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# THE BROADWAY DEMOCRATS

♦ District Leaders: Curtis Arluck, Paula Diamond Román ♦ President: Joe Nunley ♦

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## **APRIL GENERAL MEETING:**

# **Bail Reform and Criminal Justice**

**a discussion with Jason Flom  
and Michelle McGrath**

**with moderator Mary Peppito**

*Jason Flom* is a founding board member of the Innocence Project, and creator and host of the Wrongful Conviction podcast

*Michelle McGrath*, a lawyer in The Legal Aid Society's Decarceration Project, focuses on research, monitoring, and litigation of pretrial detention issues for criminally accused people across NYC

*Mary Peppito* is 25-year veteran lawyer in The Legal Aid Society's Criminal Defense Practice in Bronx County.

## **Thursday, April 14, On Zoom**

### **Club Business 7:30 pm**

### **Forum 8:00 pm**

*register at*

**[bit.ly/broadwaydems-register-Zoom-meeting](https://bit.ly/broadwaydems-register-Zoom-meeting)**

for more information, email [DistrictLeaders@BroadwayDemocrats.org](mailto:DistrictLeaders@BroadwayDemocrats.org)

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Volume 47, Issue 4

April 2022

## President's Corner

Joe Nunley

### We Will Not Capitulate

President Biden brought a \$5.8 trillion budget proposal to Congress, which has more than \$30 billion in grants to states and local police departments.

It boosts military spending by 10%, to a record shattering \$813 billion. As far as military spending goes we already spend more than the next eleven nations in the world combined.

There is no element of the Build Back Better Act included in this budget.

It was narrowly defeated in the U.S. Senate because of Sinema and Manchin after it passed the House of Representatives.

If a budget is a moral document then this is clearly a statement of where priorities are and is clearly handing a victory to the right-wing propaganda machine. The Russian invasion of Ukraine is a new business opportunity for the weapons manufacturers (Lockheed Martin, Raytheon, etc.) and their 700 full-time lobbyists in Washington.

Weapons of war are our number one export and one of our top domestic businesses as well. We make so many guns that we flood Mexico with half a million guns per year and their gun violence is off the charts. We wonder why gun violence is rising precipitously in America but we shouldn't. It's as easy to buy a gun in most of America as it is to buy a pack of chewing gum. The gun lobby had prevented reasonable regulations to protect our citizens.

Most states don't even require a background check to purchase any weapon, even a semi-automatic assault rifle.

So I wonder what the \$30 billion dollars designated to state and local police are going to mean for public safety. Are we going to give them more weapons? Are we going to further militarize the police? Are we going to present them with tanks and armored vehicles and helicopters and drones? What are we preparing for?

Let's say you're a member of the Black Lives Matter movement. Let's say that you participated in protests after George Floyd's murder. Most members of the Broadway Democrats did. What does this budget say to us? If you believe that there is systematic brutality against Black people by the police all over the country, why would you further empower these institutions?

The right-wing backlash that progressives are facing right now is extraordinary and it is on so many levels. President Biden's movement back to the ideological center (where he's comfortable) is positioning himself to take on Trump or a Trump-like right wing strongman in the 2024 presidential election. I get this and I respect it. It's good politics. It offers no help, whatsoever, however, in winning the upcoming mid-terms.

Let's look at police departments in Minneapolis (where Jacob Blake was shot seven times in the back) or Kenosha, Wisconsin (where Kyle Rittenhouse murdered two protesters and walked free). How will more money for their police departments make Black people feel safer? It won't. If it does, I'll be the first to say I was wrong.

If the federal government is going to give \$30 billion to local and state police, is it the contention of the president that gun shootings will go down? Is it the contention of the president that incidents of police brutality will go down?

If the answer to these two questions is "yes" then everyone should be behind it. But the point that thousands of community activists have been trying to make – to deaf ears, apparently – is that the cause of crime is a continually underfinanced public sector of education, housing, employment opportunities, mental health facilities, and a lack of after-school programs and nurses and health care workers in schools, and a horrific criminal justice system.

