Thank you all for coming. Wow! Look at this room. You know, last night we celebrated the Pretrial Justice Institute’s 40th anniversary, which of course prompted us to spend some time looking back at our history, as well as into our future. I can honestly say that when I joined PJI a decade ago, I could only imagine that someday we’d host an event—with more than 200 amazing people from across America who not only know and care about pretrial reform, but who are also determined to do something about it. We did that in 2011 with the (Department of Justice) DOJ National Symposium on Pretrial Justice, and now here we are again. What an honor it is to be on the team of PJI, able to serve you all.

Before I get too deep into my remarks, I want to ask how many people here have heard of guy named Michael Treadwell? I learned about him a couple weeks ago from New Hampshire public radio. According to their account, Mr. Treadwell is a divorced, 53 year-old father of two who spent more 854 days in jail over the course of six years for a range of low-level charges, like trespassing and disorderly conduct—costing local taxpayers a total of nearly $64,000. The piece noted that Michael had mental health and substance use issues. It also noted that he had been held pretrial 25 times, and more than half of the charges against him were eventually dropped—after he had spent days, and in some cases weeks behind bars. I share his too-typical story with you for two reasons: First, to remind us of at least one of the hundreds of thousands of people who are being mis-served by current pretrial practice every day, and second, to cite an example of the new kind of media coverage that is bringing this dysfunction to the American people as never before.

I suspect that everyone here knows: you, we—those not able to be here but who wanted to be—are part of a period of change and incredible innovation in pretrial justice. We are benefitting from things that were never available before. In addition to informed media attention, there is research supporting the law, a focus on data and transparency, champions across the country taking major political risks to do what’s right, litigation taking on entrenched systems, and philanthropic attention from across the philosophical spectrum.
We are also, however, in an era of distrust of government, strained relationships between communities and the police, and misinformation and scare tactics by the for-profit bail bonding industry. This includes important public figures being paid to oppose improvements sorely needed in counties across the country, intensive lobbying by an industry that does not share our values, and even personal attacks on individuals who have consistently stood for safety, fairness, and effectiveness in our systems.

Under these conditions, we have gathered together for the next day and a half to learn from each other, and to find our way forward in this unprecedented environment.

As we do, we should remember the scope of our problem. More people will serve time in jail pretrial than will ever be sentenced to jail or prison in any given year. And right now, someone somewhere is accepting a reduced charge plea with credit for time served just to go home—in the process, being saddled with a criminal record that will burden him the rest of his life. Others will wait in jail for days, weeks, months, in some cases even years for their cases to be resolved—losing their jobs, health, homes, and maybe even families as a result. Still others will arrange for a for-profit bail bondsmen to facilitate their release, entering into contracts with interest rates that could keep them tethered to that debt long after they’ve paid their debt to society. Most of these will be poor and working class people who, by rights, should be using their limited resources to care for themselves and their families—instead of contributing to the wealth of vast corporations.

And let us also not forget that a very small number of extremely dangerous individuals with access to money will be working the same system to go home without the least bit of oversight from the courts.

Looking at the situation with this wide lens is sobering—and I didn’t even mention the national public defender crisis or court case-processing challenges due to volume—but ultimately, it’s why we are here.

To better appreciate what it means to be in the third generation of reform, let me quickly walk you through the history of innovation in pretrial justice. I hope you will experience it like a walk through the Museum of American History, where you might see an exhibit of, say, the development of the telephone. It’s easy to look at early models and think “how old fashioned!” or “how the hell did anyone make a call on that thing!” or even what my son said once, “You used to use phones just to make calls?” But remember: the inventors and users of each iteration of the phone saw those models as revolutionary, and they were necessary for the next innovation.

