The Treatment of White Collar Crime in China

By David W. Fulton

The industrial city of Shenyang, capital of the Liaoning Province.

Introduction

This article attempts to supply a framework for a basic understanding of the treatment of some aspects of white-collar crime in the People's Republic of China. It is directed primarily toward the Western business community, which is often familiar neither with Chinese culture nor with Chinese law. If economic contact between the West and China continues to expand, there will be a corresponding increase in the possibility that Westerners will be prosecuted in Chinese courts. Some of the offenses will be intentional and it will be seen that the best hope for these defendants lies in diplomatic appeal and political bargaining. Others will commit unintentional or negligent offenses, and it will be seen that hope for these defendants may be found in the Chinese legal system itself, if fairly applied. But just as with other legal systems, the goal of business is to avoid confrontational entanglement in Chinese courts, either as defendant or plaintiff. With the idea in mind that "forewarned is forearmed", the discussion will attempt to provide some understanding of Chinese law and of how to avoid problems with it.

The discussion adopts a standard analytic technique used in the study of Western law, examination of black-letter law and of cases prosecuted under it. Comparison of the two is intended to show what the law is supposed to be, and what it becomes when applied. We are interested primarily in what may conveniently be described as white-collar crime, on the assumption that representatives of Western culture will not go about committing violent crimes against their hosts. The term is used here to describe acts which are malum prohibitum, acts which are not inherently immoral, but become so because their commission is expressly forbidden by positive law, or whose illegality results from positive law.

The corpus of Chinese law has been swelled recently by promulgation of new laws governing a wide range of topics. The 1980 Criminal Law forms the centerpiece of our discussion, covering jurisdiction, punishment, and details of specific offenses with which businessmen must be concerned, such as embezzlement and corruption. Article 117 provides entry into the criminal law for other new enactments governing taxes, joint ventures, exchange control, and environmental protection. These other new laws contain their own administrative penalties, but when an offense is serious (and this line is never drawn with clarity) they commonly allow for punishment under the criminal law.

Two caveats are necessary at this point. English translations of these new laws are now becoming available and each tends to give a slightly different meaning to the provision in question. Where the translations show potentially significant variation, such as in the sections on intentional or negligent violations of public security, the reader's attention will be directed to differing results which might arise from a prosecution under one or the other. At this writing, there exists no official translation as such. The reader should also be aware that cases discussed in connection with various provisions are not cases in the sense used to describe the publications of the National Reporter System in the United States, but rather are cases reported in sources such as the Joint Publications Research Service. These publications glean their material from mainland radio and newspaper reports which are themselves subject to almost total control by the Chinese authorities. This is important for two reasons. First, the Communist Party has traditionally used the law as an instrument of social engineering, cases which are reported in the media may carry a political message directed at a domestic audience above and beyond the niceties a legal scholar may discern in them. Second, the cases discussed here represent only part of the total number of cases reported in the Chinese media, a situation resulting from reliance on English language sources. The author must therefore emphasize that the discussion is intended only as a framework for understanding and not as a final black and white statement of the law.

Economic Regulatory Offenses

This section deals with articles drawn not only from the 1980 Criminal Law, but also from some of the new rules and regulations promulgated as part of the current regime's
policy of de-centralizing economic planning and of expanding contacts with capitalist enterprises. The discussion includes consideration of new laws on income taxes, exchange controls and joint ventures, and of articles in the Criminal Law itself, which deal with embezzlement, forgery, speculation, manipulation, and bribery. The businessman who wants to get involved with China should note that the trend towards de-centralization of economic planning may have the unwanted effect of increasing the number of offenders prosecuted under these economic and corruption statutes. Chinese management techniques will no longer be geared exclusively towards reaching a production quota set by a central planner without regard to actual demand. Managers will be more aware of, and more vulnerable to market forces as the concept of profit becomes more important. Depending on how far this new emphasis on market forces is allowed to carry, some enterprises may be forced to cease operations because they cannot compete with more efficient enterprises. Managers faced with such a prospect may adopt illegal tactics in an effort to remain solvent.

a. Corruption

Corruption has been a major concern of the Communist Party since the early years of its campaign against the Kuomintang. Corrupt and inefficient government by the KMT was a factor contributing to popular acceptance of Communist rule, and the Party is naturally sensitive to any charge that officials now in power are abusing their positions for personal gain. One of the earliest laws promulgated by the regime was the 1951 Statute on Penalties For Corruption in the Chinese People's Republic. It contained severe penalties in many of its articles, some of which are still enforceable today. Penalties under the new law are only slightly less stringent.

