

legal profession. Do you believe that those representing injured persons in product liability and medical malpractice cases are harming America?

15. So-called tort-reform is aimed at restricting the amount of non-economic damages, such as pain and suffering, a party can receive. Are you concerned that this interferes with the traditional role of juries and judges to find facts and mete out appropriate justice?

16. Do you believe the use of the government contractor defense should be limited in nonmilitary procurement? If so, how?

17. Some people say the Ninth Amendment can play no substantive role in protecting rights, that it's merely a statement of principle or reminder of limited government. Do you agree?

18. A number of legal scholars argue that the 11th Amendment has been interpreted by the Court to shield states from liability for wrongdoing in a way that blatantly contravenes the original intention of the Amendment. Are you familiar with that scholarship and do you find it persuasive?

19. In what circumstances, if any, is it appropriate for a contractual arbitration clause to contract away substantive contract law, tort, or statutory rights? For instance, can an arbitration clause require arbitration of a worker's Title VII rights and at the same time limit the worker's compensatory damages to \$200,000? Can that same clause require the loser to pay the winner's attorney's fees? Can that clause require that the parties to arbitration bear their own attorney's fees?

20. Describe the presumption against pre-emption of state law. Does it apply in some or all instances where federal law is said to preempt state law?

21. Is the presumption against pre-emption of state law (by federal law) similar to the plain statement rule that demands that Congress speak with unmistakable clarity if it wishes to override the states' sovereign immunity? If the presumption against pre-emption is not similar to the plain statement rule, explain how it is different?

22. How is the presumption against pre-emption applied in cases where federal regulatory law (regulating, for instance, drugs, boats, pesticides, motor vehicles, and the like) is said to preempt state tort law that provides monetary remedies to compensate for injuries caused by a product that the federal government regulates?

23. Do you believe Congress should preempt the state-law-based medical malpractice system?

24. What are your views on the "American rule" as opposed to the English rule under which the losing party in litigation generally pays the winner's costs, including attorney's fees?

25. What has been your reaction or views on Congressional funding levels for federally funded legal services programs over the last two decades? Should government be responsible for funding representation for poor people in civil litigation where important property or liberty interests are at stake? Or should that be mainly or entirely a private function?

26. Some scholars and judges believe that "Originalism" is the only principled method of constitutional interpretation. Do you agree?

27. Do you believe that a declaration of war by Congress is Constitutionally required for the United States to engage in war?

28. Does a Congressional delegation of the war-making discretion to the President in the form of a war resolution meet the test of Article One, Section Eight of the Constitution?

29. What level of equal protection scrutiny was applied in *Bush v. Gore*, 531 U.S. 98 (2000)?

30. What is the precedential effect of *Bush v. Gore*? In other words, what kinds of equal protection claims does *Bush v. Gore* control or apply to? After *Bush v. Gore*, may a political entity (city, county, state) holding an election use more than one type of voting methodology (paper ballots, standard machines, punch cards, etc.) knowing that the error rates (whether through undercounts or otherwise) are different from one methodology to another?

31. Is there a need to amend our open government laws to make the President subject to them in whole or in part? Would such amendments be constitutional?

32. Do you believe arguments before the Supreme Court should be televised in the way C-SPAN televises Congressional deliberations?

33. In your view, is the Freedom of Information Act functioning properly at this time? If not, what are the major problems facing the Act?

34. In *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health and Human Resources*, 532 U.S. 598 (2001) case, the Court rejected the argument that a party that has failed to secure a judgment on the merits or a court-ordered consent decree, but has nonetheless achieved the desired result because the lawsuit brought about a voluntary change (the catalyst theory) in the defendant's conduct is entitled to attorney's fees. Does the rejection of the catalyst theory of fee recovery in the Supreme Court's *Buckhannon* decision apply across-the-board to federal fee-shifting statutes? If not, to what kinds of fee-shifting statutes is it likely to apply and to what kinds is its application more doubtful?

35. Brian Wolfman, Director of the Public Citizen Litigation Group notes, "The Bush administration says that *Buckhannon* applies to [Freedom of Information Act] FOIA cases, even though Congress stated explicitly, when it enacted FOIA, that fees should be available when FOIA cases settle. The Bush Justice Department has consistently argued to expand *Buckhannon* to every pro-consumer and civil rights statute in every conceivable situation." What approach (or approaches) to statutory construction of Congressional enactment was evident in the Supreme Court's *Buckhannon* decision? How would you describe the reliance on (or lack of reliance on) legislative history in the majority's reasoning in that case? Do you believe the Bush Justice Department is applying the *Buckhannon* decision correctly?

