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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Report	Cynthia M. Rufe [2 PAGES RELEASED IN PART FOR (b)(6) ON PRA RE-REVIEW 09/15/2025 JLS]	2	01/02/2002	b6;
002	Report	Judge Cynthia Rufe [11 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/15/2025 JLS]	11	01/02/2002	

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

Judges - [Rufe, Cynthia M.]

FRC ID:

9630

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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Privileged/Deliberative Process

CYNTHIA M. RUFÉ
CANDIDATE FOR NOMINATION TO THE
U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF
PENNSYLVANIA
PREPARED FOR THE WHITE HOUSE PURSUANT TO
THE WHITE HOUSE'S REQUEST FOR VIEWS

BK

potential
moderate-
liberal

experience
+ qualified

INTERVIEW WITH CANDIDATE

The interview with the candidate was rather uneventful. Judge Rufe said that good judges need to listen, be fair and have the intellectual and moral integrity to do the right thing. She indicated that she has appeared in front of judges who pre-decide a case because of their own personal philosophy. Judge Rufe said that because this is so upsetting she would never let it happen if she were a District Court judge.

Judge Rufe believes that the best way to keep control of a courtroom is by being "quietly firm." Since being elected to the state bench in 1993, she has never had to hold a lawyer in contempt. She believes that holding a lawyer in contempt is not the way to show strength.

When asked about outstanding examples of good judges, Judge Rufe mentioned her uncle (a judge on the state appellate bench), her husband (a colleague on the Common Pleas Court) and her brother-in-law (a judge on the Common Pleas Court in another part of the state). Judge Rufe said that she enjoys Justice Scalia's opinions because they are "so clear and well thought out regardless of the position he takes." She concluded by calling Justice Scalia the "clearest writer on the bench and hits it right on the mark."

(b)(6)

THIRD PARTY INTERVIEWS

There were over a dozen people interviewed for this report. All of the individuals, with the exception of one attorney that had tried a case against her, said very positive things about Judge Rufe. The one attorney who criticized Judge Rufe was very vague. While she was in private practice, Judge Rufe represented a daycare center that was the focus of allegations of child abuse. This case was one of the national wave of cases alleging physical and sexual abuse of preschoolers at daycare centers. After an extensive criminal investigation, law enforcement officials exonerated the school. However, there were several civil suits filed. Brian Sullivan represented one of the plaintiffs. During an interview of Mr. Sullivan for this report, he stated that while he had several concerns, he would not share the vast majority as he felt that Judge Rufe would be confirmed despite his reservations. However, he did state that he did not have any ethical or analytical concerns about Judge Rufe. He then refused to comment when asked about her temperament or demeanor. When Mr. Sullivan was asked if he had appeared before her as a judge, Mr. Sullivan stated that he had attended one settlement conference. He said that her temperament and demeanor at that time were fine. Mr. Sullivan did provide the names of other attorneys who he said would provide additional information. When two of these people were contacted, they expressed no concerns whatsoever about Judge Rufe and indicated that they thought she was an excellent choice. The only less than enthusiastic comment came from another attorney on one of these preschool cases. Keith Erbstein said that while Judge Rufe did nothing wrong while representing the preschool, it was an emotionally charged case and they "did not get along."

The other comments from federal judges, state judges, prosecutors (both state and federal), and attorneys in private practice. They were all supportive of Judge Rufe and thought that she would be an excellent federal district court judge.

PRIVILEGED/DELIBERATIVE

November 30, 2001

Judge Cynthia Rufe

Prepared for the White House pursuant to the White House's Request for Views
on Judge Cynthia Rufe

Summary: Judge Cynthia Rufe (formerly Judge Cynthia Weaver)¹ has been a Judge of the Court of Common Pleas, Bucks County, Pennsylvania, since being elected to that court in 1993 (she received both the Republican and Democratic nominations in that election). The Court of Common Pleas is a trial court of general jurisdiction, trying both criminal and civil cases, including jury trials. Prior to becoming a judge, Ms. Rufe was an experienced litigating attorney and public defender, with a substantial practice in family law and criminal defense work. On the whole, Judge Rufe's opinions are generally well-prepared, well-researched, and moderate in judicial approach. We found only one substantial written opinion by Rufe that could be considered egregious or extreme in its departure from well-grounded principles of jurisprudence. In that case (*Commonwealth v. Efaw*), Rufe held that a constitutionally-based reasonable expectation of privacy extended to a person's disclosure of information to an insurance company in connection with an investigation of an arson incident and that such information had therefore been unconstitutionally disclosed to the Commonwealth. Both the intermediate appeals court and the Pennsylvania Supreme Court firmly rejected her conclusion and analysis, holding that the issue was plainly controlled by a directly applicable Pennsylvania statute which authorized disclosure of the information and that the precedents cited by Rufe in support of her constitutional privacy theory were inapplicable or misapplied. This opinion, however, may be something of a departure from the generally straightforward and well-grounded approach reflected in most of Judge Rufe's available opinions, especially those in the criminal law area. On the other hand, the statement on "judicial activism" in Rufe's response to the Senate Questionnaire (discussed in Part IV, below) suggests possible grounds for concern in this area. Our review of news and legal databases for stories or reports mentioning Judge Rufe (or "Judge Weaver") did not identify any significantly damaging or adverse reports or information.

I. Background and Professional Career

Judge Rufe obtained her bachelor's degree from Adelphi University in 1970, and subsequently earned her J.D. from SUNY at Buffalo School of Law in 1977. She was a public high school teacher for several years between her graduation from college and her matriculation to law school.

Judge Rufe (then Cynthia Weaver) began her legal career as an attorney in the Bucks County

¹ Judge Rufe married fellow Pennsylvania Common Pleas Court Judge John Rufe in 1999, and changed her name from Cynthia Weaver to Cynthia Rufe.

