et querens ostendet excepcionem scriptam cum sigillo justiciarii appenso mandetur justiciario quod sit ad certum diem ad cognoscendum sigillum suum vel dedicendum. Et si justiciarius sigillum suum dediceret non possit procedatur ad judicium secundum illam excepcionem prout admittenda est vel cassanda.”

27. For details of what follows, see C.A.F. Meekings, King’s Bench Justices 1239–1258 95-104 (unpublished typescript in the possession of Dr. David Crook of the Public Record Office, London). I have some-
prodicio (both perhaps best understood here as treason), but as these were linked with a charge of "false judgment" against him and unnamed colleagues it seems probable that the substance of the charge was one of misconduct in the performance of his official judicial functions, equated with "treason" perhaps because of the oath of "faithful service" to the king he had allegedly betrayed by his misconduct. In the absence of any formal record of this appeal or fuller details of it in the chroniclers who report it, it is impossible to be certain what gave rise to the charge. There is, however, some evidence to suggest that it may have been connected with Henry's handling of an appeal of robbery and false imprisonment brought in the 1250 Lincolnshire eyre against Geoffrey of Benniworth, whose sole daughter and heir had recently married Henry's own eldest son and heir, John. Delaying or dismissing the appeal out of favor for Geoffrey was presumably what was being alleged. Henry of Bath appeared at a meeting of parliament at Windsor in mid-February 1251 to answer the appeal in person. He seems to have had little difficulty in having the appeal quashed as improperly formulated ("[n(on rite nec secundum legem regni proposita . . . nec formata'), perhaps because of doubts about the propriety of treating judicial misconduct as being tantamount to treason.28 Henry seems nonetheless to have been dismissed from judicial office at around this time. At about the same time the king seems to have had a proclamation made inviting anyone with grievances against Henry of Bath to come to court and make them: the first evidence of this alternative method of dealing with judicial misconduct. The chronicler Matthew Paris says many did so. A writ issued on 16 May 1251 instructs the sheriff of Lincolnshire to ensure Henry's appearance before the king at the octaves of Trinity to answer the king "on certain articles emerging in the eyre of [Lincolnshire] and on several trespasses committed against the king and others in the same eyre against the law and custom of the king's kingdom," suggesting that he still had to answer complaints brought in the king's name as well as those brought by private individuals. However, it is only proceedings on two private complaints that can be traced in surviving records. One related to his conduct as a justice in the 1248 Sussex eyre, the second related to another case in the 1250 Lincolnshire eyre, where Henry of Bath was alleged to have given a corrupt judgment in return for a grant of land. On 8 July 1251 the king released his suit against Henry of Bath and the members of his household for all trespasses for two thousand marks, but was careful to protect the right of others to bring action against him. There is, however, no evidence to show that any private complainant obtained judgment against him. By 1253 Henry of Bath was back in service as a royal justice and by Trinity term 1253 had been restored to the position of senior justice of
the court of King's Bench.

Three justices of the Jews were convicted of misconduct while in office during this same period: Master William of Watford in 1272, Hamon Hauteyn and Robert of Ludham in 1286. Master William of Watford's conviction was the result of inquisitorial proceedings held in the Exchequer when the grandson of a supposed debtor challenged the genuineness of an unsealed bond of 1229 sent to the Exchequer from the Exchequer of the Jews among the bonds of a recently deceased Jewish creditor. The bond was among the bonds of Poitevin son of Benedict le Joefne and was sent to the Exchequer to allow the levying of the king's one-third share of his estate. Master William's conviction was in essence for inserting, or facilitating the insertion, of the forged bond among the bonds transferred into the Exchequer of the Jews from the London chirograph chest. Master William was remanded into custody but subsequently released on bail when accused in another set of proceedings, this time apparently directly initiated by an individual complainant. Peter Merchant of Mapledurham accused Master William of responsibility for placing in the king's treasury another forged charter in the name of Peter's father that had subsequently been sent to the Winchester chirograph chest to allow the money to be levied by Benedict of Winchester. After pleading in the case in 1272 Master William absconded and was eventually outlawed.

Hamon Hauteyn and Robert of Ludham were also convicted after inquisitorial proceedings in the Exchequer. Hamon Hauteyn's offenses were (1) receiving money (£20) from Joce Batecok at his robbery trial at the Tower of London in 1283 in the king's name that he had not paid over and for which he had not accounted to the king, and (2) taking his rolls as justice of the Exchequer of Jews to the house of Rabbi Elijah Menachem in London and there altering an entry recording the debts assigned out of the treasury of the Exchequer of the Jews in compensation for the debts owed him by the abbot of Stratford, thereby allowing Master Elijah to receive much more than the £250 of debts to which he was entitled. His colleague Robert of Ludham was only convicted for his participation in this latter episode and for having his clerk remove the original membrane of his roll containing the same enrollment and substitute a newly written membrane that agreed with the amended entry on Hauteyn's roll. Only the king seems to have been damaged by the misconduct concerned. Both justices were allowed to make fine with the king in the amount of £1000 for all their offenses against him. In none of these instances, however, is it clear that the misconduct penalized can properly be characterized as judicial misconduct. The justices of the Jews were as much administrators as justices and their mis-

29. See PRO, E 159/46, m 9.
30. See G.O. Sayles, ed., 1 Select Cases in the Court of King's Bench under Edward I clv-clix (55 Selden Soc'y 1936).
31. See PRO, E 159/46, m 9d; E 159/48, m 4.
conduct was in the performance of what looks like an administrative, rather than a judicial, function.

This does not quite exhaust the pre-1290 evidence for the enforcement of ethical standards against royal justices, or at least the invocation of specific ethical standards as being applicable to them. There are also at least three identifiable surviving petitions submitted to king and council, probably at sessions of parliament, during the first half of the reign of Edward I that attempt to do this. The earliest of these is from the men of the ancient demesne manor of King’s Rippon dating from the late 1270s. This complained of the actions of Ralph de Hengham, the senior justice of King’s Bench, outside his own court: appearing at a session of the Bedfordshire eyre (of 1276) and preventing them getting judgment on their complaint against the abbot of Ramsey (alleging he was making unjustified demands for additional services) in accordance with Domesday.\(^{32}\) They ascribed his action to his ties with the abbot that had been created by the abbot’s presentation of Ralph to a church in the abbot’s gift. Their purpose was not, however, to secure Hengham’s dismissal or punishment, but merely to ensure that the case was removed into King’s Bench, and that when it was Hengham would play no part in hearing it. The endorsement shows that they were not successful even in this. Master Roger of Seaton, the chief justice of the Bedfordshire eyre, attested that they had been non-suited and they were simply advised to bring a new action.

In a second petition of circa 1283 the prior of Worcester complained that he was unable to secure any of the serjeants of the Common Bench to act for him in litigation in that court brought against him by the court’s chief justice, Thomas Weyland.\(^{33}\) The case is a useful reminder that there was indeed nothing to stop a royal justice bringing litigation in his own court, though convention may have required him not to sit in on its hearing. The prior did not specifically say that his inability to obtain serjeants was the result of threats made by the chief justice; perhaps no threats were required. Nor did he allege that the chief justice had done anything wrong in the treatment of the litigation or gotten his colleagues to do so. What he did ask was either that the case be removed into King’s Bench or that the Treasurer and Barons of the Exchequer be associated with the justices of the Common Bench in hearing it. Evidently it was not unreasonable to ask that outsiders keep an eye on proceedings or that the case be removed to a more neutral court. The endorsement to the petition shows that it was the second of these two courses that was adopted.

In a third petition submitted by Beatrice of Eldheawe and addressed to the earl of Cornwall as regent in the king’s absence (which must therefore belong to

---

32. See PRO, SC 8/219, no 10940. For the record of this case, see JUST 1/10, m 44d. This shows that there had been previous related litigation in King’s Bench that had established that the men owed additional services and that a record of this litigation was brought into Court; it does not mention that it had been Hengham who brought this record.

33. See PRO, SC 8/308, no 15374.
the period 1286–89), she complained of delay by the justices of the Common Bench in hearing her action of attaint and also of them having her beaten and thrown out of the court so she could not listen to her case. There is no endorsement to record what, if any, action was taken on this complaint.

II

Edward I landed at Dover on 12 August 1289 after spending over three years out of England. Not much more than a month after his return (on around 19 September) Thomas Weyland, the chief justice of the Common Bench, was indicted at a gaol delivery session held at Melton in Suffolk of being an accessory to a murder committed by his servants. He was then arrested, but escaped to take refuge in the Franciscan priory of Babwell just outside Bury St. Edmund's. By 24 September a temporary replacement, who presided over the court during the following Michaelmas term, had been appointed to act in his place. On 13 October 1289 all sheriffs were notified of the appointment of a special commission headed by John de Pontoise, bishop of Winchester, to receive any complaints of grievances and wrongs (gravamina et injurie) committed by the king's officials (ministri) while the king was out of the country. The commissioners were not empowered to determine the complaints, merely to record them and the responses of the officials concerned, and then to refer them to the king for correction at the next parliament. The sheriffs were also told to ensure that any persons with such grievances were told to appear at Westminster before the commissioners on the morrow of Martinmas (12 November) to present and prosecute their complaints. It is not clear whether or not it was the arrest and flight of the chief justice that precipitated the appointment of this commission. The chronology of the appointment would certainly allow of such an interpretation but the terms of the commission, with its reference to the king's ministri, might suggest that the real targets were the various local officials of the crown and their misdoings. The term was, however, sufficiently wide to allow complaints against officials of the central administration, including royal justices. In the event, these auditores querellarum (hearers of complaints) seem to have received a number of complaints against royal justices. Most, if not all, were determined at the Hilary parliament of 1290. Other complaints against royal justices that were heard at that parliament seem only to have been submitted to the king's council at the parliament itself. A further opportunity was then offered for the

34. See PRO, SC 1/11, no 78.
38. See pp. 266, 269-71 below.
making of complaints against the king's justices as well as others by the decision taken at the Hilary parliament to appoint two new commissions (or perhaps a single commission sitting in two separate divisions) that was given the power not just to receive complaints but also to determine them. One of the two groups, led by the bishop of Winchester and containing five of the seven commissioners who had been appointed as *auditores querellarum* in October 1289, dealt with complaints against the greater offenders, including the king's justices; the other, led by Master Thomas of Scarning, archdeacon of Norwich, dealt with the lesser offenders, local officials in the king's service. After Michaelmas term 1291, the two groups seem to have merged into a single group, now led by Peter of Leicester, whose work seems to have continued until Michaelmas term 1293. This was the first occasion when a general opportunity was offered for complainants to make complaints against the king's justices as a whole for misconduct in the performance of their judicial functions, the first time that the rhetoric of the judicial oath was complemented by a real chance to see it enforced. Perhaps even more significantly, the dismissal of most of the justices against whom complaints were made early in 1290 meant that many of the complaints were made secure in the knowledge that those against whom the complaints were made were no longer in positions of power and able to retaliate against their accusers. This may have encouraged some false or unwarranted accusations, but it also meant that genuine accusations were not suppressed because of fear of the consequences.

