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## TURNING VICTIMS INTO DEFENDANTS: A STUDY OF SEX SCANDALS

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Falling standards in media ethics has been a global and alarming phenomenon. One particular trend is to treat sex scandals as info-tainment for the masses and to boost sales. In 2001 and 2002, the Chu Mei Feng scandal in Taiwan and the Carina Lau Kar Ling incident in Hong Kong shocked the Chinese community. Privacy issues and obscenity laws were immediately invoked and many called for tighter control of the press. Careful analysis, however, will reveal that legal regulations are inherently limited and unable to grant adequate protection to victims. Ironically, in both cases, the protagonists got their ultimate revenge not through the court but by waging a war against the media through the media. This paper therefore argues that unless there is an alteration of the gender bias in society, tighter legal regulation of the press will only sacrifice press freedom without helping the victims.

### I. INTRODUCTION

The falling standards of media ethics is an alarming global phenomenon. A particularly worrying trend is the treatment of sex scandals as info-tainment to entertain the public and to boost the sales of publications.<sup>1</sup> Yet when the protagonists of sex scandals are victims of sexual offences, the coverage of these stories can easily become a form of media violence against the victims. In 2001 and 2002, two sex scandals shocked the Chinese community and called into question the ethical standards of the media, the regulation of the press, and the protection of the victims of sex offences. These two incidents were the Carina Lau Kar Ling incident in Hong Kong and the Chu Mei feng scandal in Taiwan.<sup>2</sup>

Carina Lau is a movie star in Hong Kong and is famous within the Chinese community. In 2002, two tabloid magazines showed nude photographs of her taken under duress. The photographs were classified as obscene articles, and the magazines are facing prosecution for violation of the obscenity law at the time of writing.<sup>3</sup> Chu

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<sup>1</sup> For examples of discussions of this trend in info-tainment, see B. Kovach & T. Rosenstiel, *Warp Speed: America in the Age of Mixed Media* (New York: Century Foundation Press, 1999); and J. B. Thompson, *Political Scandal: Power and Visibility in the Media Age* (Cambridge: Polity Press, 2000). These include an analysis of the scandal involving U.S. President Bill Clinton and Monica Lewinsky and other stories drummed up by the media; see *infra*, text to note 60 *et seq.*

<sup>2</sup> In this article, I use the terms Taiwan and Republic of China interchangeably.

<sup>3</sup> See text accompanying *infra* note 19. For the report on the proceedings against *Eastweek*, see *Television and Entertainment Licensing Authority v. Eastweek* (20 February 2003), OAT/GOT/772/2002/Review (Obscene Articles Tribunal, Hong Kong SAR). For the report on the proceedings against *Three Weekly*, see *Television and Entertainment Licensing Authority v. Three Weekly* (8 April 2003),

was a promising young politician in Taiwan who was betrayed by her best friend and secretly videotaped having sex with her married boyfriend. The videotape was later made into a video compact disc (VCD), copies of which were distributed by a tabloid magazine in 2001. Along with other charges, the magazine was prosecuted for invasion of privacy and violation of the obscenity law.<sup>4</sup> In both incidents, graphic images of the victims' painful sexual experiences and their private lives were revealed to millions of nosy readers, and it was also rumoured that pictures of both Lau and Chu that depicted the entire process of sexual violation and intercourse were made available on the Internet.<sup>5</sup> In the midst of such outrageous media practice, many called for tighter control of the press.

A careful analysis of both incidents, however, reveals that the media were not the only culprits in the victimization of the two female protagonists that heightened the culture of mass voyeurism of the private lives of others. The law courts and the public were also accomplices and participated actively in intruding on their privacy and objectifying the experience of the two victims.

