

LETTER TO THE EDITOR

To the Editor:

We don't like bullies. Adults shouldn't abuse children, and lawyers shouldn't pick on law students—unfairly. Yet, that's what happened in these pages in February, when Colleen M. Auer, an attorney in Arizona, attacked a former student of ours, Meredith Marder, for her Note, *The Battle to Save the Verde: How Arizona's Water Law Could Destroy One of Its Last Free-Flowing Rivers*, 51 ARIZ. L. REV. 175 (2009).

Ms. Auer's article quibbles with essentially every aspect of Ms. Marder's Note, which shouldn't be surprising, given that Ms. Auer is heavily invested as an advocate for one side of the controversy. We have no interest here in rehashing and rebutting her arguments, but one small illustration of her rhetorical strategy should suffice to convey Ms. Auer's general approach. She dismisses the Note because Marder is not an expert in the field. That's true: Marder was a second-year law student when she wrote the Note. By Auer's reasoning, no law student could ever plausibly publish anything. We strongly encourage readers to read Ms. Marder's piece, Ms. Auer's response, and to judge for themselves.

Less easily forgiven than a zealous advocate's excessive rage is the decision of the editors of the *Environmental Law Reporter* to publish an advocate's brief masquerading as objective scholarship. Worse still, the editors introduced Ms. Auer's piece with a Publisher's Note (since corrected to be labeled an Editor-in-Chief's Note), explaining that they published this attack on a student because the Auer attack "was refused publication" in the *Arizona Law Review*. Indeed it was, as the editors saw it as an

ad hominem attack that failed to deal with the substantive issues. Twice the editors gave Ms. Auer a chance to clean up the piece.

So it is disappointing to us, as scholars who respect this journal and have published in its pages, to see the editors so easily hoodwinked into publishing an attack on a student.

Very truly yours,

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Marc Miller
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Editor's Response:

Law students are not children, and the law review publication process is not a game. Law students are adults, many with prior careers or time spent interning or working at organizations involved in active controversies. At *ELR*, we treat student notes the same as any written submission when considering whether to publish the work. We publish students alongside practicing attorneys and academics because we feel their pieces merit it, not because we apply a different set of standards to student writing. We do recognize different experience levels among our writers, be they students or not, and do invest varying levels of effort in assisting authors in preparing their pieces for publication. Sometimes the assistance is accepted, sometimes not.

The decision to publish Colleen M. Auer's article was not made easily. When the submission was received, we

declined because her response was more appropriately published in the *Arizona Law Review*. When, after some time, the author replied that the *Arizona Law Review* had refused publication, our editorial calculation changed. We requested a revision of the article for consideration. The author submitted a revised draft, but requested that we publish the original submission.

A practicing attorney was claiming to be disadvantaged in the realm of public debate by a published piece to which she was unable to respond. Our ultimate decision to publish her article was based on that fact and not on the merits of the article as an original submission. I would have preferred that the article we published were different in many respects, but at the end of the day, the content of the article is the decision of the author. Our role is to try to help authors strengthen their pieces, not to write them.

ELR's purpose is to be a forum for discussion and debate, and that purpose informs our editorial decisions. I would hope the Arizona faculty and students would submit a substantive response to Ms. Auer's article to *ELR News & Analysis*. It would be met with open arms.

Scott Schang
Editor-in-Chief