

THIRTY-EIGHTH DAY**Monday, March 29, 2004**

The Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004, convened at 11:50 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Pastor Cal Takara, Kaimuki Christian Church, after which the Roll was called showing all Senators present.

The President announced that he had read and approved the Journal of the Thirty-Seventh Day.

Senator Kawamoto introduced General Eric Shinseki, retired Chief of Staff of the United States Army, and commended him on his outstanding military service. Accompanying General Shinseki was his wife Patti.

At this time, the President invited General Shinseki to the podium to address the members of the Senate.

General Shinseki addressed the members of the Senate as follows:

"President Bunda, thank you very much for this rare privilege. I know that not everyone who visits this Chamber has the opportunity to stand at this microphone. Senator Kawamoto, thanks for the retribution and my greetings to my Kauai Senator here, Senator Hooser, and all the other members of this Body.

"I would like to thank you for this great recognition, great honor, and I will tell you also that I was a pretty normal and average kid who grew up and prowled the wilds of the island of Kauai, a product of our public school system there and a product of a good strong family as well as teachers who not just educated us but made learning important at a very early age. That stayed with me through 38 years as a soldier. They made learning a lifelong experience and I've never forgotten that.

"As a Chief, I oversaw the recruitment of young Americans who joined our force. Some of you may not know this, but we recruit anywhere from 174,000 to 180,000 young Americans into the Army each year. And as a result, we also put those numbers back into our communities. I would offer to you that while they are with us, not only do they grow in their skills as soldiers, but education is an important aspect of what they learn from us. This responsibility of self-development is not in the system. They have a role to play here with the experiences they have with us operationally, and I hope you have seen the merits of it. What you get back are very capable youngsters who stand on their feet, have an idea about what's important in their future lives, and come back as contributing members of your communities and go to work and add value to your communities.

"And so, after 38 years of serving as a soldier, and I know that this recognition today pretty much focuses on my last four as Chief of the Service, I would offer to you that the great honor in my life was the opportunity to spend every day of those 38 years as a soldier with some very great Americans and following in the footsteps of other great Americans from this State who served in years past in some terrible conflicts that we continue to recognize today.

"There are youngsters who continue to deploy. The 25th is on its way. I know they have a brigade I think they sent off to Afghanistan. They have a brigade on the ground in Iraq. You

can be very proud of these youngsters. They're following sort of the same traffic pattern that I followed 38½ years ago when I arrived to the 25th and six months later found myself deployed to Vietnam. I know what their families are going through.

"Your support, as the members of this Body, to those families, to those soldiers, to those commanders who have this tremendous responsibility is not missed. And those of us who have spent this much time in uniform, we've lived in all the alternatives to Hawaii. We've been to all the other places that don't quite match up, so coming home to Hawaii is always something special. And I think sometimes we miss just how good this State is and how much opportunity there is.

"And if there is any encouragement for you, it's to give every youngster the same opportunity I had all those many years ago as a kid prowling the wilds of Wailua and Lehu, Kauai, as a graduate of the public school system, and that is to give them the same opportunity.

"Thank you very much for the honor here today."

At 12:09 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:28 o'clock p.m.

MESSAGE FROM THE GOVERNOR

Gov. Msg. No. 423, submitting for consideration and confirmation to the Small Business Regulatory Review Board, the nomination of DORVIN D. LEIS, term to expire June 30, 2008, was read by the Clerk and was referred to the Committee on Commerce, Consumer Protection and Housing.

ORDER OF THE DAY**HOUSE COMMUNICATIONS****MATTERS DEFERRED FROM THURSDAY, MARCH 25, 2004**

H.C.R. No. 21, H.D. 1 (Hse. Com. No. 291):

By unanimous consent, action on H.C.R. No. 21, H.D. 1, entitled: "HOUSE CONCURRENT RESOLUTION ENDORSING AND SUPPORTING THE SPIRIT OF HAWAII GOODWILL AND FRIENDSHIP COASTAL KOREA VISIT AND URGING THE NORTH KOREAN GOVERNMENT TO SUPPORT JAE KWON LEE AND JONATHAN COWLES ON THEIR JOURNEY TO NORTH KOREA," was deferred until Tuesday, March 30, 2004.

H.C.R. No. 23 (Hse. Com. No. 292):

By unanimous consent, action on H.C.R. No. 23, entitled: "HOUSE CONCURRENT RESOLUTION APPROVING AND AUTHORIZING THE ESTABLISHMENT OF STATE-PROVINCE RELATIONS OF FRIENDSHIP BETWEEN THE STATE OF HAWAII OF THE UNITED STATES OF AMERICA AND THE PROVINCE OF THUA THIEN-HUE OF THE SOCIALIST REPUBLIC OF VIETNAM," was deferred until Tuesday, March 30, 2004.

