Gender diversity of 8th Circuit scrutinized at regional meeting

By Barbara E. Jones

The Infinity Project — a grass-roots initiative dedicated to increasing gender diversity on the 8th U.S. Circuit Court of Appeals — last week kicked off its efforts up a notch with a meeting of representatives from throughout the circuit.

The event, held Oct. 17 at the University of St. Thomas School of Law, included the presentation of the first annual Judge Diana Murphy Legacy Award. Judge Murphy was the first and so far only woman to serve on the 8th Circuit bench. The event was held in her honor. Prior to her elevation to the 8th Circuit bench in 2004, Murphy was a U.S. District Court judge in Minnesota.

In presenting the award, University of Minnesota Professor Carol Chomsky described Murphy as a judge who renders her opinions with fairness, dignity, compassion and understanding and who has had the courage to reach unpopular results to support freedom and justice. Chomsky quoted former Chief U.S. Magistrate Judge Jonathan Lebedoff, who said, "I’ve never known any man or woman who possesses the extraordinary gifts that Judge Murphy has shared with our profession and our community."

Murphy said she was overwhelmed at the expression of support from a new generation of women in the bar and the award that will in the future recognize people who have worked to advance equal justice for women.

"Diversity affects the quality of justice and just the perception of justice," Murphy said.

Taking the lead

University of Maryland School of Law professor Sheryllyn Hill delivered the keynote address, which was on the topic of "Leadership, Gender and Judicial Selection." Hill said that efforts to increase diversity on the bench do not conflict with the concept of an impartial, color-blind bench.

"The lack of gender diversity on the 8th Circuit shows that this issue is one that really requires constant vigilance," Hill told attendees. While many circuit courts do not have a representative gender balance, the 8th Circuit is the only one of its kind, she said. While the 1st Circuit has also had only one woman judge in its history, the 8th Circuit has twice as many judges, she pointed out.

The 8th Circuit’s gender issue reflects the continuing problem of gender disparity in the legal profession, according to Hill. "We want to make sure that we’ve got women working at the highest levels of law firms who can be selected to serve on courts," she said.

Diversity ensures the best-informed and richest decision-making, Hill said. "I’ve argued that this is part of the due process right of litigants that is embedded in the 14th Amendment," she said.

"In talking about the importance of gender diversity on the bench, we should be careful to talk about how it enhances judicial decision-making and therefore the legitimacy of the courts," Hill continued. "It brings into the room, particularly on the appellate bench, perspectives and viewpoints that otherwise might not be present. Those perspectives and viewpoints are not just nice because they make us feel good, they are important because they result in better judicial decision-making."

Hill advised reaching out to other circuits. "I think we have a national problem of gender diversity on our circuit courts," she explained. Since the circuit courts are a province of the U.S. Supreme Court, she said, the issue has tremendous implications.

The circuit feeder system

8th Circuit Judge Michael J. Melloy, who is chaired in Cedar Rapids, Iowa, shared with attendees some of his insights on increasing gender diversity at the federal appellate level.

"For good or bad, we tend to have a pipeline system to the federal bench," Melloy said. Most of the judges on the 8th Circuit have come from the federal district courts or state supreme courts, he said. "I think it’s important that you consider how to encourage women, particularly younger women, to work their way into the pipeline."

Pointing out that President George W. Bush has appointed seven of the 11 sitting judges on the 8th Circuit, Melloy pointed out that there might not be many vacancies in the near future.

However, he continued, there will be U.S. District Court vacancies.

According to Melloy, about 40 percent of the District Court judges will be eligible to retire in the next four years. "I suspect many of them will, particularly if it’s a President Obama, because many of those people are Clinton appointees," he said, adding that those judges will be prime candidates for the appellate court in 10 or 15 years.

Melloy also discussed the role that diversity plays in the court, particularly during conferencing cases. "We had a wonderful African-American judge, Judge (Theodore) McMillian. Having a judge who grew up in a segregated St. Louis added a whole new dimension, not in every case, but in that case where race, discrimination and segregation of schools is an issue, in the same way that Justice Thurgood Marshall brought it to the Supreme Court," he recalled.

The same is true of Murphy in any case that has a gender component, Melloy said. "It may or may not change the outcome, but at least it’s a view that will be considered [and] it may affect how the decision is written," he explained.