

New York Law Journal



NEW YORK, FRIDAY, NOVEMBER 3, 2000

Web address: <http://www.law.com/ny>

©2000 NLP IP Company

PRICE \$3.00

Pataki Names Graffeo To Court of Appeals

Diligent 'Team Player' Is Third Woman on Bench

BY JOHN CAHER

ALBANY — Governor Pataki yesterday selected as his third Court of Appeals nominee an Albany Appellate Division judge known in the local legal community as diligent, ethical, conscientious and collegial — a team player who rarely dissents and displays little in the way of ideology in her opinions.

Third Department Justice Victoria A. Graffeo, a 48-year-old one-time obscure government lawyer whose career has risen meteorically since Governor Pataki's election six years ago, was nominated to fill the seat vacated through the retirement of former Senior Associate Judge Joseph W. Bellacosa, who recently took over as dean of St. John's University School of Law.

Upon confirmation by the State Senate, which is all but certain, Justice Graffeo will become the 104th person — and only third woman — to serve on New York's highest legal tribunal since it first began hearing cases in 1847. The only other women to serve on the Court, Chief Judge Judith S. Kaye and Judge Carmen Beauchamp Ciparick, sit on the current bench.

Like the Governor's two other Court of Appeals appointees, Justice Graffeo is a Republican, an Appellate Division justice, an upstater, and certainly not an activist. Observers say that like Chief Judge Kaye, Justice Graffeo seems to prefer deciding cases as directly as possible, without venturing further than necessary to resolve the issue at hand. And like the man she apparently will replace, Justice Graffeo is an Italian American who lives in the Albany suburb of Guilderland.

As an Appellate Division jurist, Justice Graffeo almost always joins the majority on a court with a reputation for restraint. Even in her infrequent dissents (she has dissented or joined

dissents in only three of roughly 1,800 cases), she tends to articulate a position succinctly while revealing next to nothing about her political views or jurisprudential philosophy. Her decisions reflect respect for precedent and a reserved, cautious approach to jurisprudence. She has never been reversed by the Court of Appeals.

Vincent M. Bonventre, an Albany Law School professor and longtime Court watcher, said he expects Justice Graffeo to be much more moderate than Judge Bellacosa, who was known for his conservative, law-and-order decisions and bitter dissents.

Continued on page 4, column 4



PHOTOGRAPH BY ALAN SOLOMON
Governor Pataki announcing his nomination yesterday of Appellate Division, Third Department, Justice Victoria A. Graffeo to the State Court of Appeals at a press conference in the Red Room of the State Capitol building.

EX 'F-3'

Pataki Nominates Graffeo

Continued from page 1, column 4

"In the three [dissenting] opinions she either wrote or joined, there is nothing biting, nothing particularly controversial, nothing of the kind of vehemence you saw in her predecessor's dissenting opinions," Professor Bonventre said. "I think foremost what she will bring to the Court is a moderating influence."

Professor Bonventre said the appointment of Justice Graffeo could very well "blunt" a conservative shift in the Court noted by several observers and commentators.

"There is just no indication in Judge Graffeo's Appellate Division record or reputation that she is going to be anywhere near as pro-prosecution and pro-government [as Judge Bellacosa]," Professor Bonventre said. "So, you have Judge Bellacosa's departure, and he is not being replaced with somebody with the same jurisprudential ideology."

One of the major issues the Court of Appeals will undertake in the near future concerns the constitutionality of the death penalty statute, which was scrutinized by the Solicitor General's office when Justice Graffeo held that position. Yesterday, Justice Graffeo said she did not foresee any conflict in sitting on the Court that will determine, perhaps next year, if the statute is constitutional.

"I don't believe it was my work," Justice Graffeo said yesterday when asked if she could sit in judgment of a statute when she or her staff may have played a role in its formation. "It was a legislative statute ... If I felt that I couldn't act fairly, I would discuss that with the other members of the Court. I don't anticipate that situation."

Governor Pataki said he did not apply any sort of a "litmus test," and did not select Justice Graffeo on the assumption that she would vote in favor of the death penalty, the linchpin of his legislative agenda upon taking office in 1995.

"I am confident that Judge Graffeo will apply the law and review the law as she believes is consistent with the statutes and constitution of the state," the Governor said.

At a press conference yesterday, Governor Pataki described Justice Graffeo as "an outstanding lawyer, an outstanding judge, an outstanding public servant," and indicated that her reputation for collegiality weighed significantly in his choice.

"One of the things that Chief Judge Kaye has stressed to me time and again, when we discuss in the abstract the nature of the Court of Appeals, is the importance of someone who works well with other members of the Court because it is a collaborative body and collegiality is an important part," the Governor said.

Governor Pataki also said that he seeks to appoint judges who share his view that jurists should leave legislating to legislators. "I have made it very plain that I don't believe that a court should be usurping legislative authority," the Governor said. "I think that, from time to time, has been a problem."

Same-Party Choices

Unlike his predecessor, Mario M. Cuomo, Governor Pataki has stayed within the confines of his own political party in naming Court of Appeals judges. Both his prior appointees, Richard C. Wesley and Albert M. Rosenblatt, are Republicans. By contrast, Democratic Governor Cuomo's first appointee was Republican Richard D. Simons, and his first seven included three Democrats, three Republicans and one independent.

But Governor Pataki said there was no particular professional, personal or political attribute that led him to select Justice Graffeo over six other candidates: Presiding Judge Susan Phillips Read of the Court of Claims; Appellate Division Justice Richard T. Andrias of

the First Department; Deputy Chief Administrative Judge Juanita Bing Newton; Administrative Justices Stephen G. Crane of Manhattan and Steven W. Fisher of Queens; and former State Bar Association President James C. Moore, a partner at Harter, Secrest & Emery in Rochester.