The 1951 Statute on Corruption presents a catch-all definition of corruption in Article Two.

The seizure, theft, or appropriation of state property by deception or substitution, the appropriation by extortion of the property of other persons, bribery and other illegal acts committed by workers in state institutions, enterprises, schools and the agencies under their jurisdiction in the guise of taking care of the public interest are considered corruption.

The punishments for corruption are laid out in Article three and range from death for unusually serious offenses to one year of surveillance if the amount involved is less than 10,000,000 yuan. (Note that in 1951 China was still in the grip of hyper-inflation.) Property of the guilty parties was subject to confiscation and the presence of certain aggravating circumstances listed in Article Four would serve to increase the punishment. These included organized corruption, serious injury to the State, theft or sale of state economic information, and "other especially malicious circumstances". Officials and citizens alike were encouraged to expose corrupt practices by Articles Thirteen and Fourteen, which provided that directors of government agencies who discover but fail to expose corruption on the part of their subordinates would be punished, and that any citizen had the right to expose corruption and to be protected from the vengeance of those so exposed. Furthermore, Article Five provided that punishment would be mitigated or omitted for offenders who expose others engaged in corrupt practices. The 1980 Criminal Law does not include a general description of corruption but instead deals with several specific offenses in Chapter VI Offenses Against the Socialist Economic Order and Chapter VII Malfeasance. The current campaign against corruption has taken the form of a crackdown on 'special privileges' enjoyed by cadres, aided in part by aggressive newspaper reporting. The case of Zheng Xuyu is illustrative. Mr. Zheng was accused by the People's Daily of illegally occupying a private residence for an extended period of time. Given the crowded conditions in which many Chinese live, this abuse of power seems to be particularly galling to the media, if not to every rank-and-file citizen. Mr. Zheng was forced to relinquish the residence and to submit a self-criticism to the party committee of the military district of Hebei Province. However, at a later date Mr. Zheng retracted this criticism, refuted his disclosure of past mistakes, and brought suits for libel against the reporters and editor of People's Daily. At this writing, these cases are still pending before the Supreme People's Court. The incident emphasizes the power of the press to affect once untouchable members of the party. Mr. Zheng had occupied the residence from 1970 to 1979 and had ignored
orders to move out sent to him on numerous occasions by "superior organizations and leaders." When the People's Daily publicized his offense, he moved out almost instantly, although he has since attempted to re-establish his alleged right to the residence and to force a retraction by the newspaper.

The press is not the only initiator of action against corrupt practices, as the case of Guo Zhongwen shows. Mr. Guo was dismissed from his position as a party main branch secretary for organizing private parties and dinners, accepting gifts, and engaging in activities which "blemished" the spirit of the party. Mr. Guo's offenses consisted primarily of mis-using state property and accepting gifts which he exchanged at retail stores for cash. The Cangshan County Party Committee dismissed him after an in-depth investigation, but did not prefer criminal charges against him, though they could easily have done so under Article Two of the 1951 Statute on Corruption, set forth above. The 1980 Criminal Law contains several articles which would apply if Mr. Guo were prosecuted, most notably Article 151, "Anyone who takes away a relatively large amount of public or private property by stealing, swindling or plundering will be sentenced to imprisonment for not more than 5 years, detention or surveillance," and Article 155 on embezzlement, discussed in more detail below, "A state functionary who takes advantage of his position and power to embezzle public property will be sentenced to detention or imprisonment for not more than 5 years." The punishment actually provided for Mr. Guo tends to cast doubt upon the consistency of the campaign against special privilege. Although the reader should not minimize the punitive effect of dismissing Mr. Guo from a party position, albeit at a fairly low-level, the kinds of petty abuses involved here would seem to be perfectly suited to making an example out of the offender. Once again, the fact situation indicates that political considerations played a major role in the final disposition of the case.

