

Hon. Victoria A. Graffeo
Former Associate Judge
NYS Court of Appeals
10-27-16

John Caher: For the record, it is October 27th, 2016 and we're interviewing Judge Victoria Graffeo at Albany Law School.

In the biography you wrote for the Historical Society, you talked about your grandmother. There was a quote that jumped out at me about, quote, "the role of women in my family and the impact it had on my development," closed quote. Can you tell us that story and particularly about the influence of your grandparents and the suffragette grandparent?

Judge Graffeo:

My grandmothers were immigrants and they had a great influence on me because most of the women in my family worked outside the home. I grew up knowing that I had to decide on something that I wanted to do to help support myself and the family. My mother's mother was one of the role models that I had growing up. She worked in the garment industry with women from different ethnic backgrounds and they would work together to help each other with their problems and she was very involved in community organizations. She was a real leader despite the fact that she only went to primary school for a few years so she had virtually no formal education. She had gone to work at 10 in the garment industry in Manhattan.

She always told us how proud she was that she marched with the suffragettes so I think we had a family history of strong women in our Italian family and you were expected to follow that lead.

John Caher: I wonder how old your grandmother was when she was allowed to vote.

Judge Graffeo: You know, I don't know the answer to that question. I lost my grandmother before I graduated law school, so there are a lot of topics I wish I had discussed with her as an adult that I didn't think to ask as a young person.

John Caher: Don't we all? Let's fast forward a little bit to the mid-70s when you were a student here and hoping to get some practical experience and what did you encounter? Were there many women litigating in Albany at that time? Were the firms responsive, receptive to women applicants?

Judge Graffeo: I came to Albany Law School in 1974. The two classes ahead of mine—we were the class of 77—had very few women. Our class had a larger number of women. We had—I'm going to guess—about 40 women. Not all of those women graduated and the class was over 200, so we were on the cusp of larger numbers of women starting to enter the legal profession. There were very few female litigators in the Capital District. There were maybe a couple in the district attorney's office, but for the most part in the firms in Albany, women pretty much handled estates and trusts, family law, that type of thing. There were not many civil litigators.

I decided that the only way I was going to secure a job in a law firm was if I started to work in a law firm while I was a student, that if they got a chance to know me, perhaps I'd be offered a job. My second and third year I worked for a firm in Colonie and that turned into a full-time job upon graduation. I did participate in interviewing and it was rather shocking what some of the questions were that I was asked.

John Caher: Such as?

Judge Graffeo: I remember interviewing with a firm in Utica. They asked me if I had a boyfriend, if I planned on getting married, if I thought I was going to get pregnant, and what were they going to do if I got pregnant shortly after they hired me. At that time, I was single and didn't have a boyfriend so I wasn't even sure why I was being asked these questions, but it was a different era. Firms were not as accustomed to having women and they were unaware of how to balance the family work responsibility that many women have to carry.

John Caher: After you graduated, you went to Tate, Bishko, Miller and Ruthman?

Judge Graffeo: Yes. When I graduated, I went to work for a firm with nine gentlemen in Colonie, New York and I was extremely fortunate. They were great mentors. They taught me the practice of law and they gave me a lot of opportunities and I started trying cases shortly after I was admitted to the bar. They were very fair and equitable about the distribution of work in the office.

John Caher: Were you the first and only woman there?

Judge Graffeo: Yes.

John Caher: I think I've heard this story before but can you tell the story about the federal bank case you had where the closing counsel referred to you as a "little lady," "little friend," little something or other?

Judge Graffeo: That was in the late 70s. It was interesting to be a female litigator because many of the judges in the Capital District had never presided over a trial with a female attorney. I remember one evening going to justice court up north and my

brother had gone with me that night because of a terrible snow storm. The judge kept asking me if I was really a lawyer and who he could call to make sure I was an attorney. After making us sit there for about two and a half hours, my brother finally blurted out, "Do you think we'd be sitting here all night if she wasn't a lawyer?"

I had an equal access to credit trial in Rensselaer County in federal court and my adversary was a retired judge who kept calling me his little friend. I did voice some objection to that in chambers but I don't recall that he was seriously admonished, and the judge said to me, "Well, what should we call you?" I said, "My name would be fine, or 'counselor' would be fine." There wasn't a lot of experience in how to deal with women in the courtroom back then.

John Caher: Was that in front of the jury.

