

ABSTRACT

OF THE

VIRGINIA MILITIA LAW.

RELATIVE TO THE

ASSESSMENT AND COLLECTION OF FINES,

ALLOWANCE AND PAYMENT OF CLAIMS,

AND THE

Powers, &c. of Battalion and Regimental Courts.

RICHMOND, VA.

PRINTED BY RITCHIE AND DUNNAVANT.

1861.

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Va. Laws, Statutes etc
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ABSTRACT

OF THE

VIRGINIA MILITIA LAW.

AUDITOR'S OFFICE, RICHMOND, VA.
March 25, 1861.

On the 23d day of March 1861 an act was passed amending certain laws respecting the militia of the commonwealth, so as to render them more efficient, changing the law relating to the assessment, collection and disbursement of the militia fines, and the payment of claims on that fund; which makes it necessary to issue this circular, to explain the construction to be given to its various legal provisions. I also annex numerous forms in aid of the construction, adapting them, as far as I can, to the law as it now exists. I therefore respectfully request the attention of all persons concerned, especially the regimental clerks and collectors of the militia fines, to the following abstract:

Battalion courts; how constituted; when and by whom held.

Annually, in October or November, at such place as the commandant of the regiment may appoint, two battalion courts of enquiry in each regiment are required by law to be held. The court is to be composed of the commandants of battalions and commandants of companies in the battalions attached thereto.

It is the duty of the presiding officer to administer to each member of such court an oath, that "*they and each of them will faithfully enquire into all delinquencies to be laid before the court, and to assess fines thereon, without favor, partiality or affection.*"

After this oath has been administered to the members of the court by the presiding officer, any member can, and it is his duty to administer to the presiding officer a similar oath.

This court has no other duty to perform than to assess fines on delinquents. The fines to be assessed by it are upon non-commissioned officers, musicians and privates in the battalion, and upon other persons, where specially authorized. Any person fined by such court may appeal to the *next* regimental court, but not to any court after the court next succeeding the battalion court imposing the fine.

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The clerk and provost marshal appointed by the regimental courts of enquiry, are required to attend the battalion courts of the regiment, and perform the duties pertaining to their offices.

Regimental courts ; how constituted ; when and by whom held.

As soon as may be after the last battalion court of enquiry, at such place and time as the commandant shall appoint, a regimental court of enquiry is required to be held. This court is composed of the commandant of the regiment, and commandants of battalions and companies in the regiment attached thereto. The senior officer present is to preside, and the same oath prescribed for officers of battalion courts, is to be taken, which is to be administered in the same manner as the oath to members of the battalion courts. The regimental court is to appoint a clerk and provost marshal, who shall be removable at its pleasure. The president of the court shall administer to the clerk an oath "*faithfully to execute the duties of his office.*" The clerk is to keep a fair record of the proceedings of this court. The name of the clerk is to be certified by the president of the court to the auditor of public accounts, within ninety days after his appointment. (See form A.)

The regimental court has power to assess fines, according to law, upon officers of the regiment, upon officers attached thereto, and upon other persons, where specially authorized. They may hear and determine appeals from either of the two *next preceding* battalion courts; remit or lessen, within the limitations prescribed by law, any fine imposed by either of them, or any fine imposed by the *next preceding* regimental court.

Tickets for fines.

Tickets for all fines imposed by battalion and regimental courts of enquiry, are to be made out by the clerks of those courts, and placed in the hands of the sheriff for collection, after the first day of January and before the first day of April next following the time such fines were imposed, together with an alphabetical list of such tickets. (See form B.)

At the foot of which list of fines the clerk shall take from the sheriff or collector a receipt for the tickets contained therein, and shall forthwith transmit to the auditor of public accounts a certified copy of such list and receipt; which is to be received as evidence in any action or motion against such collector.

If from any cause there be no fines assessed or placed in the hands of the sheriff or collector, that fact must nevertheless be certified to the auditor.

Collection of fines ; when payable into the treasury.

The sheriff is required to collect, annually, all such fines imposed as are due to the commonwealth. They are to be paid into the treasury on or before the 15th day of December next after they are required to be placed in the hands of the sheriff or collector.

Insolvents.

The list of insolvents is required to be alphabetical; and to the list an affidavit of the sheriff or collector is to be annexed, to the effect mentioned in form (C).