THIRD READING

H.B. No. 2206, H.D. 1, S.D. 1:

On motion by Senator Hanabusa, seconded by Senator Chun Oakland and carried, H.B. No. 2206, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONTROLLED SUBSTANCES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

H.B. No. 2251:

On motion by Senator Hanabusa, seconded by Senator Kawamoto and carried, H.B. No. 2251, entitled: "A BILL FOR AN ACT RELATING TO CHAPTER 291E," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

H.B. No. 2280, S.D. 1:

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, H.B. No. 2280, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO STATE BONDS," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

H.B. No. 2337, H.D. 1, S.D. 1:

On motion by Senator Taniguchi, seconded by Senator Kokubun and carried, H.B. No. 2337, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO NAME CHANGES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

ADVISE AND CONSENT

Stand. Com. Rep. No. 3064 (Gov. Msg. No. 180):

Senator Menor moved that Stand. Com. Rep. No. 3064 be received and placed on file, seconded by Senator Baker and carried.

Senator Menor then moved that the Senate advise and consent to the nomination of TIMMY L. ALBAO to the Credit Union Advisory Board, term to expire June 30, 2007, seconded by Senator Baker.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Stand. Com. Rep. No. 3065 (Gov. Msg. No. 209):

Senator Menor moved that Stand. Com. Rep. No. 3065 be received and placed on file, seconded by Senator Baker and carried.

Senator Menor then moved that the Senate advise and consent to the nomination of JAMES P. CHUNG to the Elevator Mechanics Licensing Board, term to expire June 30, 2007, seconded by Senator Baker.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Stand. Com. Rep. No. 3066 (Gov. Msg. Nos. 333, 334 and 335):

Senator Menor moved that Stand. Com. Rep. No. 3066 be received and placed on file, seconded by Senator Baker and carried.

Senator Menor then moved that the Senate advise and consent to the nominations to the Board of Examiners in Optometry of the following:

FRANKLIN Y.P. LAU OD, term to expire June 30, 2007 (Gov. Msg. No. 333);

JERE HU ENG LOO OD, term to expire June 30, 2007 (Gov. Msg. No. 334); and

ERNEST K. OSHIRO OD, term to expire June 30, 2007 (Gov. Msg. No. 335),

seconded by Senator Baker.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

Stand. Com. Rep. No. 3067 (Jud. Com. No. 3):

Senator Hanabusa moved that Stand. Com. Rep. No. 3067 be received and placed on file, seconded by Senator Chun Oakland and carried.

Senator Hanabusa then moved that the Senate consent to the nomination of SIMONE C. POLAK to the Office of Judge, District Court of the Second Circuit, for a term of six years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, seconded by Senator Chun Oakland.

Senator Hanabusa rose in support of the nominee and said:

"Mr. President, I rise to speak in support of Jud. Com. No. 3, the confirmation to the District Court of the Second Circuit, Simone Polak.

"Mr. President, Ms. Polak comes before us very well qualified for this position. Her education begins with a Bachelor of Arts in criminal justice from the John Jay College of Criminal Justice at the City University of New York. Her law degree is from the McGeorge School of Law at the University of the Pacific in California. Ms. Polak has 15 years of experience with the prosecutor's office. She presently sits as one of the lead lawyers in the appellate division. She has been a senior trial attorney. She specialized in violent crimes and has even done the much difficult area of child sexual assault, and in addition to family court, supervisor within the prosecutor's office. She has served at the United States Air Force Reserve and also as an EMS technician in New York. She has, as part of her resume, been a lecturer of various topics, primarily in the area of law.

"Mr. President, as we have done will all of our other judiciary nominees, we had input from the Hawaii State Bar Association. Ms. Polak, like Mr. Hong, received a 'not qualified' rating. The vote of Ms. Polak was 10 to 2, and the rationale given was that her absence of substantive civil litigation and/or family court (domestic relations) experience outweighed her experience working with the office of the prosecuting attorney of the County of Maui. And they

recognized, the Hawaii State Bar Association recognized, that she served that with distinction.

“Mr. President, members, my sentiments about the Hawaii State Bar Association and what they have done in terms of this rating system is very well known. And I would have to say that what they did with Ms. Polak also confirms my sentiment.

“The requirements under the constitution for a district court judge is five years of experience – nothing else. It doesn’t say if you’re going to go to the family court, Mr. President, you have to be five years in the family court. It doesn’t have any of those requirements. And she must be, of course, in good standing. Those are really the requirements that we need.

“The constitution also says that when we select anyone for the judiciary, the process that the people of this state have come up with is the judicial selection committee. Mr. President, the people of this state, when they enacted that constitutional amendment, wanted it known that lawyers shall not control the selection of judges because you cannot have a majority of the nine members of the judicial selection committee being members of my profession, and that’s because I believe the people wanted to make a statement when they said that.