b. Embezzlement

Embezzlement is defined in the West as "the fraudulent conversion of the property of another by one who has lawful possession of the property and whose fraudulent conversion has been made punishable by statute." It is distinguished from the other theft crimes by the requirement that the embezzler have lawful possession of the property before the act of conversion takes place. Under the current constitution, ownership in the PRC takes two main forms, socialist ownership by the whole people and socialist collective ownership by the working people. Commune members and non-agricultural individual laborers are allowed to engage in sideline pursuits involving no exploitation of others, but for the most part the property of which a potential embezzler will have lawful possession in the Western sense will belong to the state. As such, conversion of that property will be an offense against the state and will therefore, in theory at least, be punished severely.

The 1951 Statute on Corruption did not deal with embezzlement by name but includes several articles worded in such a fashion as to allow a prosecution under them. As discussed earlier, Article Two is very broad, providing that "The seizure, theft, or appropriation of state property by deception or substitution . . . is considered corruption." Article Eight stipulates that "non-government officials who have . . . appropriated state property by deception" must either reimburse the state or pay a fine, and, if the crime is serious, may be punished under Article Three with a jail term and confiscation of all property. If the offense includes theft or sale of state economic information, Article Four provides that the punishment shall be even more severe. Articles 15 and 16, again almost as an afterthought, make the entire statute applicable to workers in public organizations and soldiers in the revolutionary army.

The 1980 Criminal Law deals with embezzlement in Articles 126 and 155, and with what are referred to as "swindlers" in Articles 151 and 152. Article 155 provides penalties ranging up to life imprisonment or death, but unlike the 1955 Statute on Corruption does not specify the point where ordinary embezzlement becomes "extremely grave", thus warranting harsher treatment. Article 126 does not use the term embezzlement, but provides a penalty of up to seven years imprisonment for "personnel directly responsible for serious cases of misappropriation of state funds . . . " Articles 151 and 152 provide penalties of up to ten years or life for "anyone who takes away a relatively large amount of public or private property by stealing, swindling or plundering." Swindling is nowhere defined, but appears to be quite similar to what the West knows as larceny by fraud — "purposely [obtaining] property of another by deception." Such an interpretation is urged by the inclusion of Article 153, which provides that anyone who uses violence or threats of violence in order to "hide the booty, resist arrest or destroy evidence" will be charged with robbery under Article 150. Thus, it would appear that Articles 151 and 152 deal with fraud crimes which do not involve lawful possession of the property prior to conversion but rather where possession is gained by deceit. The use of violence in gaining or maintaining that possession therefore becomes ordinary robbery. The two articles are included in this discussion of embezzlement because "swindling" is not defined in the statute and might therefore be used in prosecution of an embezzler.

Prosecutions for embezzlement are reported frequently in the Chinese media, probably as a warning to potential offenders and to demonstrate to the public that the law is indeed being enforced. The two cases included in this section are fairly typical. The first is the case of Tai Hung-sheng, who was convicted of embezzling almost 1000 yuan from the Haiming Shoe and Hat Shop, where he was cashier and "temporarily leading member." By his own admission in court, Mr. Tai "did not enter receipts into the accounts and . . . did not deposit cash in the bank." Mr. Tai was sentenced under Article 3(4) of the 1951 Statute on Corruption, which provides a penalty of up to one year imprisonment, and under Article 5(2), which allows mitigation of punishment in the event of a.

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"Frank and full confession after discovery of the crime, sincere and spontaneous repentance, [and] compensation as far as possible for the property stolen by corruption." Mr. Tai had confessed fully and, with the aid of his father, who also testified, had already repaid most of the money by the time his case came to trial. The trial itself was concerned primarily with Mr. Tai's repentant attitude; his guilt had been established beforehand by the prosecutor's investigation and by Mr. Tai's own confession. His father and several co-workers testified that he was basically a good man, but had been influenced by the "gang of four". Because Mr. Tai made a full confession and demonstrated sincerity, he was exempted from penal servitude and sentenced only to reimburse the amount stolen.