It is also essential that the court of enquiry to which such list is returned, should examine the same with the tickets, and correct it, if necessary; and if it be of opinion that it is correct, or having corrected it, shall allow it, and direct the clerk to certify the same to the auditor of public accounts. Such list must be returned within one year from the date of the sheriff's receipt for the tickets. If not so returned within the year, the auditor is prohibited from allowing the same.

Fines suspended by commandants.

Any officer or soldier fined by a regimental court of enquiry may, at any time before the *next succeeding* regimental court, apply to the commandant of his regiment for an order suspending its collection; and upon affidavit showing good cause therefor, *but not otherwise*, the said commandant may suspend the collection of the fine by a written order to the clerk of the regimental court, or to the sheriff. The affidavit and order of suspension must be returned to the auditor so as to enable that officer to allow the sheriff credit therefor. (See form D.)

Volunteer companies.

The fines assessed under the by-laws of volunteer companies, are to be collected and paid to the treasurer of such company. It is important, therefore, that they should in no respect be blended with the muster fines due the commonwealth. (For commissions to be paid, see that head.)

Sheriff's compensation.

On the fines to be paid into the public treasury, a sheriff or collector is allowed a compensation of ten per centum on the amount collected and paid. On fines assessed by volunteer companies, not less than ten nor more than fifteen per cent. commission is allowed. The fines by such volunteer companies are to be paid to the treasurer of such company.

Notices of regimental musters and trainings, how given.

Before the passage (on the 23d day of March 1861) of this act, notices of regimental and company musters were required to be given by commandants of companies, by advertisement in the local newspapers. The amendment is as follows:

“Notices of regimental musters and training of officers may be given by the brigade inspector, by advertisement in one or more convenient newspapers; but the expense thereof shall not exceed \$10 for each brigade in any year. Notices of company musters shall be given by commandants of companies, by notices to be posted at three separate public places, in the respective company districts, at least ten days previous to such musters.”

The same act provides, that “there shall be two trainings in every year, of all the officers in each county; which shall be at the courthouse of such county, except that the trainings of officers of the 131st regiment shall be held at Lynchburg, and the fall trainings of the officers of the 176th regiment may be held at Mannington, if a majority of the officers of that regiment so determine: but the place of such

training may be changed by the brigadier general of the brigade, upon application in writing of a majority of the officers."

Each training shall continue three successive days.

The first (or spring) training is to be conducted by the brigade inspector, in the manner prescribed by law, on the three days immediately preceding the regimental muster.

The second (or fall) training is to be held in the month of September or October, commencing on such day as may be appointed by the commandant, and is to be conducted by the senior officer present.

When regimental musters are to be held.

When several regiments are organized in the same county, the brigadier general of the brigade is required to appoint the general musters of such regiments on separate successive days, commencing immediately after the training required to be conducted by the brigade inspector. The brigade inspector is to attend all regimental and battalion musters in his brigade. He is required to inspect all arms in the hands of the militia, and report to the adjutant general the condition of such arms, and all instances of abuse thereof.

Music to be employed by brigade inspector.

Each brigade inspector shall employ a drummer and fifer to attend each training of officers and regimental muster in the brigade.

Musical instruments to be obtained; when and how.

The commandant of each regiment and battalion, where battalion are substituted for regimental musters, may procure for the use of his regiment or battalion, and for the drum and fife majors attached thereto, once in ten years, if necessary, one drum and fife; upon which he shall cause the name of the county and number of the battalion or regiment to be marked. In like manner he may procure one bugle for each company of cavalry and riflemen attached to his regiment or battalion.

Repairs of equipments.

When any of said equipments require repairs, the commandant of the regiment or battalion may procure the same to be done. The commandant of such regiment or battalion shall submit all accounts for such equipments or repairs, to their respective regimental or battalion courts of enquiry; which may make a reasonable allowance therefor. When the court allows for new equipments, it shall also certify that no such equipments have been purchased for the regiment or battalion within the preceding ten years. Upon such allowance (with such certificate in the case of new equipments), the said commandants may draw upon the auditor of public accounts in favor of the claimant, to be paid out of the militia fine fund, for the amount thereof. (See form L.)

Militia fine fund.