There survives only a very imperfect record of the complaints made against the royal justices between 1289 and 1293 and of their disposition. Enrollments of cases heard before the *auditores querellarum* on the main plea roll of the “major offenders” division often seem to be muddled and record replies to complaints not previously specified as well as to complaints that are; moreover, the plea roll (JUST 1/541B) is itself not very well preserved. Some complaints are known only from surviving petitions; others only from the enrollment of a petition on the parliament roll. We know of the complaint that led to the conviction of three of the justices of the Common Bench and of the court's chief clerk, the keeper of writs and rolls, only from an enrollment in the Common Bench that incorporates the king's order for the rehearing of the case. A full record of

---


41. For the chronology of the dismissal and conviction of the justices in 1289–90, see pp. 265-73 below.

42. A particularly muddled enrollment led to the conviction of the justices of King's Bench. See *State Trials* at 27-40 (cited in note 40).

43. For a good example, see the complaint of John Laurence of London against William of Brunton and Thomas Weyland, PRO, SC 8/280, no 13992.

44. See the complaint of Margery and Violetta Zoyn against Thomas Weyland and John de Lovetot, in 1 *Rotuli Parliamentorum* 56-57, no 136 (London 1783) ("Rot Par").

45. See PRO, CP 40/81, m 102.
proceedings on the complaints that led to the conviction of the justices of the southern eyre circuit only survives by chance in a fifteenth-century copy of the original enrollment apparently made for the city of Norwich.46

There were at least fifteen complaints against one or more of the justices of the Common Bench for alleged misconduct in that court. Two were against the chief justice of the court Thomas Weyland alone.47 Eight were against his junior colleague William of Brunton alone48 and there is one nominally against all the justices of the Common Bench but singling Brunton out for special mention.49 Two are against the justices of the Common Bench as a group;50 one against Weyland and his junior colleague Lovetot;51 and one joins the names of Weyland and Brunton with that of Ralph de Hengham, the chief justice of King's Bench.52 There were sixteen complaints against the justices of King's Bench for misconduct in that court. One mentions all the justices of the court but singles out the chief justice Ralph de Hengham for special mention;53 a second singles out Hengham but also mentions alleged misconduct by Solomon of Rochester as chief justice of the 1285 Essex eyre;54 a third and a fourth couple Hengham with a junior colleague.55 All of the remaining twelve mention Hengham alone.56 The largest number of complaints, twenty in all, were against the justices of the

46. See British Library Manuscript Additional Roll 14987.
47. (a) By Hugh of Gosbeck. See CP 40/81, m 102 (but note that this was the complaint which led to the conviction of most of the court's other justices). (b) By Robert of Ufford. See SC 8/268, no 13379 (but note that this seems to be a follow-up to an earlier petition that did not survive).
48. (a) By Walter Surdeval. See PRO, JUST 1/541B, m 36d. (b) By Robert of Boddington. See PRO, JUST 1/541B, m 33d. (c) By Roger of Thornton. See State Trials at 18-23 (cited in note 40). (d) By Richard Peres of Dunstable. See PRO, SC 8/107, no 5338. (e) By the prior and convent of Huntington. See PRO, SC 8/263, nos 13105 and 13143, badly summarized in 1 Rot Parl at 48, no 37 (cited in note 44). (f) By Agatha de Newburgh. See PRO, JUST 1/541B, m 35. (g) By John, son of Thomas of Goldington. See PRO, JUST 1/541B, m 32d. (h) By Emma, widow of Harcelph of Clissbury. See PRO, KB 27/131, mm 47-47d.
49. By the abbot of Roche. See State Trials at 1-5 (cited in note 40). Only Brunton answered the complaint.
50. (a) By the abbot of St. Evroult. See State Trials at 91-92 (cited in note 40). (b) By Ralph, bishop of Carlisle. See 1 Rot Parl at 23-24 (cited in note 44).
51. See PRO, SC 8/75, no 3706, summarized in 1 Rot Parl at 56-57 (cited in note 44).
52. See PRO, E 175/1, no 7, m 3.
53. By Henry de la Leghe and Nicholas de Cernes. See State Trials at 27-40 (cited in note 40) (but note they also included William of Brunton in their complaint).
54. By men of the manor of Nazeing. See PRO, JUST 1/541B, m 31d.
55. (a) With Nicholas of Stapleton, by Nicholas de Stuteville. See PRO, SC 8/45, no 2205. (b) With William of Saham, by John Curpel. See PRO, SC 8/265, no 13223.
56. (a) By William de Camville, merchant of Bristol. See State Trials at 46-48 (cited in note 40). (b) By William of Durnford. See PRO, E 175/1, no 7, m 1. (c) By Master Richard of Langford. See PRO, JUST 1/541B, m 22. (d) By Edith, widow of Thomas of Astley. See PRO, KB 138/4, no 81. (e) By Richard of Whirtacre and James of Astley and his wife Philippa. See PRO, JUST 1/541B, m 27. (f) By William of Bardwell, chaplain. See PRO, JUST 1/541B, m 6. (g) By Roger le Peyreyn. See PRO, JUST 1/541B, m 22. (h) By Philip of Dulwich. See PRO, SC 8/42, no 2080. (i) By Walter Maudut. See PRO, JUST 1/541B, m 21d. (j) By Robert de la Warde. See 1 Rot Parl at 52, no 82 (cited in note 44). (k) By Simon of Kinsham and his wife Maud. See 1 Rot Parl at 52, no 84. (l) By Richard de Loges. See PRO, SC 8/1, no 8.
“southern” eyre circuit of the 1280s. Four of them seem to have been against the senior justice of this circuit (Solomon of Rochester) and his colleagues generally,57 three of them against Rochester and individual colleagues;58 ten against Rochester alone;59 and three against Richard of Boyland, one of the junior justices, alone.60 There were only three against the justices of the other “northern” eyre circuit. Two are against the senior professional justice (William of Saham) alone;61 one mentions both Saham and his colleagues but was initially answered by Saham alone.62

There are also fifteen complaints against justices of these same royal courts but in their capacity as local assize justices. Four of these are against William of Brunton, the justice of the Common Bench, for alleged misconduct while sitting as an assize justice in Norfolk and Suffolk.63 Three are against John de Lovetot, the justice of the Common Bench, for alleged misconduct while sitting as an assize justice in Norfolk.64 One is against Ralph de Hengham, chief justice of King’s Bench, for alleged misconduct while sitting as an assize justice in Middlesex;65 two against Nicholas of Stapleton, a junior justice of King’s Bench, for alleged misconduct while sitting as an assize justice in Westmorland and York-

57. (a)-(b) Separate complaints by the burgesses of Norwich and Robert Rose. See British Library Additional Roll 14987 (1286 Norfolk eyre). (c) By the abbot of Bury. See PRO, SC 8/177, no 8816 (1286-87 Suffolk eyre). (d) By John de Warenne, earl of Surrey. See PRO, SC 8/200, no 9970 (1288 Sussex eyre).
58. (a) Against Rochester and Richard of Boyland by Thomas of Carlisle. See PRO, JUST 1/541B, m 12 (1286 Norfolk eyre). (b) Against the same two by Richard Malle. See State Trials at 11-14 (cited in note 40) (same eyre). (c) Against Rochester and Siddington by Robert Rose. See PRO, JUST 1/541B, m 12 (same eyre).
(h) By Roger de Covelyngge. See PRO, SC 8/331, no 15625 (1288 Sussex eyre). (i) By Hugh Taylor. See PRO, C 49/2, no 20 (1289 Wilts eyre). (j) By Richard of Rougham. See PRO, SC 8/331, no 15697 (1286 Norfolk eyre).
60. (a) By Richard Malle. See State Trials at 14-17 (cited in note 40) (1286 Norfolk eyre). (b) By Elywse Dnem. See PRO, JUST 1/541B, m 34 (same eyre). (c) By William of Dunford. See State Trials at 5-11 (1287 Gloucestershire eyre).
61. (a) By Alan Osemund. See PRO, JUST 1/541B, m 9d (1286 Cambridge eyre). (b) By John Nottelyn. See PRO, JUST 1/541B, m 11d (1287 Gloucestershire eyre).
63. (a) By Geoffrey atte Water. See PRO, JUST 1/541B, m 46d (Norfolk). (b) By Robert Baynard. See PRO, JUST 1/541B, m 14d (Norfolk). (c) By Simon Choket of Weasenham. See PRO, JUST 1/541B, m 6d. (d) By Robert Palmer of Kedington and others. See PRO, JUST 1/541B, m 36d (Suffolk). See also note 59 above.
64. (a) By the prior of Butley. See State Trials at 62-67 (cited in note 40). (b) By John of Pickering. See PRO, JUST 1/541B, m 8. (c) By Matthew of Maltby and others. See PRO, JUST 1/541B, m 35.
65. By master Thomas of Sedgefield. See PRO, JUST 1/541B, m 25.
There is also one against Solomon of Rochester, the chief justice of the "southern" eyre circuit, for alleged misconduct while sitting as an assize justice in Essex (but also as senior justice of the 1285 Essex eyre); one against his junior colleague Richard of Boyland alleging misconduct while sitting as an assize justice in Cambridgeshire; and three against William of Saham, the senior professional justice of the "northern" eyre circuit, for alleged misconduct while sitting as an assize justice in Kent, Hampshire and Sussex. Four more complaints were against members of this same small group of royal justices but sitting in yet other capacities. One is against John de Lovetot for alleged misconduct while serving as a gaol delivery justice at Colchester in Essex (and subsequently), and another against Lovetot for alleged misconduct while associated with the sheriffs and aldermen of London in hearing a London plea. One is against Ralph de Hengham for alleged misconduct while taking an inquisition for remission to the regent and council; and one against Nicholas of Stapleton for alleged misconduct when specially commissioned to hold a criminal trial in a homicide case. The remaining eight complaints all allege various kinds of misconduct by members of this same group of justices outside the courts in which they acted as justices. There are two such complaints against William of Brunton; two against Solomon of Rochester; one against both William of Brunton and Thomas Weyland; and one each against John de Lovetot, Ralph de Hengham, and William of Saham.