The second case involves embezzlement on a much higher level and over a much longer period of time. Ms. Wang Shouxin was convicted of embezzling the equivalent of more than $350,000 over a seven year period, a "staggering" figure in China, where the average wage is less than $30.00 a month. She was a cashier at the Binxian County Fuel Company in Heilongjiang Province until political purges during the Cultural Revolution allowed her to rise in rank to become the fuel company's party secretary — a post of considerable importance. There, according to People's Daily, she and her accomplices turned the company into an "independent kingdom", and embezzled a large amount of money with which they purchased scarce luxury items such as televisions and bicycles. Ms. Wang and her son plied the staff with banquets and gifts to keep them quiet, though one of them did make a report to higher authorities. Ms. Wang tried to find this informer by administering handwriting tests, ransacking homes, and firing ten workers. She was tried in a court in Heilongjiang Province, convicted, and condemned to death. According to one report, the 2,200 people attending the trial applauded when this sentence was pronounced.

Given the recent trend in Chinese jurisprudence toward a more orderly judicial process, one might understandably register some surprise when informed that embezzlers are still condemned to death at trials attended by thousands of people. And indeed, a survey of press reports indicates that most publicized executions are for violent crimes such as murder and rape, not white collar crimes like embezzlement. This case includes several aggravating legal, political, and social factors which, I submit, resulted in this harsh penalty for what was otherwise an ordinary embezzler.

First, the sum involved here was tremendous, probably more than enough in 1951 dollars to fall under the first section of Article 3, which provides imprisonment for ten years to life if the sum appropriated exceeds 100,000,000 yuan or death "if circumstances of the crime are unusually serious." Ms. Wang was also liable under Article Fourteen, above, which makes it a criminal offense to persecute or to take revenge upon someone who exposes corruption. Article Four provides that where corruption is accompanied by other crimes such as persecution, punishment will be prescribed for the totality. It also provides
a list of factors which will result in a more severe punishment, including repetition and failure to repent, organization of corruption involving several persons, inflicting serious injury on the state or the public or the people's security, and "other especially malicious circumstances." All of these may be observed in Ms. Wang's offense.

Second, Ms. Wang rose to her influential position during the Cultural Revolution, implying that she allowed herself to be associated with the radicals who were attempting to seize power. She may have made political enemies in the process and the fact that the radicals have been surprised indicates that she probably no longer has many friends in the current regime. Political revenge of this sort is very unpleasant to contemplate, but should not be ruled out in this case. After all, more than one official who was hounded from power during the Cultural Revolution has returned under the auspices of Mr. Deng. In this regard, one might also note the description of her operation as an "independent kingdom." This is a bit of political jargon which readers familiar with the removal of Kao Kang will recognize. It refers to periods in Chinese history when the central government was too weak to enforce its authority in all areas, resulting in the establishment of local power centers in competition with it. Kao Kang was closely associated with the Soviet Union during the late 1940's and early 1950's, and was a powerful figure in Manchuria, which borders the Soviet Union and contains much of China's heavy industry. He was removed from power because of the fear that if the Americans invaded China over the Yalu River, he would seize control of Manchuria, establish his own "independent kingdom", and invite the Soviet army to back him up. The use of the term in this case implies that Ms. Wang was acquiring too much political power and influence, in addition to stealing from the fuel company.

Finally, the execution of Ms. Wang can be viewed as a gesture to public opinion. The large sum of money involved here could not help but give Ms. Wang and her associates a very high profile. The various items for which at least some of the money was spent might be called conspicuous consumption of goods and, just like Zheng Xuyu's usurpation of a private residence, discussed above, such goods would not go unnoticed by others. Considering that Ms. Wang was already in a highly visible position as party secretary, it is very possible that she incurred the enmity of many people with whom she had no direct contact. The fact that her trial was conducted in public and attended by some 2,000 people argues strongly that she was executed as much to serve public opinion as for crimes against the state.