“Dale Lee, the president of the bar association, came forward and basically told us that he did not want the process of the bar association to be at issue. He just wanted to come forward and explain why they arrived at their decision. He said that it was a very unique situation, because for some reason, they felt that the demand of the Maui family court were such that they needed someone who had family court experience. But they even qualified it even further than that, Mr. President. It wasn’t family court experience; it was domestic relations experience, which to us lawyers mean you have to practice divorce law, because Ms. Polak definitely has family court experience because that is exactly where child abuse cases go. So, to say that she had no family court experience, I don’t know where the bar association came off saying that.

“In an unprecedented move, the judiciary actually submitted testimony. This is the first time that they have done it. And the reason why was because of the action taken by the Hawaii State Bar Association. They made it very clear that they were not there to criticize the Hawaii State Bar Association, but you could tell they were clearly perplexed by what had happened. They explained to us what the Chief Justice does. He gets the six names from the judicial selection committee, then he basically interviews everyone. He asks judges. He asks community members. He asks everyone that he believes to be relevant in the determination as to who he will select. And he interviewed each and every one of the six candidates. Then the Chief Justice made his selection. He judged each and every one on basically 15 different criteria, and he felt that Ms. Polak was the most qualified. And he selected her and he sent her name to us.

“They came forward, the judiciary did, to remind us again that the process of the selection of judges, of making that list of six, is of the judicial selection committee, and he, the Chief Justice, is confident in that process and believes that they would not have sent to him a name that was not qualified. And in his interview and based upon his years of experience, he found her to be qualified.

“An interesting person who came forward to testify on behalf of Ms. Polak was Judge McNish, retired family court judge of Maui. He came forward and he said he wanted to have input and to basically give us some guidance as to what he felt are the necessary criteria for a great family court judge. He said, in order of priority, instead of saying that it doesn’t really matter,

he said in order of priority, the first thing is a desire to sit in the family court. The second is to be able to face highly charged emotional disputes. And I call your attention to the fact that Ms. Polak did child abuse cases. That would qualify anyone to be able to meet this criteria. The third is the willingness to work hard and to put in extra hours. The fourth is intelligence, and the fifth is the knowledge of substantive law.

“Judge McNish went on to say that when he was first appointed as a judge, he had no family court experience. In fact, Judge Romanchak, who was the judge who the implications were that people in Maui, the practitioners in Maui, may be feeling as they did about Ms. Polak because they love this judge and they could probably not find anyone to fulfill his position. Judge McNish said he had no family court experience when he was first appointed to the bench. They also said Victoria Marks, for example, Michael Broderick, they had no family court experience.

“An interesting gentleman, another retired judge, who came with her was Judge Baxa, Artemio Baxa. He basically held the Committee sort of captured in his, I guess, litany of compliments of Ms. Polak. He had such an interesting story, having supervised her before going to the bench, and after he retired, going back to the prosecutor’s office and having the opportunity to work with her again. He said she has a very independent mind and he believed that she had the kind of integrity that will be necessary to fulfill this job. He could not stop saying enough things about her.

“Mr. President, members, we are faced again with the bar association. Let us not forget, the bar association, by its own rules, says that a candidate can be not qualified only if it failed to meet one of the three criteria – integrity, judicial temperament, and professional competence. Mr. Lee said there is no question about Ms. Polak’s integrity, no question about her judicial temperament. The only question was in their range of something called professional competence. But even that, all that they could say was they were uncomfortable that she had no family court experience.

“Mr. President, there is nothing in the bar. There is nothing in the Rules. There is nothing that says you need family court experience. And in fact, we have confirmed, by the same structure, Mr. Broderick last year with no family court experience. Based upon that, based upon the overwhelming testimony that your Committee received in favor of Ms. Polak, I ask that you and my colleagues join me in confirming Ms. Polak to the district court of the second circuit.

“Thank you very much.”

Senator Hogue rose to speak in favor of the nominee and said:

“Mr. President, I rise in favor of Jud. Com. No. 3, confirmation to the District Court of the Second Circuit, nominee Simone C. Polak.

“I wanted to echo some of the comments offered by the Judiciary Chair about Ms. Polak – her intelligence, her independents, her hard work ethic, and also what I found to be very impressive, and this was an area that came into question, her ability to multi-task. One of the questions, apparently, that was put forward by some members of the bar association was that she had part-time work, outside part-time work, and I think it was very obvious that she did all of her jobs extremely well. This should be a great qualification for her in this tremendous job. She’s thorough; she’s patient; and she should make a very great judge.

"Experience became the issue, and I think it was Attorney General Mark Bennett who made a very good case for the fact that think of the message that is being sent here by the Hawaii State Bar Association. The message is that if you work for the county prosecutor's office, you can't be a judge. That's the message that they are sending, and that is an absurd message. I think that we have seen from the qualified judges who have gone and worked here in the State of Hawaii, that you can come out of the prosecutor's office, you can come out of the public defender's office, you can come out of many aspects of the legal community and do a great job as a judge.