Almost all these proceedings were initiated by private, individual complaints made in written form (a bill or plaint). There was no attempt to use the mechanism of indictment or presentment to collect accusations against individual justices and to prosecute those justices in the king's name. Nor was there any at-

66. (a) By Adam of Harrington. See PRO, JUST 1/541B, m 36. (b) By the prior of Holy Trinity, York. See PRO, JUST 1/541B, mm 3, 4, 12d, 33.
67. By John of Testling. See PRO, SC 8/75, no 3725.
68. By Geoffrey Burdeleys. See PRO, JUST 1/541B, m 5d.
69. (a) By Ralph of Ditton. See PRO, JUST 1/541B, m 8 (Kent). (b) By Guy of Stoneham. See PRO, JUST 1/541B, m 29d (Hampshire). (c) By Robert Doget and his wife Margery. See PRO, JUST 1/541B, m 465 (Sussex).
71. By Richard, son of Richard le Kissere. See PRO, JUST 1/541B, m 1ld.
72. By Anketin of Woodcote and wife Maud and Geoffrey Pyterych. See PRO, JUST 1/541B, m 34.
73. By Thomas of Goldington and his wife Amice. See State Trials at 81-84 (cited in note 40).
74. (a) By the executors of Ralph Marshal. See PRO, JUST 1/541B, m 34d. (b) By Henry de la Leghe and Nicholas of Cernes. See State Trials at 27-40 (cited in note 40).
75. (a) By Thomas, son of William of Delce. See PRO, SC 8/42, no 2077. (b) By Henry, son of Henry de Boys. See PRO, SC 8/35, no 1734.
76. By John Laurence of London. See PRO, SC 8/280, no 13992. But note that Weyland seems to have been officially associated with the mayor and sheriffs for the hearing of this plea. See Calendar of Patent Rolls 1281-92 396.
77. By the community of the city of Norwich. See PRO, SC 8/64, no 3193.
78. By Nicholas de Vere and his wife Agnes. See PRO, E 175/1, no 7, m 4.
79. By William, son of William de Brendhalle. See PRO, JUST 1/541B, m 34d.
tempt to bring private proceedings of a criminal nature against individual offenders, though when William of Saham attempted to transfer part of the blame for the misconduct alleged against him to John of Cave, Cave chose to treat this as tantamount to a criminal charge and appears to have offered battle in denial of the charges made against him. Rather than fight the battle, Saham withdrew the charges.80

This substantial body of complaints allows us for the first time a detailed insight into the various kinds of behavior on the part of a royal justice that might be considered misbehavior and a breach of professional ethical standards. “Maintenance” had been specifically declared illegal by the 1275 Statute of Westminster I (c. 25) but the statute does not make wholly clear what behavior this was thought to cover.81 Only the accusations clarify what kinds of behavior constituted “maintenance.” Royal justices were accused of committing this offense both outside their own courts and within them.

The complaint of Henry, son of Henry de Boys, against Solomon of Rochester alleged that Henry’s ejection from his manor of Theydon Boys in Essex by an armed party led by John de Tany and his brother Peter and almost one hundred others in 1287 had been by the “aid and avowry” (par le avurie e par le eye) of Solomon, who was the supporter of their party (ke just sustenur de la partie Jon de Tany) and of various subsequent maneuvers to prevent his recovery of the manor by assize of novel disseisin. Solomon’s answer (as recorded on the dorse of the complaint) initially took refuge in the rule that he could not be made to answer for being an accessory to an offense before the principal was convicted; but he is also recorded as responding, though only informally out of court (extra judicium), that he put himself on the record of the justices who had heard the assize that neither he nor anyone acting on his behalf had been present when the assize was taken. This seems to be a denial of “maintenance” as defined by the 1275 statute, for this mentioned only the maintenance of litigants in litigation.82

A similar combination of support for a prior ejectment from a tenement (this time in the city of London) and then preventing the hearing of litigation to remedy the ejectment (this time brought in the London husting) was alleged by the executors of Ralph Marshal against William of Brunton. William’s response, as recorded, answered only the second of the two allegations (maintenance within the terms of the statute) and denied that any delay had been procured by his favor.83

The complaint of Henry de la Leghe and Nicholas of Cernes alleged that Brunton had been active behind the scenes in giving counsel and aid to William, son of the parson of Tempsford, in procuring his acquittal on a robbery indict-

80. See State Trials at 40-45 (cited in note 40).
81. See pp. 244-45 above.
82. See note 75(b).
83. See note 74(a).
ment in King's Bench and then in helping him bring an action of abetment against Henry de la Leghe and Nicholas of Cernes. This too appears to have been “maintenance” within the terms of the 1275 statute.⁸⁴ A fourth complaint concerned a trespass plea brought in King's Bench by the abbot of Bury St. Edmund's against William of Bardwell, chaplain. William complained in general terms of “maintenance” of the abbot by Ralph de Hengham, the chief justice of the court, although his complaint does not make clear what form this “maintenance” took. He also complained of “maintenance” of the abbot by the Common Bench justices Weyland and Lovetot and the eyre justice Boyland and here specified that their “maintenance” took the form of coming to the court with the abbot and giving “counsel and aid” against William, presumably assistance in the pleading of the case. Lovetot and Boyland were said to have also helped the abbot at the jury trial stage of the case later and to have helped the abbot both in private and in public.⁸⁵

What was probably also “maintenance” (and was certainly champerty) was also alleged against Hengham by Nicholas de Vere and Agnes. They said they had asked him for advice and assistance in their action claiming the manor of Cokeham in Sussex. They claimed he had only agreed to give this if they promised to give him a half of whatever they were able to recover or acquire through the litigation. His assistance had taken the form of lending them his clerk, Peter of Haverhill, to act as their attorney. Eventually Hengham had reached an agreement with their opponent under which the case went to jury trial but the jury had been fixed in advance to give a verdict favorable to the opponent. In return the opponent agreed to pay two hundred marks. The complainants were disgruntled not because of the original agreement but because Hengham had then only paid them fifty marks out of the two hundred received.⁸⁶

There are also three complaints that allege “maintenance” of litigation by royal justices in the courts in which they themselves were sitting. This was one of the complaints of Roger of Thornton against William of Brunton in respect to litigation brought against Roger in the Common Bench by Hugh FitzHenry.⁸⁷ It was also one of the complaints of Henry, son of Nicholas of Bury St. Edmund's, against Solomon of Rochester as chief justice of the 1286–87 Suffolk eyre, in respect to a plea brought against Henry by the prior of Bromholm for the advowson of Bardwell, allegedly instigated by Rochester at the request of his colleague Robert Fulks and maintained by the chief justice.⁸⁸ The third was the complaint of Thomas of Carlisle against Rochester and Boyland as justices of the 1286 Norfolk eyre in respect to litigation brought against Thomas by Henry of Basset and his wife Agnes (the justices were said to have given advice and

---

⁸⁴. See note 74(b).
⁸⁵. See note 56(f).
⁸⁶. See note 78.
⁸⁷. See note 48(c).
⁸⁸. See note 59(f).
agreement to the plea that had been procured by the burgesses of Yarmouth).\textsuperscript{89} Unfortunately, in none of these cases is it entirely clear what form the “maintenance” took.

Most of the other complaints related to the hearing of civil litigation involving the complainants by the royal justices against whom the complaints were made in the courts of which they were justices and alleged failure to follow the proper procedures. Some complainants alleged that the justice concerned had heard the litigation in a court that was improperly constituted. A London plea was heard by John de Lovetot in association with the city’s two sheriffs but without the presence of the aldermen, although city custom mandated the presence of aldermen at the hearing of such pleas.\textsuperscript{90} An action of \textit{audita querela} brought by Pernel, the widow of William of Flegg, before the Norfolk assize commission was heard by John de Lovetot alone without awaiting the presence of his two colleagues on the commission.\textsuperscript{91} A jury verdict in a trespass suit brought in the Common Bench by the earl of Norfolk had been heard by Thomas Weyland at Boyton in Suffolk alone and without any colleagues.\textsuperscript{92} The complaint of Thomas of Goldington and his wife Avice against Nicholas of Stapleton related to the trial at the king’s suit of Robert of Appleby and others for the killing of his brother, Nicholas of Hastings. Their complaint was that although Stapleton had been commissioned to take the jury trial in the case in the county of Westmorland, where the killing had taken place, he had taken the trial at Newcastle-on-Tyne, outside the county. This had been to the benefit of the accused, since it had meant that the relatives of the victim had not had notice of the session and so had not been able to challenge jurors who favored the accused.\textsuperscript{93} In all these cases, the justices concerned had known their courts were improperly constituted and had proceeded in this way in order to favor the opponents of the complainant.

Improper delay in hearing litigation or refusal to hear it was alleged in a number of other complaints. Such conduct was clearly a breach of the judicial oath taken by these royal justices, though none of the complainants seem specifically to have mentioned this. Two complainants alleged such misbehavior against Ralph de Hengham when acting as chief justice of King’s Bench. Roger le Peytevyn complained of delay in hearing his assize of novel disseisin after it had been removed into King’s Bench\textsuperscript{94} and William de Camville, a merchant of Bristol, of the refusal to hear a trespass plea removed out of the city court of Dublin (and also of Hengham’s picturesque threat allegedly delivered to William that if he ever tried to bring the litigation again he would be imprisoned for a

\textsuperscript{89.} See note 58(a).
\textsuperscript{90.} See note 71. But note that Lovetot denied this was required by recent precedent.
\textsuperscript{91.} See note 64(c).
\textsuperscript{92.} See note 47(b).
\textsuperscript{93.} See note 73.
\textsuperscript{94.} See note 56(g).
year and a day in a prison where he would see neither his hands nor his feet). 95
One complainant alleged that when his writ of *qui malefactores* for an enquiry into
his maiming, robbery and imprisonment had been handed over by Solomon of
Rochester to Richard of Boyland as justice of the appropriate section of the eyre
for a hearing in the 1286 Norfolk eyre, Boyland had delayed the hearing. 96
The remaining three such complaints were all against Solomon of Rochester
himself as chief justice of the "southern" eyre circuit: from a litigant whose pleas
in the 1286 Norfolk eyre were all delayed by Rochester; 97 from a litigant in the
1286–87 Suffolk eyre whose assize Rochester did not allow to pass but put on
the file; 98 and from a litigant in the 1288 Sussex eyre whose trespass plea had
been delayed from day to day till he had been non-suited. 99
By 1290 it was evidently the normal expectation that a litigant with a case in
one of the central royal courts would both need, and be able, to call on the ser-
vices of one or more serjeants to act and speak for him or her in court. It was
therefore a serious matter if one or more of the justices of the court prevented a
litigant from using the services of a serjeant. We have already noted one com-
plaint made in the early 1280s by the prior of Worcester claiming that he had
been unable to secure the services of counsel in the plea brought against him in
the Common Bench by the court's chief justice, Thomas Weyland. 100 Something
similar was alleged in the complaint of Thomas Denham of Suffolk who had
been involved in litigation in the Common Bench with an opponent who was
Weyland's marshal (and his father) and who had apparently had to speak in
court for himself. 101 Rochester and Boyland were also said to have refused to
allow Thomas of Carlisle to have any of the serjeants for whose services he had
paid to speak on his behalf when he was accused of assault and *barnsoken* in the
1286 Norfolk eyre. 102 It was one of the complaints of Roger of Thornton
against William of Brunton that when the land action brought against him came
on for hearing in the Common Bench, Brunton had prohibited the serjeants of
the court from acting for him. 103
Other things might go wrong at the pleading stage itself. It was not much
use having a serjeant if the arguments he advanced for his client were disre-

---

95. See note 56(a). But note that Hengham's answer (that the case had not been properly removed
into his court) was upheld by the *auditores querelarum*.
96. See note 60(a).
97. See note 58(b).
98. See note 59(g). But note that Rochester claimed he had not delayed the assize, but rather they
had pleaded up to the assize at about the beginning of Lent and the taking of the assize had then been
delayed by that.
99. See note 59(h).
100. See p. 249 above.
101. See note 59(g).
102. See note 58(a).
103. See note 48(c). The charge was denied by Brunton and his denial upheld when various promi-
nen serjeants of the court were subsequently individually examined on the point.
garded by the justices. The most frequent complaint about the pleading stage was that a justice had refused to allow a valid exception, which should have led to a judgment quashing the claim or complaint of the plaintiff, and had instead forced the defendant or his counsel to take an issue that then went to jury trial. Refusal to allow one or more specific exceptions is alleged in seven complaints; refusal to allow one or more exceptions or to enroll these exceptions is alleged in one complaint; refusal to allow or enroll an exception or to seal a bill of exception (as required by Westminster II, c. 31) in another complaint. In two other complaints, the subject of the complaint was the refusal of the justices to allow the arguments allegedly advanced by the plaintiff in response to the pleading of the defendant or to enroll them. One other complainant who had brought a writ of trespass in King’s Bench alleged that Chief Justice Hengham had wrongfully induced his serjeants to plead “outside” the terms of his writ.