The point is that these thinkers were not and are not wrong in their assessment. They are right about reallocating our resources to where they are truly needed. They are right about criminal justice reform. They are right about BAIL REFORM which we will be highlighting at this month's forum. I urge you all to come.

We have to take on the irrationality of fear. It stems from fear of others and fear of self and fear of

change. And, I would say at this point, fear of reality. We have to take on the barrage of lies that are thrown at us. We cannot capitulate. We cannot get tired. We cannot withdraw from the struggle.



**Disclaimer:** unless otherwise indicated, items herein reflect the views of their authors only. They are published as a part of our club's commitment to the free and open exchange of ideas on topics of interest, but their publication should not be construed as an endorsement by the editor, the Steering Committee, or the Broadway Democrats club.



## District Leader's Report

### Paula Diamond Román

One of the main football topics in the post-Super Bowl off-season was quarterback Deshaun Watson, who was accused of sexual harassment and assault by twenty-two women. Last Friday, a Texas grand jury declined to indict and criminally charge Watson. Many football fans are treating this as a complete exoneration, rather than a prosecutor or grand jury deciding there isn't enough evidence to proceed with a trial where the threshold is "beyond a reasonable doubt." Meanwhile, the women are going forward with a civil lawsuit.

At the beginning of this, Watson played for the Houston Texans. During this legal process, a number of teams were considering Watson for their quarterback positions. Many of them claimed to have investigated the situation during the negotiations, although none of them spoke to the women or their lawyer. Watson now has a five-year, \$230 million contract to play for the Cleveland Browns, despite the fact that he could still be suspended by the NFL under the personal conduct policy (as set forth in the collective bargaining agreement).

This has introduced some interesting conversations about our judicial system, especially the concept of "innocent until proven guilty," in very different settings than the usual legal debate. Several of the amendments to the U.S. Constitution refer to this concept, especially the Fifth Amendment which says "No person shall be held to answer for a capital, or otherwise infamous crime ... nor be deprived of life, liberty, or property, without due process of law ...," but the actual words "innocent until proven guilty" don't appear in the Constitution.

Broadcasters Michael Kay, Don LaGreca and Peter Rosenberg of 'The Michael Kay Show,' on the YES Network, have spent a lot of hours discussing the criminal charges, the civil suit, the continuing popularity of Watson, and the willingness of so many teams to consider him for their quarterback position. Interestingly enough, with such a large number of women continuing with their lawsuit, they've adopted the "where there's smoke there's fire" position on Watson's guilt/innocence. Kay said:

I will tell you this. He's not charged with anything. That many women accusing him of doing ... something happened. Sorry, something happened. You can't have that many women accusing the guy of doing something and then he's completely, completely innocent? They all got together to bring him down? People that don't even know each other? C'mon."

In response to a caller who can't understand why Watson is even able to play football with that many women accusing him, Rosenberg says: "You're skipping to the point where you absolutely know what happened. It's hard to jump out and say that simply because there's a lot of accusations that you know without a shadow of a doubt that he's someone who shouldn't get to work again." The caller points out that the NFL isn't a court and isn't bound by "reasonable doubt."

LaGreca talked about the lack of closure with the Texas grand jury declining to indict and criminally charge Watson. He wasn't found guilty; is he innocent? Was he "found" innocent or just "not guilty"? Is the difference in the burden of proof required for criminal charges and a civil suit reflected in degree of guilt and innocence between being convicted of a crime and being found civilly liable?

And, then, Millie from the Bronx called in. Millie, both a life-long sports fan and an attorney of twenty years, calls in to explain Watson's innocence. In response to LaGreca's discomfort, she says, "Unless he's tried and found guilty, the only words that should attach, in regards to the situation, in a criminal sense, is Deshaun Watson is innocent." Kay asks if he's still innocent if he's found civilly liable in the civil lawsuit. Don refers to Watson as "technically innocent" since he wasn't found innocent or exonerated the way he might have been if he had gone to trial. The guys ask Millie from the Bronx respectful, intelligent, clear questions but, they still don't seem to feel that Watson is as innocent as if he'd been to trial and found not guilty.

