

Exercising Leadership: A Call to Diversify the Judiciary

Mary R. Vasaly



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Barack Obama's election had a powerful impact on both African-Americans and other minority groups who have been traditionally excluded from the seats of political power. His election meant that participation in government at the highest levels was no longer open only to those who fit traditional stereotypes. But this achievement does not mean that our work in promoting diversity in the halls of power is finished. Indeed, there is still a stunning lack of diversity in the federal judiciary, particularly when one considers the underlying demographics among those qualified to serve.

A group of law professors, lawyers, and academics are keenly interested in changing this situation, particularly as it relates to the absence of women on the federal bench. This group recently formed the Infinity Project. Its mission is to increase gender diversity on the Eighth Circuit bench. Although its efforts are concentrated on the Eighth Circuit, the Infinity Project hopes its initiative takes hold in other circuits for two primary reasons. First, the circuits are a pipeline to the U.S. Supreme Court, which sorely needs to experience an increase in the number of seated women. Second, in the last few years, the judiciary has increasingly come under attack. Judicial elections have become politicized. Judges have been attacked and criticized for rendering unpopular decisions. The other branches have sought to invade the courts' jurisdictions. All of this undermines public confidence in the judiciary and threatens the rule of law. Lack of gender di-

versity on the bench is another fundamental threat to the preservation of the rule of law. The court's job is to safeguard the constitutional rights of both women and men, as well as vulnerable and disadvantaged minorities. How can the public have confidence and trust in such an institution if half of those who are qualified to serve are excluded from its ranks? The judgments of a diverse judiciary command greater acceptance in a diverse society and, of course, a deliberative process enhanced by collegiality and a broad range of perspectives necessarily results in opinions that are both true to the rule of law and over time allow for a fuller and richer evolution of the law. It is thus imperative that we increase gender diversity and thereby foster respect for the rule of law.

The Infinity Project focused on the Eighth Circuit because it boasts the worst record in terms of gender diversity despite the fact that efforts to increase diversity began decades ago. As women began to enter the legal profession in greater numbers, specifically in the seventies and eighties, leadership in the legal profession focused on exploring the impact of gender bias in the courts. The National Judicial Education Program pushed for state-specific information out of a growing concern that gender bias was having an impact on the administration of justice. Fifteen years ago, the problem was first recognized and the chief judge of the circuit appointed the Honorable Diana E. Murphy—the circuit's lone woman judge—to chair a gender task force that was charged with examining the effects of gender on “both processes and people in the Eighth Circuit judicial system.” The task force issued a Final Report and Recommendations of the Eighth Circuit Gender Fairness Task Force.¹ The report concluded that the workforce in the Eighth Circuit was mostly female; however, these jobs were primarily staff positions. In contrast, most of management and,

in particular, the judges, were men. The study recommended that the court “take identifiable steps to ensure equal opportunity for advancement by women into management and supervisory positions within the court units.”

Despite the study's recommendations, 61 judges (three before Congress officially established the court) have served on the Eighth Circuit bench in its history, but only one has been a woman. Eleven judges currently sit on the Eighth Circuit Court of Appeals. Only one woman—Judge Diana Murphy—currently serves. If we to include the six senior judges in this calculation, the number is one out of 17, or 5.8 percent. Since 1995, nine people have been appointed to the Eighth Circuit Court of Appeals.² All nine appointments have been men.³ (Although Bonnie Campbell was nominated by President Clinton, her appointment was never voted on.)

The founding committee of the Infinity Project met over the course of a year to develop the framework for the project and to identify at least two point people in each of the states comprising the Eighth Circuit to carry out its mission. The Court of Appeals for the Eighth Circuit includes seven states and 10 districts: Arkansas [eastern and western], Iowa [northern and southern], Minnesota, Missouri [eastern and western], Nebraska, North Dakota, and South Dakota. The founding committee members identified leaders in each state committed to forming an Infinity Subcommittee. During the year, the founding committee also developed a case statement and talking points document, identified key areas for further action within the entire circuit and within each state, and began planning for a circuit-wide meeting. That meeting was held on October 17, 2008.

As a result of its efforts, the Infinity Project hopes to increase diversity within the judicial appointment process

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and develop a sustainable mobilization mechanism by:

- creating public awareness of the importance of gender equity on the bench and the availability of qualified women candidates
- engaging senators and other politicians on the issues of gender equity and the need for appointment of a female Eighth Circuit judges
- serving as a clearinghouse for candidates who have indicated an interest in serving on the Eighth Circuit bench

It is hoped that these efforts will result in the appointment of more women to the district court and Eighth Circuit bench in the near future and that lawyers in other

circuits will take action to address this problem, which persists throughout the federal judiciary (see chart on page 5). At the present time, all federal circuits and over 40 states have impaneled groups of lawyers, judges, and academics to try to improve the experience of anyone who encounters or interacts with the justice system. One common theme permeates all the findings to date: Improvement remains an opportunity.

As many implementation efforts are beginning to trail off or seem frozen in time, the Infinity Project recognizes the need for continued progress and self-reflection regarding judicial appointments in all the circuits. Anyone who participates in or impacts the federal judiciary should accept responsibility in addressing

issues of gender differences and bringing continuous improvement to the judicial system. For more on the Infinity Project, please visit www.theinfinityproject.org.

Mary Vasaly is an attorney with Maslon Edelman Borman & Brand, LLP, in Minneapolis, Minnesota, where she practices commercial litigation and appellate law. She can be reached at mary.vasaly@maslon.com

Endnotes

1. Creighton Law Review in 1997, at 31 CREIGHTON L. REV. 9.
2. Federal Judicial Center, *U.S. Court of Appeals for the Eighth Circuit*, click on Judges, Jan. 13, 2008, available at www.fjc.gov/public/home.nsf/hisc.
3. *Id.*