“Peine forte et dure pour les mines fer de montagne”

(A Hard and Forceful punishment for Iron Mountain Mines.)

Peine forte et dure (Law French for "hard and forceful punishment") was a method of torture formerly used in the common law legal system, where a defendant who refused to plead ("stood mute") would be subjected to having heavier and heavier stones placed upon his or her chest until a plea was entered, or as the weight of the stones on the chest became too great for the condemned to breathe, fatal suffocation would occur.

The common law courts originally took a very limited view of their own jurisdiction. They considered themselves to lack jurisdiction over a defendant until he had voluntarily submitted to it by entering a plea seeking judgment from the court. Obviously, a criminal justice system that punished only those who volunteered for punishment was unworkable; this was the means chosen to coerce them.

Many defendants charged with capital offences nonetheless refused to plead, since thereby they would escape forfeiture of property, and their heirs would still inherit their estate; but if the defendant pled guilty and was executed, their heirs would inherit nothing, their property escheating to the Crown. *Peine forte et dure* was abolished in the United Kingdom in 1772, although the last known actual use of the practice was in 1741.[1] In 1772 refusing to plead was deemed to be equivalent to pleading guilty. This was changed in 1827 to being deemed a plea of not guilty. Today, in all common law jurisdictions, standing mute is treated by the courts as equivalent to a plea of Not Guilty.

The most famous case in the United Kingdom was that of Roman Catholic martyr Saint Margaret Clitherow, who was pressed to death on March 25, 1586, after refusing to plead to the charge of having harboured Catholic (then outlawed) priests in her house (in order to avoid a trial in which her own children would be obliged to give evidence).

The only executee of *peine forte et dure* in American history was Giles Corey, who was pressed to death on September 19, 1692, during the Salem witch trials, after he refused to enter a plea in the judicial proceeding. According to legend, his last words as he was being crushed were "More weight", and he was thought to be dead as the weight was applied. This is referred to in Arthur Miller's political drama *The Crucible*, where Giles Corey is pressed to death after refusing to plead "aye or nay" to the charge of witchcraft. In the film version of this play, the screenplay also written by Arthur Miller, Corey is crushed to death for refusing to reveal the name of a source of information.

courtesy of Wikipedia http://en.wikipedia.org/wiki/Peine_forte_et_dure#Pein_forte_et_dure

Bailing out Iron Mountain Mine

By Bill Attainders

The legacy of Iron Mountain mines is at once profoundly simple and incredibly complex, the story of great fortunes made and the sad demise and ultimate catastrophe of greed and abandonment in the face of an environmental disaster. It is also a story of people, people who toiled in unbelievable conditions to pull from the earth copper ore that would help to change the world, making possible the great revolution that is the modern age.

Iron Mountain, in Redding California, was in its heyday California's largest copper mine.

First mined for silver and gold in the 1860's, it was said that at the turn of the century she made for her owners over a million dollars a day in gold alone. According to the California Bureau of Mines, by 1896 the stockholders had received over half of there investment returned in dividends in just 3 years.

Great wealth came from Iron Mountain, but also the livelihood of at times as many as 2000 workers. There was at one time a community known as Minnesota, which is now only a ghost town.

The 1908 "History of Copper mining in California" published by the California Bureau of Mines mentions in passing that the mine had begun operating a copper cementation plant, which is a large basin where the water that drains from the mine was allowed to flow over an abundance of scrap iron, resulting in a reaction that causes the copper to precipitate out.

This Acid Mine Drainage was occurring at the new adit to the Hornet Mine, which was just being prepared for mining at the time with a 10 by 10 ore production shaft.

It may be seen therefore from the historical record of Iron Mountain Mines that the Acid Mine Drainage was occurring in the ore bodies before mining had even begun.

Known as AMD, by the 1920's Iron Mountain was being blamed for killing fish in the Sacramento river, and after the Shasta dam was completed in the 1950's, interrupting the natural dilution that had previously occurred with heavy rains, the people of California and the government agencies involved began to consider possible solutions to the problem.

By 1962 the price of copper had fallen to 23¢ pound, and the Mountain Copper Co. closed the mine. Acquired by the Stauffer Chemical Co. in 1967, Stauffer invested a considerable sum planning to reopen the mine, and then abruptly sold the property to T.W. Arman in 1976.

CERCLA's mistakes.

by John Copeland Nagle

Judge Dowd was far too modest. Three years after Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),(1) he wrote that CERCLA was rushed through a lame-duck session of Congress, and therefore, might not have received adequate drafting."(2) Courts struggling to interpret CERCLA since then have abandoned such understatement. Judges now hope that "if they stare at CERCLA long enough, it will burn a coherent afterimage on the brain."(3) The usual explanation for CERCLA's poor drafting blames the hurry with which the lame-duck Ninety-sixth Congress passed the hazardous waste law in December 1980 before President-elect Reagan and a Republican Senate majority assumed office.(4)

