Diversity makes our court system better.” That was the fundamental premise behind the Infinity Project's October 13, 2011, forum entitled "Informing and Improving Judicial Selection Processes." Hosted at the University of St. Thomas School of Law and featuring a keynote address by best-selling author and legal commentator Jeffrey Toobin, the two-hour event focused on problems of racial, ethnic, and gender disparity in federal and state courts, with the overall goal of advancing the Infinity Project's mission of creating public awareness of the importance of gender diversity on the bench.

Karen E. Schreier, Chief United States District Judge for the District of South Dakota, kicked off the event by graciously accepting the Diana Murphy Legacy Award, given to individuals who have advanced the position of women in the law. Chief Judge Schreier began and ended her remarks by asking and answering the simple question, "What difference would a more diverse bench make?" Highlighting Judge Diana Murphy's 6-5 en banc opinion in Nelson v. Correctional Medical Services, a case raising the issue whether prison officials violated a nonviolent pregnant inmate's constitutional rights by shackling her during childbirth, Schreier suggested that gender diversity was of crucial importance. "Diversity makes all of our court system better," she concluded.

Three United States Senators–Amy Klobuchar, Tom Harkin, and Al Franken–then made remarks via videoconference. Klobuchar, the Chair of the Senate Judiciary Committee's Subcommittee on the Supreme Court, explained that increased diversity on the Supreme Court helped "expand the horizons of our justice system" by "broadening the perspective of the federal bench." While grateful of the progress the legal profession has made since her early days in practice, Klobuchar opined that the profession has "so much farther to go." In support, she recalled a newspaper column discussing Justice Elena Kagan’s "frumpy" leg-crossing style at the time of the hearings on her judicial nomination to the Supreme Court. To much audience agreement, Klobuchar doubted that a similar situation involving a male nominee would have been newsworthy.

Senators Harkin and Franken echoed the sentiments of their Senate colleague. Harkin spoke proudly of Iowa’s having been the first state to admit a woman to the bar, in 1869. Despite that tradition, Harkin lamented the fact that there have been no women district judges in the Southern District of Iowa; he hoped any of his three female recommendations for a current vacancy would address that problem. Similarly, Franken tracked the significant progress women have made since an 1872 Supreme Court decision that upheld an Illinois court's decision to exclude women from the practice of law. Franken hoped to continue that progress by confirming some of President Obama's judicial nominees, 47% of whom are women. "The credibility of our judicial system depends on a diverse federal bench," Franken concluded.

Keynote speaker Jeffrey Toobin then traced the history of federal judicial diversity through the lens of the Supreme Court. In its early days, he explained, "diversity meant geographical diversity." In the early and mid-19th centuries, when the main divisions in the country were regional, ensuring both northern and southern justices was a "reflection of the politics of the time." In the late-19th and early-20th centuries, achieving a diverse court meant nominating justices of varying religions. As the twentieth century progressed through the civil-rights and women's movements, Toobin pointed to exemplar Justices Thurgood Marshall and Sandra Day O'Connor to show how the Supreme Court slowly reflects sociopolitical changes.

Normatively, Toobin agreed with the three senators that a diverse federal bench would strengthen institutions both inside and outside the law. Citing Justice O'Connor's 2003 affirmative-action decision in Grutter v. Bollinger, Toobin noted that widely arrayed groups from military officers to Fortune 500 company executives advocated an increase of women in their ranks. Toobin's prognosis for an increasingly diverse federal bench was lukewarm: the legal rationale for diversity in school admissions "is very much under question" given recent Supreme Court and circuit court decisions, and the Senate is confirming judicial nominees at one of the slowest rates in a century.

Toobin then questioned the three panelists about his conclusions: Robert Raben, past president of the Hispanic Bar Association; Celeste F. Bremer, United States Magistrate Judge for the Southern District of Iowa; and Audrey G. Fleissig, United States District Judge for the Eastern District of Missouri. All three agreed that an increase in diversity, however it is defined, would strengthen federal and state courts. As an example, Bremer explained that she "unequivocally" relates to litigants who come before her differently than a male counterpart, despite the fact that they decide issues almost identically.

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Fleissig and Raben both emphasized disadvantages of the judicial selection process. Fleissig joked that anyone who voluntarily goes through the process knowing in advance what it entails is perhaps "per se too crazy to sit on a court anywhere." She also lamented that nominees get "mired in a process where they are almost too afraid to talk about anything." Raben questioned the value of a system that creates an "odd fiction," in which to get nominated almost requires political networking, but the minute a judge is nominated he or she "morphs into an almost empty vessel."

Overall, however, the panelists remained optimistic about progress towards diversity in the federal judiciary. Toobin noted that just three hours before the forum, the Senate confirmed its first openly gay woman as a federal district judge. Underlying all of these hopes was another, mostly unstated aspiration: that the Eighth Circuit, with only one female judge in its 120-year history, might soon see an increase in its gender diversity as well.