"So really, the thing that is in question here is the credibility of the Hawaii State Bar Association. What we have learned through the nomination process of Ted Hong and Simone Polak is that the way that they handle their process really begs a number of questions. With Ted Hong, was it political? With Simone Polak, is it territorial? Is there something else going on in Maui with divorce court lawyers that we don't know about? But we can't get those questions answered, and that is very, very problematic. These people hide behind anonymity, confidentiality, and they don't come forward. It's a very, very, very troubling process.

"So, I urge you to send a message to them to get their house in order. It appears that Simone Polak has her house in order and is very qualified to be a great judge on the Valley Isle.

"Thank you, Mr. President."

Senator English rose to speak in support of the nominee and said:

"Mr. President, I rise in support.

"Mr. President, members, I ask that you help confirm Ms. Polak to the second circuit for one single reason – we need judges, and we need good judges in Maui County. Our county, as you know, is made up of islands and very remote areas, and so you have to understand the difference – the different norms and the different types of acceptability in different areas. And I think that this nominee understands, for instance, the lifestyle on Moloka'i and the difference that it has on the case as opposed to a juxtapose against a case from the urban area of Kihei or Lahaina.

"The second circuit covers these areas and I know that she will do a good job in adjudicating cases that come before her for the Island of Maui, the Island of Moloka'i, and the Island of Lana'i. I ask that you support her nomination today – that we also understand that the Hawaii State Bar Association is just one of many bits of information that we would receive in order to make our decisions. Ultimately, the decision rests with the 25 of us here, and we should never forget that – that we are the ones that make that choice.

"The bar association, actually, I think that this whole process that we've been through with them serves as a very good reminder to all of us that we do not cede our votes to anyone. We do not give our votes to the bar association, and we do not say that, well, because the bar association said unqualified, I have to vote 'no.' No, the vote belongs to you as an elected Senator and you take that into consideration, but vote your conscience.

"So, I ask you to please support this nominee. Thank you."

Senator Hooser rose to speak in opposition to the measure and said:

"Mr. President, I rise in opposition to the nomination.

"Mr. President, as was the case in the most recent judicial nomination requiring the consent of this Body, I find myself unable to support the nominee. Once again, the primary reason is that the nominee was determined by the Hawaii State Bar Association in a decisive vote of 10 to 2 to be not qualified.

"I do not question the credibility, the integrity, or the honesty of the Hawaii State Bar Association. I do question the process, and I think that's a subject we need to take up outside of this Session between the bar association and the judicial selection commission to figure out a better way to do this, because I'm not comfortable with the process either but I do respect and honor the integrity of the bar.

"The negative determination greatly influences my decision and there's a principal reason that with some reluctance I intend to vote 'no.' I say with reluctance, Mr. President, because I am confident that the nominee is competent in the work that she does, is of good character, and has conducted herself in a professional manner in the legal work she has undertaken. However, the position of family court judge is one that deeply affects the lives of many people, and this is a position, again, which I cannot feel comfortable on voting with reservations. There should be no reservations. And yet the bar association, essentially a jury of her peers, empowered by the Hawaii Supreme Court with the power and responsibility to aid the court, has gone even further than expressing reservations. They have determined in their own wisdom through a process approved by their organization that the nominee is not qualified.

"The bar association has stated, 'in absence of substantive civil litigation and/or family court experience.' And while you have heard today that with her unquestionable fairness, temperament, and ability to learn she may grow into her responsibilities, the president of the bar association points out that the Maui family court is a court where there is no luxury for on-the-job training.

"I have no doubt that this nominee is an able attorney and a good person. Perhaps if I were a resident of Maui and had personal and professional relationships with those who know her best and would work with her, I might very well come to a different conclusion. And perhaps if I were myself an attorney who had worked with the nominee, I might give the bar association's determination less weight in my own decision making. However, out of the last 12 judicial nominations, only one nominee, until this nomination, was found by the Hawaii bar to be not qualified. And my decision now, as it was then, is to withhold consent.

"Mr. President, I trust the recommendation of the Hawaii State Bar Association. I have doubts about the nomination for this sensitive and important judicial appointment, and I wish to have no doubts when fulfilling my own important responsibility in this process. Therefore, Mr. President, in good conscience and with no malice, I am unable to support the nomination.

"Thank you, Mr. President."

Senator Baker rose to speak in support of the nominee and said:

"Mr. President, I rise in support of Jud. Com. No. 3.

"This appointment is to the district family court in the second circuit of Maui, and the nominee is Simone Polak, who for the past 15 years has been a deputy prosecuting attorney in our county. By all accounts she has provided exemplary service in that capacity. I received numerous e-mails from her current and former colleagues and supervisors. I've heard from former

family and circuit court judges on Maui who greatly respect her and her ability in support of her nomination.