The circumstances of CERCLA's enactment present formidable challenges to any theory of statutory interpretation. You favor a textualist theory that examines the statutory language alone? "CERCLA is not a paradigm of clarity or precision. It has been criticized frequently for inartful drafting and numerous ambiguities attributable to its precipitous passage."(5) You rely on canons of construction from which to glean statutory meaning? "Because of the inartful crafting of CERCLA ... reliance solely upon general canons of statutory construction must be more tempered than usual."(6) You prefer to rely on the legislative history of a statute's enactment? "[T]he legislative history of CERCLA gives more insight into the `Alice-in-Wonderland'-like nature of the evolution of this particular statute than it does helpful hints on the intent of the legislature."(7) You seek to implement congressional intent? "[C]ongressional intent may be particularly difficult to discern with precision in CERCLA."(8) You try to interpret statutes to promote good public policy? "CERCLA `can be terribly unfair in certain instances in which parties may be required to pay huge amounts for damages to which their acts did not contribute'."(9) You consider the current attitude toward a statute? "CERCLA is now viewed nearly universally as a failure."(10) Those who emphasize the purpose of a statute have found CERCLA more to their liking,(11) but there is an increasing awareness that purpose alone cannot solve all of CERCLA's riddles.(12)

Congress did not foresee this confusion in 1980. Alarmed by Love Canal," but perhaps even more alarmed by the prospect of a transfer of political power in the presidency and in the Senate, Congress rushed to pass a federal hazardous waste law."(14) Earlier in 1980, Congress had considered several different bills addressing the problem of hazardous wastes, and the Senate and House had approved strikingly different proposals.(15) The November election of Ronald Reagan and a Republican majority in the Senate created a new sense of urgency for members of Congress and the Carter Administration who feared that all of their work would go for naught once the new Senate and President assumed office on January 20, 1981.(16) Congress acted immediately after the election:

The bill which became law was hurriedly put together by a bipartisan leadership group of senators (with some assistance from their House counterparts), introduced, and passed by the Senate in lieu of all other pending measures on the subject.... It was considered [by the House] on December 3, 1980, in the closing days of the lame duck session of an outgoing Congress. It was considered and passed, after very limited debate, under a
suspension of the rules, in a situation which allowed for no
amendments. Faced with a complicated bill on a take it-or-leave it
basis, the House took it, groaning all the way.(17)

The result, not surprisingly, was a statute that left many questions unanswered and that did not answer clearly even those questions that it addressed.

Time has failed to remedy the mistakes resulting from Congress's haste. The lower federal courts remain split concerning numerous issues raised by CERCLA.(18) The Supreme Court rarely has

intervened to resolve this confusion in the lower courts.(19) The Superfund Amendments and Reauthorization Act (SARA) of 1986(20) failed to resolve these disputes, and no subsequent effort to amend the statute has succeeded. Administrative reforms have not corrected the mistakes inherent in the statute itself. Lacking direction from the traditional tools of statutory construction, and unable to wait for Congress to correct the errors, the courts interpreting CERCLA muddle along.

The thesis of this Article is that CERCLA confounds every theory of statutory interpretation. This conclusion should be obvious from the conflicting readings of CERCLA announced by the lower federal courts and from their frequent complaints about CERCLA's drafting. Because the lower federal courts cannot turn to past Supreme Court cases or to existing administrative interpretations for guidance, CERCLA's drafting problems are magnified. The few CERCLA cases that the Supreme Court has decided provide little help in understanding CERCLA's many other unclear provisions. The Environmental Protection Agency's (EPA) understanding of CERCLA is not dispositive because the courts do not owe such interpretations the deference usually accorded administrative interpretations under Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc."(21) CERCLA thus offers a rare opportunity to examine how lower federal courts interpret a statute when they are unconstrained by the interpretations of others and unhelped by most of the tools traditionally used in determining congressional intent.

This Article considers the interpretive issues raised by CERCLA in the context of three different kinds of mistakes made by Congress when it enacted the law in 1980. Building on a description of statutory mistakes that I have developed else where,(22) this Article focuses on three recent cases to demonstrate how the courts struggle to interpret CERCLA's mistakes. Section I discusses CERCLA's drafting errors. There is widespread agreement that CERCLA contains many such errors, but there is less consensus regarding which of CERCLA's provisions resulted from such drafting mistakes or what the response of the courts should be. Thus, the district court in Redwing Carriers, Inc. v. Saraland Apartments, Ltd.(23) adopted an interpretation of an apparent drafting error that every previous court to decide the question had rejected.(24) The court's interpretation is difficult to disprove even though it was original, so Section I also discusses approaches to statutory interpretation that seek to preserve widely accepted understandings of a statute.

Section II considers CERCLA's ambiguous and vague provisions. The absence of definitions for key statutory terms and the lack of other evidence of congressional intent regarding many of CERCLA's key provisions has produced many circuit splits. Citizens Electric Corp. v. Bituminous Fire & Marine Insurance Co.,(25) a case involving one of CERCLA's many ambiguous provisions, presents the unusual spectacle of noted textualist Judge Frank Easterbrook adopting an interpretation of CERCLA that is seemingly contrary to the plain statutory language and to numerous district court decisions adhering to that language. Section II also uses Citizens Electric to analyze the debate concerning the propriety of relying on CERCLA's broad remedial purposes as a way of interpreting the statute.

Section III examines a different kind of mistake. Repeated judicial criticism of CERCLA as unfair, harsh, and inequitable echoes broader complaints that Congress made a policy error in the first instance when it crafted CERCLA. Although courts usually leave to Congress debates about the wisdom of a statute, many courts do consider the policy results of various possible statutory interpretations. New York v. Lashins Arcade Co.(26) is one of many recent cases that openly struggles to interpret CERCLA in light of the actual results that the law produces. Lashins Arcade also is notable because it was the first CERCLA case heard by Judge Guido Calabresi, who has written extensively about tort liability and about statutory interpretation. Section III reviews the possible consequences of Judge Calabresi's writings as they relate to the continuing vitality of CERCLA.