Public Defender's Office, where she served from 1977 to 1982 as Deputy Public Defender and as Coordinator of the Juvenile Division. As a public defender, Rufe's assignments included criminal defense of indigents, representation of juvenile delinquents, service as guardian ad litem for abused and neglected children, and representation of mental patients facing involuntary commitments. According to her questionnaire response, Rufe appeared in court almost daily in her practice with the Public Defender's office.

In 1982, then under the name of Cynthia Weaver, she established a solo practice in Newtown, Pa., which later expanded to a three-attorney firm. In that practice, Ms. Weaver appeared in county, state, and federal courts, specializing in civil and criminal litigation. Her practice eventually expanded to include civil cases involving employment/employment discrimination issues, personal injury, and civil rights litigation in the federal courts.

From 1984 to 1988, Judge Rufe served as Solicitor, Bucks County Children and Youth Social Services Agency, in Doylestown, Pa. She represented that agency in dependency, child abuse, and child neglect proceedings in the Pennsylvania courts as well as in administrative hearings before the Pennsylvania Department of Public Welfare.

In 1993, after switching from the Democrat to Republican Party, Judge Rufe successfully defeated the incumbent and was elected as a Judge of the Court of Common Pleas for Bucks County. She has served on that court, a trial court of general jurisdiction, until the present. Her docket covers both civil and criminal litigation, including extensive jury trials. Our review of available written decisions by Judge Rufe indicates that her judicial exposure to constitutional and other complex issues (of the kind that would arise in federal district court) is fairly substantial in the criminal law area, but not so substantial on the civil side.

During her legal career, Judge Rufe has been a member of numerous professional organizations and associations, including the American Trial Lawyers Association (ATLA), the American Bar Association, and the National College of Criminal Defense Lawyers. She has also been active in a number of charitable and civic organizations, such as the Big Brothers/Big Sisters of Bucks County and Youth Services, Inc., of Langhorne, Pa. She reports having delivered speeches to a considerable variety of organizations over the years, but no speeches on constitutional law or legal policy. In this regard, it appears that Judge Rufe has maintained a relatively low-key public profile over the years and does not appear to have engaged (at least to any visible degree) in public controversy or debate over political, policy, or controversial legal issues.

Judge Rufe's questionnaire response indicates that she has written no published articles, op-ed pieces, or other public writings, and we found no evidence of such writings in our database searches.

II. Judicial Approach and Decisions

We reviewed a broad sampling of Judge Rufe's opinions and decisions, as well as appellate court reviews of her opinions, from the following sources: (1) copies of her more significant unpublished opinions supplied by Judge Rufe; (2) copies of her opinions that were reversed by higher courts, supplied by Judge Rufe; (3) copies of her opinions on constitutional issues supplied by Judge Rufe; (4) reported opinions mentioning Judge Rufe identified on the WestLaw database²; and (5) opinions described in press or periodical reports identified on the ALLNEWSPLUS and LEGALNP databases.

With the exception of her problematic opinion in *Commonwealth v. Efaw* (discussed fully below) and her response to the Senate Questionnaire regarding judicial activism (see Part IV, below), we found little indication of an extreme or activist approach to judicial interpretation in the opinions and decisions we reviewed. It should be recognized, however, that apart from her substantial criminal law docket, the cases addressed in Judge Rufe's opinions seemed rarely to involve the kind of controversial or ideologically-divisive issues that would tend to reveal a pronounced judicial philosophy one way or the other. In light of the very limited number of opinions by Judge Rufe addressing sensitive or controversial issues (again, outside the criminal law area), the *Efaw* opinion might be considered a more significant indicator than might otherwise be the case.

Summarized below is a sampling of the more significant opinions and rulings identified in our review. Reported citations (where provided) are to appellate opinions reviewing Judge Rufe's decisions, which are unreported. The sampling contains a disproportionate number of cases where Judge Rufe's opinions were reversed, because such cases naturally tend to be the more significant ones. Our review did not, however, indicate that Judge Rufe's decisions were reversed with above-normal frequency.

A. Opinions or Rulings Reversed

****Commonwealth v. Efaw*, No. 1677-98 (1998), *rev'd*, 731 A.2d 625 (Pa. Super. Ct.), *aff'd*, 774 A.2d 735 (Pa. 2001). In a criminal prosecution for arson, reckless endangerment, and insurance fraud, Judge Rufe denied the State's motion for the admission of significance evidence gathered by the insurer of the burnt property in its investigation conducted under Pennsylvania's Arson Reporting Immunity Act ("ARI Act"). In so ruling, Judge Rufe held that the disclosure of such evidence to the government would violate what she determined to be a constitutionally-based reasonable expectation of privacy of the defendant respecting such information. In her decision, Rufe invoked (and liberally expanded upon) the Pennsylvania Supreme Court's opinion in *Commonwealth v. DeJohn*,

² We also searched the WestLaw database for cases where Rufe had appeared as counsel (under the name of Cynthia Weaver) in her pre-judicial career. None of the cases or appearances we identified were of a remarkable or controversial nature warranting comment.

which had held that the Pennsylvania Constitution affords greater privacy protections than the Federal Constitution and, as applied in that particular case, protected a bank customer's reasonable expectation of privacy in certain financial records maintained by the bank. Acknowledging that her holding "is one of first impression" and was "drawn from precepts of the Pennsylvania Constitution as well as from the contractual relationship between an insurance policyholder and insurer," Judge Rufe explained her ruling in *Efaw* as follows:

[B]y our pre-trial ruling, this Court does not seek to establish a "policyholder" privilege, but does recognize the reasonable expectation of privacy in the sensitive information conveyed or disclosed to an insurance company by an insured in the legitimate pursuit of a contractual settlement claim for damages.

