

FINAL

**Advisory Committee on Juvenile Justice
Meeting Minutes
January 25, 2006
Approved May 17, 2006**

The official business meeting of the Advisory Committee on Juvenile Justice occurred on Wednesday, January 25, 2006, at St. Joseph's Villa, 8000 Brook Road, Richmond, Virginia 23227.

Committee members present

Kevin Appel
Jane Brown, Proxy for Maurice A. Jones
Monica Estrada
Peter Feddo
Matthew T. Gowin
Lynette Greenfield, Proxy for Barry Green
Eileen Grey
Scott Grimes
Dr. Jay W. Malcan
Charles Martin
Sophia McEachin
Sheriff Charles Phelps
Robert E. Shepherd, Jr.
Wayne Thomas, Chair
Ruby G. Turner
Justin Wilson
Barry Wittig

Committee Members Not Present

Ben Andrews
Dr. Cynthia Cave, Proxy for Dr. DeMary
Dave Chapman
Janet Lung, Proxy for Dr. Reinhard
Kevin Massengill
The Honorable Robert F. McDonnell
Daniel L. Plaughner
The Honorable Linda T. Puller
The Honorable Sharon Breeden Will
Gina E. Wood

DCJS Staff present

Dr. Aura Hanna
Laureen Hyman
Laurel Marks
Ashaki McNeil
Curtis Stevens

I. Welcome, Call to Order and Introductions

The meeting was called to order by the Chair, Mr. Wayne Thomas. New members were welcomed and all present introduced themselves to the group.

II. Review and Approval of Minutes

Mr. Thomas asked if there were any comments, additions or deletions to be made to the minutes from the November 29-30, 2005, meeting of the ACJJ. A motion was made by Mr. Appel and seconded that the minutes be approved with one change: Mr. Charles Martin was present at the last meeting. The motion passed unanimously.

III. Review of Introduced Legislation

Mr. Shepherd discussed the following bills identified as being of interest to the Advisory Committee members:

Bills	Summary as Introduced (From Legislative Information System)	ACJJ Position
HB 126 Kilgore [AH]	Juvenile detention hearings. Provides that if the juvenile and domestic relations district court does not sit within the county or city where the charge is pending on the day following the day the child is taken into custody the judge may designate a courthouse where the detention hearing will be held. The bill also states that the attorney for the Commonwealth and the attorney for the child may appear electronically; the current Code mentions only the child. The intake officer is specified as being responsible for giving notice of the hearing to the persons entitled to notice. The bill has an emergency clause. This bill is a recommendation of the Committee on District Courts.	No position

There was some discussion regarding this bill and it was felt that it would be a disservice to the child not to have an attorney present.

Mr. Martin interpreted the need of this bill to ensure that juveniles get a speedy trial to lessen the amount of time the juvenile has to wait in case the court is closed.

Sheriff Phelps remarked that juvenile court in Isle of Wight County only meets once a week. Bob Shepherd felt that, in addition to the attorney, parents should be present as well.

Ms. Marks explained that under current practice in Virginia, when there is an electronic hearing, the attorney must be present at the hearing.

Mr. Martin made a motion to support this bill and later withdrew his motion.

It was decided that the committee would not support as there are too many questions regarding this bill. They support the idea of a quick trial, but not without appropriate representation of the attorney and parents.

HB 176 Putney [AH]	Criminal procedure; compensation of court-appointed counsel. Authorizes the court, in cases where court-appointed counsel represents a defendant on a felony charge that may be punishable for a period of more than 20 years, to waive the statutory limit on the compensation for such counsel when the time and effort expended, the result obtained, the novelty and difficulty of the issues, or other circumstances warrant such a waiver.	Support
HB 313 Albo [AH]	Compensation of court-appointed counsel. Removes the monetary caps on court-appointed counsel fees and instead allows the court to set an hourly rate based on the type of case.	Support
HB 1203 Moran [AH]	Public defenders; compensation. Allows any county or city, in its discretion, to supplement the compensation of the public defender or any of his deputies or employees above the salary fixed by the executive director of the Commission.	Support

Ms. Grey made a motion to support these three bills, the motion was seconded and approved unanimously.