(Above) Chief Judge Schreier accepts the Infinity Project Judge Diana Murphy Legacy Award while panelists (R to L) Jeffrey Toobin, Honorable Celeste F. Bremer, Honorable Audrey G. Fleissig and Robert Raben look on.

(Above) Rita Bailey, Pulaski County District Court Judge, Arkansas, an Infinity Project organizer. Judge Bailey joined other project organizers from across the circuit who came to Minnesota for the program and to develop strategies for advancing judicial diversity across the circuit.

(Left to Right) Panelists Jeffrey Toobin, Honorable Celeste F. Bremer (United States Magistrate Judge for the Southern District of Iowa), Honorable Audrey G. Fleissig (United States District Judge for the Eastern District of Missouri) and Robert Raben, board member for the National Hispanic Bar Foundation and the Victory Fund.

Jeff Justman is a member of the Communications Committee and an associate at Faegre & Benson LLP. He previously clerked for Eighth Circuit Court of Appeals Judges James B. Loken and Diana E. Murphy.
Lawyers Expand the Diversity Pipeline:
Mentoring Page Scholars Through the Page Education Foundation

Disproportionate differences between the racial composition of the legal profession and the general population in the United States are nothing new. In 2000, people of color represented over thirty percent of the United States population, but only ten percent of the legal profession. Demographic reports for 2010 show minimal changes. As our country diversifies—with projections that minorities will hit fifty percent of the general population by 2050—the legal profession must become more representative of the clients we serve. A more representative legal profession cultivates public confidence and trust in the legal system; it helps ensure fundamental fairness for society.

Improving diversity in the legal profession requires improving diversity in the pipeline into the profession. Pipeline initiatives focus on low-income minorities, who often lack role models in higher education and professional careers. By reaching youth as far back as pre-kindergarten, such programs lay a foundation for students to invest in college education and consider law amongst other professional careers. Although no panacea, pipeline initiatives improve the likelihood of future attorneys of color.

In Minnesota, one such initiative is the Page Education Foundation. Established in 1988 by Minnesota Supreme Court Justice Alan C. Page and his wife, Diane Sims Page, the Foundation encourages youth of color to pursue higher education. It awards annual, renewable grants to minority college students in Minnesota—Page Scholars—based on their commitment to education and mentoring youth. As part of their scholarship experience, Page Scholars mentor kindergarten through eighth grade children of color, focusing on literacy and tutoring. They also gain mentors in the community, with whom their interests and professional aspirations align. Each Page Scholar is mentor and mentee, responsible for passing on what they receive.

A Page Scholar’s Story, Full Circle

In 1990, DeGalynn Wade was a Page Scholar. The youngest of three children in North Minneapolis, Wade was the first in her family to finish high school. Growing up and hearing gunshots outside her home, as a child she wondered how to help the people around her. Against this backdrop, Wade knew at age seven that she wanted to be a lawyer. When she won the Page Scholarship at seventeen years old and renewed it through college and law school, the Page Education Foundation assigned a young student for her to mentor each year. The Foundation also assigned Justice Page, then a lawyer at the Minnesota Attorney General’s Office, to mentor Wade.

Wade’s early experiences as a Page Scholar made a lasting impression on her. As a mentor, Wade regularly helped her mentees with homework. On two occasions, both over the Christmas holiday, she took in two mentees who faced turbulent times at home. Through these experiences, Wade saw that too many children of color lack role models and close relationships with successful professionals. In response, she forged even stronger connections with her mentees, who have completed college and are pursuing graduate degrees. They remain in touch to this day.

As a mentee herself, Wade found Justice Page’s guidance invaluable. She would call Justice Page with questions about academic scholarships, applying to law school, and working in the legal profession. The two would meet for lunch and other events sponsored by the Page Education Foundation. For Wade, Justice Page was “a voice to help me reason, someone in my corner all the time.” He guided Wade on her personal quest to become a lawyer. He connected her with other lawyers to learn about different areas of law. Wade reflects, “Justice Page helped me accomplish my dreams by assisting with the groundwork.” By 1998, the groundwork was ready when Justice Page swore Wade into the Minnesota Bar. When she turned to him to utter, “we did it,” Justice Page returned, “YOU did it.”

Today, Wade has come full circle, guided by her passion to help others through her profession and personally. As a family law practitioner, she counsels clients often on a pro bono basis. As a Page Scholar alumna, she keeps active with the Foundation. Wade identifies potential Page Scholars, helping them apply for the scholarship. She recruits mentors for Page Scholars. Wade also raises money and strategizes with the Foundation about long-term plans. Since 1999, she has mentored more than ten Page Scholars, getting to know them on their terms and in their space. Wade reassures mentees that she is available to them—anytime, anywhere. Her goal? To give back everything she received from the Foundation.

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