Both the intermediate Superior Court and the Pennsylvania Supreme Court rejected Judge Rufe's judicial extension of constitutional protection to a person's disclosures to insurance companies and held that the matter was governed instead by the directly applicable ARI Act (a copy of the Supreme Court's opinion is attached hereto). The ARI Act did not bar the disclosure of the information in question to law enforcement agencies. Describing Judge Rufe's interpretation of the *DeJohn* opinion as "fallacious," the Pennsylvania Supreme Court rejected Rufe's extension of *DeJohn* to information disclosed to insurance companies and held that the ARI Act "clearly provides for the release of such information to law enforcement agencies." 774 A.2d at 737-39. The rejection of Judge Rufe's expansion of unenumerated constitutional rights by successive appellate courts confirms the flawed legal reasoning of her decision in this case.³

Commonwealth v. Walker*, No. 03638 (Superior Ct. 1997). In this case, Judge Rufe denied the criminal defendant's motion to suppress crack-cocaine evidence, rejecting the argument that the police lacked a reasonable and articulable suspicion to justify the detention of the suspect and holding that the alleged detention was a mere "encounter." Following Judge Rufe's holding that "no illegal police action took place," defendant was convicted for multiple illegal drug offenses. On appeal, the Superior Court reversed, holding that the officers' stop of the suspect was a "non-custodial detention" undertaken without the required reasonable and articulable suspicion. **It is not at all clear that the Superior Court's reversal of Judge Rufe was well-founded.

Commonwealth v. Burwell (Superior Ct. 1997). In this criminal case, Judge Rufe refused to

³ In the responses to her Senate Questionnaire, Judge Rufe described her ruling in *Efaw* as follows: "Trial court ruling was based upon the Arson Reporting Immunity Act and the restrictive privacy provisions in the Pennsylvania Constitution." Senate Questionnaire at 8. **To the extent this answer suggests that Rufe had simply applied specific provisions of the ARI Act or the Pennsylvania Constitution – as opposed to engaging in an expansive interpretation of what was itself an expansive interpretation of general constitutional privacy principles – this response is somewhat misleading.**

allow the defendant to withdraw his guilty plea. The Superior Court reversed, noting that a trial court should liberally permit the withdrawal of guilty pleas, and stressing that the defendant had asserted his innocence and that the record was silent as to any resultant prejudice to the State.

Commonwealth v. Barrett, No. 4255 (Superior Ct. 1997). Here, the Superior Court reversed Judge Rufe's decision granting the defendant's motion to suppress the Government's evidence in a drunk driving case. The issue was whether a traffic stop effectuated by police officer's outside their area of primary enforcement jurisdiction was unlawful, thereby requiring suppression of resultant evidence. Judge Rufe had ruled that the stop was invalid and granted the defendant's motion to suppress. In reversing Rufe's decision, the Superior Court held that the stop was valid because the officers were in "fresh pursuit" of the suspect vehicle, and therefore Judge Rufe erred in granting the motion to suppress.

Commonwealth v. Phillips, No. 3671 (Superior Ct. 1995). The Superior Court affirmed Judge Rufe's ruling granting the defendant's motion to suppress the Government's evidence, but reversed her decision dismissing the criminal complaint in a prosecution for possession and delivery of illegal drugs. Rufe had ruled that the pivotal arrest warrant in the case was invalid on the grounds that probable cause was not established within the four corners of the underlying affidavit and, therefore, the resultant arrest of the defendant was illegal. Without reaching other issues in the pre-trial motion, she dismissed the criminal complaint. The Superior Court affirmed Rufe's ruling that the arrest was illegal for the reasons she had indicated, but then held that she had erred in dismissing the complaint, stating: "Once the issuing authority has conducted a preliminary hearing and found sufficient evidence to hold the defendant, the appropriate remedy is suppression of any evidentiary fruits of the illegal arrest, not dismissal of the charges."

B. General Unreported Opinions

*****Lower Makefield Township v. Ehrlich*, No. 98-004680-22-5 (1998).** In this opinion in a civil case, Judge Rufe demonstrated a sound approach to valid claims of constitutionally protected property rights. Her opinion rejected the Township's application for an injunction to prohibit a property owner from cutting down trees on his own property without first obtaining a permit. Judge Rufe first stressed that "[t]he United States and Pennsylvania Constitution provide that property ownership is an inherent right. . . . Absent valid zoning ordinances or restrictions, any citizen may purchase real property and use it for any lawful purpose as a matter of constitutional right." Slip. Op. at 3 (citations omitted). She then concluded:

After extensive review, nothing in the Code suggests to this Court that an owner of land situated in Lower Makefield Township is generally forbidden to clear his property of trees or shrubs. Furthermore, Township admits that it has no evidence or indication that Ehrlich destroyed or will destroy more than thirty percent of the wooded acreage in violation of the Code. Therefore, the Court is compelled, as a

matter of law, to protect Ehrlich's constitutional right to lawfully use his property as he so desires.

Slip. Op. at 5.

**Commonwealth v. Weldon*, No. 00226-2000 (2001). In this rather substantial opinion, Judge Rufe rejected the defendant's post-conviction appeal from his conviction of aggravated indecent assault stemming from the defendant's sexual molestation of his biological daughter. In her thorough and well-researched opinion, Rufe rejected all the numerous procedural arguments raised by the defendant in seeking to set aside his conviction. Among the more significant issues was defendant's claim that the government's electronic surveillance of certain conversations violated his constitutional rights to counsel and to remain silent. In rejecting these arguments, Judge Rufe first stated: "Because defendant was not charged with any crime until August of 1999, the electronic surveillance conducted months earlier was incapable of violating his Sixth Amendment right to counsel." Slip Op at 7. Addressing the defendant's Fifth Amendment/*Miranda* arguments, Rufe further held:

Custodial interrogation means questioning by law enforcement officers after a person has been taken into custody. Assuming arguendo that M.W. was an agent of the Commonwealth when she wore the electronic wire in this case, no *Miranda* violation occurred since defendant was not in custody and because defendant did not know M.W. was acting in conjunction with the Bristol Township Police Department. Accordingly, defendant's claims that the electronic surveillance violated his rights to remain silent and to counsel lack merit.