In time of peace the militia fines constitute a fund for defraying the expense of the militia establishment. All expenses, which by law may be allowed, are to be paid out of said fund. In case the said fund shall be insufficient to pay said expenses, they are to be paid out of any money in the treasury not otherwise appropriated.

Music at trainings.

Each brigade inspector shall employ a drummer and fifer to attend each training of officers and regimental muster in the brigade, who shall be allowed each three dollars per day for their services at the *trainings*, and each two dollars per day for their services at the *regimental* musters, and four cents per mile for every mile they necessarily travel to attend the trainings. These claims for music at trainings are to be certified by the brigade inspector; and the same rule of construction is to be given in respect to mileage as that governing the mileage of brigade inspectors, illustrated hereafter. (See form F.) Claims for music at the regimental musters are to be allowed by the regimental court.

How claims are certified for payment.

All claims are to be allowed either by commandants of regiments, brigade inspectors, or by regimental courts. Claims in favor of the brigade inspector are to be allowed and certified by the commandant of the regiment. All other claims are to be allowed by the regimental courts.

Much care and attention should be observed in granting these certificates, by which money is drawn from the public treasury. The law allows each brigade inspector five dollars per day for every day he shall attend the training of officers and regimental musters, and ten cents for every mile he shall necessarily travel in going and returning. He is allowed mileage for but one circuit through the brigade; and this is all that can be allowed or paid. The brigade inspector is restricted to this, notwithstanding he may, by the arrangement of the circuit, have been compelled to travel more than a properly regulated circuit would require. To illustrate what is meant by "going and returning," we will suppose a brigade inspector resides in Richmond, and is to attend trainings at Petersburg, Norfolk and Alexandria. His mileage, in this case, would be from Richmond to Petersburg; thence to Norfolk; thence to Alexandria; thence *directly* to Richmond—and not to "return" by Norfolk and Petersburg to Richmond.

It is the duty of the brigadier general to cause the trainings to be so arranged that one circuit only will be necessary. If they are not so arranged, it is not the fault of the state, and nothing more will be paid than a properly regulated circuit will justify. (See form E.)

Claims allowed by a regimental court.

All claims other than those mentioned, which are authorized by law, are allowable by the regimental courts of enquiry, are to be certified by the clerk of the

regimental court allowing the same, and are to be countersigned by the commandant of the regiment.

All such claims, or so much thereof as may be authorized by law, so certified and allowed, shall be in favor of the person performing the services, and are to be paid by the auditor of public accounts, upon presentation. Those claims allowed by a regimental court, cannot, however, be paid until a list of all the claims allowed by such court, has been certified by the clerk, countersigned by the commandant, and received at this office. Such list of claims, so certified, is made the guide of the auditor in his payment of claims.

If there be no claims allowed, that fact must nevertheless be certified by the clerk and commandant. All claims allowed by the regimental courts are to be certified by the clerk of the regimental court allowing the same, and shall be countersigned by the commandant of the regiment, and before they can be paid, must be endorsed by the claimant. These allowances are to be paid by the auditor, upon presentation.

Claims on militia fine fund.

Particular attention should be given to this branch of the subject by clerks of the regimental courts. The clerk is required forthwith, after the allowance is made, to transmit to the auditor a list of all claims allowed; which list is to be countersigned by the commandant of the regiment, and is to be the guide of the auditor in making payments.

What claims may be allowed.

In time of peace, or rather for services in the peace establishment, no claim other than the following shall be allowed or paid, to wit:

Claims of brigade inspectors.

1. To each brigade inspector, \$5 per day for every day he shall attend the training of officers and regimental musters, and 10 cents for every mile he shall necessarily travel going and returning, as provided in the 8th section of chapter 25 of the Code. (See form E.)

Claims of drummers and fifers at trainings, &c.

2. To each drummer and fifer who shall attend the training of officers in the brigade, \$3 per day for their respective services, and 4 cents for every mile of necessary travel in going and returning, according to the 9th section of said chapter 25. (See form F.)

Claims of drummers and fifers at company musters and fall trainings.

3. To a drummer and fifer and bugler, for attending the fall training of officers, regimental, battalion and company musters, including volunteers as well as other companies, each \$2 per day for their services: provided, if a drummer and fifer cannot be obtained, and the services of any band is obtained, they (the band, not each member) shall be allowed \$5 per day. (See form G.)