36. From both a legal (constitutional) and practical perspective, what is your view of the trend in the federal judiciary toward releasing more of its opinions in "unpublished" form, i.e., where the relevant court accords no precedential effect to the decision for other cases?

37. Should federal judges attend seminars which are funded by private corporations (or by foundations that are funded by such corporations) that have matters of interest to the corporations before the courts?

38. Do you believe a government attorney, in a subordinate position, should be forced (under penalty of discharge) to work on a case or argue a position that he or she believes is illegal, unconstitutional or unethical? Or should government lawyers have a "right of conscience" like other professionals?

39. What kinds of participation in civic life may federal judges continue to be involved in once they assume their judicial positions?

40. How many hours or what percent of their work time do you think partners in major firms should devote to pro bono work each year?

41. How many hours on average did you bill per year as a partner and at what rates?

42. How many hours on average did you bill per year as an associate?

43. What was the nature of your pro bono work and approximately how much time per year did you devote to pro bono work?

44. Corporate attorneys and legal scholars have written books and articles decrying unethical or fraudulent billing practices in large corporate law firms. An article in the Summer 2001 Georgetown Journal of Legal Ethics titled *Gunderson Effect and Billable Mania: Trends in Overbilling and the Effect of New Wages* states that unethical billing practices are "a pervasive problem in law firms across the country"—do you agree?

45. Did you ever observe unethical billing practices when you were in private practice?

46. If so, what was the nature of and who were the protagonists of such practices?

I hope these questions, whether asked orally or submitted to the nominee in writing for response, spark a robust, constructive debate between the Committee members and the nominee. Such exchanges should provide the Senate and the larger public with insights into how Judge John G. Roberts will, if confirmed as Chief Justice, perform his duties.

## A TRIBUTE TO EDA KAMINSKI

### HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 15, 2005

Mr. LANTOS. Mr. Speaker, I ask my colleagues to join me in paying tribute to the life of a truly extraordinary woman, Eda Kaminski, who passed away on September 6, 2005. We celebrate her remarkable life for the perseverance, tenacity and grit that helped her survive four German concentration camps and the resilience and resourcefulness that allowed her to prosper when she immigrated to America.

Eda was born in the mountain village of Zawoja, Poland on July 22, 1916. She was married in 1939 to Salek Künstler in Krakow two days before the Germans invaded Poland and began the Second World War. Their daughter, Anita was born in 1942 and fortunately was smuggled out before the Krakow ghetto was destroyed. Eda and her husband were sent to Plaszow. The Germans separated Eda from Salek and later murdered him. Eda struggled and survived Auschwitz and Bergen-Belsen, where many of those too sick to work were sent. The camp was liberated by British troops in April 1945.

After the war Mrs. Kaminski found Anita hidden by a Catholic family in Krakow. Even though she had a sister who lived outside of London, most of Eda's family was killed in the Holocaust. Without resources or help, Eda and Anita moved to a Displaced Persons camp in Selb, Germany. It was there that she met her husband Reuven Kaminski and finally in 1949, they immigrated to New York to begin a new life. Their son, Harvey Kaminski became a successful financier in the New York area. Her daughter, Anita K. Epstein, came to Washington and pursued a successful career in government relations.

Mr. Speaker, her truly incredible and inspiring story was chronicled in the Washington Post on September 20, 2003. I ask that the text of the article be included in the CONGRESSIONAL RECORD. Once again, I ask my colleagues to join me in honoring her extraordinary life.

IN THE HOLOCAUST, HIDE-AND-SEEK WAS NO  
GAME  
(By Reilly Capps)

Under glass in the new exhibit at the U.S. Holocaust Museum is a letter. It was written in 1943 by Eda Kunstler, a prisoner in Plaszow, Poland, the same forced-labor camp where Schindler's list saved a thousand lives. Eda was hoping to save just one life, her baby daughter's, when she wrote these words to a stranger:

“Dear madam,

“I beg you, you are a mother as well, save my child. God will reward you and I will pay you as well. Remember that the child has wealthy parents, and that if we survive you will have everything we promised. . . . Give her food and keep her clean. That is all that a child needs. My child is bathed every day at 8:30, is fed and then placed on her side and she will sleep until 5 or 6 AM. She is fed every three hours, a roll dipped in water, or a roll with butter and sugar, a lot of sugar. . . .”