Id at 8 (citations omitted).

Commonwealth v. Liebel, No. 2466/97 (1998). In this substantial slip opinion (46 pp), Judge Rufe thoroughly examined and soundly rejected a series of issues raised in post-sentencing motions by a defendant who had previously pled guilty to murder, been found guilty of murder in the first degree in a "degree of guilt hearing," and sentenced to life imprisonment. In her opinion, Judge Rufe: (1) rejected the defendant's arguments that there was insufficient evidence of "specific intent to kill" to support a first degree murder conviction; (2) denied defendant's motion to withdrawal his guilty plea, finding that the defendant's guilty plea was voluntary and that the defendant understood the charges against him when he entered the plea; (3) rejected defendant's claim that, at the degree of guilt hearing, the court had improperly allowed admission of evidence revealing the defendant's prior juvenile adjudication for assault; and (4) rejected four different claims that defendant's conviction was invalidated by ineffective assistance of counsel. As Judge Rufe explained with respect to the ineffective assistance claims:

Despite the defendant's late protestations of innocence, and his claims that trial counsel was ineffective in establishing that innocence, he presented no witnesses nor evidence to support any legal justification for this crime. Without such evidence,

we cannot say that trial counsel's course of conduct was without a reasonable basis designed to effectuate his client's interests. Thus, defendant's claims of ineffective assistance of counsel must fail.

Commonwealth v. Ervin, No. 95-4981-2 (1995), *aff'd*, 691 A.2d 966 (1997). In this criminal case, the Superior Court affirmed the defendant's conviction on three counts of rape and other sex crimes and upheld Judge Rufe's rejection of defendant's motion for post-conviction relief alleging varied claims of ineffective assistance of counsel. In all, the reviewing Court upheld Judge Rufe's rulings adverse to the defendant on eight separate issues. In this and various other criminal cases, Judge Rufe's rulings reflect a healthy skepticism towards defendants' post-conviction claims of ineffective assistance of counsel.

**Kelly v. St. Mary's Hospital*, No. 96-3062-22-2 (1996). In this civil action, the plaintiff asserted a tort claim of "intentional and/or negligent spoliation of evidence" against the defendant hospital. In an opinion reflecting sound principles of judicial restraint, Judge Rufe held that Pennsylvania does not recognize a cause of action for spoliation of evidence and upheld the dismissal of all claims with prejudice. In her very thorough and well-researched opinion, Judge Rufe acknowledged that such a cause of action had been "created by a minority of jurisdictions." Slip Op at 4. She further noted that, while no appellate court in Pennsylvania had recognized such a claim, several lower courts (courts of common pleas) had done so. After a full survey of the pertinent caselaw, however, Rufe concluded: "A cause of action for spoliation of evidence is not recognized as the law in Pennsylvania nor does this Court believe that it is within its domain to adopt this relatively new tort, particularly on the facts of this case." (Emphasis added.)

III. Media and Newspaper Reports

We reviewed pertinent news databases (including ALLNEWSPLUS and LEGALNP) back to 1970 for references both to Cynthia Rufe and Cynthia Weaver. The great majority of hits were straightforward trial or crime reports concerning cases tried by Judge Rufe. No particularly controversial or damaging articles were identified in our database searches.

A summary of a number of the more significant reports follows.

Rape Charge Dismissal. A September 20, 2001, story in the *Philadelphia Inquirer* reported that "a blunder" by the Bucks County Sheriff's Department had forced Judge Rufe to dismiss all charges against an accused rapist before he could be tried. Due to inadvertent government errors, the rape suspect was held in custody more than 180 days after arrest before being placed on trial in accordance with the requirements of Pennsylvania's speedy trial law. As a result, Judge Rufe granted the defendant's petition for dismissal of charges on speedy trial grounds.

Efaw Decision. A July 11, 2001, story in the *Legal Intelligencer* reported on the Supreme

Court of Pennsylvania's reversal of Judge Rufe's "constitutional expectation of privacy" decision in *Commonwealth v. Efaw*, discussed above. There were numerous other news reports on this case as well.

Federal Judge Merit Selection in Pennsylvania. A June 10, 2001, story in the *Harrisburg Patriot-News*, criticizing political aspects of federal judicial nominations in Pennsylvania, made the following passing references to Judge Rufe's candidacy for a federal district court nomination:

If everyone else agreed to give [Specter-sponsored candidate Michael] Baylson the 3rd Circuit Court of Appeals post, Specter said, he'd sign off on the rest of the proposed three-nominee eastern federal judge slate: Lehigh County President Judge James Gardner, Bucks County Judge Cynthia Rufe and either Berks County Judge Jeffrey Schmel or Berks attorney Ronald Stanko.

No one has said that this slate lacks judicial merit. . . . The third, Rufe, is in line for robes because, as one longtime federal court power said, "It's Bucks County's turn this year to get a federal judge."

1993 Party Switch. A November 30, 2000, article in the *Allentown Morning Call* ("AMC") concerning the appointment of another Pennsylvania attorney as a U.S. Magistrate contained the following reference to Judge Rufe's 1993 party switch from Democrat to Republican:

[Linda Caracappa] was one of several Democratic lawyers who switched to the Republican Party following the 1993 election. In that election, Judge Robert E. Mellon, a Democrat who had received a gubernatorial appointment to the bench, was defeated in his bid for a full term by Republican attorney Cynthia Rufe, also a former Democrat, who switched parties to run against Mellon.

Drunk Driving Dismissal. An Oct. 18, 2000, story in the *Legal Intelligencer* reported that State Prosecutors announced they would file an appeal from Judge Rufe's dismissal of drunk driving charges that had been brought against a former Bensalem politician's son. Rufe accepted the argument of defense counsel that police must observe a defendant driving erratically to justify the stop of a vehicle on the basis of driving at an unsafe speed and, because she found no such evidence existed, suppressed the stop and evidence that resulted from it, including the officer's testimony that the defendant appeared intoxicated. Prosecutors said they would appeal to challenge the Pennsylvania Supreme Court opinion on which Rufe's ruling was based.