The first big innovation in pretrial justice happened in the 1960s. It was inspired by the Manhattan Bail Project—an amazing initiative in which a magazine editor and a philanthropist persuaded the New York City jails to let them into their facilities to study the people in custody. The result was a theory, eventually borne out in practice, that many of the folks being held before trial could be released and trusted to show up in court without having to post their own money. Our amateur researchers were challenging the decades-old idea that people had to have “skin in the game” to come back to court (coined by Warren Buffet in another context, and which in pretrial has been proven to be false). Their new theory, premised on a vague notion of community ties, surely had its limits—for one thing, it ended up looking a lot like community ties for white guys. But it invented release on recognizance, a huge innovation.
Nevertheless, the Manhattan Bail Project led to the first national conference on bail, presided over by then-Attorney General Robert F. Kennedy, and the Bail Reform Act of 1966. That law was meant to diffuse a variety of innovations in the federal system—things like Release on Recognizance, least restrictive conditions with money as a last resort, 10% to the courts—which would then be emulated in the states. But although the law was emulated in many places, practices didn’t dramatically change. Going back to my phone analogy, we had reached the point where we were offering people the option of dialing themselves, but they kept asking Operator Mildred to make the connection for them.

The second generation occurred in the 1980s—which also happened to be the era of my musical awakening and forays into big hair and John Hughes movies. Apparently pretrial innovation was happening at the same time—I just didn’t see it on MTV. This time around the innovation was adding the consideration of public safety as a legal purpose of the bail decision. This, too, was an important invention. At time when our nation was unusually preoccupied by crime and drugs, the courts could now weigh concerns about public safety and the dangerousness of the defendant against the requirement for “liberty as the norm and detention as the carefully guarded exception.”

This deliberation was meant to include serious consideration of history, facts, and the strength of the case before the court. It was meant, really, for these things to be debated openly, resulting in a finding of “no condition or combination of conditions to reasonably assure...” But that’s not how its been used since then. Instead, considerations of dangerousness have been used to justify setting large money bail amounts, to expand a for-profit industry that, ironically, isn’t even held liable for public safety outcomes, and to deepen the deprivation of liberty of poor and working class people. I tried to imagine telephone analogy for this—but the best I could come up with was the pager— remember those? They were a little bit like ankle bracelets and, frankly, really annoying. A technology that could have been great, but was badly implemented.

So now, here we are, the 3rd generation — and if it’s starting to sound like Star Trek, remember, this is a convention, not a conference. This is our generation—and like any labeled generation, we think we finally have things figured out.

The third generation of pretrial reform started in the late 2000s. Thanks to the hard work of a lot of people around the nation, it was the equivalent of transitioning from cell phones to smartphones—carrying a computer around in our pockets—and now even on our wrists—and thinking NOTHING of it. But let’s not forget how innovative what’s happening now is.

The innovation in this 3rd Generation of reform—which coincidentally happens to include the number 3, just like our 3DaysCount campaign—is the push for replacing the money bail system with one based on risk, leading to minimal pretrial detention—after due process; maintaining or improving already-high rates of appearance in court; and public safety outcomes that improve the quality of life for everyone—including victims, kids of the accused, and even system actors who so often tell me how badly they want the outcomes of their decisions to align with the oaths they took rather than simply protecting their position at all costs with the better-safe-than-sorry approach.

Of course, because it’s ours, we’ll say that this 3rd Generation is different from the others. But really, it is. For one thing, it is the first generation of work to include the judiciary. Across America, court officials are leading the call for pretrial and bail reform as never before. It started with the Conference of Chief Justices, led at the time by Eric Washington who will be on stage in a few minutes. It spread through the Chief Justice community, to district courts, and municipal
courts. And just last month, the American Judges Association issued a groundbreaking policy resolution calling on court systems to eliminate the use of commercial and secured bonds. Justice Robert Torres—who fought to make the territory of Guam the inaugural 3DaysCount location, and who is also with us here today—led that action.

This kind of engagement by judges is unprecedented, and it is the single biggest innovation in this go-round. Lest you think it happened by accident, such as the invention of electricity, you must know that it did not. This time, many of us doing this work looked back and asked what was missing the presence of would make a difference. While there are a few other elements, and I will mention them, the engagement of judges is paramount to success. And it’s working.

