

July 31, 1996

STATEMENT OF REPRESENTATIVE GAYNOR CAWLEY TO THE SPECIAL  
COMMITTEE TO STUDY GUARDIANSHIP LAWS OF THE HOUSE JUDICIARY  
COMMITTEE.

I would like to thank Chairman Wogan and members of the Special Committee to study guardianship laws for affording me the opportunity to offer opening remarks at this hearing pursuant to House Resolution 377 of which I was the prime sponsor.

As you are aware, the Joint State Government Commission presented a report to the General Assembly this past May. The report recommended changes to the Guardianship laws of the Commonwealth.

On June 17, 1996 Representative Don Snyder introduced House Bill 2713 of which 16 members, including myself, co-sponsored. Representative Snyder's Bill amends the Title 20 statutes regarding guardianship and power-of-attorney laws.

On May 2, 1996 I was contacted by Judge Frank Eagen and later by Attorney John McGee of Lackawanna County asking that I take the necessary steps to amend the existing laws regarding guardianships and power-of-attorney laws.

I then, along with Representative Thomas Tigue introduced House Resolution 377 on May 14, 1996. As you know, the Resolution directed the House Judiciary Committee to conduct hearings and propose legislation strengthening guardianship laws relating to incapacitated persons.

At that time, I was unaware that the subcommittee of the Joint State Government Commission was just completing their report. Both Representatives Tom Gannon and Don Snyder advised me of this fact.

On July 11, of this year, I sent Representative Wogan a letter asking that he and the other members of the special committee to study Guardianship laws, review Judge Eagen's and Attorney McGee's proposed changes.

Today you will hear from Both Judge Eagen and Attorney McGee. I am very grateful for their willingness to come to Harrisburg to testify and I would also like to sincerely thank the committee for allowing them to offer their expertise on this most important matter.

I know that the District Attorney of Lackawanna County, Michael Barrassé also supports tightening the laws governing powers-of-attorney and guardianships and I will contact him today and ask that he forward his recommendations to this committee as soon as possible.

In closing, I again thank the committee for their interest in this matter, and I would recommend that the committee contact Attorney General Corbett and Auditor General Hafer for their input, if you have not done so. As a footnote, I want to remind you that I have attached a Scranton Times article dated May 28, 1996 regarding powers-of-attorney for your review.

# DA Says Law Must Change; Foes Disagree

5-28-96

BY THOMAS K. STAFF  
THE SCRANTON TIMES

The general consensus is that most people are basically honest, that tales of rip-offs are the exception, not the rule.

But those exceptions, however rare, are enough to prompt Lackawanna County District Attorney Michael Barrasse to call for changes in the law that allows individuals to give another person their power of attorney.

"The law provides a license to steal," said Barrasse, whose office has prosecuted a number of cases where individuals granted power of attorney have stolen from the people who trusted them.

Powers of attorney are granted in a variety of situations, ranging from individuals who want to conceal their identity in a business transaction to a person who wants someone else to handle their financial or personal affairs on a daily basis.

Opponents to changing the law are as steadfast as Barrasse.

The basic issue, they say, is privacy.

## 'WRONG DIRECTION'

"This is still America here, people still have their right to privacy," said attorney Dante Cancelli, who has debated the issue with Barrasse numerous times. "This is another step in the wrong direction."

In most cases, the abuses of the power of attorney are thefts from the elderly — crimes that Barrasse labels as "reverse child

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● Elderly woman exploited by neighbor.

● Allowing confidential review of the document by a judge. The judge would be required to look at the age of the person granting the power of attorney, the size of the estate involved, and the physical and mental condition of the person.

"The court should look at the amount of money to be distributed each month and prohibit the spending of any money by the person with the power of attorney without court approval," he said.

"I am not trying to interfere with the commercial world," he said. "I am not trying to meddle in peoples' businesses or to over-regulate, but the power of attorney gives people the right to do whatever they want with no fiduciary responsibilities."

The power of attorney is used every day in the business world

without any problems, Barrasse concedes, but the possibility of abuse and the difficulty prosecuting those who use the power illegally make it necessary for restrictions.

Barrasse also has expressed concern over the state's guardian-

ship law, but said at least under that law guardians have to be appointed by a judge and are required to make periodic reports to the court.

"A person with a power of attorney doesn't even have to bother filing false reports with court," he said. "There are no checks and balances at all."

## ABUSES RARE

But lawyers who deal with powers of attorney regularly say

the law allows people with a power of attorney to make gifts, including to themselves, and is used for estate planning purposes.

The majority of people are honest and are going to do the right thing for the person who gives them their power of attorney," he said. "They are usually selected because they are trusted. It is the exceptional case where someone takes advantage of someone else.

"I think the law is written adequately to address the needs of people while they are competent to handle their own affairs," he said.

Cancelli agreed, saying the only concession he would be willing to make would be to give individuals the option of filing a document requesting court scrutiny.

The option of making a court record is available now but rarely used, according to President Judge James Walsh.

"In my experience people don't usually file with the court," he said.

Whether there should be a requirement for court review is a matter of debate, Walsh said, but there is a provision of the law that could be changed to discourage abuse.

Prior to 1976, the power of attorney law invalidated that authority if a person became legally incompetent. But now, the power of attorney is durable, meaning it remains valid regardless of competency.

"Maybe we should go back to the old law," Walsh said. "It is when a person loses capacity that they become susceptible to abuse."