Honored as Italian-American Role Model. A March 29, 2000, story in the *Legal Intelligencer* reported that Judge Rufe – whose maiden name was Cynthia Favata – had been chosen by the Bucks County Chapter of the Order of Sons of Italy in America to be honored as an Italian-American Role Model. The complimentary article primarily concerned Judge Rufe's family upbringing

and Italian family values and does not contain any controversial, adverse, or issue-related matter.

Marriage to Judge John Rufe. A January 27, 1999, story in the *Legal Intelligencer* reported on Judge Rufe's marriage to fellow Bucks County Common Pleas Court Judge John Rufe. The story does not contain controversial or adverse information, primarily focusing on lifestyle, professional, and social aspects of the marriage. The story did note that, "John Rufe, a Democrat, said he and his Republican spouse also have 'interesting discussions' about politics, especially now in the midst of the impeachment trial. (Cynthia Rufe offered a 'no comment' on that subject.)."

* *"Taking"/Just Compensation Ruling Reversed.* An August 26, 1998, story in the *Legal Intelligencer* reported that the Pennsylvania Supreme Court had reversed the Commonwealth Court's affirmance of Judge Rufe's (then Judge Weaver) earlier ruling that a paving firm had been entitled to just compensation for a temporary taking resulting from its inability to use its land for quarrying during the period that the Township was unsuccessfully defending the constitutionality of its zoning ordinance that restricted the quarrying activity. The portion of the story referring to Judge Weaver stated: "Bucks County Judge Cynthia Weaver found that because Miller was precluded from using the land as a quarry during the period the zoning ordinance was being challenged, a compensable temporary de facto taking occurred as a matter of law." The Commonwealth Court affirmed Judge Weaver, but the Supreme Court reversed, holding that the paving company had not satisfied its "heavy burden" of proving that the zoning ordinance deprived it of the use and enjoyment of the property.

***Marijuana Case Thrown Out.* A January 14, 1997, story in the *Allentown Morning Call* reported that Judge Rufe (Weaver) sentenced a defendant to 30 days for a marijuana possession violation, but dismissed related felony charges for the manufacture of marijuana on the grounds that the police's observation of the marijuana plants growing in defendant's apartment had not provided a valid basis for obtaining a search warrant. As the story reported:

Officers noticed a plant light in the window of Roberts' apartment but were unable to see what was growing there. Policemen then asked a neighbor to allow them to look from a second-floor window but still couldn't see anything but the lamp.

From the third floor, however, police saw marijuana plants under the lamp and obtained a search warrant. When they entered the apartment, they found .78 grams of marijuana. Because the plants were growing, Roberts was charged with manufacture of illegal substances.

Weaver threw out the manufacturing charge, ruling the plants were not in "plain view" as described by law. If an officer can see an illegal substance in a building or car without making an effort by moving something out of the way, the officer can get a search warrant, Assistant District Attorney

Matthew Weintraub said.

**In-Chambers Conversation with Judge Weaver.* The November 20, 1995, issue of the *Pennsylvania Law Weekly* carried a fairly lengthy interview-type article entitled, "A Conversation with Judge Cynthia M. Weaver, Bucks County Court of Common Pleas." The article was predominantly devoted to discussion of practice and procedure insights regarding the Bucks County Court, as well as the various stages of Judge Weaver's legal career and professional development. Except for the item noted below, the article did not contain any controversial, adverse, or political/ideological matter. However, Judge Weaver's rather vehement concluding comments on a then-recent Pennsylvania Supreme Court ruling warrant mention. As the story reported:

The Pennsylvania Supreme Court recently ruled that divorced parents are not legally obligated to pay college tuition for their children. Weaver was not pleased with this decision.

"I'm absolutely appalled that the Supreme Court would first tell the legislature that they have to pass a statute," Weaver said, "that you can't do this by case law. Which is what they did when they declared the last procedure unconstitutional. The legislature responds by passing such a law.

"It helps children who wouldn't get to college otherwise, because there is absolutely no way to help these kids without this law. Now, they've struck that down.

"The state often acts in areas where they see a class that needs to be protected. I though children of divorced and separated parents needed that protection and help."

DOW Homicide Acquittal. In an *AMC* story of July 7, 1995, it was reported that Judge Weaver, "in a controversial decision," had found a 22-year-old male innocent of homicide by vehicle-driving while intoxicated, while finding him guilty of the lesser offense of simple homicide by vehicle. The defendant's car had driven off the road and hit a tree, resulting in the death of a passenger riding in defendant's vehicle. Defendant had a BAC of .20 percent, double the legal driving limit. Judge Weaver sentenced the defendant to six to 23 months in county prison for the HBV conviction; he would have been subject to a mandatory sentence of three years in prison had he been convicted under the HBV/DWI offense.

IV. Miscellaneous

Statement on Judicial Activism. A long-established portion of the Senate Judiciary Committee Questionnaire asks candidates or nominees for their views on a number of basic criticisms

or notable examples of “judicial activism.” Responses to this question are usually inconsequential because they are carefully drafted to avoid offense to either side of the issue. Judge Rufe’s response to this question, however, appears quite defensive in tone and does not reflect even basic acknowledgment of a problem in this area. See Senate Questionnaire, Part III, Q.5, at 22. It also contains a statement – that there is “a judicial responsibility to protect elements of society from the overreaching of any majority” – that is not an accurate statement of the limited actual judicial role embodied in the Constitution and the Separation of Powers – namely, to apply the law (including the Constitution) as it is written in deciding cases or controversies. Judge Rufe also asserts that the judiciary’s role is that of “an *equal* branch of government” – a sweeping proposition that is not reflected in the Constitution or the Federalist Papers. The relevant portion of Judge Rufe’s statement follows:

I believe that those who broadly criticize the judiciary as a monolithic branch of government bent on remodeling society in a manner suitable to the judiciary sometimes fail to recognize our role as an equal branch of government. While the primary role of a judge is to supervise or implement dispute resolution, there is also a judicial responsibility to protect elements of society from the overreaching of any majority. Equality under the law is a civil right and a judicial responsibility. As a judge who has faced the responsibility to balance the rights of the individual against the interest of the state, I can more clearly recognize the need for equity rather than to bring an agenda for change to my performance as a judge.

