

# Write a publishable comment for your law review or journal

**Journal membership and article publication will strengthen your resume and advance your legal career. So how do you craft a compelling comment that will be picked for publication?**

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## **START BY UNDERSTANDING WHICH CASES MAKE GREAT COMMENTS**

A comment is an article on a **particular case** and its **legal impact**. A superior comment is based on a case that meets one of these criteria:

- It has tension between the lower court and appellate court opinions
- It is a case of first impression
- It is legally important and contains a strong dissent

It's not advisable to write a comment on a district court opinion, because it lacks precedential value and does not contain enough substance for a comment.

### **THERE ARE FOUR TYPES OF ARGUMENTS TO CONSIDER AS YOU APPROACH WRITING YOUR COMMENT:**

1. **The case was decided incorrectly.** Demonstrate why the court was wrong.
2. **The court is correct, but for the wrong reasons.** Demonstrate how the court applied the wrong reasons and explain the approach that should have been taken.
3. **The court missed the point.** Analyze a point in the case that you think the court missed.
4. **The court is correct.** Make sure to discuss all counter arguments.

# Find a compelling case

Conducting strong searches will help you find a compelling case for your comment. Following are three examples to use as-is, or to modify.

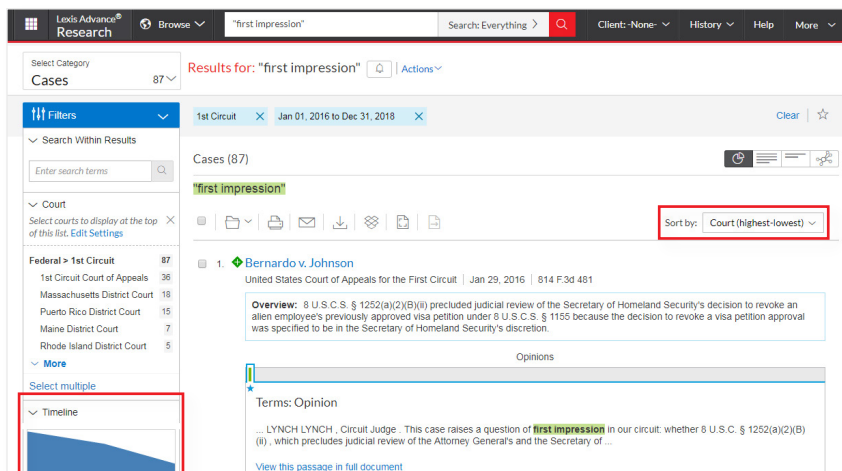
## FIND CASES THAT HAVE BEEN REVERSED OR HAVE A DISSENTING OPINION

- Type **reverse w/25 judgment or decree and not affirm** in the search box.
- Select **Cases**, then select **U.S. Federal**. Use **Sort by:** to sort your search results from **highest to lowest court**. Use **Timeline** to retrieve cases from the previous two years.
- Narrow the results further to just **circuit courts** or use **Search Within Results** to find cases that discuss a **particular legal issue** of interest to you or your journal.