HB 427 Nutter [AH]	Office of Comprehensive Services for At-Risk Youth and Families; rates for residential treatment. Requires the Director of the Office of Comprehensive Services to negotiate statewide or regional contracts for residential treatment services paid from state pool funds.	No position
HB 548 Saxman [AH]	Department of Juvenile Justice; education costs. Requires the Department of Juvenile Justice to pay the education expenses for any juvenile who is placed in a correctional residential facility and is educated by the local schools of a district other than his original district.	Oppose

There was some discussion about the extra burden this would put on DJJ and that it might encourage juveniles to be kept in facilities where they can be taught by DCE. If so, it could decrease allowances for juveniles to transition into the community through halfway houses. A motion was made by Mr. Shepherd to oppose this bill, was seconded and approved unanimously.

HB 692 Marsden [AM]	Exceptions to confidentiality. Provides that information relating to a juvenile can be released to a law-enforcement agency as long as the juvenile in question is suspected to be a member of a criminal street gang and the law-enforcement agency requesting such information is investigating criminal street gang activity.	Oppose
HB 847 Albo [AM]	Gang information; juvenile records. Requires the Departments of Corrections and Juvenile Justice to collect information on individuals identified as gang members and transmit it to the Commonwealth's Attorneys' Services Council. The Council will disseminate the information to attorneys for the Commonwealth. An attorney for the Commonwealth may request an affidavit signed by the custodian of the records that a person on the list has been identified as a member of a criminal gang and the affidavit can be admitted into evidence in any court proceeding as prima facie evidence of the individual's gang membership. The bill also specifies that law-enforcement agencies, school administrations and probation offices are included as entities that may examine certain juvenile records held by the Department of Juvenile Justice if there is a court order determining that they have a legitimate interest. The bill also says that the court order may be granted if the person, agency, or institution has a legitimate interest in the juvenile. Under current law the interest is limited to the case or in the work of the court.	Oppose

Mr. Gowin advised that this bill could cause a negative moniker to be attached to a juvenile by assuming there is a gang relation. As former law enforcement, he doesn't see the value in having that information given to law enforcement or the need to reveal mental health records to law enforcement. Juveniles already in the system could be involved in gang activity for protection that will conclude once they are out of the facility.

Ms. Turner remarked that "SUSPECTED" is the key word, and that we shouldn't base sharing of information on suspicion.

Sheriff Phelps moved to oppose both HB 692 and HB 847. The motion was seconded and approved unanimously.

HB 712 McQuigg [CS]	Juveniles; duty of person taking child into custody. Requires that whenever a child who is under 14 years old is taken into custody regarding the commission or alleged commission of certain acts, the person taking the child into custody shall advise the child whether he is at liberty to terminate the interrogation and leave. If the child does not leave, the person taking the child into custody shall advise the child that he has the right to counsel and to have present his parent, guardian, legal custodian, or other person standing in loco parentis.	No Position
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HB 1169 Eisenberg [CS]	Recording of interrogations of juveniles. Provides that statements made by a juvenile criminal defendant are presumed inadmissible in a court unless reliably recorded. The presumption may be overcome if the statement is otherwise reliable and was recorded out-of-state or by a federal officer.	Support
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Ms. Grey noted that it needs to be decided (under B) if “both” refers to the parents or lawyers or both. This refers to custodial interrogation.

Mr. Appel made a motion that the ACJJ take no position but express concerns over the lack of clarity in language of HB712, where it refers to parents or counsel as both being present and that we support HB 1169. It was seconded and approved unanimously.

HB 737 laquinto [AM]	Crimes; possession of marijuana; penalty. Makes the first offense of possession of marijuana a Class 1 misdemeanor and deprives the person found delinquent or so convicted of the privilege to drive for one year. Currently, the penalty for the first offense is an unclassified misdemeanor and carries a maximum penalty of 30 days in jail and a \$500 fine, and, in the case of a juvenile, the loss of driving privileges for six months.	Opposed
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There was concern by the committee that they shouldn't have their driver's license suspended for a first offense.