Jury trial in most types of litigation followed on from the pleading stage, often only after one or more adjournments had taken place. Various types of judicial misconduct were alleged to have taken place at this stage. These included refusal to allow the jury stage itself to proceed although pleading had already taken place, something apparently alleged in four different complaints. This was, in effect, another form of delaying or denying justice and equally in breach of the judicial oath. Refusal to allow or try a litigant’s proper challenges against some or all of the jurors for bias is alleged in five of the complaints.

Related but distinct complaints include taking a jury by men from an inap-


105. Against Solomon of Rochester and his colleagues in the 1286–87 Suffolk eyre. See note 57(c).

106. See note 52. For the eventual sequel to this complaint, see 1 Rot Parl at 84-85 (cited in note 44) (where Beckingham’s oral record of the exception having been made allowed it to be read back into the formal written record).

107. See notes 48(d) and 63(a).

108. See note 56(f).

109. (1) Against William of Brunton in respect to an assize of darrein presentment in the Common Bench. See note 48(a). (2) Against William of Saham as an assize justice in Hampshire. See note 69(b). (3) Against William of Saham as an assize justice in Sussex, alleging an adjournment after nine of the recognitors had been sworn and despite the presence of enough other men for the jury. See note 69(c). (4) Against Solomon of Rochester as chief justice of the 1286–87 Suffolk eyre. See note 59(g).

110. (1) Against Hengham and Stapleton, justices of King’s Bench (a lord’s challenges on behalf of his villein tenant). See note 54. (2) Against William of Brunton as a justice of the Common Bench (also alleging a refusal to allow a bill of exceptions on this). See note 48(a). (3) Against the justices of King’s Bench. See note 53. (4) Against Ralph de Hengham sitting as an assize justice. See note 65. (5) Against William of Brunton sitting as a Suffolk assize justice. See note 59(g). A refusal to allow proper challenges is also mentioned in the complaint of John Laurence against Brunton and Weyland in respect to a London hearing in which Weyland seems to have been an associate justice. See note 76.
propriate locality;\(^{111}\) removing jurors in order to rig the jury in favor of the litigant’s opponent;\(^{112}\) removing jurors by the challenge of a party but without any cause being given for the challenge;\(^{113}\) removing jurors who had seen the land in dispute and replacing them with jurors who had not done so;\(^{114}\) and taking measures to ensure that a criminal jury consisted of kinsmen and relatives of the accused in order to ensure their acquittal.\(^{115}\) In two complaints, justices were alleged to have charged a jury incorrectly and not in accordance with the pleading of the case.\(^{116}\) In three complaints, it was alleged that there had been successful pressure on the jurors from a justice to change an initial verdict that had been in their favor into one that had then gone against them.\(^{117}\) Jurors seem often to be questioned about their verdicts by justices and sometimes quite properly made to reverse them by justices who could see that their conclusions were unsound in law or fact. What was being alleged here was that the pressure to reverse them was improperly motivated in these particular cases. All these forms of misconduct shared the characteristic that they left no trace in the formal record. There were proper procedures to be followed, but there was little means of checking that they had been. Their great merit was that, if successful, almost all of them simply produced a jury verdict that favored the complainant’s opponent and on which a judgment in his or her favor could then be based; there would be nothing to indicate the justice’s own role in ensuring the favorable verdict.

A third variety of unjustified delay (equally in breach of the judicial oath), delay between the jury giving its verdict and the giving of final judgment by a justice in a case, was alleged in four complaints;\(^{118}\) the entry of judgment after jury trial at nisi prius without calling the parties to hear their judgment (and thus giving them a chance to argue about the significance of the verdict) in one;\(^{119}\) the giving of judgment contrary to the verdict in another complaint.\(^{120}\) One complaint was of the giving of a judgment without the jury giving its verdict;\(^{121}\) another was of the giving of a judgment after a jury verdict without affording the tenant the opportunity to pay his arrears or find surety for future payments of his services in accordance with the relevant statute and refusing to seal a re-

\(^{111}\) See notes 58(a) and 71.
\(^{112}\) See note 56(f).
\(^{113}\) See note 53.
\(^{114}\) See note 63(a). For a complaint by a juror who had wrongfully been placed on a jury when he had not viewed the tenement, see note 69(a).
\(^{115}\) See notes 70 and 73.
\(^{116}\) See notes 47(b) and 61(a).
\(^{117}\) See notes 56(f), 63(b) and 67. For a complaint in which the foreman of a jury complained of amercement and imprisonment because he had refused to do Lovetot’s bidding in giving a jury verdict, see note 64(b).
\(^{118}\) See notes 56(b), 56(d), 58(c) and 67.
\(^{119}\) See note 47(b).
\(^{120}\) See note 55(a).
\(^{121}\) See note 69(c).
lated bill of exceptions. Unjustified delays between pleading and the giving of judgment were alleged in a further two complaints. There were also three complaints relating to the awarding of damages. One complained of the awarding of the damages claimed without allowing any taxation of them by the jury; two alleged the subsequent increase of damages taxed by a jury by the justices; and one of an amercement assessed by the justices rather than by a jury.

In a rather different category are allegations of misconduct that involve deliberate falsification of the court’s record: failure to enroll that the defendant in an assize of novel disseisin had appeared not in person but through a bailiff (a legally significant qualification); enrollment of a verdict in a way that significantly distorted what the jurors had said; failure to enroll a verdict once it had been given; enrollment of a continuation of a case to a later date prece partium (at the request of the parties) when the court had given judgment for the seizure of land prior to giving judgment by default and the adjournment had not been agreed to by both parties. More serious still are the three (or perhaps four) complaints where complainants alleged that justices had deliberately erased an enrollment as originally entered in order to substitute a different (and false) enrollment to their detriment. It was such an allegation against Thomas Weyland that led to the downfall of all but one of his fellow justices of the Common Bench. Similar allegations were subsequently made against William of Brunton in respect to an entry on an essoin roll recording the proffering of excuses for nonappearance; against Ralph de Hengham and William of Saham in respect to an enrollment on the King’s Bench plea roll; and (perhaps) against Nicholas of Stapleton in respect to an entry on his assize roll. Such complaints are presented as though the justices were themselves responsible for making and erasing the entries on the rolls made for them. These actions were, of course, the work of their clerks, but the justices bore ultimate responsibility for them and could indeed be presumed to have ordered them.

There were also allegations of wrongdoing relating to non-contentious business. Thomas Weyland, while chief justice of the Common Bench, was alleged to have ensured the levying of final concords (the most solemn and binding

122. See note 61(a).
123. See notes 48(f) and 56(b).
124. See note 59(e).
125. See notes 55(b) and 59(j).
126. See note 56(f).
127. See note 64(a).
128. See notes 56(c), 64(a) and 68.
129. See notes 65 and 68.
130. See note 48(h).
131. See p. 266 below.
132. See note 64(b).
133. See note 53.
134. See note 66(a).
form of land conveyance made under the aegis of the court) in his own court by a child under the age of legal capacity in order to transfer title to one manor to Thomas of Lewknor and a second manor to himself.\textsuperscript{135} William of Saham and his colleagues in the 1286 Huntingdonshire eyre were alleged to have allowed the levying of a final concord by the father of another complainant, even though the complainant had challenged the levying of the fine on the grounds that his father was of unsound mind and thus unable to grant his land away.\textsuperscript{136} A third complaint alleged that Solomon of Rochester and his colleagues on the 1280–81 Hampshire eyre had wrongfully allowed the enrollment of a grant of lands by the complainant even though he was then being held in prison awaiting trial for homicide and had been brought before the justices in fetters.\textsuperscript{137}

The two complaints that led to the conviction of the justices of the “southern” eyre circuit appear to be the only examples of complaints made of the failure of justices to take action on the presentments made to them.\textsuperscript{138} One complainant alleged that a deceased justice had maliciously procured the presentment of bills of indictment against him and that the senior justice of the eyre (Solomon of Rochester) had himself handed over such a bill to the jurors of a hundred and induced them to present it, but the senior justice denied doing so and denied that (even if he had done so) he had committed any wrong, and the \textit{auditores querelarum} agreed that this was indeed the case.\textsuperscript{139}

There are also other types of more miscellaneous complaints: against the two chief justices Hengham and Weyland and Weyland’s junior colleague Brunton for their part in authorizing a writ of a new (and contentious) form initiating litigation against the complainant without the assent of the chancery clerks and rejected by those clerks as “false” and that had led to a judgment dispossessing the complainant of his land;\textsuperscript{140} against William of Saham as chief justice of the 1287 Gloucestershire eyre for his part in having a complainant arrested and imprisoned and goods and chattels in his custody seized;\textsuperscript{141} against Richard of Boyland as a justice of the 1286 Norfolk eyre for having the complainant arrested and imprisoned until she had made a payment to a third party (but without affording her any chance to answer the claim in court);\textsuperscript{142} against Richard of Boyland as a justice of the 1287 Gloucestershire eyre for inducing the complainant by threats to agree to pay two hundred marks to the earl of Gloucester\textsuperscript{143} against William of Saham for having the complainant arrested and taken to a

\begin{footnotes}
\textsuperscript{135} See note 51.
\textsuperscript{136} See note 62.
\textsuperscript{137} See note 59(a).
\textsuperscript{138} See note 57(a)-(b).
\textsuperscript{139} See note 59(f).
\textsuperscript{140} See note 52.
\textsuperscript{141} See note 61(b).
\textsuperscript{142} See note 60(b).
\textsuperscript{143} See note 60(c).
\end{footnotes}
succession of different prisons;\(^{144}\) against Ralph de Hengham for bad advice that had cost the complainants the sixty marks they had been offered for an out-of-court settlement by their opponent (that Hengham had advised them to reject);\(^{145}\) against Solomon of Rochester as chief justice of the 1281–82 Devon eyre and his clerk Richard of Hadlow for getting the complainant’s father to make a bond to Hadlow for an annual pension of one hundred shillings in return for favorable treatment at the eyre and on the understanding that the money would in fact go to Rochester and despite the fact that the receipt of such pensions was forbidden to both justices and clerks (apparently a reference to the oaths of justices and clerks).\(^{146}\)

