

# THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

## FOREWORD

---

### ABOUT COINCIDENCE

In what I believe to be a first for *The Journal*, this issue includes two pieces by JAG lawyers who are also law professors: Major Thoman's survey of appellate law in the military courts of the United States and Lieutenant Madden's essay comparing appellate courts and judges in Canada to those in France. Because we have a longstanding interest in providing our readers with an occasional view of appellate law as it is practiced outside the United States, I was happy to see Lieutenant Madden's essay when it arrived among the manuscripts that reach us every week. And then, almost as if I had conjured it up, Major Thoman's article appeared shortly after we had accepted Lieutenant Madden's essay. Knowing that our readers would find real value in an article about military appeals, I was of course pleased to have his comprehensive introduction to that important topic reach us at last.

This coincidence puts into one issue a survey of the appellate practice in the courts of the United States military and a comparative analysis of the French and Canadian appellate systems. The former adds to the many sources of court-related information already to be found in *The Journal's* published issues, while the latter expands the growing list of international works that have appeared in our pages as well. Whether the confluence of events that has allowed us to run them together can be attributed to luck or fate, we feel fortunate to be presenting these two JAG-written articles here.

ABOUT THE REST OF THIS ISSUE

Professor Dragich's article adds to this issue a fresh look at the discussion surrounding the size and structure of the federal courts of appeals. Even if you think that you already know all there is to know about this topic, you are likely to find that her approach has uncovered something new to you. On a related topic, Professor Kaheny's article brings a political scientist's perspective to an analysis of gatekeeping behavior by judges in the federal courts of appeals, tracing several patterns unlikely to be immediately obvious to those of us living exclusively in the law. And Ms. Waksberg speaks with the voice of experience in her instructive survey of the special responsibilities assumed by lawyers who represent children on appeal.

I promise in nearly every foreword an issue that has something for everyone, but again I find that this issue contains a combination of works in which nearly every appellate judge or appellate lawyer is likely to find at least one practical suggestion, one new way of looking at an old problem, or one aside that piques her interest in an unfamiliar field or expands her general understanding of the law.

AND ABOUT THINGS TO COME

*Furman v. Georgia*,<sup>1</sup> in which the Supreme Court held that "the imposition and carrying out of the death penalty . . . constitute[d] cruel and unusual punishment" in the circumstances then before it, will turn forty this year. We plan to recognize this milestone with a special section in our next issue that contains reflections on the case and its place in American law.

NBM  
Little Rock  
March 8, 2012

---

1. 408 U.S. 238, 239–40 (1972) (per curiam).