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# Swearing In Ceremony: Investiture of Judge Rosemary S. Pooler as a United States Circuit Judge for the Second Circuit

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Roger J. Miner  
U.S. Circuit Judge

**Investiture of Judge Rosemary S. Pooler**  
Syracuse, New York  
August 16, 1998

I am happy to participate in these investiture proceedings and to join with my colleagues in extending a warm welcome to Judge Pooler as she confronts the burdens and pleasures of membership in our Court. Judge Pooler already has taken part in some of our cases, and I was privileged to sit with her and my other active colleagues in a recent in banc proceeding. In all my discussions with her, she has demonstrated the wit, charm and intellect for which she is so well known. During her service as a Justice of the New York Supreme Court and as a Judge of the United States District Court for the Northern District of New York, she earned the respect of the trial bar for her keen perception, her diligence and her fairness. She brings to her new position the accomplishments of a lifetime, and I am sure that her tenure will be marked by the same success that has characterized her every endeavor.

This is an historic occasion. As far as I have been able to determine, this is the first time that the United States Court of Appeals for the Second Circuit has convened in Syracuse. And, until today, no one from Syracuse has served on this Court since William J. Wallace retired in 1907. It took 101 years, but Judge Pooler finally has brought home to Syracuse its seat on the Second Circuit Court of Appeals. Syracuse is an important city,

the largest in the Northern District, and well deserves this honor. There are some interesting parallels between the careers of Judges Wallace and Pooler. But before I get to those similarities, I would like to sketch in some of the federal court history that brings us to this day.

In the beginning, there was the Judiciary Act of 1789, passed by the first Congress convened under the United States Constitution. That certainly was a "do-something" Congress. It probably accomplished as much as it did because there were as yet no political parties. Of course, there were the Federalists and Anti-Federalists, but they were able to compromise their differences in the interests of starting up the fledgling republic. Largely the work of Oliver Ellsworth of Connecticut, the Judiciary Act established the three-tier system of federal courts that continues substantially as it was at the beginning. The district courts and circuit courts were created by the Act, the Supreme Court having been created by the Constitution itself. The Judiciary Act made no provision for the appointment of Circuit Judges. The Justices of the Supreme Court were required to ride Circuit. They sat with the district court judges to hold sessions of the circuit courts, which had both trial and appellate jurisdiction.

George Washington appointed his Revolutionary War comrade and one-time Mayor of New York City, James Duane as the first United States District Judge for the District of New York. Like all sensible New York City folk, Duane retired to upstate New

York, settling on a large tract of land now known as Duaneburg in the Northern District. The District of New York, which included the entire state, was authorized a second seat by Congress in 1812. In that year, President Madison appointed William Van Ness to join Mathias Tallmadge, who had been appointed by Thomas Jefferson in 1805. Congress separated the District of New York into two districts, the Northern and the Southern, in 1814, with Tallmadge assigned to the Northern. The Western and Eastern Districts were established much later. It was not until 1927 that a second judgeship was authorized in the Northern District. A third was added in 1978, and five seats presently are authorized.

William J. Wallace, Judge Pooler's historical predecessor, was the fifth to serve as District Judge for the Northern District. He was appointed to the district court seat in 1874 by President Grant. Wallace was a Syracuse native and a graduate of Hamilton College. His appointment came on the recommendation of an important historical figure, the eminent New York Senator, Roscoe Conkling. Wallace met the Senator when he applied for admission to the Bar. Conkling was a member of the examining committee. It was a most fortunate meeting for Wallace. It has been said that Senator Conkling, a native of Auburn, bestrode the Senate like the Colossus of Rhodes. He was the greatest orator of his day and was known to have great influence with the President who appointed Wallace. He twice declined a nomination to the Supreme Court, saying that it was beneath his notice.

Here we begin to draw some parallels. Judge Pooler also was recommended to the President by a Senator who is a great orator and whose advice the President values. Like Senator Conkling, Senator Moynihan had the good judgment to recommend a Syracusan to the District and Circuit courts. Pooler's appointment was lauded by the newspapers, just as the newspapers of the day lauded Wallace's appointment. Pooler has an excellent reputation among lawyers, as did Wallace. Wallace served as Mayor of Syracuse, Pooler served on the Syracuse Common Council. Wallace was a Republican. Here the parallel lines diverge slightly. There is also another difference that I am sure you all have discerned. Wallace was a male. Pooler is a female. In fact, she is the first and only woman ever to serve as a District Judge in the Northern District of New York. She therefore comes to the Circuit Court as an historical figure to begin with.

The Northern District of New York must get over its history of inhospitability to the female sex. During our historical research of the Northern District, my wife, a long-time student and teacher of history, found in the federal archives in Bayonne, New Jersey, the original papers filed in a case entitled: "The United States of America v. Susan B. Anthony." The crime charged was voting in a Congressional election, the indictment alleging "the said Susan B. Anthony being then and there a person of the female sex." An allegation difficult to disprove! The defendant was convicted after trial in the Circuit Court at Canandaigua, then part of the Northern District, and sentenced to pay a fine

of \$100 and costs. My research partner triumphantly reported that the Marshal certified that he could find no property to satisfy the judgment, and it appears that the fine never was paid.

In the early days of the federal court system, the Supreme Court Justices found great hardship in riding circuit in addition to performing their Supreme Court functions. Circuit Courts were held many times by the District Court Judges alone. As a result, Congress in 1869 had created separate circuit judgeships. The Circuit Courts continued to have trial as well as appellate jurisdiction. In 1882, Judge Wallace was appointed Circuit Judge of the Second Circuit by President Arthur, another very good friend of Roscoe Conkling. Wallace succeeded Samuel Blatchford, a former law partner of William Seward in Auburn, who was appointed to the Supreme Court.

By the time 1891 rolled around, the Supreme Court was swamped with business and Congress decided to undertake a major change in the federal court set-up. In that year, the Circuit Courts were reconfigured into their present-day status as strictly appellate tribunals. The district courts became the primary trial courts in the federal system. The legislation was worked out by Senate Judiciary Chairman William Evarts of New York. In 1892, Circuit Judge Wallace became the first Chief Judge, then known as Senior Judge, of the new Second Circuit Court of Appeals.

Like Judge Pooler, Judge Wallace ran for elective state

judicial office. The difference is that she won and he lost. It was in 1897 that Judge Wallace, then the Circuit Chief, ran on the Republican Ticket for Chief Judge of the New York Court of Appeals. You could do that in those days. As a matter of fact, Learned Hand also ran for the New York Court of Appeals as a sitting judge. He lost too. Judge Pooler might say that Wallace's problem was that he ran on the wrong Ticket. I would say that Hand lost because he just wasn't a very pleasant fellow.

Judge Wallace retired in 1907 and joined a Wall Street law firm. According to historical records, five hundred lawyers and judges attended his retirement dinner at the Waldorf-Astoria. In his remarks at the dinner, Wallace spoke out against a proposal by a congressional leader to make the office of Federal Judge an elected position with a seven-year term. Some things never change! William Wallace died in 1917, and he is buried here in Syracuse. His will provided for the distribution of \$160,000 and two parcels of New York City real estate for the benefit of indigent children. When I mentioned this to Judge Pooler, she remarked that he must have had no children of his own. Otherwise, he would have been unable to accumulate so much wealth.

A couple of years ago, our colleague Amalya Kearse, speaking at a dinner in New York city, said that she loved her brothers but would like to have a sister. The President finally has given that sister to us, and she is only the second woman to serve on this Court in its entire 107-year history. May her service on

the Second Circuit Court of Appeals be long and happy and may she enjoy strength and good health as she continues her historical journey.