By no means do all of these complaints suggest a specific motivation for the wrongdoing concerned, but some do. These match most, if not all, of the types of motivation mentioned in the 1278 judicial oath.\(^{147}\) Straight bribery (a money payment) is suggested by many complainants, though generally without a specification of the actual sum involved.\(^{148}\) The complaint of John, son of Hubert of Harlow, specifies that twenty marks were paid to John de Lovetot by Gilbert, son of William of Dunmow, and Clement of Cookham to act as gaol delivery justice for their trial on homicide charges and to assist in procuring their acquittal. On further examination, however, Gilbert changed his story and said that he had only sent Lovetot one hundred shillings in a bladder and that it had recently been returned to him.\(^{149}\)

Ten marks was the bribe allegedly paid to Nicholas of Stapleton to ensure a murder trial was held outside the county where it was committed and under conditions that helped ensure an acquittal (though other bribes may have been paid to him as well).\(^{150}\) Ten marks is also the sum William of Sahaam is said to have received from the clerks and proctors of the bishop of Worcester for assisting them in taking possession of the church of Cleeve despite the resistance of the proctor of Peter of Leicester during the 1287 Gloucestershire eyre. This money may, however, have simply been received on behalf of the king.\(^{151}\) Ten marks was the bribe allegedly paid by Reginald Whitepintel to Richard of Boy-
land as a justice of the 1286 Norfolk eyre to ensure the arrest of the complainant
and her detention until she had paid a fine to Reginald.\textsuperscript{152} One complainant
(Walter of Durnford) mentions his own (unspecified) payments to chief justice
Hengham and suggests that his failure to get a hearing was because he had been
outbid by his opponent (Master Richard of Clifford).\textsuperscript{153} William of Saham was
alleged to have received a bribe in kind for favor to the men of Southampton in
the form of a barrel of wine, a cartload of white herring and a saddlecloth.\textsuperscript{154}
Other judicial misbehavior was ascribed to other kinds of material factor: the
promise of a living whose advowson was in dispute;\textsuperscript{155} attempts by a justice
(William of Brunton) to extort a pension of £5 a year for his clerk;\textsuperscript{156} the annual
pensions received by Ralph de Hengham from the abbot of Waltham and the
abbot of Bury St. Edmund’s.\textsuperscript{157}

Misbehavior by Solomon of Rochester was alleged in one complaint to re-
sult from the fact that the complainant’s opponent had a brother who was in
Rochester’s service,\textsuperscript{158} and the “maintenance” alleged against John de Lovetot to
result from the fact that a brother of one of the litigants was in his service.\textsuperscript{159}
Hengham’s “maintenance” in a third complaint was ascribed to the fact that one
of his clerks had been presented to the church whose advowson was in dis-
pute.\textsuperscript{160} Favor towards the rector of the London church of St. Mary Somerset,
who was also the steward of the woman now allegedly married to Lovetot, was
alleged to account for other Lovetot misbehavior.\textsuperscript{161} Rochester’s misbehavior in
another case was ascribed to favor one of his fellow justices on the 1286–87
Suffolk eyre (Robert Fulks) now dead;\textsuperscript{162} misbehavior by Rochester and Brunton
to the fact that one of the litigants was the marshal of chief justice Weyland and
his brother a clerk in Weyland’s service;\textsuperscript{163} misbehavior by the justices of the
Common Bench (and especially Brunton) to the maintenance of the then treas-
urer John de Kirkby, bishop of Ely, whose niece had married the litigant;\textsuperscript{164} and
Hengham’s misbehavior in a case involving Master William of Ewell, a canon of

\begin{itemize}
\item 152. See note 60(b).
\item 153. See note 56(b).
\item 154. See note 69(b). He was careful to deny not just that he had received it but also that any agent
acting on his behalf had done so and denied receiving it either from them or their agents (probably a specific reminder of the terms of his judicial oath).
\item 155. See note 59(c). See text at note 32 for misbehavior by Ralph de Hengham ascribed to a prior gift of a church to Hengham by the abbot of Ramsey.
\item 156. See note 48(e).
\item 157. See notes 54 and 56(f).
\item 158. See note 75(b).
\item 159. See note 64(b).
\item 160. See note 56(d).
\item 161. See note 71. They were later married and it was believed by others, including the king, that they
were already married at this time but this seems not to have been the case. See PRO, CP 40/76, m 48d; 
Close Rolls 1288–96 at 65 (cited in note 36).
\item 162. See note 59(f).
\item 163. See note 59(g).
\item 164. See note 49.
\end{itemize}
St. Paul's, implicitly to the fact that Hengham was also a canon of the same London cathedral chapter.\textsuperscript{165}

Favor for the great was another possible motive. Weyland's misbehavior in hearing the jury stage of a trespass plea involving the earl of Norfolk was ascribed to the fact that he was then a member of the household and chief counselor to the earl;\textsuperscript{166} but the misbehavior of Weyland and his colleagues and of Hengham as chief justice of King's Bench in another case (in delaying judgment) was simply ascribed in general to favor for the earl of Gloucester, and not ascribed to any kind of closer link between the justices and the magnate.\textsuperscript{167} In other cases the misbehavior of the justices of the Common Bench was said to have been "procured" by the magnate sisters, Isabella of Clifford and Idonea de Leybourne;\textsuperscript{168} and misbehavior by Hengham to have been "procured" by the bishop of Exeter.\textsuperscript{169}

\textbf{III}

The proceedings against the king's justices in 1289–93 are significant not only because they illuminate contemporary expectations of judicial behavior but also because they led for the first time not just to removal from office but also to conviction and punishment for judicial misconduct of a majority of senior royal justices. This constitutes the first large-scale enforcement of a developing code of judicial ethics.

The chief justice of the Common Bench, Thomas Weyland, was a special case. Both his temporary removal from office prior to Michaelmas term 1289 and his punishment (exile not just from England but from all of Edward I's other territories and the forfeiture of all his lands and movable property) were the consequences not of any kind of judicial misconduct but of his actions after the death of an Irishman killed by his servants the previous summer, which had made him an accessory to the murder.\textsuperscript{170} The abjuration that led to his exile and loss of lands and chattels took place at the Tower of London on 20 February 1290. Over a month before, on 14 January, orders had been given for the seizure of the lands and chattels of most of Weyland's junior colleagues (William of Brunton, John de Lovetot and Roger of Leicester) and on 15 January replacements were appointed for them in the court in time for the beginning of Hilary

\textsuperscript{165} See note 65.
\textsuperscript{166} See note 47(b).
\textsuperscript{167} See note 56(b).
\textsuperscript{168} See note 50(b).
\textsuperscript{169} See note 56(c).
\textsuperscript{170} See Brand, \textit{The Making of the Common Law} at 113, 131-33 (cited in note 1).
14 January 1290 was probably the date of their conviction for judicial misconduct. There is no surviving official record of that conviction but the Norwich chronicler, Bartholomew Cotton, tells us that they were imprisoned in the Tower with Weyland “because they had made a false judgment and falsified the king’s rolls” (pro eo quod falsarunt judicium suum et rotulos regis) and that they had been convicted of this by their own acknowledgment before the king and by the erasure of the rolls (super quibus fuerant convicti per recognicionem suam coram rege factam et per rasuram rotulorum). The context is almost certainly a case that had been heard in the Common Bench in Trinity 1288 in which Hugh of Gosbeck had appeared as a warrantor. Hugh is known to have made a complaint to the king and council in the Hilary parliament of 1290 specifically against Thomas Weyland, alleging that after his appearance in court and joinder of issue Weyland had on the following day ensured his own rolls were erased and then had Hugh called and when he failed to appear had entered judgment against him by default; the complaint is known to have been upheld and to have led to the quashing of the judgment. It seems likely that it was the unrecorded hearing and investigation of this complaint that led to the judgment being given against each of Weyland’s colleagues who had been serving in the court in Trinity term 1288, presumably on the grounds that they had colluded in Weyland’s wrongdoing and that their guilt was demonstrated by the fact that the rolls made for each of them followed the revised version of the entry on Weyland’s roll, not the entry as originally entered. The other pre-1290 Common Bench justice, Ellis of Beckingham, escaped conviction not because his rolls contained the original version of the entry, but because he was not sitting as a justice of the court that one term. He was away from Westminster acting as one of the justices of the Dorset eyre.

Conviction seems to have led to a relatively brief incarceration in the Tower for each of these justices pending their “agreement” to payment of a fine for wrongdoing. William of Brunton was still in the Tower on 3 February 1290. Brunton had been allowed to keep some of his servants with him there. Orders were issued to the sheriff of Cambridgeshire on that day to permit them to be maintained from goods and chattels belonging to Brunton that he had seized into the king’s hands. Brunton was presumably out of the Tower by 20 April 1290 when he paid the first installment of his fine. John de Lovetot had recently been released from the Tower in the second week of May and paid the first installment of his fine on 8 June 1290. Roger of Leicester must have been

171. See id at 153 n 75.
172. See H.R. Luard, ed, Bartholomaei de Cotton Historia Anglica 173 (Rolls Series 1859).
173. See PRO, CP 40/73, m 86d.
174. See PRO, CP 40/81, m 102.
176. See Close Rolls 1288–1296 at 66 (cited in note 36); PRO, E 401/113.
177. See PRO, KB 27/123, m 56; E 401/113.
Ethical Standards for Royal Justices in England, c. 1175-1307

released by the time he paid the first installment of his fine on 12 May 1290.178

The fines agreed to by each of these justices almost certainly reflected their perceived ability to pay, rather than any kind of estimate of their relative culpability: Brunton's fine was a massive six thousand marks (£4000); Lovetot's £1000; Leicester's five hundred marks.179 Brunton had paid the whole of his fine by the end of June 1294;180 Lovetot the whole of his by late October 1293;181 Leicester the whole of his by the beginning of February 1296.182 Brunton's fine was by any standard a large one. Sydney Painter calculated the median income of what he himself described as twenty-seven "major" landowners during the period 1260-1320 at only £339 a year.183 If Painter's figures are accurate, Brunton's total payment amounted to more than ten times the annual value of the income of a large landowner of the period.