Judge Graffeo: The improper name references, yes. The discussion with the judge was in chambers.

Judge Graffeo: That trial did have a jury and so that was my concern with the perception. Actually at one point, one of the jurors strolled into the courtroom while I was working at counsel's table and he said to me, "Oh, are you that little girl who's trying this case?" That's when I realized that the words you use in the courtroom do have an impact on jurors. I think all young attorneys have difficulty in the courtroom when you're up against experienced attorneys, but it was particularly difficult at that period of time because the system was not accustomed to women practicing.

John Caher: As I recall, Tate Bishko disbands and you go to the predecessor of the Division of Alcoholism where you work with and meet, coincidentally, Karen Peters, right?

Judge Graffeo: Yes. When my law firm disbanded, I decided that I was probably interested in starting my own practice, but until I was organized to do that, I thought a stint in government might be helpful. I happened to see an ad in the Women's Bar newsletter about a position at the New York State Division of Alcoholism and Alcohol Abuse and since I had done a fair amount of matrimonial litigation, I understood some of the effects of alcoholism on family relationships, so I thought I would apply for that position. I was interviewed and hired by Karen Peters, who was counsel of the agency at the time. She became a very effective mentor and she pretty much taught me the ropes for how you succeed in the large bureaucracy.

She also had the courage to run for Supreme Court, the first woman in the Third Judicial District. I think that her success in that effort years later served to encourage me to consider a judicial career.

John Caher: She may have also been the first female family court judge in Ulster County.

Judge Graffeo: She probably was.

John Caher: She was an inspiration for you?

Judge Graffeo: Yes. Judge Peters is a very inspiring person and she has I spent a great deal of her time and effort in encouraging other women in the legal profession.

John Caher: Your next stop I think was the legislative branch where you ended up, I think, for 10 years?

Judge Graffeo: Yes.

John Caher: Did you experience or witness any gender discrimination issues?

Judge Graffeo: On the one hand, I think my 10 years in the legislature in some respects was the most exciting and interesting of my various legal careers because you're dealing with cutting-edge public policy issues. As a political science major, I was always interested in government. On the other hand, at times it could be frustrating because, first of all, I worked for the Assembly minority so we had to struggle for resources and a legislative agenda. There were not many women at the upper echelon of staff in the legislature at that time.

Initially, when I was chief counsel to Assembly Minority Leader Clarence D. Rappleyea and we would have leaders' meetings, I would be the only woman in the room. For a good part of my career, I worked with all men and I'm comfortable doing that. But it's interesting as I reflect back that I always seemed to be in these environments. Until I entered the Appellate Division and the Court of Appeals, generally the executive staff was all male.

John Caher: Did they treat you equally in legislature?

Judge Graffeo: My boss was terrific. I don't know how some of the other conferences operated but I can honestly say my members had a lot of trust in me. It was a very successful professional experience for me so I think that I was able to bring more women to the organization and advance more women on our staff. A lot of those people ended up in substantial government positions as years went by. So it was a very fulfilling period of my career.

John Caher: It sounds like a lot of that had to do with the fact that Rappleyea was supportive. If he wasn't, that would have been the end of the discussion, wouldn't it?

Judge Graffeo: I'll tell you one story. This is how I gained respect very early on for my employer. One of the first years that I was floor counsel, the new members arrived in

January and the conference held a reception at the Fort Orange Club, which at that time excluded female members. I refused to attend. I talked to the leader and told him that I was uncomfortable going there since they didn't allow female members, and that our Women's Bar Association was petitioning them to accept women members. My leader said, "All right after this, we will not hold these events there." I thought that that was very gracious, and that he truly understood and appreciated it once it was brought to his attention.

John Caher: Didn't you go on from there to Attorney General's office as solicitor general?

Judge Graffeo: Yes, I did.

John Caher: Were you the first female in that position?

Judge Graffeo:

No. The Attorney General's office actually had a very long tradition of female solicitors. There were a couple of women before me so that's one advantage in government service. For many years and many decades, I think that government was a more satisfying home for a lot of women because there were more opportunities.

John Caher: At that time, there was probably a fair number of women in the attorney general's office, wasn't there?

Judge Graffeo: Yes. There were quite a number of women in the various offices around the state.

John Caher: I imagine you had to resign to run for Supreme Court?

Judge Graffeo:

Yes. I resigned in August and was appointed in September.

John Caher: Oh I see. How did you position yourself to get that appointment, an interim appointment until the next election?