Mr. Appel made a motion that this bill be opposed, was seconded and approved unanimously.

HB 1017 Hurt [CS]	Intake; alcohol-related offenses; juveniles. Clarifies the juvenile intake process where it is unnecessary to file a petition for certain alcohol-related offenses to make it consistent with implied consent statutes (specifically: maiming, etc., of another resulting from driving while intoxicated; persons under 21 driving after illegally consuming alcohol; and driving after forfeiture of license). This is a recommendation of the Committee on District Courts.	No Position
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Mr. Appel made a motion that we take no position on this bill. The motion was seconded and approved unanimously.

HB 1033 Hurt [AM]	Juvenile sentencing. Allows juveniles who are transferred to circuit court for trial as adults to be sentenced by a jury and specifies that the jury sentence is a recommendation and the court retains the power to sentence as a juvenile offender if the judge so chooses.	No Position
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Instead of the judge making the decision, now the jury can make the decision, but the judge still has final say. Mr. Appel noted that from his experience, a judge usually follows the ruling of the jury in adult cases.

Sheriff Phelps commented that the judge usually tells the jury what their options are.

It was decided that the ACJJ would take no position on this bill.

<p>HB 1155 Lingamfelter [CS]</p>	<p>Sex crimes, electronic monitoring; penalties. Requires a mandatory minimum term of confinement of 25 years for the following offenses: sexual intercourse with a child under 13 years of age, sodomy of a child under 13 years of age, and object sexual penetration of a child under 13 years of age. The bill also provides that for those offenses and for abduction with intent to defile and abduction of a child under 16 years of age for immoral purposes if the term of confinement is less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years and that the suspended sentence shall be suspended for the remainder of the defendant's life. Where the conviction is for sexual intercourse, sodomy or object sexual penetration involving a child under 13 years of age, any probationary period must include at least three years of active supervision under a postrelease supervision program operated by the Department of Corrections with a minimum of three years of electronic GPS (Global Positioning System) monitoring. In any case where a defendant is convicted of abduction, rape, carnal knowledge of a child between 13 and 15 years of age, sodomy, object sexual penetration, aggravated sexual battery, or indecent liberties, and some portion of the sentence is suspended, the period of suspension must be at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned and the defendant must be placed on probation for that period of suspension.</p>	<p>Opposed</p>
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Mr. Appel made a motion to oppose this bill, the motion was seconded and approved unanimously.

<p>HB 1252 Hugo [CS]</p>	<p>Sex crimes; penalties. Requires a mandatory minimum term of confinement of 25 years for the following offenses: sexual intercourse with a child under 13 years of age, sodomy of a child under 13 years of age, and object sexual penetration of a child under 13 years of age. The bill also provides that for those offenses and for abduction with intent to defile and abduction of a child under 16 years of age for immoral purposes if the term of confinement is less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years and that the suspended sentence shall be suspended for the remainder of the defendant's life. Where the conviction is for sexual intercourse, sodomy or object sexual penetration involving a child under 13 years of age, any probationary period must include at least three years of active supervision under a postrelease supervision program operated by the Department of Corrections with a minimum of three years of electronic GPS (Global Positioning System) monitoring. In any case where a defendant is convicted of abduction, rape, carnal knowledge of a child between 13 and 15 years of age, sodomy, object sexual penetration, aggravated sexual battery, or indecent liberties, and some portion of the sentence is suspended, the period of suspension must be at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned and the defendant must be placed on probation for that period of suspension.</p>	<p>Opposed</p>
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Mr. Appel made a motion to oppose this bill, the motion was seconded and approved unanimously.