Senate Questionnaire at 22.

V. Confirmation Considerations

With the exception of the *Efaw* opinion (discussed in Part II) – which is not at all likely to bother those inclined to oppose the President’s judicial nominations – we did not find significantly adverse information of the kind likely to raise serious controversy or concern in the judicial nomination hearing or confirmation context.

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Supreme Court of Pennsylvania.

COMMONWEALTH of Pennsylvania, Appellee,
v.
Cynthia EFAW, Appellant.

Argued Oct. 18, 2000.
Decided June 20, 2001.

In prosecution for arson, recklessly endangering another person, and insurance fraud, Commonwealth appealed from order of the Court of Common Pleas, Bucks County, Criminal Division, No. 1677/1998, Cynthia M. Rufe, J., denying its motion to admit evidence gathered by insurer in its investigation under Arson Reporting Immunity Act (ARIA). The Superior Court, 731 A.2d 625, No. 2447PHL1998, reversed, and defendant appealed. The Supreme Court, No. 0003 M.D. Appeal Dkt. 2000, Newman, J., held that defendant did not have reasonable expectation of privacy in information submitted to insurer during fire investigation.

Superior Court affirmed.

Zappala, J., concurred in the result.

Nigro, J., dissented and filed opinion.

West Headnotes

Criminal Law ⚖️ 412(5)
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Arson defendant did not have reasonable expectation of privacy in statements and information given to insurer as part of fire investigation, and thus insurer's failure to notify defendant that it submitted materials to prosecution pursuant to Arson Reporting Immunity Act (ARIA) did not require exclusion of evidence. 40 P.S. § 1610.3(c).

*735 Mel D. Kardos, Newtown, for Cynthia Efav.

David William Zellis, Chalfont, Diane E. Gibbons, Doylestown, and Stephen B. Harris, Warrington, for Com.

Before FLAHERTY, C.J., and ZAPPALA, CAPPY, CASTILLE, NIGRO, NEWMAN and SAYLOR, JJ.

OPINION

NEWMAN, Justice.

Appellant Cynthia Efav (Appellant) appeals from the Superior Court's Order, which reversed the denial by the Court of Common Pleas of Bucks County (trial court) of the Motion in Limine, filed by the Commonwealth, to admit certain evidence compiled by the State Farm Insurance Company (State Farm) pursuant to an arson investigation. Appellant asks this Court to determine whether the Arson Reporting Immunity Act (ARIA) [FN1] permits the Commonwealth to compel an insurance company to disclose information it received or developed pursuant to its private investigation absent disclosure to the insured, and without the insured's specific waiver of *736 her reasonable expectation of privacy or confidentiality. We affirm the decision of the Superior Court for the following reasons.

FN1. Act of July 2, 1980, P.L. 340, as amended, 40 P.S. §§ 1610.1-1610.8.

FACTUAL AND PROCEDURAL HISTORY

A fire occurred on December 23, 1995 at a home owned by Appellant and her husband. At the time of the fire, the daughter of Appellant was renting the home. State Farm carried the homeowner insurance policy of Appellant and her daughter's renter's insurance policy. State Farm investigator John Christmas (Christmas) and others examined the property, took photographs, and interviewed Appellant. Fire Marshall Edward Copper (Fire Marshall Copper) of Bristol Township also investigated the fire. Christmas' report, and a subsequent report by Fire Marshall Copper, concluded that the ignition of combustible materials placed on the electric burner of the kitchen stove caused the fire. State Farm denied claims by Appellant and her daughter for payment under their respective insurance policies. On January 2, 1998, Fire Marshall Copper requested the information gathered by State Farm during its arson investigation. He made the request, authorized by the ARIA, which provides in relevant part:

(a) Fire loss information.—Any authorized agency may, in writing, require an insurance company at interest to release to the requesting authorized agency any or all relevant information or evidence deemed important to the authorized agency which the insurance company may have in its possession relating to a fire loss under investigation by the authorized agency. Relevant information may

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include, without limitation herein:

(5) material relating to the investigation of the loss, including statements of any person, proof of loss, and any other information relevant to the investigation by the authorized agency.

40 P.S. § 1610.3(a). In response, State Farm supplied the Commonwealth with photographs, statements and other information it compiled during the arson investigation. On August 14, 1996, a Bucks County Investigating Grand Jury issued a subpoena to State Farm requiring the production of all documents relating to the arson investigation. State Farm complied with the subpoena.

The Grand Jury charged Appellant with arson, [FN2] recklessly endangering another person, [FN3] and insurance fraud. [FN4] Appellant filed a motion to suppress the documents submitted by State Farm on the grounds that State Farm obtained the information while it was acting as an agent of the Commonwealth or was engaged in a relationship with Commonwealth investigators that was so close that it effectively served as a Commonwealth agent. The trial court found that no such relationship existed and denied Appellant's motion to suppress. While denying Appellant's motion, the trial court indicated that portions of the information State Farm provided to the Commonwealth might be excluded on evidentiary grounds at trial.

FN2. 18 Pa.C.S.A. § 3301.

FN3. 18 Pa.C.S.A. § 2705.

FN4. 18 Pa.C.S.A. § 4117.