"After reviewing her resume, I was taken aback that the Hawaii State Bar Association gave her an unqualified rating based on her lack of experience in domestic relations. Mr. President and colleagues, while she has no private civil litigation experience, she has years of exemplary criminal litigation experience, much of it dealing with adult and child abuse and sex assault cases, exactly the kind of cases that are part and parcel of the family court caseload.

"The testimony indicated that Ms. Polak is a very able researcher and legal student and would have no difficulty mastering the substantive areas where she has not practiced. Even the ABA standards indicate, quote, 'a candidate should not normally be expected to possess expertise in any particular substantive field,' close quote. The ABA guidelines go on further to state, quote, 'the important consideration is the depth and breadth of the professional experience and the competence with which it has been performed, rather than the candidate's particular type of professional experience,' close quote.

"Mr. President and colleagues, in my view, the Hawaii State Bar Association overreached on this one. They set standards above the recommendation of the ABA, and beyond what had been previously published as their own criteria, and beyond what the judicial selection commission uses as well.

"For anyone who votes for Ms. Polak and voted against Mr. Hong, as the newspapers will probably try to foment, and others may say that it was just politics that dictated those votes, to that I say rubbish. The concern for Mr. Hong's nomination had to do with judicial temperament as well as concerns raised by private individuals and others in the community. I submitted then and submit now that judicial temperament is a quality that one has and is not something that can be acquired with experience. Judicial temperament goes to the heart of one's ability to be fair, impartial, and treat parties with respect. It was indeed a factor in my vote, but not the sole factor. Had I wanted to do the political thing, Mr. President, I would have voted for confirmation. But when all the factors were weighed, I could not.

"Mr. President, I believe that as Senators, we have to weigh each set of factors when it comes before us. I do not and will not cast aspersions on the reasoning or motivation of any of my colleagues who may disagree with the conclusions that I reach, and I expect the same consideration.

"With regard to Simone's qualifications, her family court absent civil experience in that area, let me note as our Judiciary Chair did, that there are many fine jurists currently serving and recently retired who would not have met the HSBA standard. Retired Judges Marie Milks, Dan Kochi, Judge McNish of Maui are just a few examples, and there are many others – distinguished jurists all.

"While the Judiciary Chair has quoted from some of Judge McNish's testimony, I'd like to have it all inserted into the Journal, but I'd like to read just a portion: 'The substantive law can be learned,' he said. 'The first four qualities cannot.' And those four qualities that he mentioned were desire to sit on the family court, comportment in the face of highly charged emotional disputes, willingness to work hard and put in extra hours, and intelligence. Then Judge McNish goes on to state, 'every judge, regardless of experience or knowledge of the substantive law, will have a steep learning curve in route to becoming an exemplary judge. Because she has the first four qualities in abundance, I believe Ms. Polak will succeed on that

learning curve. I hope she is given the opportunity to do so.' So do I, Mr. President.

"I would also like to have included in the record, although I'm not going to read them, several additional comments that I received from some of Simone's colleagues, people who know her best. All of these individuals believe that Simone has the background, litigation experience, ability to continue to learn the law, temperament, and capacity to be an exemplary judge. On that, I also concur – plus, we need more women on the bench.

"Mr. President, I ask all of my colleagues to join me in voting to confirm Simone Polak to the district court, second circuit, County of Maui.

"Thank you very much."

The Chair having so ordered, Senator Baker's insertion of Judge McNish's testimony reads as follows:

"As a former family court judge in the Second Circuit, I strongly support the nomination of Ms. Polak. I understand a question has arisen regarding her substantive knowledge of family law. While knowledge of the substantive law is indeed an asset for a new family court judge, it is the least important of five significant qualities. In order of importance, I would list those five qualities as follows:

1. A desire to sit in family court
2. Comportment in the face of highly charged emotional disputes
3. Willingness to work hard and put in extra hours
4. Intelligence
5. Knowledge of the substantive law

"Of these five, the first three are the most important. In fact, because of the broad jurisdiction, it would be difficult for anyone to have knowledge of all areas of family law. Criminal, juvenile, domestic relations, child protection, adoption, mental health commitment and other areas of the law are all included within its scope.

"Personally I believe that Ms. Polak does have knowledge of some of the substantive family law from prosecuting domestic violence cases and child abuse cases – the latter involving her in the workings of the Children's Justice Center.

"The substantive law can be learned, the first four qualities cannot. Every judge, regardless of experience or knowledge of the substantive law will have a steep learning curve in route to becoming an exemplary judge. Because she has the first four qualities in abundance, I believe Ms. Polak will succeed on that learning curve. I hope she is given the opportunity to do so.

"Thank you for the opportunity to provide testimony. I plan to be present at the hearing to further address the committee and answer questions.

