



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?

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.

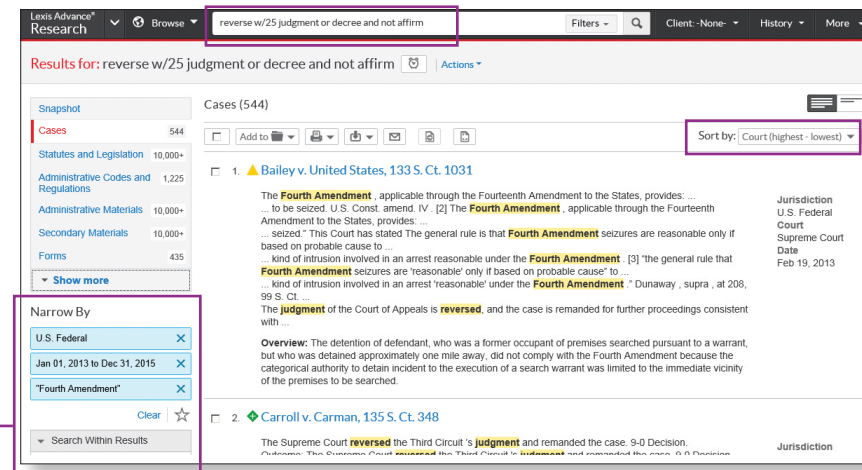
Find cases that have been reversed or have a dissenting opinion.

This topic can explore the piece of legislation, how the courts have interpreted it, and the impact of the dispute.

1. Type **reverse w/25 judgment or decree and not affirm** in the search box.

2. Select **Cases**, then select **U.S. Federal**. Use **Sort by** to sort your search results from **highest - lowest court**. Use **Timeline** to retrieve cases from the previous two years.

3. 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.

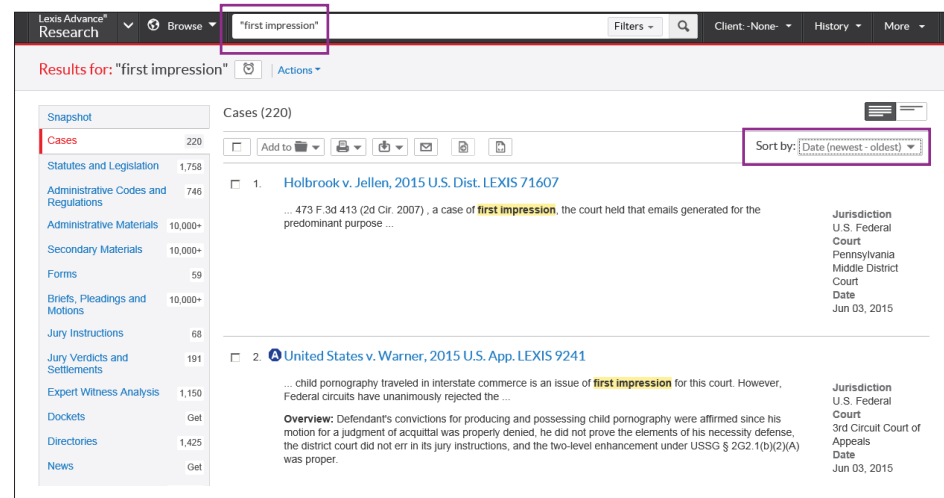


Find cases of first impression.

1. Type **"first impression"** in the search box. Select **Cases**.

2. Use **Sort by** to sort your search results by **Date (newest - oldest)**.

3. 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**.

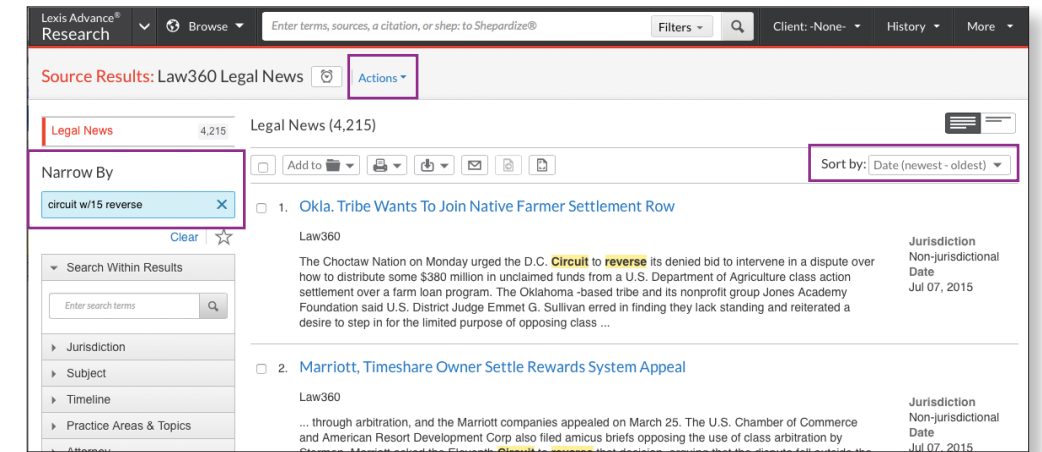


Examine the news for cases that have been reversed.

1. Type **Law360** in the red search box. To the right of **Law360 Legal News** in **Actions**, select **Get Documents**.

2. Narrow your results by typing **circuit w/15 reverse** in **Search Within Results**.

3. 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 is to 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 note 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 that 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 "Secondary Materials (75)". The left sidebar shows a list of categories: Statutes and Legislation (28), Administrative Codes and Regulations (5), Administrative Materials (9), Secondary Materials (75), Forms (0), Briefs, Pleadings and Motions (91), Jury Instructions (0), and a "Show more" option. Below this is a "Narrow By" section with "Law Reviews and Journals" selected. A "Search Within Results" section is also visible. The main results list includes:

- 1. **54 B.C. L. Rev. 1841**: Boston College Law Review, ARTICLE: WHETHER YOU "LIKE" IT OR NOT: THE INCLUSION OF SOCIAL MEDIA EVIDENCE IN SEXUAL HARASSMENT CASES AND HOW COURTS CAN EFFECTIVELY CONTROL IT, 10676 words. Content: Law Reviews and Journals. Jurisdiction: Massachusetts. Date: September, 2013.
- 2. **12 J. Marshall Rev. Intell. Prop. L. 509**: The John Marshall Law School Review of Intellectual Property Law, ARTICLE: OUTSPOKEN: SOCIAL MEDIA AND THE MODERN COLLEGE ATHLETE, MEG PENROSE, 18624 words. Content: Law Reviews and Journals. Jurisdiction: Illinois. Date: Special, 2013.
- 3. **31 Miss. C. L. Rev. 185**: Mississippi College Law Review, ARTICLE: Friends, Gangbangers, Custody Disputants, Lend Me Your Passwords, Aviva Orenstein, 21683 words. Content: Law Reviews and Journals. Jurisdiction: Mississippi. Date: 2012.
- 4. **13 N.C. J.L. & Tech. On. 227**: North Carolina Journal of Law & Technology, Online Edition, ARTICLE: UNITED STATES V. CASSIDY: THE FEDERAL INTERSTATE STALKING STATUTE AND FREEDOM OF SPEECH, Timothy L. Ainsup, 13248 words. Content: Law Reviews and Journals. Jurisdiction: North Carolina. Date: June, 2012.
- 5. **41 U. Mem. L. Rev. 355**

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 more research tips at
[YouTube.com/LexisNexisLawSchools](https://www.youtube.com/LexisNexisLawSchools) |