Judge Graffeo:

I never seriously considered a judicial run. I think some people, perhaps, plan for years and set a goal to be a judge. I was quite happy doing what I was doing and I had only been there about two years when I received a phone call from the Republican county chairman, asking me if I would consider running for Supreme Court.

I was called to a meeting and spoke with them and, lo and behold, I ended up one of the three women. It was a very unusual campaign. There were three vacancies and the Republican Party ran three women—a sitting Family Court judge and a sitting district attorney—and I did not have the name ID of the other two women. We ran against three incumbent Democratic judges. It was a very unusual election. It was a rather unique strategy to put female candidates in

front of the voters to see if the electorate was amenable to women on the bench and recognized the need for more diversity on the bench.

At that time, Judge Peters was on the Appellate Division so there were no women on the Supreme Court bench in the seven counties and that was a theme of the campaign, so it was an exciting time to run. It was a big risk for me because, out of six candidates, I figured I had the least amount of name ID and I had to resign a great job in order to do this. I was appointed to fill the vacancy. The judge who had that position had been appointed to the federal court, so that's how the vacancy in Albany County occurred. I filled the vacancy in September but I had to run that November for the term beginning in January.

John Caher: How did you become known, though, to the powers-that-be to be in a position to get that appointment for Judge Kahn's seat and to get nominated to run?

Judge Graffeo: There are so many different ways that people become a judicial candidate. I think mine was probably a bit unusual in that I came out of government, whereas most judicial candidates up to that point in time in the Third JD tended to be out of private practice or, even more likely, they had been judges in lower courts and then they were moved up the ranks—whether city, county, even town justices—and then they ran for Supreme Court. Mine was a rather unique path, but I was very fortunate in that I had worked in the government/political arena for years and I knew people in the political arena and I think that was quite a benefit for me.

John Caher: You mentioned at the time that you went to Supreme Court, Judge Peters was on the Appellate Division so there were no women in the trial courts.

Judge Graffeo: Correct.

John Caher: Did you have any pause about going to the Appellate Division two years later, knowing that would mean there would be no women on the trial court?

Judge Graffeo: I think when Supreme Court judges think about applying for the Appellate Division, whether male or female, they always wonder about the effect it's going to have on their local bar. Many of my colleagues on the Appellate Division would talk about how they lamented over this because they were the only Supreme Court judge in their county, so when you go to the Appellate Division, you leave the bar without a local justice. I had the additional concern that there wouldn't be any women on the trial bench in the Third JD. But on the other hand, you hope that whomever the parties decide to run, that maybe there would be a qualified female candidate.

At a certain point you have to realize some of these opportunities are only presented once to you and you do what you think is best for your career, and at the same time, you hope that the tradition can continue.

John Caher: At the Appellate Division there was you and Judge Peters. Judge Mikoll was gone by then wasn't she?

Judge Graffeo: No, when I first joined the Appellate Division, I was the third woman because Judge Ann Mikoll from Buffalo was on the court and, of course, Judge Peters was on the court.

John Caher: Let's turn to the Court of Appeals. When Judge Kaye was appointed in 83, did you grasp the significance of it at that time?

Judge Graffeo: I think all female attorneys had a sense of pride when Judith Kaye joined the New York Court of Appeals. It was a confirmation that we were making an impact on the profession. For me personally, I had argued a case around 1980 at the Court of Appeals and I remember standing at the podium and looking at the seven men. As a young lawyer, you're rather nervous anyway in your first argument in the Court of Appeals. I remember just thinking there's all these gentlemen here, and all the portraits around the courtroom were all male, so it would be impossible not to feel a bit out of place there. I think that Judith's appointment to the Court was such a significant advancement for all women in the profession.

John Caher: She was the only one for 10 years maybe before Judge Ciparick joined her and then you were the third, and then within a couple of years, you had a majority.

Judge Graffeo: Yes. Judge Kaye was always very proud of the fact that for a number of years we had four women on the Court and so at least when the Court undertook its major renovation, we actually got an additional bathroom outside the courtroom so we had a men's and a ladies' room. These things are symbolic of equality.

John Caher: Beyond symbolism, why is it important to have diversity—gender, racial, whatever—on the Appellate Court when, theoretically, you apply the law to facts and, bingo!, you have a decision. Is there something that different experiences bring to the appellate process that's important?