4. To the clerk of every regimental court of enquiry, for attendance on each court or board of officers during its session, not exceeding \$5. For making out the list and tickets to be placed in the hands of the sheriff or other collector in any year, \$5; and for the copies thereof to be certified to the auditor, and for stationery for the use of said courts, \$5. (See form H.)

5. To the provost marshal, for each day he shall attend the courts of enquiry, \$2. (See form I.)

6. To the adjutant of every regiment, for attending the regimental musters and the training of officers, \$4 for each day's attendance. (See form J.)

7. To the adjutant, or any other officer of the line ordered to perform the duty of enrolling, notifying and mustering any company which has no officers, and reporting delinquents in said company, \$2 per day whilst actually employed in such duty, so that the same does not exceed \$6 for any company in one year. (See form K.)

8. For equipments and repairs for musical instruments, as prescribed in the 10th section of chapter 25, under the restrictions contained therein, there shall be a reasonable allowance made therefor. (See form L.)

9. For advertising, under the provisions of the 2d section of chapter 25, such sums as may have been actually incurred, not exceeding the amount allowed in said section. (See form M.)

10. To each company of artillery equipped with ordnance, there shall be allowed horses to draw its pieces and caissons at every muster required by law; and the regimental courts of enquiry shall make proper allowance therefor. But said courts shall not allow for more than two horses for each piece, and two horses for each caisson, nor more than one dollar for each horse actually employed at such musters. (See form N.)

There is no provision authorizing payment to musicians for attending companies when assembled to elect officers.

The 25th section of chapter 30 of the Code has been repealed. No sheriff is therefore now required to pay any militia claim. The section repealed reads as follows:

“§ 25. If any sheriff or collector shall fail to pay any claim or allowance properly certified, having funds in his hands arising from fines sufficient therefor, the court of the county or corporation of which he is sheriff or collector, on motion of the person holding said claim, shall render judgment against him for the amount thereof, with costs.”

J. M. BENNETT,
Aud. Pub. Accounts.



FORMS.

[A]


Form for Certifying the Appointment of a Regimental Court Clerk.

I certify, that at a regimental court of enquiry held for the _____ regiment, on the
day of _____ 186____, at _____ in _____ county, _____ was duly appointed
clerk of the said regimental court of enquiry.

Given under my hand this _____ day of _____ 186____.

_____, *President of the Court.*

To the Auditor of Public Accounts.

 The appointment of a clerk must be certified to the auditor within *ninety days* after his appointment.

[B]

Form of the List of Militia Fines transmitted to the Auditor.

A list of militia fines assessed in the _____ regiment, in the county (or corporation) of
for the year _____ collectable in _____.

[Here should follow the names arranged in alphabetical order, and the amount of each
fine—also the total amount on each page.]

Received the _____ day of _____ 18____, of _____ clerk of the _____ regiment,
sundry tickets for militia fines assessed in the said regiment, corresponding with the fore-
going list, and amounting in the whole to \$ _____; which fines I am to collect and ac-
count for according to law.

_____, *Deputy Sheriff,*

For _____, *Sheriff of _____ County.*

I, _____ clerk of the _____ regiment, do hereby certify, that the foregoing is a
true list of tickets for militia fines put into the sheriff's hands for collection, and a true copy
of the sheriff's receipt for the same.

Given under my hand this _____ day of _____ 18____.

_____, *Clerk Reg't.*

[C]

Form of a List of Insolvents allowed by the Regimental Court of Enquiry, and returned to the Auditor.

At a regimental court of enquiry held for the _____ regiment, on the _____ day of
18 _____, at _____, in the county of _____ :

The following list of insolvents in the militia fines of 18 _____, collectable in 18 _____, amounting to \$ _____, was returned by _____ deputy for _____ sheriff of _____ county, verified by the affidavit of said deputy hereto annexed—whereupon it is ordered to be certified to the auditor, that the court believe the same to be correct, and that it ought to be allowed.

_____, Clerk Reg't.

[Here should follow the names of the insolvents in alphabetical order, with the amount of each fine. The names should be written so as to correspond with the list of fines transmitted to the auditor.]

Form of the Affidavit annexed to the Insolvents.