Respectfully,

/s/ Douglas S. McNish
Douglas S. McNish"

The Chair having so ordered, Senator Baker's insertions of comments received from Ms. Polak's colleagues read as follows:

"From: Lena Lorenzo
Sent: Tuesday, March 23, 2004 4:44 PM
Subject: Judicial Nominee Simone C. Polak

Please support the confirmation of judicial nominee Simone C. Polak for the District Court of the Second Circuit, Maui. For fifteen years I have worked closely with Ms. Polak at the Department of the Prosecuting Attorney. I am presently the Director of the Victim/Witness Assistance Division. Prior to becoming a director, I worked with Ms. Polak on several cases involving violent crimes primarily adult and child sex assault cases. Every work day, I have contacts with Ms. Polak. In all my contacts with her, I have known her to be truthful personally and professionally. She displays a moral conscience that guides her steadily in doing the 'right thing' and to give consideration to others' needs. She treats people equally and/or the same with dignity and respect no matter what background or socioeconomic status they are from. She is open to others opinions though they may be different from hers.

Ms. Polak is one that the deputy prosecutors in the office approach for legal advice. Because of her well rounded work and life experiences and her non-judgmental ability to listen to facts, other staff members seek her counsel in various topics and situations. Ms. Polak's legal experience will help her to be a good judge. I truly believe that it is the amalgamation of her experiences including that in the medical, military and private sector that will help her to be an excellent judge.

It is my great pleasure to provide this information as I believe Ms. Polak would make an excellent judge given the opportunity. Thank you very much for your kind consideration."

"From: Jenna Smith
Sent: Tuesday, March 23, 2004 4:40 PM
Subject: Please confirm Simone Polak's judicial appointment

I am writing to you asking for your support of Simone Polak's judicial appointment. I have worked with Ms. Polak for the last five years in the Maui County Department of the Prosecuting Attorney in my capacity as a Victim/Witness Counselor.

As a prosecutor in the Appellate Division, Ms. Polak consistently demonstrates her vast knowledge of the law in debates with her colleagues and preparing legal briefs. She is who the other prosecutors go to when they need legal questions answered. In addition to thoroughly knowing the law, Ms. Polak displays integrity and moral courage. She is someone who can apply the law fairly and judiciously to real life situations. Her compassion for crime victims is particularly remarkable.

I have every confidence that Ms. Polak's intelligence, experience in fairly analyzing legal issues, and fair temperament will make her an excellent, highly regarded member of the judiciary. Please confirm the judicial appointment of Simone Polak to the Maui Family Court. Thank you for your thoughtful consideration."

"From: JW Hupp
Sent: Tuesday, March 23, 2004 8:19 AM
Subject: Simone Polak, Judicial Nominee

Dear Senator,

Please accept this recommendation on behalf of Simone Polak for the post of Family Court Judge for the Second Circuit. I would like to begin by expressing my great dismay towards the position taken by the Hawaii State Bar Association. The Bar appears to be throwing words out with out any regard on the weight they might have. To categorize Ms. Polak as being 'unqualified' because she hasn't practiced in other areas of the law is absurd. By creating a standard where any judge must

have practiced as a litigate every area of law they may encounter on the bench is ridiculous. The Bar is labeling all career Prosecutors (and all career Public Defenders) as unqualified. By their label, they will determine every attorney who has not done criminal prosecution, defense, child custody and divorce as 'unqualified.' To please the Bar, an attorney is apparently expected to move from job to job. Of course, then they risk being labeled as 'flighty' and 'without any firm foundation.'

A potential nominee may be more rounded if they have experience in all different areas of the law, but a potential nominee could be just as qualified if they have taken the time to dedicate themselves to a particular area of the law. I implore you to stand against this arbitrary labeling process. What really matters when considering whether someone should sit on the bench is not learned in books or by writing a memo in a divorce case. What we need to see in a judge is wisdom, integrity and honor. A judge must treat all people with dignity and respect, while not shying away from tough decisions. That is the kind of person we need to have serving our community as a judge.

That said, Simone Polak is such a person. I have worked with her for nearly eleven years, and I have always turned to her for her advice on issues. She and I have not always agreed, but I always have respected her opinion. When a tough issue arises in our office, it is not uncommon to here someone say, 'I need to talk to Simone about this.' Whenever she takes a position on a matter, she will always carefully analyze the facts and the law, and clearly explain how she came to her conclusion. This is they kind of person you want serving as a judge - she's sharp, so you do not have to worry about her being able to learn what she hasn't been exposed to as a prosecutor.

Sincerely,
J.W. Hupp
Deputy Prosecuting Attorney
County of Maui"

Senator Sakamoto rose in opposition to the nominee and said:

"Mr. President, I rise in opposition.

"Mr. President, I hope that the Hawaii State Bar Association will continue to improve the process in their adding input to this nomination process. I believe they are well aware of the various parts of the process as has been stated. I believe their members are well aware of their colleagues and people in their profession, and certainly, each nominee is unique.