One of the reasons I bring up The Michael Kay Show is that they often do talk about issues in the

intersection of sports and politics. In conversations including vaccine mandates, women in sports, criminal behavior by athletes, and diversity in the upper echelon of management/coaching, the show has consistently been a touchstone for cultural acceptance. They're white ethnic guys who grew up in the Bronx and New Jersey and live in the 'burbs; they are never going to join the Broadway Democrats. By and large, however, they seem to represent social/political shifts in our country. The entire situation with Deshaun Watson, from beginning until today, has them unsettled about the concept of "innocent until proven guilty."

These questions may seem naïve to many of us (I sit typing this next to a criminal defense lawyer). I do think there is a real dissatisfaction in defining these terms for one's personal philosophy. If you've ever been called for jury duty in criminal court, you can watch the lawyers question the potential jury members about the basic concept of "innocent until proven guilty." The potential jury members often falter answering the question; they know how they are supposed to answer; they believe it to different degrees and they are able to lie about their belief to different degrees of success

This may seem like an article about the #MeToo movement and the difficulty balancing "innocent until proven guilty" with our shameful history of not listening to women who have been harassed, abused and/or assaulted. It isn't. This is actually an article about bail reform.

The most important issue about bail is that, while you are awaiting trial, you are innocent. You haven't been found guilty. You are being kept in jail to prevent you from fleeing the jurisdiction. Criminal Procedure Law requires the judge to consider the defendant's previous record, financial resources and ties to the community in setting bail. It is reasonable to be concerned that a defendant will return to stand trial. It isn't reasonable to be concerned that they're out in the community endangering the other members of the community because they are innocent. They haven't been found guilty; it isn't reasonable to begin punishing them before the trial.

That's what bail reform is really about. Defendants have been arrested because they've been seen committing a crime, they look like the person reported committing a crime, they've pissed someone off who wants to get even, they've committed some crime in the past, they committed the crime, they have an incredibly strong alibi. Until a jury of twelve citizens, or occasionally a judge, says the defendant is guilty beyond a reasonable doubt, they are innocent. They don't belong in jail.

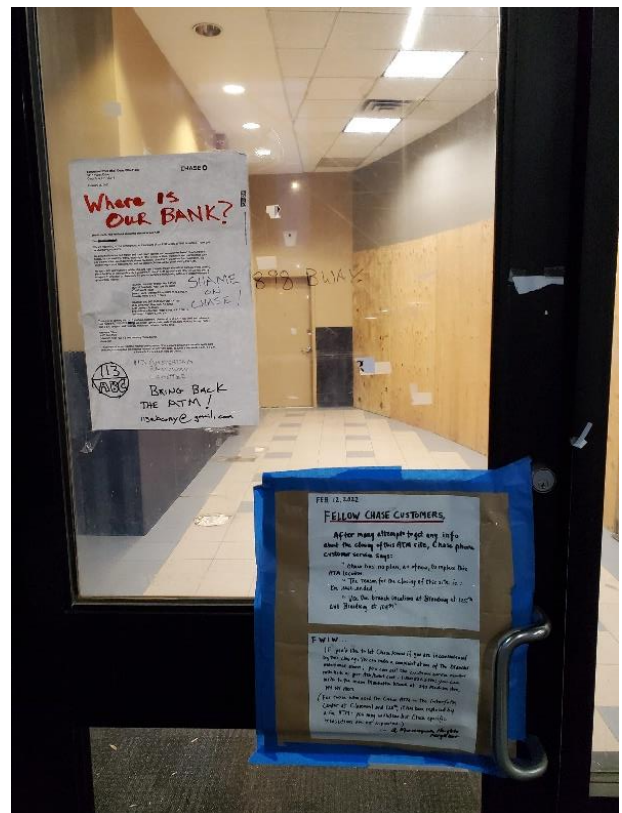
## And in other legal news:

As you've no doubt heard by now, Acting State Supreme Court Judge Patrick F. McAllister (Republican) of Steuben County struck down the recently redrawn congressional and legislative maps for New York. Judge McAllister enjoined "using, applying, administering, enforcing or implementing any of the recently enacted 2022 maps for this or any other election in New York, included but not limited to the 2022 primary and general election for Congress, State Senate and State Assembly." This ruling will be appealed but it raises questions about everything, including the possible delay of the June 28 Primary. Stay tuned!

OR

## An Open Letter to Chase Bank

Noah Kaufman



To: Chase Bank  
Re: "Customer Escalation Request"  
No. ECW 220128-04180

We note, with concern and dismay, the closure of the ATM facility at 2898 Broadway, southeast corner of Broadway and W.113th Street.

This ATM facility was provided 21 years ago as an agreement to offset the loss of the Chase (Chemical) Bank branch when that real estate parcel was combined with the former NY Public Library

garage parcel into the Columbia University dormitory/library condominium. For all these years, the ATM has provided workers at our local hospital and our local institution of higher learning with access to their accounts.

Now the ATM has been shuttered due to “vagrancy complaints.” This is astounding, and unwelcome.

The unidentified complainant(s) may have noticed that numerous bicycle delivery workers, a growing “essential” job title—a direct by-product of the computer-based food delivery services apparently used by some neighbors—would avoid frostbite between “gigs” by seeking shelter in the ATM lobby. These working people are not “vagrants,” “hobos” or “layabouts.”

Do not penalize our community. Please reopen this ATM facility promptly.

Sincerely,

Noah Kaufman  
Member, Steering Committee, 113ABC  
113abc.ny@gmail.com



DL

## Homelessness, Mental Health and Safety

Richard A. Siegel

This week, our mayor is dismantling various homeless encampments around the city. He states that while folks have the right to sleep on the streets, they do not have the right to build ‘housing’ on the streets. The mayor believes that people should go into the shelter system—as it is better than living on the streets without bathrooms, showers and cooking facilities. Many advocates believe he has a significant lack of understanding of unsheltered New Yorkers. Advocates are concerned that folks may simply relocate to the outer boroughs where the spotlight may not exist.

This is a complicated issue. For many, the non-family shelters are not safe or do not feel safe. Many of the shelters are in old, substandard buildings. Most do not give people any privacy. Many of the people who use them are troubled souls who have untreated medical and mental health conditions. A few have significant mental health issues—and especially anger-related issues—that make them difficult to live with. While the shelter system tries very hard to meet individual needs, it is an impossible task. There are nowhere near enough ‘safe haven’ beds to accommodate those on the streets.

As a result, some people feel safer by themselves or in encampments where they choose their ‘neighbors’. Of note, the vast majority of those on the streets pose NO safety risk to anyone.

It often takes the outreach teams weeks to months to make enough of a connection with street homeless folks. If that connection is made and trust is created, folks may agree to accept a bed somewhere and make an ongoing connection to supportive services.

This is a very complicated issue. Knocking down encampments may scatter the individuals away from a given site, but it is not a solution to this complex problem. Creating smaller, cleaner shelters with supportive services embedded is a much better idea. That would be one of the many steps needed towards providing a real solution to a complicated problem.

<http://www.broadwaydemocrats.org>

[jfacebook.com/groups/BroadwayDemocrats](https://www.facebook.com/groups/BroadwayDemocrats)

## State Committeeman Report

### Daniel Marks Cohen

A month since the convention of the NYS Democratic Committee and the state-wide campaigns are a decidedly sedate affair. Incumbent Governor Kathy Hochul appears to have largely consolidated Democratic support, with Congressman Tom Suozzi and NYC Public Advocate Jumaane Williams on the right and left, but neither one really catching fire. Lt. Governor Brian Benjamin has two opponents as well, but neither of them is penetrating much into the voters' awareness either. We're less than 90 days out from the Primary, but you wouldn't know it. Attorney General Tish James and NYS Comptroller Tom DiNapoli do not have primary opponents, and they may not have even general election opponents at this rate. Not that we need things need to be exciting – we just came off a pretty intense two-year period, so maybe a slower election year would be a good thing.