County, to wit :

This day, _____ deputy sheriff for the county aforesaid, made oath (or affirmation) before me, a justice of the peace for the said county, that the foregoing list of delinquents in the militia fines he verily believes is correct and true; that he has used due diligence for the collection of the fines in said list mentioned, and hath not collected any part thereof.

Given under my hand this _____ day of _____ 18 _____ .
_____, J. P.

[D]

Form for the Suspension of the Collection of a Fine imposed on a Private.

For reasons stated in the annexed affidavit of _____, and it appearing that said _____ has been fined, as in said affidavit stated, for his several failures, to wit :

and that the fines amount to \$ _____; and it appearing also that no regimental court has been held in the regiment to which the said _____ belongs since the said fine was imposed, and considering that said _____ by his said affidavit, has shown good cause therefor, I do hereby direct that the collection of said fines be suspended until the next regimental court.

_____, Commandant of _____ Reg't.

To the Clerk of the Regimental Court (or to the Sheriff, as the case may be).

☞ This form may be readily reformed so as to suit the suspension of the collection of a fine imposed on an officer.

[E]

Form for Certifying a Claim for Services of Brigade Inspector.

I certify, that _____, a brigade inspector appointed by brigadier general _____ for his brigade, did attend at _____ in the county of _____, and was there employed in training the officers of the _____ regiment for three successive days, to wit: On the _____ days of _____ 186 ; and on the _____ day of _____ 186 attended the regimental muster for said regiment.

I further certify, that the said _____ has traveled _____ miles from _____ (the place of the last training, or from the place of his abode, as the case may be) to the place above specified, for which services in training, attendance at the regimental muster, and mileage, he is entitled to \$ _____, to be paid out of the militia fine fund.

Given under my hand this _____ day of _____ 186 .

_____, *Commandant of Reg't.*

To the Auditor of Public Accounts.

[F]

Form for Certifying Claims for Music at Trainings.

I certify, that _____ drummer (or fifer) has attended the training of officers three days, to wit: on the _____ days of _____ at _____ of _____ and performed service as such, and that he traveled _____ miles from _____ (the place of last training, or muster, or from his place of abode, as the case may be); for which service and mileage he is entitled to _____ dollars and _____ cents, to be paid upon the warrant of the auditor of public accounts, out of the militia fine fund.

Given under my hand this _____ day of _____ 186 .

_____, *Brigade Inspector.*

To the Auditor of Public Accounts.

☞ Although the musicians attending the regimental musters are employed by the brigade inspectors, their claims for music at the *regimental* musters are nevertheless to be allowed and certified by the regimental court. (See form G.)

[G]

Form of a Certificate of Allowance to a Drummer or Fifer.

At a regimental court of enquiry held for the _____ regiment, on the _____ day
of _____ 18____, at _____ in the county of _____ :

Ordered, that _____ be allowed \$ _____ per day for his services as drummer
(or fifer) _____ days, to wit: _____ day at the regimental muster, and _____ day at the
April and October musters of Captain _____ company of militia (or _____ day
at the regular and extra musters of Captain _____ volunteer company of _____)
attached to the _____ regiment, during the present year, amounting to \$ _____ .

_____ _____, *Clerk.*

COUNTERSIGNED:

_____ _____, *Commandant.*

☞ This form will be varied of course to suit the services performed by the musician,
whether drummer, fifer or bugler, which ought always to be particularly specified.

[H]

Form of Certificate of Allowance for the Services of the Clerk of the Regimental Court, which can be varied according to circumstances.

At a regimental court of enquiry held for the _____ regiment, on the _____ day of
_____ 18____, at _____ in the county of _____ :

Ordered, that _____ clerk of this regiment, be allowed for attending one regi-
mental and two battalion courts of enquiry during the present year, _____ dollars for
each court; also _____ dollars for a list of fines and tickets placed in the sheriff's hands
for collection; and _____ dollars for stationary for the use of the board of officers, and a
list of fines, and a certified copy of the sheriff's receipt transmitted to the auditor, amount-
ing in the whole to _____ dollars.

_____ _____, *Clerk* _____ *Reg't.*

COUNTERSIGNED:

_____ _____, *Commandant.*

[I]

Form of a Certificate of Allowance to the Provost Martial.