Article 117 of the 1980 Criminal Law

Article 117 is discussed in a separate section because it covers a large area of potential criminal liability, including several activities in which foreigners will be especially interested. It states:

Those who violate financial, foreign exchange, gold and silver and commercial control laws and practice speculation and manipulation will in serious cases be sentenced to fixed-term imprisonment of not more than 3 years or detention. They can concurrently or exclusively be sentenced to fines or the confiscation of property.

This article provides an entry into the criminal law to be used against those who violate other laws regulating the economy, several of which were promulgated within the last three years. As discussed above, the trend towards de-centralized economic planning and the desire to attract foreign business have required a more detailed set of rules than ever before. These rules are necessary not only to provide continuity and predictability to the economy, but also to protect it from unscrupulous or desperate managers. For example, the years of central planning, beginning with an emphasis on Soviet methods, have resulted in a concentration of certain production capabilities in the hands of a relatively few enterprises. The survival of an established but inefficient enterprise might depend on its ability to destroy competition through predatory pricing, a phenomenon often observed in capitalist economics. The degree of control by central authorities over such supply bottlenecks is quite large, and any concerted effort would have to be approved by a high level official, but the prospect of losing just such a high level position if the enterprise were to become insolvent might provide the necessary motivation. On a lower level of the economy, an investigation into commodity prices in Tianjin was launched in early May, 1980 in response to criticism of sharp increases. Tianjin Daily reported that an investigation was made in every unit to check price hikes. The municipal revolutionary committee produced an order indicating that "all units which violate the price policy or which impose unauthorized price hikes directly or indirectly, will have to be rectified", and that penalties would be imposed on those who inflated prices without the permission of the committee. The People's Daily reported on June 12, 1980 that Chongqing (Chungking) municipality had conducted four "extensive" price investigations revealing more than 20 "serious cases of violations against pricing policies and regulations", and urged strong action by the authorities.

c. Exchange Control

The Provisional Regulations for Exchange Control of the People's Republic of China were promulgated by the state council on December 18, 1980 and by their terms apply to:

All foreign exchange income and expenditure, the issuance and circulation of all kinds of payment instruments in foreign currency, dispatch and carriage into and out of the People's Republic of China of foreign exchange, precious metals and payment instruments in foreign currency. . .

These regulations are drawn to keep very tight control over the movement of foreign exchange or hard currencies in and out of the country. As does any developing nation, China needs hard currency to finance imports from the industrialized countries. Individual possession of foreign exchange is limited to whatever is already inside the country, and most transactions must be conducted through the Bank of China, including transactions by governmental and
non-governmental bodies alike. Conversion to and from renminbi must also be carried out through the Bank of China, and sending renminbi or denominated cheques, drafts, and other instruments out of the country is prohibited.

These regulations represent a new phase in Chinese law. The provisions are as detailed as anything found in the West, and foreigners planning to do business with the Chinese would be well advised to study them with care, especially in light of Article 31, which provides a reward for units or individuals reporting violations. Article 31 also provides such penalties as compulsory exchange of foreign currency for renminbi, fines, confiscation of property, and punishment under Article 117 of the Criminal Law.

The possibility of increasing profits on a foreign trade deal through violation of exchange control regulations is a temptation known to any businessman working on overseas projects. For example, the price differential on the black market for hard currency, or the opportunity to purchase imports at a future date without going through the Bank of China at the official exchange rate might lead a Chinese manager to ask for direct payment in foreign exchange instead of renminbi. Such activity is subject to fines and/or a prison term of up to three years.

d. Taxes

The PRC issued two new income tax laws in September 1980, one concerning joint ventures using Chinese and foreign investment, and one dealing with individuals. Detailed implementation regulations soon followed. The enactments total some 95 articles in all, and use tax terminology familiar in Western systems such as straight-line depreciation, residual value of fixed assets, amortization and so on. The tax regulations are just as detailed as the exchange regulations discussed above, and are specifically directed towards foreign business and investment. The temptation to avoid these taxes is lessened somewhat by what the Chinese claim is a lower tax rate than prevails elsewhere in the world, a mere 33%. Offenders are liable under Article 14 of Joint Venture Tax Law and Article 12 of the Individual Tax Law, which provide that the tax authorities may, in addition to collecting the tax due, impose a penalty of up to five times the tax not paid. Gross violations will be handled by the local people’s courts under Article 121 of the Criminal Law, which carries a penalty of up to three years fixed-term imprisonment for the personnel directly responsible. Exactly what constitutes direct responsibility will probably be determined on a case-by-case basis, and, since trial will be on the level of the local people’s court, could vary widely, depending on the political situation at the time of trial.