Hugh of Gosbeck's success in his complaint had two further consequences. Of greatest importance to him, perhaps, was the quashing of the judgment given against him and the reinstatement of the status quo as it had been prior to that judgment. This was specifically authorized by a writ from the king to the new justices of the Common Bench on 17 February 1290.184 He was also awarded damages and can be found later in 1290 and 1291 suing process against Brunton, Leicester and Lovetot to levy their equal shares (amounting to just under £20 each) of these damages.185

Although the fines paid by each of these justices seem originally to have been agreed to only for their wrongdoing in this one particular case, they were subsequently transformed on 11 or 12 February 1291 in the case of the fines paid by Brunton and Lovetot, if not that agreed by Leicester, into general fines redeeming (so far as the king was concerned) any wrongdoing committed by these justices while in the king's service at any date up to 22 February 1290.186

178. See PRO, E 401/113.
180. His initial payment on 20 April 1290 was of two thousand marks. See PRO, E 401/113. Thereafter he seems to have paid off the remainder of the fine at the rate of a thousand marks a year (with the payment year beginning in early November). See PRO, E 401/116, 117, 119, 121, 124, 126, 128, 129.
181. His initial payment on 8 June 1290 was of five hundred marks. See PRO, E 401/113. Thereafter he seems to have paid off the fine at the rate of three hundred marks a year (with the payment year beginning in late October) except for the final payment of one hundred marks. See PRO, E 401/116, 117, 119, 121, 124, 126, 128.
182. His initial payments on 12 and 19 May 1290 were of two hundred marks. See PRO, E 401/113. Thereafter he seems to have paid off the fine at the rate of sixty marks a year. See PRO, E 401/116, 117, 119, 121, 124, 126, 129, 132, 134, 138.
184. See PRO, CP 40/81, m 102.
185. See PRO, JUST 1/541B, mm 33, 10d, 24d, 12, 5. The sum to be levied from each was £19 17s 6d. The judgment may have awarded damages of £100 against these three and against Weyland and the chief clerk Robert of Littlebury as well, but Weyland's abjuration removed any possibility of levying them from him and there is no evidence of the damages being levied from Littlebury.
186. See Calendar of Patent Rolls 1281–1292 at 421. There is no evidence of payment of two fines by these justices or for any increase in the amount of the fine as from February 1291 in return for the widen-
This was indeed the only fine for wrongdoing paid by Brunton (or by Leicester). Lovetot was not so fortunate. By May 1293 he had been convicted of wrongdoing a second time and was compelled to make a second fine for wrongdoing, this time of a thousand marks. It seems likely, however, that this conviction and fine were for something other than judicial misbehavior. It may have been for wrongdoing committed while in the service of Eleanor of Castile, late wife of Edward I.

These fines did not stop other proceedings against these individual justices for misbehavior while in office. Brunton is known to have been convicted a second time for misconduct ("maintenance") on the complaint of Henry de la Leghe and Nicholas de Cernes some time before the end of Easter term 1291. The complainants asked for damages against Brunton and the other justices and clerk convicted in the same suit (Hengham, Saham and the clerk John of Cave), but judgment was adjourned on this claim from term to term until at least Easter term 1292. Brunton seems also to have been convicted in a third set of proceedings brought by Richard Golding and William de la Denne. No details of their complaint are known, but the complainants were suing process before the auditores querellarum in Easter term 1292 to recover damages of £10 for wrongdoing. Other complainants seem only to have succeeded in having the specific judgments of which they had complained revoked, but not in recovering damages, or to have been allowed to have the original proceedings reviewed by means of a certification, or were allowed to replead their case in the Common Bench. The damaged plea roll recording proceedings on the complaint of John, son of Hubert of Harlow, relating to a gaol delivery where Lovetot had been the justice suggest that Lovetot (as well as his clerk Henry of Guildford) may have been convicted of misconduct in these proceedings and that he may also have had to pay damages to the aggrieved complainant. The prior of But-
ley's complaints against Lovetot as an assize justice simply led to a decision to reexamine the recognitors of the assize concerned. There was no further judgment of misconduct recorded against Roger of Leicester.

ii

The second group of royal justices to be convicted of judicial misconduct consisted of the justices of the "southern" eyre circuit who had sat in the 1286 Norfolk eyre. Their conviction came on 20 February 1290 and was for failing to take action on two separate presentments made during that eyre, one alleging the usurpation of jurisdiction by the prior of Norwich over two streets in Norwich to the detriment of its citizens, the other an obstruction of the passage by water between Norwich and Yarmouth by the prior of St. Benet's Hulme and the levying of an unjustified toll for the right of transit. The complaints made had been against the chief justice Solomon of Rochester and against the two of his colleagues who had been hearing proceedings on presentments, Richard of Boyland and Walter of Hopton, plus Rochester's chief clerk for crown pleas Robert of Preston, who was responsible for record keeping in relation to presentments. It is also these four alone who are recorded as having been remanded to the Tower on 20 February. However, Hopton is known to have petitioned against being held liable in respect to one of the two presentments on the grounds that, at the time the matter was dealt with, he had not yet been accepted as a justice of the eyre. Although the petition was endorsed as recording the king's unwillingness to take any action on it, it looks as though other counsels may ultimately have prevailed. The same fifteenth-century copy of the original entry combining proceedings on these two presentments records the fines agreed to not just for that but also for other trespasses not only by Solomon of Rochester (£4000) and Richard of Boyland (£1000) but also by Master Thomas of Siddington, the one other surviving justice of the eyre who had been engaged in hearing civil pleas but whose name had not previously been mentioned in the record of the case. His fine is recorded as being two thousand marks. Solomon of Rochester was out of the Tower by 5 May 1290 when he paid the first five hundred marks of his fine. By the middle of November 1294, he, and later his executors, had paid a total of four thousand marks. Richard of Boyland was out of the Tower by 25 April 1290 when he paid the first installment of his fine. His widow and his heir were still paying regular installments of the fine as late as

194. See *State Trials* at 62-67 (cited in note 40).
195. See British Library Additional Roll 14987.
196. See PRO, SC 8/263, no 13125; 1 Rot Parl at 56, no 134 (cited in note 44). A mandate of December 1290 suggests that the payments he made for the wardship of his late wife's lands were allowed to count as payments for the fine. See *Close Rolls* 1288–1296 at 155 (cited in note 36).
197. See PRO, E 401/113, 116, 117, 119, 121, 124, 126, 128, 129, 132. His fine was said to have been one of 4,000 marks in a reference in Easter term 1294. See PRO, E 159/67, m 39.
1302. Thomas of Siddington was out of the Tower by 12 May 1290 when he paid the first installment of his fine. I have traced a total of 1,975 marks paid by him down to 2 December 1295, suggesting that he probably did pay the whole of the two thousand marks.

It would not have been appropriate for either the citizens of Norwich or Robert Rose to have recovered damages in respect to their complaints and they did not do so. There were, however, further proceedings on the presentment made against the abbot of St. Benet's Hulme in the court of King's Bench, before assize justices and in the Exchequer beginning later in 1290.

The auditores querelarum continued to hear and determine complaints against these justices after their initial conviction. Solomon of Rochester in particular was, as has been seen, the object of numerous complaints. He seems nonetheless to have escaped any further conviction for judicial misconduct. Master Thomas of Siddington likewise escaped further conviction. Richard of Boyland, however, was convicted of misconduct a second time in Easter term 1293 for bringing unjustified pressure on William of Durnford, while acting as a justice of the 1287 Gloucester eyre, to agree to pay a fine of two hundred marks to the earl of Gloucester. The judgment awarded damages of three hundred marks to Durnford against Boyland and also ordered the arrest of Boyland "to satisfy the king." The latter was normally the preliminary to payment of a fine, but there is no trace on the Receipt Rolls of any increase in the regular payments Boyland was then making on the original fine or of the beginning of payments of a second fine. It looks as though the initial fine did indeed cover this offense as well. The following Trinity term the plea roll of King's Bench contains an acknowledgment by Boyland that seems to have superseded the original award of damages of three hundred marks to Durnford. Under it, Boyland agreed to acquit Durnford and his heirs of the two hundred marks he had originally acknowledged owing to the earl, and also acknowledged owing Durnford himself fifty marks.

Ralph de Hengham was still in office as chief justice of King's Bench as late as 12 February 1290 (when orders were given for writs relating to pleas in the

---

198. See PRO, E 401/113, 116-17, 119, 121, 124, 126, 128-29, 132, 134, 138-39, 140-41, 143-45, 147-48, 150-51, 153. See also PRO, SC 9/25, m 1d (also at PRO, SC 8/164, no 8152).
200. See PRO, KB 27/124, mm 42d, 43; KB 27/136, m 3d; JUST 1/1298, m 30; E 13/19, mm 9, 23, 88.
201. See State Trials at 5-11 (cited in note 40).
202. See KB 27/137, m 13. The entry states at the end that the enrollment had been made at the request of Peter of Leicester who had heard the plea (and who was then the head of the auditores querelarum), thereby providing additional confirmation of the hypothesis that this was by way of settlement of the original award of damages in the plea.
court to be returned to him and his colleagues) but had been convicted before the end of the Hilary parliament.\(^{203}\) It is not entirely clear when the parliament ended, but it was probably around 20 February. Hengham’s conviction was on the complaint of Henry de la Leghe and Nicholas de Cernes and was for judicial misconduct in having sealed a judicial writ for their arrest. The writ bore a date prior to the day of the inquiry into the abetment of a supposedly false indictment for harboring outlaws that was the supposed warrant for the issue of the writ. His colleague William of Saham was also accused of judicial misconduct by the same complainants in connection with the same proceedings but does not seem to have been convicted until later the same year.\(^{204}\) On conviction, Hengham was remanded not to the Tower but to the custody of the treasurer. He had presumably been released from that custody by 4 May 1290 when he began to pay his fine, paying the first three thousand marks of that fine in stages between that date and 15 July.\(^{205}\) Overall, between then and 17 May 1295 the records show him paying a total of 9,360 marks in all and it seems probable that an unrecorded or unnoticed payment brought the grand total up to the nice, but very large, round figure of ten thousand marks.\(^{206}\) The first installment of five hundred marks of William of Saham’s fine was paid on 21 November 1290.\(^{207}\) There was then a gap in payments until after his death when his executors resumed payment on 28 February 1292. Between then and 30 October 1293 they paid the remainder of the fine, totaling three thousand marks in all.\(^{208}\)

After the conviction of Hengham, Leghe and Cernes appeared before the *auditores querellarum* to press for the annulment of all the process in the original case. No action is recorded on their request for restitution of the amercements and fines they had paid the king, but process was ordered against William of Tempsford to ensure repayment of the damages he had obtained from them in the action of abetment. The judgment was also considered to have annulled the original acquittal of William of Tempsford. Orders were given to produce a jury for his retrial before the *auditores querellarum* in December 1290. The retrial was adjourned in December as only one of the *auditores* was still at Westminster and again in January for a similar reason. William of Tempsford was then released on bail pending arrangement for his trial back in Bedfordshire.\(^{209}\) Arrangements