In both the Hong Kong and Taiwanese courts, pictures of the female victims were examined in detail, with the focus being on their naked bodies, and on their breasts and genitalia in particular. Effectively, the victims were reduced to mere body parts under the obscenity laws that claimed to protect them, because the pictures had to be judged to be pornographic before the victims could claim the protection of the obscenity laws. Furthermore, under the obscenity laws of both Taiwan and Hong Kong, the culpability of the defendants rests on the extent to which the moral sentiments of the public have been offended, rather than on the direct harm done to the victims. Although the media as defendants lost the legal battles in both jurisdictions, the female victims could hardly be said to have won.

In parallel, a similar schizophrenic pattern can be discerned in the public sphere. The public denounced the practice of the media, but the magazines that broke the scandals were sold out within the first day of issue. Despite the huge public uproar in both Hong Kong and Taiwan condemning the media, the public was eager to find out whether any "second-order transgressions"<sup>6</sup> had been committed by the two victims. This term was adopted by famous media scholar John B. Thompson to refer to the violations of moral norms and orders embedded in society.<sup>7</sup> In contrast, first-order transgressions refer to the violation of legal norms, namely the infringement of privacy and the publication of obscene materials in these two cases. The public

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OAT/GOT/775/2002 (Obscene Articles Tribunal, Hong Kong SAR) [in Chinese, translated by the author].

<sup>4</sup> See text accompanying *infra* note 21. The details of the incident can be found in *Republic of China v. Kuo Yu-ling* (25 July 2002), Litigation No. 186 (Taipei District Court, Republic of China), online: <<http://nwjirs.judicial.gov.tw>> (in Chinese).

<sup>5</sup> It was believed that Lau was gang raped, but this was subsequently denied by a spokesperson for Lau. For a discussion on this case, see "Rape of Carina Lau Being Broadcast on the Web, Terrifying Scenes", online: China.com <[http://entertainment.china.com/zh\\_cn/star/chinese/11015621/20040202/11614129.html](http://entertainment.china.com/zh_cn/star/chinese/11015621/20040202/11614129.html)> (in Chinese, translated by the author). Stories and pictures of Chu's affairs topped the Lycos Search List for two weeks in 2002. For details, see Aaron Schatz, "The Strangest Feng" (22 Jan 2002), online: Lycos <<http://50.lycos.com/012202.asp>>.

<sup>6</sup> Thompson, *supra* note 1 at 120. John B. Thompson is a leading scholar in media and communication studies teaching at the University of Cambridge. One of his famous and influential works is *The Media and Modernity* (Stanford: Stanford University Press, 1995).

<sup>7</sup> *Ibid.*

is generally interested in clandestine affairs, extra marital relationships, and illicit sexual activities, and in the cases discussed here, a public trial that focused on the moral appraisal of both victims was conducted in the public arena during the storm and its aftermath.

Viewing the two incidents from this perspective, the behaviour of the media only partly serves to reflect the deeply patriarchal nature of both societies, which are always keen to monitor the behaviour of women. The court and the public were quick to lament the general decline of media ethics, and to condemn the unscrupulous activities of journalists, but they forgot that the media are also a socially constructed discourse that reflects and produces power.<sup>8</sup> The struggle for power highlighted in these two cases took place within the particular discourse that defines gender as “a set of overlapping and often contradictory cultural descriptions and prescriptions referring to sexual difference which arises from and regulates particular economic, social, political, technical and other non-discursive contents.”<sup>9</sup>

Despite the fact that Lau and Chu were victims of the media, they were well aware of the unique nature of the media, and in particular of their immense powers of interpretation. The two victims were sensitive to the issues at stake in the gender war. Strategically and skillfully, they both waged battles to rescue their image and reputation in the media by capitalizing on the stereotypical roles of women. It was relatively easy for Lau to fight the battle by playing the role of a strong victim, with the backing of her fellow artistes and many others in Hong Kong.<sup>10</sup> The ensuing moral panic forced the magazine that had published the photographs of her to close down even before the initiation of legal intervention.<sup>11</sup> In stark contrast, Chu had an uphill battle to fight. The Taiwanese media may have been eager to publish the details of the story, but the wider public perception was that Chu was a bad woman because she had committed adultery, an offence which can carry a prison term under Taiwanese criminal law.<sup>12</sup> The challenge to public morality posed by the Chu scandal was whether a bad woman could ever deserve public sympathy as a victim. Lau could appeal to the moral high ground, but Chu could only confess to her own “evil” nature.