Environmental Protection Law

Environmental protection is a new subject in Chinese law. The first enactment, entitled The Environmental Protection Law of the People’s Republic of China (hereinafter “Environmental Law”), was adopted in principle in September 1979. Its stated function is:

to ensure, during the construction of a modernized socialist state, rational use of natural environment, preven-

Article 26 establishes an Environmental Protection office charged with carrying out this task.

The rush to industrialize has created pollution problems in China which the current regime apparently wants to avoid in the future. But protecting the environment can be expensive, and existing facilities sometimes will be hard pressed to meet any standards established by the State Council under Article 33. The investment return on new projects may suffer as well if planners are required to include pollution control at the design stage. Chapter Six of this law provides both rewards and punishments to encourage obedience. These rewards include commendations, tax reductions on products manufactured using waste gas or waste residues, and cash prizes.

Penalties for violation of the law and other environmental regulations laid down in Article 32 include warnings, fines, money damages, and orders to halt production. Those offenders directly responsible for serious pollution and resulting damages to persons, farming, forestry, animal husbandry, sideline production and fishing may be liable administratively, economically, and criminally. Criminal charges would not be levied under one particular article of the 1980 Criminal Law, but rather would be prosecuted under a variety of scattered provisions depending upon the exact nature of the offense. Article 114 deals with safety regulations in factories, mines, and construction units, while Article 115 covers regulations on control of explosives, flammables, radioactive materials, poisons, and corrosive goods. Violations resulting in "serious accidents" and "grave consequences" are punished by a minimum of three years to a maximum of seven years imprisonment. These two articles are worded broadly enough to cover sudden, violent acts of pollution such as oil or chemical spills, and may also be invoked against the slower, more insidious types of pollution such as seepage pits or smoke discharges. The statute of limitation under the criminal law is ten years for offenses carrying a maximum penalty of less than ten years. The period of limitation is calculated from the date of the offense, but for a continuous or continuing offense, the calculation is based on the date of the termination of the offense. Thus, if the court were to hold that an offense was a continuing one, a company and its directors could be held liable for damage caused by a pollution source such as a seepage pit decades after the close of operations.

The Environmental Law itself covers the major types of pollution under Chapter Three. "Prevention and Elimination of Pollution and Other Hazards to the Public." Article 16 demands control of noxious substances from factories, mines, enterprises and urban life, Article 17 provides for protection of residential areas, water resource protection zones, places of historic interest and scenic beauty, and nature conservation areas, and Article 19 requires compliance with standards set by the State for smoke discharge devices, industrial furnaces, motor
vehicles, and ships. Article 20 prohibits ships from discharging substances containing oil or poison into Chinese waters. Other articles urge development of high effect, low toxicity pesticides and require control of noise and vibration. Article 13 requires strict adherence to the National Forestry Law and urges reforestation “so as to turn the whole land into a big park.” Penalties are provided in the Criminal Law under Articles 128 and 129, ranging from fines to fixed-term imprisonment of up to three years.

A strictly enforced Environmental Protection law carrying criminal penalties presents obvious problems for foreign investors. Probably the safest course would be to seek actively to comply with the new law through all phases of a project — design, construction, and operation. The Chinese managerial contribution to a joint venture should be viewed not so much as unreliable but rather as inexperienced in pollution control and therefore prone to errors in judgment. The fiscal pressures which lead managers to circumvent pollution control laws in the West are also present in China, with the added incentive that a manager whose project fails may be hard pressed to find another.