Our generation of bail reform is also the first to benefit from the worldwide web and social media—which have made it so much easier to spread information. Let’s face it, pretrial reform is a pretty arcane topic. The clear majority of people—including many who should know better—have a scant understanding of how it works, or doesn’t. At PJII, we knew we should be using technology to diffuse information, but people said, “stakeholders don’t go online or follow social media.” How were we going to advance our cause among the comparatively small number of policy wonks? Our theory was that clear information, widely disseminated and with a human touch was going to lift all boats and begin to build a public constituency for reform. We wanted to reach audiences below the executive level, people who will eventually move into decision-making positions and be better informed when they did. As you look around today, you’ll see a public embrace of these issues like never before—most recently, the advocacy groups Color of Change and the Movement for Black Lives kicked off campaigns to educate the public to end the use of money bail. When I looked it up Monday night, John Oliver’s episode on money bail had been viewed nearly six million times! There’s a lot we can lament about the Internet. But in the case of pretrial justice, we are using it to innovate.

Speaking of which, if you’re here, you have been to the University of Pretrial (UP)—an innovation in how we come together as a community and as learners and innovators. It was a big gamble for us, but it is already paying off, and I encourage you to explore and learn more about it.

When we first began advertising Pi-Con, several people told me it sounded interesting, but what’s with the egg? Frankly, some of you are probably still wondering that. Well, it’s not just because we’re fans of “Mork and Mindy.” We chose the egg as our symbol very deliberately—along with the tag line “sometimes you gotta break a few…” We believe that in the process of innovation, we will make mistakes but we cannot be fearful of doing so. Change may sound scary, but innovation is hip. The now-famous Facebook motto of “move fast and break things” can apply here if we embrace it.

But despite all these unprecedented assets and optimistic views, let’s not count our chickens before they hatch (see what I did there?). The rationale for change has reached many, but there is still no consensus on what winning looks like. And many folks are hanging on to their flip phones with a death grip. Habit, as Charles Duhigg in the Power of Habit has taught us, and tradition are hard chains to break.

And, of course, there is the opposition, which is more determined than ever to protect its very lucrative business. This industry rakes in billions of dollars every year. A recent study of Maryland showed, for example, that over five years local communities were charged more than $256 million in non-refundable corporate bail bond premiums—with more than $75 million charged in cases that were resolved without any finding of wrongdoing.
The for-profit bail bond industry, and the large insurance companies that underwrite them are spending money as perhaps never before to protect their golden goose. The legal giant Paul Clement is now a paid spokesperson. Groups like the Southern Christian Leadership Conference and Al Sharpton’s National Action Network have been either seduced by money or honestly duped by #alternativefacts. And reality TV stars Dog the Bounty Hunter and Beth Chapman make appearances and appeal to their twitter followers whenever the threat of reform arises.

I mention these things to jolt us all. The path ahead will not be an easy one. But over the next day and a half, we’ll wrestle together with how to define winning, how to head off disaster, and how to learn about and share the law and research in new and innovative ways.

We will examine dialogue from progressive quarters, where we hear the concern about poor and working class people—disproportionately people of color—who are especially burdened by a system that favors those with money. We will examine dialogue from more conservative commentators, who argue that requiring people to pay money to maintain their freedom before trial is government overreach contrary to the spirit of our Constitution and laws. (To that I would add that it is also a kind of asset forfeiture. As a condition of release, people who are presumed innocent are being compelled to pay non-refundable fees—either to courts or to a for-profit bail bondsman—that are not returned even if they are found innocent or charges are dropped.)

Other than me, now, no one at Pi-Con is going to sit on a stage like this and talk at you. We designed Pi-Con to be one continuously interactive experience. My job today was to set the stage and invite you to experience Pi-Con with a sense of urgency and an appreciation for where we are in history, and to invite you to use the next 28 hours to move around, both physically and mentally. You cannot sit quietly on the sidelines during these sessions, in some places of course that’s because there are no chairs. Today starts a new sense of community and learning which we will continue on UP after we conclude tomorrow.

As the leaders of the third generation of bail reform, we all have a lot of responsibility. People who are in jail unnecessarily, or in fear in the community, are depending on us to break out of our shells and take risks to do what’s right. We cannot allow those who would bully our efforts, lie about our work, or challenge our integrity to bother us. We must hear them as we did Charlie Brown’s teacher.

I will close with a quote from one of the most influential social scientists of the twentieth century, Herbert Simon. He wrote, “Everyone designs who devises courses of action aimed at changing existing situations into preferred ones.”

You are all designers. Let’s do this.