There is a storm around the fringes, as an Acting State Supreme Court Judge just overturned ALL New York redistricting for Congress and the State Legislature, on the grounds that the maps were gerrymandered to support Democrats. Of course, they *were*, but this is after years of shenanigans favoring Republicans. In any event, now the lines are up in the air. Will there be a reversion to the old lines, or will the new lines hold until the case is appealed? Unclear as of this writing, but the old lines might make for a few more complicated races, particularly in the East Side seat held by Carolyn Maloney. Her district was redrawn to pick up a slice of the West Side, cutting out a portion of her eastern border in Queens that was not favorable to her. If the district reverts to the old lines, it could put her seat a bit more in play.

The biggest question is regarding the Staten Island/Brooklyn seat held by Republican Representative Nicole Malliotakis, who had beaten one-term Democratic congressman Max Rose for the seat in 2020, and which had become MUCH more Democratic under new lines and is a tossup to being recaptured by the Democrats this year. If it returns to the old lines, with a more Republican voter leaning tendency, it will be much harder to pick up. With the House split almost evenly between the two parties, every seat counts, and we could be within a seat or two from victory or defeat this November, depending on how New York's lines get drawn and litigated.

Turning to local affairs, I am involved with a group of friends and neighbors trying to reactivate the old landmarked Metro Theater at 99th and

Broadway. For more than a decade it has remained vacant and crumbling. The owner is a bombastic self-promoter who has announced several new tenants (a gym, a movie theater, an arts-related space) over the past dozen years, only to see these potential occupants vanish for one reason or another. Recently the owner has said that he has yet another new business that is ready to lease the space, and while it is a familiar tune that we have heard before, there is enough corroborating information from other parties to give it some credence. We're hoping that this time it's real. We'll have to wait and see, but meanwhile you can go to [www.FriendsofMetroTheater.org](http://www.FriendsofMetroTheater.org) to learn more about this neglected but fabulous landmark and our hope for its future.



### **Better 100 Guilty Persons Go Free than One Innocent Person Be Jailed**

Mary Peppito, Peter Flom,  
and Laura Danford Mandel

Our justice system is based on the fundamental tenet that the accused are innocent unless they are proven guilty. As Benjamin Franklin famously argued, "It is better a hundred guilty persons should escape than one innocent person should suffer."

Nevertheless, there has been a politically popular drumbeat, led by previous mayors and the new mayor, to incarcerate more and more people – who are fighting their charges. But know that every single person held on bail at Rikers Island is there solely because they are too poor to pay a fee to the court (bail) – even under the new bail reforms. Simply put, they cannot afford pre-trial freedom.

As recently discussed in [The New York Law Journal](#), bail reforms were enacted in 2019 in the wake of recent, tragic, excessive bail detentions, such as [Kalief Browder's tragic story](#):

*Kalief was a Black 16-year-old boy accused of stealing a backpack, which was overcharged as a violent felony offense in 2010. He was incarcerated for three years at Rikers Island, pre-trial, held on \$3,000 bail that his family could not afford to pay. He spent much of that time in solitary confinement.*

*Throughout his case, Kalief maintained his innocence, refusing plea offers that would have led to his release, and his case was ultimately dismissed by the Bronx District Attorney in 2013. That dismissal, however, could not undo the violence and trauma he had endured at the hands of the state for the years he spent at*

*Rikers Island. He attempted suicide multiple times while incarcerated, and despite his efforts to heal wounds and rebuild his life post-release, he ultimately died by suicide at 22 years old.*

No one should ever be incarcerated (punished) pretrial because they cannot afford bail. Restrictions on liberty pre-trial – by cash bail, bond, or alternative non-monetary restrictions – are merely to ensure an accused returns to court. The purpose of bail is not punishment or preventative, but simply to ensure that one will return to court. Thus, the restriction should be commensurate with one's ability to pay.