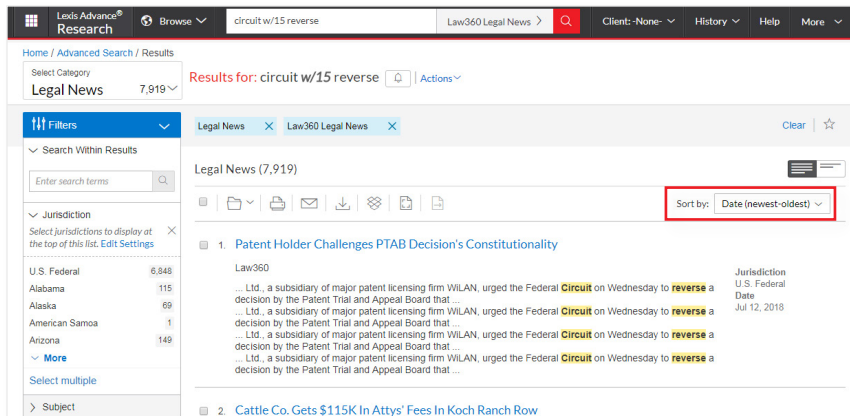
## FIND CASES OF FIRST IMPRESSION

- Type **"first impression"** in the search box. Select **Cases**.
- Use **Sort by:** to sort your search results by **Date (newest - oldest)**.
- Use the **Timeline** to retrieve only cases from the previous two years. Narrow your search results even further to retrieve only cases from a **particular circuit**.



## EXAMINE THE NEWS FOR CASES THAT HAVE BEEN REVERSED

- Type **Law360** in the Red Search Box. Select **Law360 Legal News** from the pull down that appears. Your filter will be applied to your search.
- Type **circuit w/15 reverse** in the Red Search Box.
- **Sort by: Date (newest - oldest)** to identify recently reversed cases in the news.



## Make sure your comment is not preempted

Preemption checking is the most important part of the publication process. A thorough preemption check assures the originality of a comment. The more original a comment, the more likely it will be selected for publication.

### WHAT DOES IT MEAN TO BE PREEMPTED?

If someone has already written about your topic, you cannot write about it as well. You are preempted.

You usually are not preempted if:

1. You find an article written on your topic, but it was written several years ago and new and interesting **issues have since changed** the legal landscape.
2. You find an article written on your topic, but it is **making a different argument**.
3. You find an article and one of its sections is on your topic. This usually is an overview of the topic and **your comment will be a more in-depth analysis**.
4. You find an article that has a similar introduction or background as your chosen topic. A similar introduction is fine as **long as the remainder of your article is unique**.

You usually are preempted if:

You find a relatively recent article on your topic that **makes the same argument** and comes to the same conclusion.

## Sample initial preemption check

A search like this gives you a preliminary sense of how likely you are to be preempted. Continue looking for your unique comment topic and case. If results from an initial check like this suggest a warning, preemption is likely.

- Type **stalking w/25 "social media" or facebook or twitter** in the search box.
- Select **Secondary Materials**, then select **Law Reviews and Journals**.
- You want to narrow your topic down to retrieve a manageable set of results.

Too few results indicates that your topic might not yet be ripe or is too novel. Too many results indicates that it will be difficult to bring something new to the discussion, unless your case contains substantial new legal issues.

The screenshot shows the Lexis Advance Research interface. The search bar contains the query "stalking w/25 'social media' or facebook or twitter". The results are filtered to "Law Reviews and Journals" and "Secondary Materials (122)". A red box highlights the "Filters" sidebar on the left, which includes options for "Search Within Results", "Jurisdiction", and "Timeline". The main results area shows a single result: "66 DePaul L. Rev. 901" by Gina Leahy, titled "COMMENT: WHAT'S THE DIFFERENCE BETWEEN PRIVATE AND PUBLIC ON SOCIAL MEDIA? A PUSH FOR CLEARER LANGUAGE IN THE ILLINOIS CYBERSTALKING STATUTE, 1993B words". The snippet of the article text is visible, discussing the need for clearer language in the Illinois Cyberstalking Statute regarding social media and stalking.

## Ongoing preemption check

Preemption checking is not a one-time exercise; it's an ongoing process. Once you have refined your topic and chosen your case, please contact your LexisNexis® Account Executive for expert guidance on running your final preemption check and setting up both an **Alert** on your search and a **Shepard's Alert®** on your case to monitor your search results for possible preemption in the future.



Get help with legal research:

[LEXISNEXIS.COM/LAWSCHOOL](https://www.lexisnexis.com/lawschool)

[YOUTUBE.COM/LEXISNEXISLAWSCHOOLS](https://www.youtube.com/lexisnexislawschools)