Judge Graffeo: I think many people underestimate to what extent people bring their personal philosophy and life experiences to cases, and I think that's true whether you're on the trial bench or whether you're on the appellate bench. Judges are still people. They have their own value systems, they have their own professional experiences, they have their own life experiences. That's the lens through which they examine the facts of a case. So, when you have people of different economic backgrounds, different ethnic, racial, gender, whatever, I think that it brings a different richness to the discussion.

I spent 14 years on the Court of Appeals. I could be incorrect about this, but I only remember two cases in which all the women voted one way and all the men

voted another. Neither was the type of case you would expect. One was a case from Delaware, a commercial corporate case. I think when it actually comes to the analysis, it's not readily apparent there's a gender difference, but I do think that diversity helps the court to have a better grasp of the landscape of society in our state. I think that that was true also geographically.

There's great differences in practice between Manhattan and the North Country, or Western New York or the Southern Tier, so there's all kinds of different forms of diversity that I think are very significant in keeping a balanced and fair judiciary. And that's besides the fact that it helps to instill public confidence in the courts. People are so critical now of the government, especially the representative arm of government. People tend to think it doesn't function the way it should function. I think that it's important for the judiciary that people believe that it's a fair and just system, that's just critical for our system of democracy. People I think gain a certain degree of confidence if they feel they're at times able to look at someone that looks like them or who they know their background is somewhat similar to. They feel that at least perhaps that person has a better understanding of where they're coming from. I think that that's all very critical

John Caher: You left the court at the end of 2014 and then shortly thereafter went to Harris Beach. How from a gender perspective, how is life different for a female attorney now in a private firm that was in the mid-70s when you were at Tate Bishko?

Judge Graffeo: There's still a lot of challenges for women in private practice. I'm very fortunate at Harris Beach. I have a wonderful work environment and a lot of opportunities at that firm. There's a lot of academic and legal writings about the fact that it's still more difficult for women to succeed in business, and in large firms. We still have not seen anything near to the increase in numbers of female equity partners in law firms either in New York or the United States considering what percentage of the bar we now constitute and the fact that most law schools have 50 percent or more female students.

We still have very small numbers when it comes to law firm leadership positions in firms across the nation. There's still a lot of issues for women to deal with—how to balance family and work, how to bring in business, be a rain maker. The truth is, the practice of law is a business so I think there's probably the same type of glass ceiling issues that you see in corporate America and where women are trying to have better representation on boards and in management of corporations. I think law firms are trying to see what they can do now to encourage more women to stay in firms. We have a problem with retention of women in private practice, and minorities I would mention as well.

In order to keep diversity, law firms need the same extent of diversity that we talk about for the judiciary. I think most law firms are trying to figure out how to do better retain the young lawyers they're training and how do we help them to

be successful so that they can progress to positions of leaderships in the firms in decades to come and years to come.

John Caher: Two thoughts. First, retaining them. Where are they going?

Judge Graffeo: There are a lot of studies about that. I think most law firms do exit interviews and they try to determine why some people are leaving. A lot has to do with lifestyle. There's different expectations now. A lot of younger lawyers perhaps don't want to work 60, 70 hours a week or they don't want the travel that's involved. I think it's all very personal.

John Caher: I'm also intrigued—and this is something we haven't heard before—the rain making issue. What is the impediment to women becoming the type of rainmaker they need to bring business into a law firm?

Judge Graffeo: Law firms value different aspects of practice, but certainly the ability to attract new business is one of the primary components of being able to move up the ladder in any law firm regardless of the size. Women have to be able to market themselves, they have to be able to service the client's work, instill that sense of confidence in the client and be able to develop that relationship with the client to be able to maintain that business and to grow that business, and that's not an easy thing for any young lawyer to learn, and I think it can be especially difficult for young women because they're not as accustomed to selling their skills and abilities.

John Caher: There's a new crop of prospective female attorneys in law school, or maybe now in kindergarten. What do you want them to know about the path that's been cleared for them and the responsibilities they have to take this to a new frontier?

Judge Graffeo: I think that prospective law students and also young attorneys have to remember that we are a helping profession and that what's important is really to establish a fine reputation. You still need the basic components of being a good lawyer which is to be responsible, conscientious, hard-working, good communication skills—writing and verbal skills—and to be trustworthy. Reputation begins as a student and then carries through to your entire career. Many of the people who you're going to meet in college and law school, you're going to interconnect with them at some later point in your life. So reputation is a lifelong aspect, and I think a lot of young people, especially because of the technology that we now have, they're not quite as conscious of that in terms of Facebook and all the other types of social media that's out there that may later have an impact on their reputation.