<p>HB 1279 Barlow [AH]</p>	<p>Notification to school principals of students charged with committing certain crimes. Amends the requirement that principals or their designees receive notification from local law-enforcement authorities when students in their school commit certain crimes to require that such notification be given, whether the student is released to the custody of his parent or, if 18 years of age or more, is released on bond. The bill further requires that any school superintendent who receives notification that a juvenile has committed an act that would be a crime if committed by an adult pursuant to subsection G of § 16.1-260 must report such information to the principal of the school in which the juvenile is enrolled.</p>	<p>No Position</p>
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It was decided that the Advisory Committee would take no position on this bill.

<p>HB 1309 Gilbert [AM]</p>	<p>Criminal history of a juvenile as element in determination of bail. Provides that the juvenile criminal history of a person is specifically considered when the determination is made whether to release a person on bail.</p>	<p>No Position</p>
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Mr. Grimes made a motion to support this bill. The motion was not seconded and the motion died.

Ms. Greenfield noted that the juvenile information they are referring to in this bill is already in the Central Criminal Records Exchange (CCRE). Usually violence or felony charges are.

It was decided that the Advisory Committee would take no position on this bill.

HB 1325 Caputo [AH]	Juveniles; administrative support order. Allows the Department of Social Services to establish the amount of the support obligation by the parents when a child is committed to the custody of the Department of Juvenile Justice, and allows the Department of Juvenile Justice to collect child support from the parents from the date it receives the child.	Support
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This already occurs and fee is already set – this bill is administrative and there is no direct impact on the juvenile.

Mr. Appel made a motion to support, the motion was seconded and approved unanimously. Abstentions: Ms. Greenfield, DJJ

HB 1332 Bell [CS]	Juvenile detention facilities; placement of adults. Requires that adults, and juveniles being tried as adults, be held only in adult correctional facilities. The bill also requires that upon reaching age 18, any adult in a juvenile facility shall be transferred to an adult facility.	Oppose
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Mr. Shepherd expressed concern over the possibility of a 14 year old who could be tried as an adult and transferred to an adult facility.

Mr. Appel made a motion to oppose this bill, the motion was seconded and approved unanimously.

HJ 115 Kilgore [CS]	Study; institutional programming for sex offenders; report. Directs the Virginia State Crime Commission to study the need for additional institutional programming at the Department of Corrections to treat sex offenders. A report on the study shall be filed no later than the first day of the 2007 Session.	Approve
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Dr. Malcan made the motion to approve this bill, the motion was seconded and approved unanimously.

HB 1046 Reid [AM]	Reporting alleged juvenile illegal alien delinquents to the Immigration and Customs Enforcement Agency. Provides that a juvenile intake officer shall report to the United States Immigration and Customs Enforcement Agency a juvenile who is the subject of a petition alleging he committed an act that would be a crime if committed by an adult and who has also been found to be in the United States illegally. The report shall include the nature of the offense alleged to have been committed.	Oppose
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Mr. Appel made a motion to oppose this bill, the motion was seconded and approved unanimously.

HJ 136 Moran [AH]	Study; juvenile justice; report. Directs the Virginia State Crime Commission to study Virginia's juvenile justice system.	Approve
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Mr. Appel made a motion to approve this bill, the motion was seconded and approved unanimously.

SB 129 O'Brien [AM]	Juvenile gang affiliations; release of information. Allows the juvenile and domestic relations district court to disclose to the chief law-enforcement officer of a juvenile's locality, upon the officer's request, the name, address, and probation/parole status of a gang-affiliated juvenile. The information may be shared only with other law-enforcement officers in the conduct of official duties.	Oppose
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Mr. Appel made a motion to oppose this bill, the motion was seconded and approved unanimously.

SB 208 Edwards [LM]	Office of Children's Services Ombudsman. Creates, within the legislative branch, the Office of Children's Services Ombudsman. The mission of the office is to protect children and parents from harmful agency action or inaction; investigate the acts of state and local administrative agencies adversely affecting children; recommend appropriate changes toward the goals of safeguarding the rights of children and parents; and promote higher standards of competency, efficiency, and justice in the administration of child protection and child welfare laws. The office is to be headed by a Director appointed by the Joint Rules Committee. The bill also contains an exemption from the Freedom of Information Act for active investigations conducted by the office.	Approve
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Mr. Appel made a motion to approve this bill, the motion was seconded and approved unanimously.