The Commonwealth responded by making an oral motion in limine for the admission of all evidence gathered by State Farm during its arson investigation. The trial court denied this motion, indicating that Appellant possessed a reasonable expectation of privacy in the information conveyed to her insurance company and that the Commonwealth "cannot now use [State *737 Farm] as a vehicle to obtain evidence in the absence of an effective waiver" pursuant to *Commonwealth v. Ball*, 523 Pa. 216, 565 A.2d 1143 (1990). Trial Ct. Op., 10/13/98, at 9 (R.R. 20a). The Commonwealth appealed to the Superior Court.

In a published Opinion, the Superior Court reversed the order of the trial court. It refused to require an insurance company to notify its insured prior to releasing information relating to an arson investigation or to require a waiver of confidentiality when neither of these requirements appears within the express terms of

the ARIA. We agree. The ARIA does not require notification to Appellant prior to furnishing information to the Commonwealth pursuant to an ARIA request. Appellant and the trial court improperly rely on *Commonwealth v. DeJohn*, 486 Pa. 32, 403 A.2d 1283 (1979), and *Commonwealth v. Ball*, 523 Pa. 216, 565 A.2d 1143 (1990), in support of their arguments. It is not reasonable for an insured to have any expectation of privacy in the information obtained pursuant to an arson investigation.

DISCUSSION

Appellant and the trial court seek to include a requirement within the ARIA that is noticeably absent from the text of the statute. The trial court denied the Commonwealth's oral motion in limine for the admission of all evidence gathered by State Farm during its arson investigation because State Farm never informed Appellant that the Commonwealth was invoking the ARIA. "Without such disclosure to [Appellant], and without her specific waiver of any rights to confidentiality she may have pursuant to her contractual relationship with State Farm, we could not permit the Commonwealth to circumvent" Appellant's constitutional protections. Trial Ct. Op., 10/13/98, at 11 (R.R. 22a). The ARIA does not contain a notice provision that places such a burden upon the Commonwealth.

Section 1610.3(c) of the ARIA, "Notification to policyholder", requires an insurance company to "send written notice not sooner than 45 nor more than 60 days from the time the information is furnished to an authorized agency." Thus, notification is only required after the requested information has been released. Contrary to Appellant's contention, the ARIA does not contain language that requires State Farm to notify its insured before it submits information to an authorized agency. In the instant case, the Commonwealth submitted its request to State Farm pursuant to the ARIA on January 2, 1998. According to the statute, Appellant had no right to be notified prior to February 16, 1998.

Appellant asserts that the Commonwealth and State Farm violated the ARIA by failing to provide written notice that the Commonwealth obtained information from State Farm within forty-five (45) to sixty (60) days after it exchanged information. As a result, Appellant contends that all evidence submitted by State Farm must be excluded.

The record supports Appellant's assertion that she did

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not receive notice within the forty-five (45) to sixty (60) day window provided by statute. However, under the ARIA, an insurance company's failure to notify its insured that it has submitted materials to the Commonwealth does not grant Appellant the remedy she seeks. The language of the statute does not expressly provide any remedy to Appellant for failure to receive notice. Section 1610.6 imposes criminal liability upon any person who violates provisions of the ARIA. [FN5] Specifically exempted from liability *738 are those individuals who violate sections 3(c)(1) and (2), the sections addressing notification to the insured. Further, Appellant does not offer any legislative history to outline the General Assembly's intent. Upon review, we find that the legislative history provides no direction as to this issue. This Court declines to impose a remedy that is neither expressly nor impliedly contained within the ARIA.

FN5. 40 P.S. § 1610.6 states:

(a) Disclosure of Information.--Any person who shall fail or refuse to release any information required to be released under this act or who discloses information required to be held in confidence, or who otherwise violates any provision of this act (except section 3(c)(1) and (2)) shall, upon conviction thereof, be guilty of a misdemeanor of the third degree.

Appellant contends, and the trial court agreed, that the Commonwealth circumvented her reasonable expectation of privacy or confidentiality in statements made and materials submitted to State Farm, due to her lack of waiver of such rights. Appellant bases her claim on Article One, Section Eight of the Pennsylvania Constitution, which states, "[t]he people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures." Such protection extends to those zones where one has a reasonable expectation of privacy. In support, Appellant and the trial court rely on *Commonwealth v. DeJohn*, supra, for the proposition that the Pennsylvania Constitution, Article One, Section Eight, affords citizens greater protection than the federal Constitution where one has a reasonable expectation of privacy, [FN6] and "so long as a person seeks to preserve his effects as private, even if they are accessible to ... others, they are constitutionally protected." 403 A.2d at 1289 (citing *Commonwealth v. Platou*, 455 Pa. 258, 312 A.2d 29, 34 (1973)). According to the trial court's fallacious interpretation, our holding in *DeJohn* can be extended to the instant case, and Appellant has a reasonable expectation of privacy in the information she conveyed to State Farm

in pursuit of her settlement claim for damages resulting from the fire.

FN6. Generally, this proposition as stated by the trial court and Appellant, is incorrect. Article One, Section Eight and the Fourth Amendment share similar language and contain the same basic tenets of probable cause and reasonable expectations of privacy. Article One, Section Eight differs from its federal counterpart in that the former "is meant to embody a strong notion of privacy, carefully safeguarded in this Commonwealth for the past two centuries." *Commonwealth v. Edmunds*, 526 Pa. 374, 586 A.2d 887, 897 (1991). Thus, pursuant to Article One, Section Eight, this Court has recognized a reasonable expectation of privacy in certain conduct or activities where our federal brethren have declined to do so. See *Commonwealth v. Johnston*, 515 Pa. 454, 530 A.2d 74 (1987) (rejecting federal determination that a drug sniff was not a "search" and requiring articulable reasonable suspicion before a drug sniff of property).