In analyzing these two scandals, this article argues that although the press might be criticized for sensationalizing or capitalizing on sex scandals, unless there is a change to the gender bias in society, no tighter legal regulation of the press will be able to solve a problem of this kind. Any increase in the reach of the law in this area would only sacrifice press freedom without actually helping the victims, because legal regulations are inherently incapable of protecting the victims of sex scandals exposed by the media, in particular when what is at issue is an individual’s reputation or the psychological effects of such exposure. Ironically, in both of the cases dealt with here, the protagonists got their ultimate revenge not through the courts but

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<sup>8</sup> Liesbet van Zoonen, *Feminist Media Studies* (London: Sage, 1994) at 40.

<sup>9</sup> *Ibid.* at 4.

<sup>10</sup> Five hundred marched on the streets in protest and in response to a call by the Hong Kong Performing Artists Guild on 3 November 2002. See Chow Chung-yan & Patsy Moy, “I’m Stronger than Ever, Says Actress” *South China Morning Post* (4 November 2002) at 1.

<sup>11</sup> Antoine So & Cheung Chi-fai, “Nude-photo Furore Halts Magazine” *South China Morning Post* (3 November 2002) at 1.

<sup>12</sup> *Criminal Code*, Republic of China, art. 239, online: Laws and Regulations Database of The Republic of China <<http://law.moj.gov.tw>> (in Chinese) [*Taiwan Criminal Code*].

through the media. They garnered public sympathy and waged a war against the media through the media.

To support this argument, the article is divided into three main parts. Following the introduction, the background to the two cases is outlined and the respective judicial decisions analyzed. This is followed by an investigation of the double victimization that the media and the public inflicted on the victims. The third part examines the victims' responses and their counter-strategies in the public arena. Despite the fact that the two victims ultimately obtained their victory by using the media, the last part will argue that they were merely indulging in the complicated process of negotiating and reconstructing their gender identities. They played largely by the rules of what is deemed legitimate or deviant in the gender discourse. The article concludes that the protection of victims in sex scandals requires both gender awareness of the parties involved and gender sensitivity of the whole society at a broader level.

## II. SEXUAL TERRORISM IN COURT

A common popular perception is that the court of law is the ultimate forum for delivering justice and redressing grievances. This may be true for many, but may not necessarily be the case for the victims of sexual offences. Much literature has been written about the way in which the victims of sexual offences, the large majority of whom are women, are further victimized in the legal and judicial processes.<sup>13</sup> Many female victims are forced to undergo another form of "sexual terrorism" in court.<sup>14</sup> This includes behaviour, perceptions and definitions that are threatening, violent and harassing. In other words, "sexual terrorism" refers to the reality of violence imposed on the lives of women in an attempt to control them. Eventually, these acts of legally sanctioned "sexual terrorism" deny the experiences of women victims, and silence their voices. For instance, Catherine MacKinnon has criticized the confinement of the definition of rape to the penetration of the vagina by a penis without consent as being highly problematic.<sup>15</sup> She argues that this definition completely ignores the reality that serious and equally violent forms of the violation of women may be carried out with foreign objects. Equally, the absence of consent, which is a core concept of the definition of rape, often has to be proved by the instance of violent self-defence,<sup>16</sup> without which the courts are hesitant to view the attacked woman as a victim. This explains why many female victims are reluctant to come forward to seek legal redress, as they see the courts as a part of the control mechanism of sexual dominance and subordination.

This criticism certainly rings true for the present analysis. Regardless of the fact that Carina Lau was a victim of sexual assault and Chu Mei-feng was a willing participant in a private sexual activity, neither sought redress through the legal system voluntarily. A brief summary of the facts of both cases would be useful at this stage.