The Governor said it was the "totality" of Justice Graffeo's experience, which includes service in all three branches of government, that made her stand out. Justice Graffeo received the highest ratings possible from the New York State Bar Association, the Association of the Bar of the City of New York, the Women's Bar Association of the State of New York and the New York State Trial Lawyers Association.

Fast-Track Career

Justice Graffeo's career has been on the fast-track since Republicans seized control of the Executive Mansion and the Attorney General's Office in 1994.

Although she had served as assistant counsel to a state agency and spent a decade working for the Republican minority in the Assembly, Justice Graffeo was well below the Albany radar screen until Mr. Pataki was elected governor and Dennis C. Vacco was elected attorney general. Since then, she has been in the right place at several right times; she also has close ties to state GOP Chairman William Powers.

Shortly after Mr. Vacco was elected, he announced his first major administrative appointment: Victoria Graffeo as Solicitor General. To this day, Mr. Vacco considers it one of his wisest decisions.

"She just had such an expansive breadth of knowledge on so many issues," Mr. Vacco, who was defeated in a re-election bid and is now in private practice, said yesterday. "Typically, when you find a lawyer who serves as legislative counsel, they don't necessarily always have the added quality of knowing the courtroom. But Vicki did. Vicki knew the law, she knew the legislative process and she was not at all unfamiliar with the courtroom."

Less than two years later, when a judgeship opened in Albany, Governor Pataki appointed Justice Graffeo to Supreme Court. Although the Senate was not in session in September 1996, Majority Leader Joseph L. Bruno summoned his members back to Albany for the sole purpose of confirming her nomination, and they did so unanimously. That gave her the advantage of running as "Judge" Graffeo in the November election.

The election was unusually hard fought and unexpectedly controversial, and involved an extraordinary effort by the state GOP, which rarely gets heavily involved in local judicial races.

A fund-raising committee run by then U.S. Senator Alfonse M. D'Amato contributed generously to the campaign of Justice Graffeo, Ulster County Family Court Judge Marianne O. Mizel and Mary O. Donohue, then the Rensselaer County District Attorney and now the Lieutenant Governor. Democrats complained bitterly that the candidates would be beholden to Senator D'Amato if they won. Justice Graffeo denied even knowing that Senator D'Amato was involved, but the D'Amato angle lingered throughout a campaign where independence became an issue.

Additionally, Goldman Sachs, through its PAC, contributed to Justice Graffeo's campaign. Since it is extremely rare for a municipal bond firm to donate to a judicial campaign upstate, skeptics speculated Goldman Sachs had an agenda, perhaps to curry favor with state Republicans or Senator D'Amato.

After a rancorous race, the Republicans captured two of the three seats, with Justice Graffeo and Justice Donohue, but the race was so close that it

Victoria Ann Graffeo

- Education: State University College at Oneonta (1974), Albany Law School (1977).
- Career: Private practitioner in Albany concentrating on matrimonial, family, real property and contract law, 1978-82 and 1984-89; assistant counsel to the New York State Division of Alcoholism and Alcohol Abuse, 1982-84; Counsel to Assemblyman Kemp Hannon, the Assembly Minority Leader Pro Tempore, 1984-89; Chief Counsel to Assembly Minority Leader Clarence D. Rappleyea Jr., 1989-94; Solicitor General, 1995-96; appointed to Supreme Court 1996 and elected later that year; designated to the Appellate Division, Third Department, 1998.
- Professional activities: Served as president and board member of the Capital District Chapter of the Women's Bar Association of the State of New York and as a member of the Albany County Bar Association and the New York State Bar Association; member of The Committee to Promote Public Trust and Confidence in the Legal System.
- Politics: Republican.
- Personal: Born in 1952. Raised in Schenectady. Married to Edward E. Winders, chairman emeritus of Liro-Kassner Inc., an engineering firm, and a political science Ph.D. who two years ago authored a doctoral dissertation titled "Public Authorities in New York State: A Case Study of the Interdependent Governmental Roles of the New York State Thruway Authority." Two children, Jennifer, 28, and Eric, 24.
- Hobbies: Reading, ice skating, gardening.
- Reputation on the bench: Diligent, prepared, courteous, collegial.

was nearly three weeks after Election Day before the winners were declared.

On the bench, Justice Graffeo immediately won accolades from local litigators and colleagues. Lawyers and judges have said they were struck by how hard she was willing to work, and her ability to display compassion within the confines of constitutional analysis.

"I've known Judge Graffeo for many years and her appointment is well deserved," Lieutenant Governor Donohue said yesterday. "Having worked with her on the Supreme Court bench, I know her intelligence, diligence and fairness will enable her to serve the people of our state very effectively."

Justice Graffeo was so popular on the trial court that many trial lawyers openly mourned when — only 18 months after donning robes — she was promoted by Governor Pataki to the appellate bench. On the Third Department, she immediately became part of the collegial fabric of the court, according to Presiding Justice Anthony V. Cardona.

"When I think of Judge Graffeo, I think of commitment and caring," Justice Cardona said. "She is absolutely committed to the judicial process. She is very involved. She is very caring. She very much wants to do the right thing. And she is just a very nice person to have around."

It is unclear who the Governor will designate to replace Justice Graffeo on the Third Department, and equally unclear who will fill her position as a Supreme Court justice. Also uncertain is whether the Senate will return before the end of the year for confirmation, although Governor Pataki said that would be his preference.

Barring an unscheduled departure from the Court, this is the last position Governor Pataki will fill during his second term. Judge Howard A. Levine faces mandatory retirement at the end of 2002, at the same time the Governor's current term expires. Court of Appeals associate judges serve 14 years and are paid \$151,200 annually.