

Statement of Mr. Allen Peithman  
Before the United States Sentencing Commission  
Hearing on 2023-2024 Proposed Amendments,  
March 6-7, 2024  
Proposed Amendment on Acquitted Conduct  
Panel VII – Formerly Incarcerated Individuals’ and  
Family Members’ Perspective

Hello my name is Allen Peithman and I thank the U.S. Sentencing commission for extending me the privilege to come here and talk about my experience. It is my sincere hope that by sharing what happened to both my mother Sharon, who is now 77 years old, & I went through may play a small role in changing this rule and saving others from the uniquely grim fate of acquitted conduct

I have been home now for a little over a month after serving 8 ½ years in prison. I've been getting the same question from my friends and loved ones "does it feel strange being out. It's a reasonable question, but in my particular case the strange part was being in prison. Being home feels normal, it's helped tremendously that I have a great support system and I had a plan.

When I say my time inside was "the strange part" I mean that because this indictment came as an absolute surprise. In 2017 my mother and I went to trial in federal criminal court. Two years earlier we had been running, for nearly a decade, a business known as a "smoke shop." Odds are you have several in the town you are from a big city. Both my mother and I believed what we were doing was perfectly legal. We even had assurances from attorneys and local law enforcement that it was. So in August of 2015 as the federal agents were banging at the doors of our homes it was an absolute shock.

My mother, Shari, had never been in trouble her entire life. Now we were federally indicted and facing 14 counts, plus forfeitures. Throughout the relatively long pre-trial process the government came to us with what has come to be known as a "cash for freedom" deal. The two glaring problems with this offer were one, that a large portion of what the government wanted in forfeiture was never connected to the business, and two, they wanted us to plead guilty to things we simply were not doing!

We proposed a counter-offer; we agreed to give them most of what they wanted in forfeiture, and agreed to plead guilty to charges that did not have the element of intent. Charges that we were ultimately convicted of. The government rejected our offer. So believing in our innocence we put our trust in the system, we proceeded to trial. It was a long trial, over a month in fact, and the jury (after more than a week of deliberations) returned a surprising verdict.

They acquitted us of all the most serious conduct, everything we had from the very beginning maintained our innocence of. Moreover, the jury also returned our significant assets. So this felt like victory. I remember the moment vividly; the jury had spoken, we had defeated Goliath. We felt exonerated, and our faith in the system had been rewarded by an honest verdict. Finally we could take a deep breath and the nightmare was over.

However that's not how it works in federal court. Much to our horror, we soon learned that even though we had proven our innocence, having stood before a jury of our peers, faced judgment, and been cleared of all the conduct we maintain our innocence of, it simply didn't matter. I felt like the judge cared very little for what the jury had decided. So little, in fact, that he ordered that we would lose the very assets the jury had returned to us. My mother and I were left worse than broke – we owed the federal government roughly a million dollars.

But then came worse news yet: The judge sentenced both of us using acquitted conduct. The very charges we had refused to plead guilty to and fought hard risked everything to prove we were innocent of and won... none of that mattered, because the judge deemed it so. My Mom's guidelines for the counts of conviction were well within the range of probation, she was given 64 months for a true

first offense. The counts of conviction carried a maximum penalty of 36 months, I was given more than 10 years. We were appalled, we could not understand what had happened. How after all we had been through, all that we had proven, that none of it mattered. Being innocent did not matter.

I grew up believing in the American Dream, in college I studied history & learned to love the American experiment. After sentencing I now understood perfectly the tyranny that John Adams warned of when he wrote that “representative government and trial by jury are the heart and lungs of liberty”. I understand all too well that warning, and it is my sincere hope that my testimony today may play a role in the decisions your esteemed body makes. That restoring the people's voice in what is the most important place it needs to be heard, the courtroom. Where the government has its greatest impact on our lives.

Trials have to have consequences and those consequences have to apply to both parties. In the case of my mother & I the consequences of trial fell only on us. It seems the will of the jury was completely ignored. The government took the very assets the jury had returned to us, left us owing roughly one million dollars, and sentenced us to the charges we had proved we were innocent of.

I'm home now, and getting back on my feet. It helps that the people closest to me have an understanding of just how unfair this has been. My uncle, my fiancée, & her family have all been very supportive. I'm taking advantage of some of the programs available to recently released felons, one in particular is helping cover the costs of getting my commercial drivers license. It's not easy, but I'm determined to prove that what that judge was able to do – and did – is not going to define my life. But I'm also determined to tell anyone who will listen about what happened to me and my mother.

Acquitted conduct sentencing is the worst kept secret in the American Judicial system. As I am speaking we have people in prison serving time for crimes they proved they are innocent of. Imagine yourself in their position now, imagine how lost and disillusioned in the promise of democracy and the law that they feel. This is why this must change. For more than just these lost souls who are suffering as my mother and I did, but also for the very soul of our justice system, acquitted conduct sentencing must end. “Not guilty” means not guilty. Thank you for your time and consideration.