I think that young people need to realize that what you do now can have ramifications 10 years down the road. That's something that we didn't quite experience when I was growing up, but I think that's a more difficult aspect for

young people to begin to formulate their behavior so that they can pursue a successful career later on.

John Caher: Can you discuss how the trailblazers that preceded you — going from Kate Stoneman to Judith Kaye to Sandra O'Conner and Karen Peters—made it possible for you to achieve what you did?

Judge Graffeo: I think if we didn't have these women who received a fair amount of attention for their achievements, well deserved achievements, we'd have less inspiration, and beyond that, they did a fantastic job once they achieved those positions. You always feel a heavy responsibility when you know you're the first or second or third, or whatever, and you want other women to be able to follow your path so you realize that you have to work twice as hard as perhaps you see some of your colleagues, just because you know that you carry this responsibility and you want others to be able to follow in your footsteps.

I think what that does is it helps to instill a sense of possibility in the next generation. If she can do it, perhaps I should think about doing that. I think mentoring is extremely important. I never considered going to law school. It wasn't something that I had thought was possible. I went to college to be a high school history teacher. But I was very fortunate. I had several professors who talked to me and said, "You really should consider graduate school, whether you go to graduate school for history or you go to law school. But you should really think about continuing your education." I had not really contemplated that because my parents were not college educated. I was the first one in my dad's family to even attend college.

That was a big enough financial burden for us. I had not considered graduate school and from the encouragement that I received from my professors I decided that I would apply. I was student teaching at Norwich High School when my law school acceptances arrived, and the first person I talked to was my supervising teacher. I said, "Uh oh, I have this dilemma. I really enjoy teaching, but now I have these acceptances at law school," and he encouraged me to go to law school. He said, "You can always come back and apply for a teaching job, so why don't you try this?"

I think we all need a little push and I was the beneficiary of that shot of confidence from mentoring. So I think it's very important to mentor other young people and to return that gift.

John Caher: What were your thoughts on going to law school? Did you have an idea at that point what kind of law you wanted to practice?

Judge Graffeo: No, and at that time, my family didn't know any attorneys. There weren't attorneys in our neighborhood. We weren't in that social circle. I just knew what I saw on television, so I figured I wanted to be a trial lawyer. I really didn't know

there was much else out there at the time, which I don't think was unusual. I just felt that the law gave you an opportunity to make a difference, to have your voice heard, to help people, and that was what attracted me to it and I thought, "If I don't enjoy it, I'd be able to go back to my previous career." I didn't think I had much to lose, other than the tuition.

John Caher: That's terrific. What else do you want to tell us that I forgot to ask you about? What should we know?

Judge Graffeo: When I went to Albany Law School, I believe we had only one, maybe two, female law professors, so we did not have role models in law school, at least not my freshman year. I eventually took family law with Professor Kathryn Katz so I had one female law professor during my three years at law school.

John Caher: What prompted Tate Bisco to hire you?

Judge Graffeo: That's a difficult question—why was I hired at the firm?— because I had a very interesting interview at the firm. I went in my second year as a law clerk during my second and third year of law school I worked almost every afternoon at the law firm. I went to school in the morning and in the evening because I felt that was the way to be able to really get a sense of what the practice of law was about, and it was a way to get my foot in the door into a law firm.

I tried to be as conscientious as I could and I think they became comfortable with me. I was a hard worker and we got along very well, so I think they were fairly pleased with my work and felt that I would be a good addition to the firm. I was fortunate and started there right after I took the bar exam.

John Caher: It doesn't sound like they were necessarily trying to hire a female, but they found a good lawyer who happened to be female, and the fact that you're a female did not deter them from that. Is that what you're saying?

Judge Graffeo: It sounds like I'm blowing my own horn but I think they figured, "We have a hard worker and she's willing to spend whatever time is necessary to get the job done" so I was fortunate and was offered the position.

John Caher: I suspect at some firms, even with the same qualities, that wouldn't have done the trick

Judge Graffeo: That's why I said I was very lucky to join a firm where the gentlemen were willing to teach me the practice of law and spend a lot of time showing me the ropes

and gave me opportunities to enter the court room, which a lot of firms weren't willing to do.