At a regimental court of enquiry held for the _____ regiment, on the _____ day of
 18 _____, at _____ in the county of _____ :

Ordered, that _____ provost martial to this regiment be allowed two dollars per
 day for attending the regimental and battalion courts of enquiry _____ days during the
 present year, amounting to \$ _____ .

_____ _____, Clerk Reg't.

COUNTERSIGNED:

_____ _____, Commandant.

[J]

Form of a Certificate of Allowance to the Adjutant.

At a regimental court of enquiry held for the _____ regiment, on the _____ day of
 18 _____, at _____ in the county of _____ :

Ordered, that _____ adjutant to this regiment, be allowed four dollars per day for
 attending three days at the training and one day at the regimental muster for this regiment
 during the present year, amounting to \$ _____ .

_____ _____, Clerk Reg't.

COUNTERSIGNED:

_____ _____, Commandant.

[K]

Form of a Certificate of Allowance to the Adjutant or other Officer of the Line for certain services.


At a regimental court of enquiry held for the _____ regiment, on the _____ day of _____ 18____, at _____ in the county of _____ :

Ordered, that _____, adjutant of this regiment (or _____ an officer of the line), be allowed two dollars per day for _____ days' services employed in making out lists of companies having no officers, for training said companies, and returning delinquents, &c. during the present year, amounting to \$ _____.

_____, Clerk.

COUNTERSIGNED:

_____, Commandant.

 The foregoing form will be of course varied to suit the particular services performed.

[L]

Form of an Allowance for Equipments.

At a regimental court of enquiry held for the _____ regiment, on the _____ day of _____ 18____, at _____ in the county of _____ :

Ordered, that _____ be allowed the sum of _____ dollars, it being for one drum and one fife purchased for the use of the regiment (or for one bugle purchased for Captain _____ troop of cavalry (or riflemen), belonging to said regiment); and it is hereby certified to the auditor of public accounts that the aforesaid allowances, amounting to _____ dollars, include the cost of transportation and all other incidental expenses attending the purchase of said equipments, and that no such equipments have been furnished to the regiment (or company of _____) for which they are intended, within the period of ten years next preceding the time of the said purchase.

_____, Clerk Reg't.

COUNTERSIGNED:

_____, Commandant.

Note.—If the several equipments are purchased from different persons, separate certificates of allowance will of course be granted, and the *form* can be varied to suit circumstances, preserving always the substantial parts of it. These allowances cannot be made until after the equipments are purchased and the price ascertained.

[M]

Form of a Certificate of Allowance for Notices in Newspapers.

At a regimental court of enquiry held for the _____ regiment on the _____ day of
18____, at _____ in the county of _____ :

Ordered, that _____ be allowed _____ dollars for advertising the regimental musters and training of officers of the _____ brigade in the spring of 18____, under the provisions of the 2d section of chapter 25 of the Code.

_____, Clerk.

COUNTERSIGNED:

_____, Commandant.

☞ The amount for advertising cannot exceed \$10 in one year for any brigade.

[N]

Form of Certificate of Allowance for Horses to draw Ordnance.

At a regimental court of enquiry held for the _____ regiment on the _____ day of
18____, at _____ in the county of _____ :

Ordered, that _____ be allowed _____ dollars for the use of _____ horses, to draw its pieces of artillery and caissons on the _____ day of _____ 18____; and the court certifies that there were but two horses for each piece, and two horses for each caisson; and not more is allowed than one dollar for each horse actually employed at said muster.

_____, Clerk.

COUNTERSIGNED:

_____, Commandant.

1882

(18)

The first part of the paper is devoted to a general
 consideration of the subject, and to a discussion of
 the various theories which have been advanced
 in regard to the origin of the human race.
 It is shown that the most plausible theory is
 that of a common ancestry, and that the
 evidence in support of this theory is
 abundant and conclusive.

The second part of the paper is devoted to a
 detailed examination of the evidence in support
 of the theory of a common ancestry. It is
 shown that the evidence is of a most
 convincing nature, and that it is in
 complete accordance with the theory.

The third part of the paper is devoted to a
 consideration of the various objections which
 have been advanced against the theory of a
 common ancestry. It is shown that these
 objections are all of a most frivolous
 nature, and that they are completely
 refuted by the evidence.