SB 210 Edwards [LM]	Mental health courts; pilot program. Directs the Office of the Executive Secretary of the Supreme Court to establish by January 1, 2007, no less than two and no more than five mental health courts in Virginia for nonviolent offenders with serious mental illnesses.	No Position
SB 290 Cuccinelli [CS]	Psychiatric Inpatient Commitment of Minors Act; special justices. Makes it clear that retired judges, substitute judges, and special justices are authorized to perform hearings under the Act and to receive compensation therefor.	No Position
SB 351 Howell [CS]	Juveniles; release of information. Allows the Department of Juvenile Justice to release the social, medical, psychiatric, or psychological reports and records of a child to certain law enforcement employees for the purpose of investigating criminal street gang activity.	Oppose

Once again it was felt that this information should not be out there for law enforcement.

Mr. Gowin made a motion to oppose, the motion was seconded and approved unanimously

SB 352 Howell [CS]	Psychiatric Inpatient Commitment of Minors Act; special justices. Makes it clear that retired judges, substitute judges, and special justices are authorized to perform hearings under the Act and to receive compensation therefor.	No Position
SB 362 Ticer [AM]	Elimination of capital punishment for minors; penalty. Restricts the death penalty to those who are 18 years of age or older at the time of the capital offense. Currently, the age is 16 or older at the time of the offense. This change is being made in response to the case of <i>Roper v. Simmons</i> , 543 U.S. ____ (2005), decided March 1, 2005, in which the U.S. Supreme Court held that the Eighth and Fourteenth Amendments forbid the execution of offenders who were under the age of 18 at the time of the crime.	Support

Mr. Appel made a motion to approve this bill, the motion was seconded and approved unanimously.

SB 559 (Committee Substitute) Stolle [CS]	Sex offenders; registration, civil commitment and mandatory minimums; penalties. Amends provisions related to the Sex Offender and Crimes Against Minors Registry, the civil commitment of sexually violent predators and increases penalties for certain sex crimes. First offense child pornography possession and burglary with the intent to commit certain felony sex offenses will be new Registry offenses if committed after July 1, 2006. The sex offender website will include persons convicted of all registerable sex offenses committed after July 1, 2006, not just persons convicted of violent sex offenses as under current law. The bill modifies the registration of a person convicted of murdering a child; registration will be required if the victim is under 15 years of age and if the minor victim is 15 or older and the murder is related to a registerable sexual offense. Persons convicted in a foreign country will be required to register. Sex offenders will have three days to register or reregister after an address change rather than 10 and have to reregister for any employment change. Sex offenders moving into the Commonwealth will have three days to register instead of 10, as will nonresident visitors, workers and college students who are subject to registration requirements...	Oppose
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Mr. Shepherd pointed out that if the juvenile is three years older than the victim, they will be sentenced for a minimum of 25 years. If there is a fifteen year old having sex with a reasonably mature twelve year old, it does not mean it is a vicious, predatory sex act. Individual issues need to be looked at rather than the overall picture.

Maybe we should suggest that the study be used to determine where legislation needs to be changed.

Dr. Malcan also suggested that if video equipment is a concern, than the Advisory Committee we may want to consider that for funding.