---

203. See *Close Rolls* 1288–1296 at 69 (cited in note 36); *State Trials* at 27-40 (cited in note 40).
204. There is conflicting evidence on this point. Saham’s own related appeal against John of Cave does not seem to have been brought until Michaelmas term 1290 and the response to his reply in proceedings on the original complaint refers to this action and notes a subsequent adjournment till the morrow of the Ascension (which must be 1291). See *State Trials* at 40-45 (cited in note 40). However, as will be seen, Saham started paying his fine on conviction in November 1290 and this seems to be the case on which he was convicted.
205. See PRO, E 401/113.
206. See PRO, E 401/116, 117, 119, 121, 124, 126, 128-29, 134.
207. See PRO, E 401/116.
208. See PRO, E 401/119, 121, 128.
209. See *State Trials* at 27-40 (cited in note 40).
272 Roundtable

seem to have been made at the Epiphany parliament of 1292 for his trial at Bed-
ford, but by Michaelmas term 1292 he was said to be under indictment but to have
become a fugitive. He probably never stood trial. By then Henry de la
Leghe was also dead and it was his fellow complainant, Nicholas de Cernes, who
had been indicted for his murder. At Easter term 1291 Leghe and Cernes had
also attempted to recover damages against Hengham and Saham as well as
against the clerk John of Cave and the Common Bench justice William of Brun-
ton, who had also been convicted of misconduct in connection with these pro-
ceedings. They objected that no damages could be assessed against them until
William of Tempsford had been retried on the original charges. If he was cleared
of them, Leghe and Cernes might still be found abettors of a false indictment. If
so, the suit against them would be found justified and they would not be entitled
to damages. Judgment on this point was adjourned (perhaps with an eye to
awaiting the outcome of the trial of William of Tempsford) until Trinity term
and then by a series of adjournments through to the Trinity term of 1292. No
further adjournments are recorded, evidently because by then Leghe was dead
and Cernes awaiting trial on the charge of having killed him.

This was the only case in which Hengham was convicted of judicial mis-
conduct, but in at least one other case (relating to an assize of novel disseisin
adjourned into King’s Bench) the damaged entry seems to show his judgment
being reversed and the case in effect revived. One of Saham’s judgements in
an assize of novel disseisin was similarly reversed and further inquiries were
ordered to be held by local justices of assize. In one other case Saham’s judg-
ment as a justice on the 1286 Cambridgeshire eyre was annulled after a re-
examination of the original jurors at the suit of Alan Osemund in Hilary term
1292 and Osemund recovered seisin of the land at stake in the original case.
Osemund evidently also asked for damages against Saham, but this is recorded
as awaiting the king’s "ordinance." This may have been because Saham was al-
ready dead, or perhaps because it was dubious whether or not Alan Osemund
was entitled to damages. Osemund was another of the successful complainants
to come to a bad end. By Hilary term 1293 he was being appealed of homicide
and by Michaelmas term 1293 had died in prison while awaiting an ex officio jury

210. See 1 Rot Parl at 85, no 28 (cited in note 44).
211. See PRO, CP 40/96, m 187.
212. See 3 Calendar of Inquisitions Post Mortem no 199; PRO, JUST 1/1286, m 2.
213. See State Trials at 27-40 (cited in note 40); PRO, JUST 1/541B, mm 4, 3, 1.
214. See PRO, JUST 1/541B, m 22d.
215. On the complaint of Robert Doger and his wife Margery. See PRO, JUST 1/541B, m 46. By
Michaelmas term 1291 the case had been evoked by writ of error to King’s Bench. See PRO, KB 27/129,
m 37.
216. See PRO, JUST 1/541B, m 9d. That this also led to Osemund’s recovery of seisin is made clear
from the subsequent attempts to reverse this judgment as being ultra vires. See PRO, JUST 1/96, m 21d; CP
40/130, m 172; CP 40/133, mm 181-181d; JUST 1/1323, m 85; CP 40/145, m 219.
as to his guilt after he had pleaded benefit of clergy. 217

iv

One other prominent royal justice, Nicholas of Stapleton, agreed to a fine of three hundred marks on 15 (more plausibly 16) October 1290 for any trespasses he might have committed in the king's service up to 16 October 1290. 218 The first installment of this fine was paid on 14 November 1290, the second on 9 May 1291 and the third on 16 October of the same year. 219 This may have preceded any actual conviction for judicial wrongdoing. It was certainly pleaded in Hilary term 1291 to prevent any further inquiries into the complaint of Thomas of Goldington and his wife Avice into his alleged collusion in ensuring the acquittal of those tried at the king's suit for the killing of Avice's brother, inquiries that might otherwise have shown his guilt. 220 Thereafter, all proceedings were allowed to lapse. It also seems to have preceded what seems to have been a conviction of Stapleton for wrongdoing in connection with an assize brought against the prior of Holy Trinity, York. There is no surviving record of the proceedings that led to this conviction but by Michaelmas term 1291 the prior was suing process to levy damages of eighteen marks against him. 221

v

The end result of the proceedings made against the royal justices between 1289 and 1293 was the conviction of virtually all the surviving senior royal justices who had been in office between 1286 and 1289, many of whom had begun service as royal justices during the 1270s. Of all the justices who had been in royal service during that period only two went on to serve after 1290 as well: Ellis of Beckingham, who had become a justice of the Common Bench only in 1285, and John of Mettingham, who had long been a junior justice of the "northern" eyre circuit, became its chief justice for the 1288 Dorset eyre and early in 1290 became chief justice of the Common Bench.

Most of the disgraced justices died not long after their convictions. 222 The

217. See PRO, KB 27/135, m 6d; G.O. Sayles, ed, 2 Select Cases in the Court of King's Bench under Edward I 169-70 (57 Selden Soc'y 1938).
218. See Calendar of Patent Rolls 1281–1292 at 389 (cited in note 30); Calendar of Fine Rolls 1272–1307 at 284; State Trials at 84 (cited in note 40).
220. See State Trials at 81-84 (cited in note 40).
221. See PRO, JUST 1/541B, mm 4, 12d, 3. There seem also to have been proceedings brought by the prior against Gervase of Clifton, sheriff of Yorkshire, in connection with the same case. See PRO, JUST 1/541B, m 33; E 368/62, m 11d.
222. For what follows, see Brand, The Making of the Common Law at 110-11 (cited in note 1). I was wrong in stating there that Hopton survived until after 1300. This was the result of my confusing two different Walter of Hoppins, who were evidently father and son. For evidence that the father had died not long before September 1295, see PRO, JUST 1/743, m 2.
earliest to die was William of Saham. By 1296 Boyland, Lovetot, Stapleton and Hopton were dead as well. Thomas Weyland died early in 1298. The first of the disgraced justices to be partially rehabilitated was Master Thomas of Siddington, who was sent on the king’s service to Scotland in 1298 but died in the following year. Full rehabilitation came for only two of the disgraced justices. By 1300 William of Brunton had sufficiently regained the king’s confidence to be entrusted with an overseas mission negotiating the dower of the king’s daughter Elizabeth, countess of Holland, and in 1302 he was appointed a justice of the eyre of Cornwall. He died the following year.223 It was also in 1300 that Ralph de Hengham was reappointed a member of the king’s council. When John of Mettingham died in the summer of 1301, Hengham resumed high judicial office as chief justice of the Common Bench, retaining that office until 1309. For both men, therefore, disgrace was only a temporary phenomenon. Conviction for judicial misconduct enriched the royal coffers but did not render those convicted ineligible for judicial appointment in perpetuity.

IV

The general crisis of confidence in the senior members of the judiciary caused by the removal from office of a majority of its most experienced members, the numerous complaints against them, the conviction of many for misconduct while in office, their brief imprisonment and then the payment of significant fines appears to have brought with it two other related developments.

The first was a major revision of the oath taken by the king’s justices early in 1290.224 The new form of oath substituted for the general promise not to take anything from anyone a promise not to receive anything from anyone without the king’s permission (and the enrollment makes clear that the king gave blanket permission for the justices to accept gifts of food and drink but only enough to supply them for a single day). A new clause added at the end attempted to tackle the problem of wrongdoing initiated by a single justice but witnessed by others who thereby became accessories to that wrongdoing, the situation of Thomas Weyland’s junior colleagues in the Common Bench. Justices were now under oath not to assent to any wrongdoing (malice) on the part of their colleagues and to attempt to prevent it as far as possible. If they were unable to do so, they were to report it to the king’s council; if the king’s council failed to take appropriate action, they were to report it to the king.

The second significant development was the development of procedures for the trial and punishment of individuals who had falsely defamed royal justices of misconduct in the conduct of their duties (or indeed in other ways as well). This was perhaps a sign of the nervousness of the king’s justices after the events of

223. See City of London Record Office, Hustings Deeds and Wills, Roll 31, no 55.
224. See PRO, E 368/61, m 10; E 159/63, m 10.
2001] Ethical Standards for Royal Justices in England, c. 1175-1307 275

the recent past and a manifestation of their desire to protect their reputation for the future. The first such sets of proceedings appear in 1293. In that year there were no less than four such cases.225 Further proceedings of the same kind occurred in 1294, 1297 and 1301.226 There were two further sets of proceedings in 1303227 and one other set in 1305.228 There does not seem to have been a fixed form for such proceedings. A majority seem (to judge from the related enrollments) to have taken the form of ex officio proceedings, initiated by the court itself,229 but variants included proceedings on the complaint of the defamed justice himself,230 proceedings initiated on the complaint of the royal justice but then converted into proceedings at the king’s suit prosecuted by the king’s serjeant,231 and proceedings apparently brought from the start at the king’s suit and initiated by the king’s serjeant.232

The kinds of offense or wrongdoing alleged to have been committed by the justices who had been defamed ranged fairly widely. The least specific accusation was that allegedly uttered by one of the professional attorneys practicing in the Common Bench in Trinity 1294. He simply said in court, in the presence of many listeners, that Peter Mallore (one of the justices of the court) and all his colleagues were wicked (iniqui) and “shrewes.” This is perhaps more a general contempt of the court and its justices than a specific defamation of them.233