Press reports indicate that these new laws are being enforced with fines and jail terms, as the cases in this section illustrate. The first case involves fines levied on the basis of changes brought by injured units and people in the city of Shenyang. This is permitted under Article Eight of the Environmental Law: “The Citizen has the right to supervise, accuse and bring a complaint before the court against the unit or the individual who has caused the pollution and damage to the environment.” The Shenyang People’s Procurate, the Shenyang intermediate people’s court and the Shenyang Environmental Protection Bureau cooperated in an investigation of pollution caused by an electro-plating plant, vehicle maintenance shops, and by the Shenyang Scientific Instruments Plant of the Chinese Academy of Sciences. These organizations were fined 60,000 yuan for polluting two wells which supplied water to residences in the city. The Shenyang Petrochemical Plant was ordered to pay compensation to two production units whose wells and vegetable plots were contaminated by chromium when covers on piles of chromium residue deteriorated, allowing seepage into irrigation water. The plant was ordered to remedy the problem by June 1, 1980 and to halt discharge of hydrogen chloride waste gas.

The second case involves the discharge near Shanghai of enough cyanogen to kill 48 million people, shortly after the new Environmental Law was promulgated. Worker’s Daily reported that the city of Suzhong (population: 1.3 million) was thrown into confusion after 28 tons of water contaminated with cyanogen flowed out of chemical plant into a canal when a factory worker forgot to close a valve controlling the flow of cyanogen from a tank to another container. A local court sentenced the worker, Zhang Changlin, to two years in prison and fined the plant 440,000 yuan. The heavy penalties in this case were seen as indicating that the accident may have caused some casualties.

These cases illustrate what seems to be an ongoing campaign both to punish polluters and to educate the people on the effects and prevention of pollution. Press reports on fines for polluters and calls for stricter controls have begun to appear with increasing frequency, spurred by foreign reports of mercury pollution in Japan and phenomena such as Love Canal in the United States. Whether or not the campaign will continue at the current level of intensity if the economy falters and funds for new investment become scarce remains to be seen.

**Conclusion**

Several points should be emphasized in concluding this discussion. The laws which have been examined here are all very new and their manner of application is not yet settled, especially in regard to foreigners. This uncertainty is compounded by the absence of any official translation and by the disparity between existing unofficial translations. In addition, the cases which accompanied analysis of these unofficial translations were often seen to hold as much political as legal import, thus casting much doubt on their validity as precedent for future decisions.

With this caveat in mind, we have seen that the 1980 Criminal Law is a unique blend of Chinese and communist features and cannot be understood without reference to the philosophy of each.

The capacity of the law for overwhelming a defense based on legal technicality or semantic distinction is reinforced by the emphasis placed on the attitude of the offender in sentencing and the harsh results to be expected upon failure to repent. The cases of Tai Hung-sheng and Wang Shouxin provide an excellent illustration of the point. Mr. Tai confessed, showed a proper attitude, and was treated leniently. Ms. Wang persecuted her accusers, showed an improper attitude, and was treated harshly. The case also serves to re-emphasize the political factor in modern Chinese law. Ms. Wang rose to power during the Cultural Revolution and probably made political enemies. The offenders involved in the industrial accidents discussed in the section on Violations Against Public Security received sentences which varied according to their political status. The political factor carries a great deal of weight in Chinese criminal prosecutions and, while the current regime seems committed to rule by law instead of political expediency, overnight elimination of political considerations in legal decisions seems unlikely, especially where foreigners are involved.

This is not to say that the capacity for rule by law is not present however. The framework for a regularized legal system has been laid in the law, in the courts, and in the schools. Whether the trend will continue to a complete separation of law and politics, and indeed, whether such a separation is even possible under Marxism-Leninism-Mao Zedong Thought, remains to be seen.

David Fulton was born in Wheelus Air Force Base in Tripoli, Libya. He received a B.A. with Distinction in Anthropology from the University of Virginia in 1977. He will
receive an M.A. in Foreign Affairs from the University of Virginia and a J.D. from the College of William and Mary in the Spring of 1982. He speaks Mandarin Chinese and French, and plans to work in the United States import-export trade with Asia.