She prayed her daughter, Anita, would survive. The little girl was born into the Krakow ghetto in late 1942, and so was already a miracle, a little bundle of life amid the canyons of death. Maybe there would be another miracle, Eda thought, and Anita would survive the ghetto's liquidation. Maybe her husband had been right. He was a rational man, the wealthy co-owner of a leather factory, and he told her that babies weren't useful to the Nazis, that the baby would be killed instantly, that the baby's only chance was in hiding. He told her all these things as he pried the little girl from her arms.

“I didn't want to give it,” Eda says now, “but he took the baby.”

He slipped the baby in a canvas sack, got in a taxi and headed for the gentile side of town, where a Catholic woman named Zofja Zendler waited. With a fake birth certificate, Zendler changed Anita's name to Anya and passed her off as her own. She even took her

to church. Which was how it came to pass one Sunday in Krakow that a 3-month-old Jewish girl was baptized Catholic and therefore saved.

According to the museum, more than a million children were killed during the Holocaust, but tens of thousands were hidden during the war and thousands of those survived.

Little Anita is now 60 years old. She's married, has two children of her own, and she cries when she looks at the letter, which is part of “Life in Shadows: Hidden Children and the Holocaust,” scheduled to open to the public today. It's written carefully, in Polish. There are no water marks on it, even though her mother was crying as she wrote it.

“Each one of us that survived has a story,” says Anita Epstein, a lobbyist in Washington. “It is very powerful. It's very strong for me. Too much. I have to do it in pieces.”

The exhibit is almost entirely little pieces, small things that played a small part in some incredible stories. There's a sweater worn by an 8-year-old girl as she cowered in the sewers for more than a year. A wardrobe in which a small boy hid from inspectors. Words from a diary written by an adolescent girl as she hid in an attic in Amsterdam.

“In so many ways, the stories of children's experiences are powerful for everyone—for parents, for children, for the general visitor,” says museum curator Steven Luckert. “It deals with so many different emotions: separation, fear, play, education, tough choices.”

Flora Singer was 10 years old when the German tanks rolled into Belgium. Her cousin Nounou was just a baby. Singer was hidden in a secret apartment and in a convent by the legendary Father Bruno, who saved hundreds of children. But not Nounou.

“My mother begged my aunt to let Nounou be hidden, because Father Bruno was willing to hide him also,” says Singer. She says her mother said to her aunt: “You can go, but at least let Nounou be hidden.” My mother

could not convince her to go to another place, or let Nounou go with Father Bruno.

“The next time my mother came to the apartment with food, maybe five, six days later, the Gestapo had a seal on the door, you know: ‘Property of the Third Reich.’ My mother ran in and grabbed the photos of the family.” One of those photos is displayed in the new exhibit. It's Singer and Nounou, her hands on his arms. They're all smiles.

Singer lives in Montgomery County and volunteers at the museum, but life has never been as simple as it was the day that picture was taken.

“I am here, and [Nounou] is not, and I still can't believe it, even to this day. I say, ‘How come I escaped?’ It's an enormous feeling of responsibility.”

For Eda Kunstler, it was an enormous feeling of guilt. She felt guilty in Plaszow, and in Auschwitz, and she thought of her daughter every single day in both places. And then she got to Bergen-Belsen, and she was too tired to think of anything at all.

Eda survived Bergen-Belsen, survived hunger, survived typhus, even as every member of her family, including her husband, perished. She lives in Queens now, 86 and all alone, but she remembers returning to Poland to look for her only living relative, her daughter.

She found her on a stoop in Katowice, eating a roll and frankfurter. There were 20 kids hanging around, but Eda could tell right away which girl was hers.

“I am your mother,” she told her daughter.

“No, you are not my mother,” Anita said. “My mother is inside.”

Eda cried, because she knew the letter had worked.

“Dear Madam, my husband and I are convinced and believe that you will save our wonderful child . . . be her mother and give her love, because I her mother cannot give her anything.”