William of Bereford was defamed in the king’s hall at Westminster during

---

225. See PRO, CP 40/100, m 51; 1 Rot Parl at 95a-b (cited in note 44); PRO, JUST 1/1098, m 93 (bis).
226. See PRO, CP 40/104, m 59d; KB 27/152, m 58d; JUST 1/1318, m 11.
227. See PRO, CP 40/148, m 209d; JUST 1/1329, m 7.
228. See G.O. Sayles, 3 Select Cases in the Court of King’s Bench under Edward I 152-54 (58 Selden Soc’y 1939).
229. For examples, see the proceedings against Stephen, son of Humphrey of Clopton, for defamation of the justices of the Common Bench and especially its chief justice, John of Mettingham, in Easter term 1293, PRO, CP 40/100, m 51; the proceedings against Walter of Bodenham for defamation of Gilbert of Rothbury, one of the justices of King’s Bench, in Michaelmas term 1297, PRO, KB 27/152, m 58d; the proceedings against Thomas of Bradenhurst for defamation of the chief justice of the Common Bench, Ralph de Hengham, in Trinity term 1303, PRO, CP 40/148, m 209d; the proceedings against Henry of Biskele for defamation of Henry of Guildford, an assessor to the assize justices, Hervey of Stanton and Roger of Southcote, PRO, JUST 1/1329, m 7. A variant on this are the ex officio proceedings initiated against John and Eustace de Parles at the Easter parliament of 1293 for defamation of William of Bereford as a justice of the 1293 Staffordshire eyre, 1 Rot Parl at 95a-b (cited in note 44); the brief enrollment recording the suspension of William Balliol, a general attorney of the Common Bench, on Trinity term 1294 for calling Peter Mallore and his colleagues “evil” and “shrews,” PRO, CP 40/105, m 59d; the brief enrollment recording the conviction of John de la March at the Romsey session of the assize justices John of Battisford and R. Pik in January 1301 for defamation of Battisford, PRO, JUST 1/1318 m 11.
230. The complaint of Roger of Higham to the king and council in October 1305 against William, son of William de Braose (though William had also threatened Higham at the same time). See Sayles, 3 Select Cases in the Court of King’s Bench at 152-54 (cited in note 228).
231. Proceedings against John Barton of Ryton for defamation of Robert of Swillington in the Trinity 1293 session of the 1293-94 Yorkshire eyre. See PRO, JUST 1/1098, m 93.
233. See PRO, CP 40/105, m 59d.
the Easter parliament of 1293 in the presence of magnates and other subjects of the king by allegations of misconduct in the eyre of Staffordshire, held in January and February 1293. It was alleged that he had “maintained” parties pleading before him there, by giving them his advice and by doing other things contrary to his oath and incompatible with his official position (statur officii).234

In January 1301 John of Battisford was alleged by John de la March to have “maintained” a party to one of the assizes he and a fellow justice were hearing in a session at Romsey in Hampshire.235 The “maintenance” alleged against Robert of Swillington, one of the justices of the 1293–94 Yorkshire eyre, by John Barton of Ryton was an out-of-court maintenance. He was said to have received as a guest into his household one Marmaduke of Dighton, who was guilty of stealing oxen and cows in Scotland.236 The offense alleged against Henry of Guildford, sitting as an assessor with Hervey of Stanton and Roger of Southcote in October 1303 at an assize session at Chichester in Sussex, by Henry of Biskele was the forging of a deed.237

Other allegations were more closely tied to the judicial functions that the justices were performing. Nicholas de Clervaus launched a verbal attack on Hugh of Cressingham, the chief justice of the 1293–94 Yorkshire eyre, alleging that he had been responsible for having his brother William imprisoned without reasonable cause and under such harsh conditions that his life was in danger.238 Stephen, son of Humphrey of Clopton, the warrantor in a land plea, alleged that the justices of the Common Bench had refused his reasonable challenges against the jurors in his case (even though all his challenges had been tried and allowed when found justified) and that the justices had favored his opponent and not cared to do him justice in accordance with the law and custom of the realm.239

In Michaelmas term 1297 it was alleged that Walter of Bodenham had told the abbot of Mellifont in Ireland that he could have the judgment of a case heard in Ireland reversed in England if he paid him twenty marks that would then go to Gilbert of Rothbury, one of the justices of King’s Bench. Walter took part of the money and got a writ to levy the rest in Gilbert’s name but without his knowledge.240 Thomas of Bradenhurst in Trinity term 1303 was said to have defamed Ralph of Hengham both in the hall of pleas and elsewhere in the castle of York (where the Common Bench was then holding its sessions) by alleging that he had rendered a judgment quashing a writ of novel disseisin brought by Thomas “falsely and wickedly” (falso et nequiter), contrary to statute and the law of the kingdom, and that Hengham had been to Selby to meet with his oppo-

234. See 1 Rot Parl at 95a-b (cited in note 44).
235. See PRO, JUST 1/1318, m 11.
236. See PRO, JUST 1/1098, m 93.
237. See PRO, JUST 1/1329, m 7.
238. See PRO, JUST 1/1098, m 93.
239. See PRO, CP 40/100, m 51.
240. See PRO, KB 27/152, m 58d.
William, son of William de Braose, was alleged to have spoken disrespectfully to the exchequer baron, Roger of Higham, when acting as a commissioner to determine a dispute referred to him by the king's council, after Roger had pronounced the judgment and had subsequently claimed that the judgment was motivated by his wish to cause shame and damage to William and said that he would find some way of avenging himself.242 Such accusations were generally characterized in one or both of two ways: as to the scandal of the justice or justices concerned and/or being such as to cause them shame;243 and as to the contempt of the king and/or his court.244 Damages were claimed only in the two cases where suit was brought in the name of the king. In these, the king's serjeant claimed the large round sums of one thousand marks and £1000 respectively.245

There is little real evidence of investigation of most of the accusations of misconduct. In the case of the accusations against William of Bereford made in the Easter parliament of 1293, his colleagues in the 1293 Staffordshire eyre do seem to have been asked if the charges were true (and they denied that they were), but Bereford's defamers were also in part punished because they had said things against him but had not taken the proper path of making any kind of formal accusation against him by bill or in some other form.246 In the case of Robert of Swillington, accused of receiving a cattle thief in the 1293–94 Yorkshire eyre, care seems to have been taken to at least search the jury indictments to see if Marmaduke of Dighton had been the subject of any kind of indictment.247

Only in two of the proceedings is there any evidence that the conviction of the person accused of defamation led to any kind of reparation being made to the defamed justice. John Barton of Ryton (as well as admitting he had only accused Robert of Swillington out of anger) at once offered him twenty barrels of wine for immediate delivery by way of satisfaction;248 king and council adjudged that William, son of William de Braose, was to pass through Westminster hall from King's Bench while pleas were being heard there to the exchequer

241. See PRO, CP 40/148, m 209d.
242. See Sayles, 3 Select Cases in the Court of King's Bench at 152-54 (cited in note 228).
243. For proceedings mentioning both scandal and shame, see PRO, CP 40/100, m 51. For proceedings mentioning scandal alone, see PRO, CP 40/105, m 59d; KB 27/152, m 58d; CP 40/148, m 209d. For proceedings mentioning shame alone, see Sayles, 3 Select Cases in the Court of King's Bench at 152-54 (cited in note 228).
244. For contempt of the king, see 1 Rot Parl at 95a-b (cited in note 44); PRO, JUST 1/1098, m 93 (bis); CP 40/105, m 59d. For contempt of the king and his court, see CP 40/148, m 209d. For contempt of the king and his court, see Sayles, 3 Select Cases in the Court of King's Bench at 152-54 (cited in note 228).
245. See PRO, JUST 1/1098, m 93 (bis).
246. See 1 Rot Parl 95a-b (cited in note 44).
247. See Sayles, 3 Select Cases in the Court of King's Bench at 152-54 (cited in note 228).
248. See id.
with head bared and unbelted and without any head covering and there ask for
the pardon of Roger of Higham and do as Roger wished by way of satisfaction
for the disgrace to him and the wrongdoing against him. All that happened to
the professional attorney who murmured against the justices of the Common
Bench was that he was suspended from practicing in the court.

More commonly, the offender was committed to custody. Sometimes the
court was unwilling to take the initiative in releasing the offender until the king
had been consulted, but when offenders were released in return for agreeing
to pay a fine the amount of the fine seems in general to have been relatively
small (between twenty shillings and ten marks).

V

The English common law, in the earliest phase of its history, does not mani-
fest any great concern with the need to develop and enforce a strong code of
judicial ethics to guide and control the behavior of royal justices or to guarantee
to individuals with business before the king's courts an unbiased treatment by a
neutral judge. This is in marked contrast with their treatment of jurors. Probably
from the time of the introduction of jury trial as a regular part of certain forms
of civil proceedings, and certainly by the end of the reign of Henry II (1189),
it was possible for litigants to object to potential jurors for "reasonable cause," if
there was reason to suppose that they might be biased, and have them re-
moved. From early in the thirteenth century there was also a form of action,
initially somewhat restricted in its scope but later significantly extended, to allow
disgruntled litigants to seek the reversal of "false" verdicts given against them
and the punishment of the jurors who had given them.

There seems to have been no comparable procedure in the early common
law for objecting to potentially biased royal justices; no evidence even for the
development of rules or conventions requiring such justices to disqualify them-
selves from acting in cases in which they had an interest; no development of
forms of action for penalizing justices if and when they acted improperly. All

249. See Sayles, 3 Select Cases in the Court of King’s Bench at 152-54 (cited in note 228).
250. See PRO, CP 40/105, m 59d.
251. For examples, see PRO, CP 40/100, m 51 (but the court nonetheless later released him for a
fine without the king giving an order for this); CP 40/148, m 209d.
252. The largest fine mentioned is the ten marks payable by John de la Marche in 1301. See PRO,
JUST 1/1318, m 11. A fine of two marks is mentioned as payable by Stephen, son of Humphrey of Clop-
ton, convicted of defamation of the justices of the Common Bench in 1293. See CP 40/100, m 51. Fines of
twenty shillings are mentioned as payable by Nicholas de Clervaux, convicted of defamation of Hugh of
Cressingham in 1293, and Henry of Biskele, convicted of defamation of Hugh of Guildford in 1303. See
JUST 1/1098, m 93; JUST 1/1329, m 7.
253. See Glanvill, II.12 and XIII.7. For the possible reasons for objecting to jurors, see Bracton,
III.71-2.
254. J.C. Holt, Magna Carta 181-82 (Cambridge 2nd ed 1992); Michael Macnair, Viceage and the Ance-
that did exist were the relatively vague aspirations expressed in the judicial oath taken by royal justices on their appointment even if these did become steadily more elaborate as time went on, plus, from 1275 onwards, the specific prescriptions of certain clauses of the Statutes of Westminster I and II, prohibiting certain types of misbehavior. Proceedings against the king’s justices in 1289–93 and the defamation proceedings brought against their detractors from 1293 onwards do nonetheless show that certain types of behavior, certain abuses of judicial power and discretion, were widely perceived as misbehavior and might indeed be punished as such. Indeed, even voicing criticism suggesting that justices had so behaved was considered sufficiently scandalous as to merit punishment. It is significant, however, that even though the king provided a forum for complaints against his justices in 1289–93 and profited handsomely from their punishment, judicial misbehavior was still not being treated as a matter for public investigation or prosecution as opposed to private complaint. Nor even after this episode were any regular, continuing procedures established for complaints against the king’s justices. Within a decade of their disgrace two of the most prominent of those punished for misbehavior were back in the king’s service and not long after were serving as royal justices once more, which also suggests that judicial misbehavior was still not treated that seriously. There certainly were ethical standards for royal justices in the early common law courts; what was lacking was any sustained commitment to their enforcement.