



Infinity Project Launched in Seven States to Increase the Gender Diversity of the Eighth Circuit Court of Appeals

By Dr. 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 easier to assume that women's march towards equality is progressing steadily when in fact we are reversing the progress of the last decade. Nearly 30% of President Clinton's appointments were women but only 20% of President Bush's have been women. Two circuits are one retirement away from becoming all-male courts, the First Circuit (New England) and the Eight Circuit (Minnesota, North Dakota, South Dakota, Iowa Nebraska, Arkansas, Missouri).

Since it began, the Eight 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 Eight 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.¹ As of July 2005, nearly 50 women serve on circuit courts, but only one of these judges serves on the Eighth Circuit.²

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 thirty 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 court, 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.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. (We take our name from the numeral 8 turned on its side.) A group of four core members began the project in 2007 and that group expanded to a group of more than 100 interested in working on the project in Minnesota by 2008. On October 17-18, the group met in Minneapolis to hold a seven-state organizing conference, funded by a grant from the Open Society Institute. Nearly 170 people attended a luncheon where Professor Sherrilyn Iffil (University of Maryland School of Law) argued for the importance of a diverse bench. Judges Diana Murphy and Michael Melloy then spoke about the work of the court, the kinds of cases it hears, and how the current judges came to be there. More than thirty women from across the circuit then met in close session to organize and construct their campaign for change. The group included women who had been interviewed for appointments in the past, as well as leading law professors and attorneys in private practice.

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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Infinity state point people met in Minnesota for an All-Circuit Summit. The Infinity Project honored Judge Diana Murphy, center front row.

¹ <http://www.fic.gov/public/home.nsf/hisc>. 8/11/08.

² Lynn Hecht Schafran, Not From Central Casting: The Amazing Rise of Women in the American Judiciary, 36 U. TOL. L. REV. 953, 956 (2005).

³ 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," Harvard Law Review 121 (2007-2008): 445.