But make no mistake, [pretrial detention on Rikers Island is a punishment for being poor](#). “Dozens of men [are] crammed together for days in temporary holding cells amid a pandemic. Filthy floors [are] sullied with rotten food, maggots, urine, feces and blood, with plastic sheets for blankets, cardboard boxes for beds and bags that substituted for toilets.”

According to [JusticeNotFear.org](#), “Bail reform has helped tens of thousands of people remain at home while their charges are resolved. Instead of enduring traumatizing, destabilizing, and life-threatening effects of pretrial incarceration, people remain in their communities, able to work and care for their families. And just like before bail reform, people overwhelmingly return to court and less than 2% of people released are rearrested for violent crime.” So, the fundamental reason for imposing bail in the first place is undone: bail is intended to assure that the accused show up in court, but they show up anyway. And the poor, who are the victims of bail laws, are the least able to flee.

The Mayor and some pundits believe that raising bail or rolling back the bail reforms of 2019, which were already rolled back in 2020, would reduce crime even though there is [no evidence that the bail reforms contributed to an increase in crime](#).

It is true that the rates of some crimes have risen in New York, but they have also risen in other cities. In 2021, [twelve cities had record-high numbers of homicides](#), but New York was **not** among them. [In 2020, murder rates rose in many states](#), most steeply in Montana, South Dakota, Delaware, and Kentucky. New York's murder rate is still below the levels of the 1990s (with fewer murders than deaths by suicide), and [the increase slowed in 2021](#). [Between 2019 and 2020, the violent crime rate in New York State barely changed](#)—from 361.0 to 363.8 per 100,000. In the same period the national rate increased by 5%; in Georgia, it increased by more than 20%.

Excessive incarceration costs money – a **lot** of money. [In 2021, it cost \\$556,000 per year per person](#). The incarcerated are paying with their lives, but we are all paying with our taxes. The rollbacks proposed in New York State seek to undo the reforms that sought to fulfill constitutional objectives and prevent future “Kalief Browder” tragedies. The US and NY Constitutions demand that **excessive bail not be required**, and political winds should not dictate otherwise. Bail should never prevent someone **presumed to be innocent** from fighting to ensure they are vindicated. The memory of Kalief Browder should not so quickly be discarded for political expediency; justice, morality and our Constitution mandate nothing less.

*RL*

## Join us online for a discussion on Bail Reform and Criminal Justice

Thursday, April 14 at 8:00 pm

with

Jason Flom and Michelle McGrath  
moderated by Mary Peppito

- **Jason Flom** is CEO of Lava Music, a founding board member of the [Innocence Project](#), and the creator and host of the podcast, [Wrongful Conviction](#). Follow Jason on Twitter and Instagram @itsjasonflom.
- **Michelle McGrath** is a lawyer in The Legal Aid Society's award-winning [Decarceration Project](#) whose sole professional focus is research, monitoring, and litigation of pretrial detention issues on behalf of criminally accused people across the five boroughs of New York City. Follow Michelle on Twitter @Michelle\_Mc\_G.
- **Mary Peppito** is a 25-year veteran lawyer at The Legal Aid Society in the Criminal Defense Practice in Bronx County. Follow Mary on Twitter @marypeppito.

**Register here:**

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*RL*



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[bwaydemsfundraiser2022@gmail.com](mailto:bwaydemsfundraiser2022@gmail.com)

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What *You*  
Have to Say!**

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(in MS Word, please) at  
[palmonrode@gmail.com](mailto:palmonrode@gmail.com)**

**Please note that we will consider  
all submissions,  
but we reserve  
the exclusive and final right  
to determine what to publish.**

*RL*