"Each time we vote, we should consider what is best for the people, not necessarily what is best for the nominee. We're voting for the people. Based on concerns raised, will the people who deserve a fair trial, an impartial trial, based on concerns raised, will this nominee be able to immediately sit and afford people a fair and impartial trial or proceeding? That has been called into question, therefore, I'm not able to vote in the affirmative on this nominee, Mr. President.

"Thank you."

Senator Kim rose in opposition and said:

"Mr. President, may I have the remarks of the good Senator from Kauai entered as my own."

The Chair so ordered.

Senator Tsutsui rose in support and said:

“Mr. President, I’d like to have the words of the good Senator from South and West Maui inserted into the Journal as though they were my own.”

The Chair so ordered.

Senator Hemmings rose to speak in favor of the nominee and stated:

“Mr. President, I rise to speak in favor of the nominee.

“Mr. President, after reading the committee report, with the consideration of the Chairman of Ways and Means Committee, a very lucid committee report clearly shows that this nominee is eminently qualified scholastically, as a human being, and as a hard working individual to serve on the bench. Unfortunately, this nominee’s only problem is that her nomination came to this Body in the wake of Ted Hong’s advice and consent debate on this Floor. But I must emphasize, that was a very healthy debate and it wasn’t a partisan debate because people on both sides of the aisle argued both sides of the issue.

“What I find problematic in speaking for this nominee is the fact that it seems that some would acquiesce their vote to the opinion of a handful of leaders in the state bar association. I would suggest that that is, just as I said, acquiescence of their responsibility to a third party. I’m hoping that we will, in this nomination, make decisions based upon the merits of the individual as we see it and consider the overwhelming testimony from most everybody for the qualifications of this nominee, with the exception of the Hawaii State Bar Association.

“So the question has to be asked – and we’ll never get an answer – why on this nomination has the Hawaii State Bar Association chosen to determine not qualified? They say in their testimony because of lack of experience in other family court matters. Those proponents that stood on the Floor today echoed what it said so well in the committee report, and said by testifiers, that many of them, many sitting judges who are renowned for their expertise in this area, they themselves had no experience in this area.

“So I would suggest there’s one lesson that we’ve learned in the last two debates concerning judicial nominees, and that is that possibly this Senate, no matter what side of the debate we’ve been on, is rendering a decision for most of us that the bar association leadership is not qualified to serve. And therefore, I will submit that their recommendations to these last two nominations should be ignored and we should vote in favor of the nominations.

“Thank you, Mr. President.”

Senator Slom rose to speak in support as follows:

“Mr. President, I rise in support of the judicial nominee, Ms. Simone Polak.

“I met with Ms. Polak. I found her intelligent, personable, engaging, experienced, and refreshing. And for those of us that had been lobbied last year and the year before about the problems of family court in general and family court on Maui in particular, we know that something’s not right and that we need individuals that are independent, that are able to do the job, rather than part of any ‘old boy’ or ‘old girl’ network. Simone Polak doesn’t fit that description.

“I think some people took offense to the fact that she actually has worked for a living, that she’s worked, as was said earlier, multitasking. She served her country in the United States Air

Force Reserve. She drove cars for Hertz at the airport. Mr. President, I may have to disclose conflict of interest – I’m a Hertz gold card member and maybe she drove my car. (Laughter.) She has shown an ability to be where the people are, and what a great talent and experience that is for family court in particular.

“She is open. One other thing that she did that probably was a mistake, during her soccer career she admitted to having her leg broken in four places and then even put on her resume ‘but I didn’t sue.’ Now, how can the Hawaii State Bar Association embrace somebody like that? But the people can . . . the people of Maui can.

“She’s going to be confirmed and she’s going to be a great judge, and I think she has a great future in many other areas. However, Mr. President, I’m going to call for a Roll Call vote today, again, because I detect some hypocrisy on this Senate Floor. Now, I give full credit to the Senator from Moanalua and the good Senator from Kauai. They’re sticking to their guns. They will follow blindly the discredited Hawaii State Bar Association. But several other of my colleagues who turned down Mr. Hong also alluded to how much weight they put on the bar association. So I would certainly expect them to be consistent today and vote against this nominee because the bar association said so.

“No, it’s not an indictment of the bar association, but obviously something is wrong. The Minority Floor Leader alluded to maybe there’s another possibility of why they came up with this negative proposal this time. I’ll state it clearly – my personal belief is they’re trying to cover their okole for what they did to Ted Hong.

“So, those of my colleagues that voted against Mr. Hong because of the importance of the Hawaii State Bar Association, I know they will want to do it again. And then after this is over, we should sincerely look at criteria and statements made when good people come forward and volunteer to serve our community and are subject to some of these statements and some of the antics that we’ve seen in the last couple of weeks.