In *DeJohn*, we determined that a bank customer has a reasonable expectation of privacy in financial records maintained by the bank. One of our concerns in *DeJohn* was that bank customers supply personal information to a bank under a reasonable assumption that the information will remain confidential. *Id.* at 1290. In the instant case, Appellant was aware that the information sought was compiled as part of an ongoing investigation to determine the cause and origin of the fire. If the information compiled by investigators leads to the conclusion that a fire was sparked by an insured's criminal act, we cannot say that it is proper for the insured to adopt a reasonable assumption that such information will not be submitted to and used by law enforcement officials.

In addition, the nature of the relationship between a bank and its customer can be far different than the relationship between an insurance company and its insured. *739 When an insured files a claim for a loss, the insured seeks compensation for that loss, and the insurance company investigates the incident that caused the loss. That investigation may reveal information that allows the insurance company to deny the insured's claim. This adversarial relationship is exceedingly antagonistic in a case such as this one where the incident that caused the loss was a fire, and the suspected cause is arson. As part of such an adversarial relationship, the insured cannot reasonably believe that the information compiled by investigators

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would remain confidential. This relationship is appreciably different from that of a bank and its customer where the records obtained were compiled and maintained in the ordinary course of business. As a result, we are not prepared to extend *DeJohn* to the present case. Appellant's belief that evidence of arson would not be submitted to, and used by law enforcement officials, was not a reasonable one. Further, the ARIA clearly provides for the release of such information to law enforcement agencies.

Appellant argues that this Court has previously concluded that an insured has a reasonable expectation of privacy or confidentiality in any statements or records that she submits in pursuit of a claim, and that an insured must waive such rights before her statements may be divulged to an authorized agency. Appellant contends, and the trial court affirmed, that we reached such a conclusion in *Commonwealth v. Ball*, supra. In *Ball*, an attorney for the defendant's insurance company affirmatively warned the defendants that any disclosures made to their insurance company while conducting its arson investigation could be divulged to government investigators. In the case before us, the trial court cited *Ball* and stated that the record is void of any indication that Appellant waived her reasonable expectation of privacy or confidentiality in making statements to State Farm.

We did not hold in *Ball* that an insured has a reasonable expectation of privacy or confidentiality in statements made to an insurance company during its investigation of a fire. Rather, this Court determined that the defendants "waived whatever confidentiality they possessed" in their statements to their insurance company. *Ball*, 565 A.2d at 1146. We decline this opportunity to recognize a reasonable expectation of privacy in such statements.

CONCLUSION

We affirm the Order of the Superior Court reversing the trial court's denial of the Commonwealth's motion in limine for the admission of statements made by an insured to her insurance company pursuant to an arson investigation and given to the Commonwealth pursuant to the ARIA. We find the ARIA void of language that would require State Farm to notify Appellant before submitting any requested materials to the Commonwealth. We further find that Appellant did not have any expectation of privacy or confidentiality in her statements to State Farm.

Justice ZAPPALA concurs in the result.

Justice NIGRO files a dissenting opinion.

NIGRO, Justice, dissenting.

I respectfully dissent. Unlike the majority, I would reverse the Superior Court's decision and reinstate the trial court's order denying the Commonwealth's motion to admit the information Appellant provided to State Farm once the Commonwealth invoked its right to receive that information under ARIA.

In my view, an insured clearly has a reasonable expectation of privacy in information *740 provided to an insurance company. See, e.g., *Commonwealth v. DeJohn*, 486 Pa. 32, 45-49, 403 A.2d 1283, 1289-92 (1979) (depositor has reasonable expectation that the information in his bank records will remain confidential). [FN1] I also believe that under ARIA an insurance company acts as an agent of the Commonwealth because ARIA specifically requires insurance companies to notify the Commonwealth of suspected arson and disclose to the Commonwealth, at the Commonwealth's request, any information that an insured has provided to the company. See 40 P.S. § 1610.3. Given these obligations under ARIA, I would find that in order to adequately protect an insured's Fifth Amendment privilege against self-incrimination, once an insurance company suspects that an insured has committed arson, the insurance company must notify the insured that any information he or she provides to the company may be turned over to the Commonwealth. This notification should be required regardless of whether or not the Commonwealth has requested the insured's information pursuant to ARIA. [FN2]

FN1. I disagree with the majority that the relationship between an insurance company and an insured is clearly distinct from that between a bank and a depositor. Indeed, the view of the majority endorses the idea that the relationship between the insurance company and an insured must always be adversarial. Although the relationship between the insurance company and an insured may often become adversarial, the relationship between a bank and a depositor likewise may turn adversarial.

FN2. I do not believe, however, that an insurance company has to provide notice to the insured before giving the Commonwealth information that the insured has already voluntarily provided to the insurance company. I would find that notification is

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needed once the insurance company suspects arson because at that point, ARIA mandates that the company notify the Commonwealth of its suspicion and disclose information given by the insured upon the Commonwealth's request. See 40 P.S. § 1610.3(b). Thus, in order to assure that the insured thereafter knowingly and voluntarily waives her Fifth Amendment rights, the insurance company should be required to notify the insured of its duties to the Commonwealth under ARIA.

In the instant case, the trial court found that on December 29, 1995, Fire Marshal Copper contacted State Farm regarding the disclosure of Appellant's insurance information pursuant to ARIA and subsequently made arrangements with State Farm to investigate Appellant's home. At this time, State Farm was aware that the fire may have been the result of

arson and was also aware of its responsibilities to provide Appellant's information to the Commonwealth. I believe that on January 3, 1996, before asking Appellant for her consent to take evidence from her home and to investigate her credit history, State Farm should have notified Appellant that any information derived from those actions would be disclosed to the Commonwealth. In light of the fact that Appellant was not warned that the information she provided to State Farm would be turned over to the Commonwealth, I agree with the trial court that Appellant did not knowingly waive her Fifth Amendment rights and therefore, the Commonwealth should be precluded from using this information or anything derived from the information. Given that the majority finds otherwise, I must respectfully dissent.

END OF DOCUMENT