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APPENDIX 1

1 **The Criminal Prosecution Practice & Procedure Committee Proposal:**

2 **Background of Petition**

3 The Maricopa County Attorney has asked the Supreme Court to delete Rule
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5 20, *Arizona Rules of Criminal Procedure*, which allows a court on its own motion
6 or motion of a defendant to enter a judgment of acquittal if there is “no substantial
7 evidence to warrant a conviction.” The request would also move the post-verdict
8 portions of Rule 20 to a new Rule 24.1 and renumber that existing rule’s subsections.
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10 The effect of this petition would maintain a defendant’s procedural right to have a
11 judgment of acquittal entered, but would also allow appellate review of any
12 judgment of acquittal, thereby assuring a victim’s right to justice and due process
13 along with the State’s right to a jury trial.
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15 **Discussion/Analysis**

16 After considering the petition and its grounds, the Criminal Prosecution
17 Practice & Procedure Committee urges the Supreme Court to support Petition R-
18 16-0031. As the petition points out, the case law in this area is replete with examples
19 of an acquittal being granted at the trial court level that is later found to be in error.
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21 Nonetheless, the law is clear that once a judgment of acquittal is made before verdict,
22 there is no right to appeal that decision, even if wrong, because double jeopardy
23 precludes a retrial following that acquittal. Neither crime victims nor the interest of
24 justice are served by this procedure.
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1 The seminal case on this issue is *Evans v. Michigan*, ___ U.S. ___, 133 S.Ct.
2 1069, 185 L.Ed.2d 124 (2013). In that arson case, after the State of Michigan had
3 rested, the trial court entered a judgment of acquittal based on its belief that the
4 State had not presented sufficient evidence of all the elements of the crime.
5 Unfortunately, the trial court was wrong about the elements of the crime, and its
6 acquittal was erroneous. The Supreme Court had to decide whether that erroneous
7 acquittal prevented a retrial based on double jeopardy principles, and it found that
8 it did. The Court recognized its long-held position that double jeopardy bars a
9 retrial following a court-ordered acquittal, even if that acquittal is “based upon an
10 egregiously erroneous foundation.” *Evans*, 133 S.Ct. at 1074, quoting *Fong Foo*
11 *v. United States*, 369 U.S. 141, 143, 82 S.Ct. 671, 7 L.Ed.2d 629 (1962). The same
12 is also true when a court bases its acquittal upon an erroneous decision on a motion
13 to exclude evidence. *Sanabria v. United States*, 437 U.S. 54, 68-69, 98 S.Ct. 2170,
14 576 L.Ed.2d 43 (1978). See also discussion in *Smith v. Massachusetts*, 543 U.S.
15 462, 467-468, 125 S.Ct. 1129, 160 L.Ed.2d 914 (2005).

16 The *Evans* court also recognized, however, that states are “hardly powerless
17 to prevent this sort of situation”, noting that nothing obligates them to afford their
18 trial courts the ability to grant a midtrial acquittal. *Evans*, 133 S.Ct. at 1081. Citing
19 *United States v. Wilson*, 420 U.S. 332, 95 S.Ct. 1013, 43 L.Ed.2d 232 (1975), the
20 Court indicated that to avoid double jeopardy concerns, other states and the federal
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1 system “allow or encourage” their courts to defer ruling on a motion to acquit until
2 after the jury returns a verdict. *Id.* In this way, reversal would result in a
3 reinstatement of the jury verdict. *Wilson*, 420 U.S. at 352-53. It is with this
4 background that petitioner asks the Court to eliminate Arizona’s Rule 20, thereby
5 removing the trial court’s ability to enter a judgment of acquittal before jury verdict
6 and its attendant double jeopardy concerns. The ability to enter a judgment of
7 acquittal *after* verdict would be maintained.
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10 There is no constitutional or statutory right to a midtrial acquittal. In fact,
11 some states do *not* allow court-decreed acquittals. For instance, in *State v.*
12 *Davenport*, 147 So.3d 137 (La. 2014), the Louisiana Supreme Court explained that
13 “Louisiana law and jurisprudence has unmistakably rejected empowering judges to
14 take cases away from criminal juries and interjecting their own determination of
15 evidence sufficiency before a verdict is rendered.” *Davenport*, 147 So.3d at 146.
16 Relying on its state constitution, the Court ruled that questions of guilt or innocence
17 can only be decided by a jury. *Id.* And in *State v. Combs*, 14 P.3d 520 (Nev. 2000),
18 the Nevada Supreme Court noted that it was error for the trial court to grant a
19 defendant’s motion to dismiss at the close of the State’s case-in-chief. *Combs*, 14
20 P.3d at 521. Nevada statutes provided that either the court give non-binding advise
21 to the jury to acquit (N.R.S. 175.381(1)) or enter a judgment of acquittal after the
22 jury returns a verdict of guilty (N.R.S. 175.381(2)). Many other states (e.g. Alaska,
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1 Delaware, Iowa, New York, West Virginia) provide that a trial court may *reserve*
2 its decision on a defendant's challenge to the sufficiency of the evidence until after
3 the jury returns a verdict of guilty. See *Smith v. Massachusetts*, supra, 543 U.S. at
4 478, n.2 (Ginsburg, J., dissenting). Arizona's current Rule 20, however,
5 specifically disallows a court from reserving its decision.
6

7 The right to a trial by jury in Arizona is "inviolable", and in all criminal cases
8 the unanimous consent of jurors is necessary to render a verdict. Ariz. Const. art.
9 2, § 23. Crime victims in Arizona also have the right "to justice and due process."
10 Ariz. Const. art. 2, § 2.1. Victims have the specific right to a "speedy" trial and to
11 have all rules of criminal procedure protect their victims' rights, with those rules
12 amended or repealed when necessary to protect those rights. Ariz. Const. art. 2, §§
13 2.1(10), (11). The intent of R-16-0031 is to preserve a court's ability to order an
14 acquittal based on insufficiency of evidence, either *sua sponte* or on motion, while
15 at the same time protecting a victim's right to justice and due process and providing
16 an opportunity to have the court's decision reviewed. Petitioner has cited numerous
17 cases in which a pre-verdict acquittal has resulted in a finding of error and reversal
18 under different scenarios. There is no drawback to supporting this petition. A
19 criminal defendant still has the benefit of an acquittal if the trial court believes there
20 is no substantial evidence to warrant a conviction; that benefit merely comes after
21 a guilty verdict. And there is no valid argument for maintaining a defendant's
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1 windfall from a pre-verdict acquittal when the only advantage is preventing legal
2 review of that acquittal.

3 **Conclusion**

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5 The Criminal Prosecution Practice & Procedure Committee respectfully
6 requests that the Arizona Supreme Court adopt the request to delete Rule 20 as
7 requested in petition R-16-0031. The proposal will preserve a criminal defendant's
8 ability to have a court enter judgment of acquittal if it finds there is insufficient
9 evidence to warrant a conviction, while still protecting a victim's right to justice
10 and due process and allowing for review of that judgment. The interest of justice
11 are more fully served by adopting this petition.
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