“So, I wholeheartedly endorse Ms. Polak and urge my colleagues to support her too. Thank you, Mr. President.”

Senator Hooser rose again and said:

“Mr. President, just a brief remark, if I could, in rebuttal.

“I’d like the record to reflect that I follow no one blindly, and I take great offense to the self-righteous, pompous comments given by the Senator from Hawaii Kai.

“Thank you.”

Senator Inouye rose in support of the nominee and said:

“Mr. President, I speak in support of the nominee, and I’d like the words of my colleague from South and West Maui entered into the record as if it were my own. Thank you, Mr. President.”

The Chair so ordered.

Senator Ige rose to speak in support with reservations and said:

“Mr. President, I would just like to note my support with reservations, and I would like to echo the remarks of the Chairman of the Judiciary Committee. The Hawaii State Bar Association is one input of many that we take, in looking at

judicial nominees. I find that in looking at all of the information that I have before me, that I can support the nominee with reservations.

“Thank you.”

Senator Kawamoto rose to speak in support of the nominee and said:

“Mr. President, I rise in support of the nominee and not because of the bar association, not because of anything else. I owe my life to an E-5 who was my crew chief on an airplane. She was an E-5 and that’s part of my reason why I support her.

“Thank you.” (Laughter.)

The motion was put by the Chair and, Roll Call vote having been requested, carried on the following showing of Ayes and Noes:

Ayes, 22. Noes, 3 (Hooser, Kim, Sakamoto).

At this time, Senator Hanabusa introduced Judge Polak to the members of the Senate.

At 1:05 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 1:10 o’clock p.m.

ADOPTION OF RESOLUTIONS

MATTERS DEFERRED FROM THURSDAY, MARCH 25, 2004

Stand. Com. Rep. No. 3061 (S.R. No. 18):

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the joint report of the Committees was adopted and S.R. No. 18, entitled: “SENATE RESOLUTION ENDORSING AND SUPPORTING THE SPIRIT OF HAWAII GOODWILL AND FRIENDSHIP COASTAL KOREA VISIT AND URGING THE NORTH KOREAN GOVERNMENT TO SUPPORT JAE KWON LEE AND JONATHAN COWLES ON THEIR JOURNEY TO NORTH KOREA,” was adopted.

Stand. Com. Rep. No. 3062 (S.C.R. No. 30):

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the joint report of the Committees was adopted and S.C.R. No. 30, entitled: “SENATE CONCURRENT RESOLUTION ENDORSING AND SUPPORTING THE SPIRIT OF HAWAII GOODWILL AND FRIENDSHIP COASTAL KOREA VISIT AND URGING THE NORTH KOREAN GOVERNMENT TO SUPPORT JAE KWON LEE AND JONATHAN COWLES ON THEIR JOURNEY TO NORTH KOREA,” was adopted.

Stand. Com. Rep. No. 3063 (S.C.R. No. 37):

On motion by Senator Kawamoto, seconded by Senator Hogue and carried, the joint report of the Committees was adopted and S.C.R. No. 37, entitled: “SENATE CONCURRENT RESOLUTION REQUESTING THE AUDITOR TO ASSESS THE SOCIAL AND FINANCIAL EFFECTS OF REQUIRING HEALTH INSURERS TO OFFER COVERAGE FOR COGNITIVE REHABILITATION,” was adopted.

RE-REFERRAL OF HOUSE BILL

The Chair re-referred the following House bill that was received:

House Bill	Referred to:
No. 1261, H.D. 2	Committee on Judiciary and Hawaiian Affairs

RE-REFERRAL OF SENATE CONCURRENT RESOLUTION

The Chair re-referred the following Senate concurrent resolution that was offered:

Senate Concurrent Resolution	Referred to:
No. 67	Jointly to the Committee on Economic Development and the Committee on Labor

RE-REFERRAL OF SENATE RESOLUTION

The Chair re-referred the following Senate resolution that was offered:

Senate Resolution	Referred to:
No. 31	Jointly to the Committee on Economic Development and the Committee on Labor

Senator Fukunaga, Chair of the Committee on Economic Development, requested a waiver of the notice requirement pursuant to Senate Rule 21 for S.C.R. No. 68.

Senator Fukunaga noted:

“Mr. President, this is requesting a pilot program to support the efforts of the Hawaii Chamber of Commerce of Northern California.

“The purpose of the waiver is to allow the House and Senate Committees hearing these resolutions to do so concurrently.

“Thank you.”

The Chair then granted the waiver.

ADJOURNMENT

At 1:12 o’clock p.m., on motion by Senator Kawamoto, seconded by Senator Hogue and carried, the Senate adjourned until 11:30 o’clock a.m., Tuesday, March 30, 2004.

Respectfully submitted,

Clerk of the Senate

Approved:

President of the Senate