Mr. Appel motioned to oppose, the motion was seconded and approved unanimously,

SB 561 Stolle [AM]	Gang information; juvenile records. Requires the Departments of Corrections and Juvenile Justice to collect information on individuals identified as gang members and transmit it to the Commonwealth's Attorneys' Services Council. The Council will disseminate the information to attorneys for the Commonwealth. An attorney for the Commonwealth may request an affidavit signed by the custodian of the records that a person on the list has been identified as a member of a criminal gang and the affidavit can be admitted into evidence in any court proceeding as prima facie evidence of the individual's gang membership. The bill also specifies that law-enforcement agencies, school administrations and probation offices are included as entities that may examine certain juvenile records held by the Department of Juvenile Justice if there is a court order determining that they have a legitimate interest. The bill also says that the court order may be granted if the person, agency, or institution has a legitimate interest in the juvenile. Under current law the interest is limited to the case or in the work of the court.	Oppose
Mr. Appel made a motion to oppose this bill, the motion was seconded and approved unanimously.		
SB 567 Stolle [AH]	Dissemination of juvenile record information. Allows the Virginia Criminal Sentencing Commission access to juvenile record information for research purposes.	No Position
SB 672 Obenshain [AH]	Compulsory school attendance, truancy, and chronic tardiness. Incorporates the concept of chronic tardiness into the reporting, recordkeeping, and enforcement provisions of the compulsory school attendance law and other enforcement provisions relating to the welfare of children, including the law relating to juvenile and domestic courts and the parental responsibility law relating to public education and discipline. This bill requires the Board of Education to promulgate regulations defining "chronically tardy" to identify those children who are in violation of compulsory school attendance by reason of being habitually and without justification absent from school for a significant portion of the day because of routine and substantial late arrival to school.	Oppose
Mr. Appel made a motion to oppose, the motion was seconded and approved unanimously.		

IV. Keeping Members Informed

Laurel Marks explained that DCJS likes to inform advisory committee members of upcoming training and events and will e-mail or mail information simply for that purpose on occasion. If there is interest in attending any of the conferences please let your interest be known so that we can request approval for your attendance at these functions.

V. Reconsideration of Augusta County Title II Grant

Laurel Marks explained that recommendations for Title II grants were made by the subcommittee on March 22, 2006, and approved by the advisory committee and Criminal Justice Services Board. One of those grants that was not approved for funding was requesting digital cameras for photographing juveniles in streets and gatherings, and it appeared to be contrary to Virginia Code to photograph juveniles. Additionally, the grant solicitation was intended to solicit proposals for initiatives that addressed juveniles already in the juvenile justice system, not for those who may eventually become part of the system with increased surveillance. They sent in a request for consideration and the grant subcommittee reconsidered this application. Their recommendation was to deny this application.

Ms. Turner made the motion to approve the request to deny this application, was seconded and approved unanimously.

VI. Spirit of Virginia's Youth Award

Laurel Marks explained that this award would be for a young person who was once in the juvenile justice system and is no longer, but has done something positive with their lives. We

are suggesting that we replicate on a state level what the Coalition for Juvenile Justice does at a national level. We would like to then have the award recipient speak at lunch at our JJDP Conference. As well, it would make people feel good about changes that they have made in their lives. We haven't had a chance to look into a scholarship, but will do so. Laurel recommended following the national guidelines for our own. Lynette said she could put it out to the community court service units. Ms. Turner suggested that we send it to DCE as well. We would need to get the word out soon to seek nominations in order to have an award recipient announced at the next conference. We could put it out there without mentioning the scholarship and see if we could get the money later.

Ms. Marks suggested that we may develop a subcommittee to review the nominations, then forward our award winner for Virginia to be the national nominee as well.

A motion was made by Ruby Turner to follow the National Spirit of Youth Award requirements for our own Spirit of Youth Award in Virginia. The motion was seconded and approved unanimously.

VII. Subcommittee Discussion

We suggested the various subcommittees and changes to those subcommittees. We are combining our various grants subcommittee into one. The purpose is to review grants and make recommendations to the full committee. We used to have a government relations subcommittee but decided to have the full committee discuss legislation, eliminating the need for the subcommittee. Another subcommittee is the Disproportionate Minority Contact subcommittee. It hasn't been very active yet but it was suggested that the subcommittee meet to discuss interest and if there is a direction they want to go in to see where the subcommittee should be headed.

VIII. Adjourn

A motion was made by Mr. Appel to adjourn at 4:30pm, was seconded and approved unanimously.