

Infinity Project seeks to increase gender diversity of the Eighth Circuit Court of Appeals

by Sally J. Kenney

Few observe the work of the powerful federal circuit courts of appeal. Supreme Court justices are widely known and the media closely follow their confirmation hearings and possible vacancies. Federal district court judges preside over high-profile local trials. With appeals courts out of sight, it is easy to assume that women's march towards equality is progressing steadily when in fact we are reversing the progress of the last decade. More than 30 per-

cent of President Clinton's appeals court appointments were women but only about 20 percent of President Bush's have been women.¹ Two circuits are one retirement away from becoming all-male courts, the First Circuit (New England) and the Eighth Circuit (Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Arkansas, Missouri).

Since it began, the Eighth Circuit has had 61 judges (3 before the court became the Eighth Circuit).

Only one of them has been a woman, Diana Murphy, who is 74 years old. (President Clinton nominated Bonnie Campbell but the Senate never held a vote to confirm her.) Eleven judges currently sit on the Eighth Circuit Court of Appeals. (Seventeen judges serve if you count the six judges who have senior status.) The last nine appointments to the court have been men.² As of January 1, 2007, 41 women were in active service on circuit courts, but only one of them was on the Eighth Circuit.³



The Infinity Project's mission is to increase the gender diversity of the federal bench to ensure the quality of justice in the Eighth Circuit. (The name comes from the numeral 8 turned on its side.) A group of four core members began the project in 2007; that group expanded to more than 100 by 2008. On October 17-18, 2008, the Infinity Project met in Minneapolis to hold a seven-state organizing conference, funded by a grant from the Open Society Institute. Nearly 170 people heard University of Maryland School of Law Professor Sherrilyn Iffil argue for the importance of a diverse bench. Judges Diana Murphy and Michael Melloy spoke about the work of the court, the kinds of cases it hears, and how the current judges came to be there.



Judges of the U.S. Court of Appeals for the Eighth Circuit. Only one woman, Diana Murphy, has ever been a member of that court.

1. Sheldon Goldman, et al., *Picking judges in a time of turmoil: W. Bush's judiciary during the 109th Congress*, 90 JUDICATURE 252, 282, Table 4 (2007).

2. <http://www.fjc.gov/public/home.nsf/hisc.8/11/08>.

3. Goldman, *supra* n. 1, at 268, Table 1.

More than 30 women from across the circuit then met in closed session to organize and construct their campaign for change. The Infinity Project will seek to educate senators and other key decision makers about the gender imbalance on the Eighth Circuit, identify well qualified women for consideration, mobilize widespread support for increasing the gender diversity of the court among groups and individuals, and educate the wider public about our lack of progress and why gender diversity matters. The group included women who had been interviewed for appointments in the past, as well as leading law professors and attorneys in private practice.

Some might question whether we should seek to appoint women to the court rather than simply seeking the best person for the job. For better or worse, however, the home-state senators of the president's party who largely decide who the president will nominate rarely look beyond their close circle of friends and supporters. Why is it essential that each state

have a representative on the court but not women at a time when women make up nearly half of law school graduates, and 30 percent of our judiciary overall?

All nine justices currently serving on the U.S. Supreme Court first sat as a judge on a court of appeal. If we fail to appoint women to the appeals courts, we are making it difficult if not impossible to nominate women to the U.S. Supreme Court. Moreover, the Eighth Circuit is the final appeal for most cases. Of the nearly 9,000 cases parties asked the Supreme Court to hear in the 2006 term, only four that resulted in opinions came from the Eighth Circuit.⁴

During the 1970s, women's groups organized to press the Carter Administration to appoint women to the federal courts. Since that time, the National Women's Political Caucus, the National Organization for Women's Legal Defense and Education Fund (now Legal Momentum), the National Association of Women Judges, and local groups such as Minnesota Women Lawyers have

largely turned their attention to other issues. And new groups devoted to women's greater representation in decision making, such as Emily's List and the White House Project, neglect judicial offices. The numbers from the last eight years demonstrate that we cannot count on the increasing numbers of women in the legal profession to automatically trickle up to judicial appointments. It is time to organize. As Elizabeth Cady Stanton wrote, "these things will not come of themselves." ❧

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4. The Supreme Court vacated by memorandum order five more cases, so a total of 9 out of 343 cases came out of the Eighth Circuit. *The Supreme Court—The Statistics*, 121 HARV. L. REV. 445 (2007-2008).

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