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<sup>13</sup> For example, see J. Temkin, *Rape and the Criminal Justice System* (Aldershot: Dartmouth, 1995).

<sup>14</sup> C. J. Sheffield, "Sexual Terrorism: The Social Control of Women", in B. B. Hess & M. M. Ferree, eds., *Analyzing Gender: A Handbook of Social Science Research* (California: Sage Publication, 1987) at 171-189.

<sup>15</sup> C. A. MacKinnon, "Sex and Violence", in Patricia Searles & Ronald J. Berger, eds., *Rape & Society* (Boulder: Westview Press, 1995) at 29 [*Rape & Society*].

<sup>16</sup> C. A. MacKinnon, *Towards a Feminist Theory of the State* (Boston: Harvard University Press, 1989) at 171-183.

Both Lau and Chu are attractive females in their late 30s. Lau is a 38 year-old actress, famous for her sexy, healthy look. In 1990, when she was an emerging young actress, she was kidnapped one evening. Reappearing two hours later, she never explained the incident in full. Just as the incident had disappeared from the public radar, a tabloid magazine in Hong Kong revealed the mystery. The front cover of the November 2002 issue of *Eastweek* depicted the photograph of a naked and distressed woman, with eyes and nipples pixelated to hide the detail. The title read "Tragedy in the Entertainment Industry: The Picture of the Tortured and Naked Alphabet Actress Finally Exposed."<sup>17</sup> Although the name of Lau was never mentioned on the front page or in the cover story, she could easily be associated with the victim in the photograph. Inside the issue, the cover story was immediately followed by a casual story on the recent life of Carina Lau. The cover story alleged that the photograph had been sent to several media organizations in Hong Kong anonymously from Shenzhen in China. Shortly after *Eastweek* published the photograph, *Three Weekly*, another tabloid magazine also published it.<sup>18</sup> A huge storm erupted in Hong Kong over the publication of the photographs, and many condemned the practices of the media. The owner of *Eastweek* closed down the operations of the magazine in the face of such uproar. The photographs from *Eastweek* and *Three Weekly* were classified by the Obscene Articles Tribunal as obscene materials,<sup>19</sup> the publication of which is a criminal offence under the *Control of Obscene and Indecent Articles Ordinance*.<sup>20</sup> Trials for the publication of obscene articles are pending against both magazines at the time of writing.

Across the Taiwan Strait, Chu Mei-feng was an attractive 36 year-old journalist-trained politician at the time the scandal broke out. She was a Taipei City Councilor, Cultural Affairs Chief of the Hsinchu City Bureau, and a candidate in the upcoming parliamentary elections for the New Party. Her political career was disrupted when her sex life was exposed by her former confidante and spiritual advisor, Kuo Yu-ling. The latter had installed ten recording devices in Chu's home, office and car.<sup>21</sup> The former mayor of Hsinchu, Tsai Jen-chien, who had had a romantic relationship with Chu, was believed to have been involved in the initial stage of the setting up of the devices. Chu's sexual affair with Tseng Chung-ming, a married man, was thus captured on videotape. The video was later published in photographic form by two magazines<sup>22</sup> and distributed as a VCD by *Scoop Weekly*, a Taiwanese tabloid magazine. Kuo and seven others involved in the distribution of the images were charged with invasion of privacy, theft, and publication of obscene materials. Kuo was convicted and sentenced to four and a half years' imprisonment, and five others from *Scoop Weekly* were also convicted, their sentences ranging from three years' probation to two and a half years' imprisonment.

Seemingly, the law was on the side of Lau and Chu. However, neither of them were willing participants in the legal process. Lau was hesitant to seek help from

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<sup>17</sup> *Eastweek* no. 521 (30 October 2002).

<sup>18</sup> "Unmasking the Truth Behind Nude Photos Taken under Duress" *Three Weekly* no. 160 (2 November 2002) [in Chinese, translated by the author].

<sup>19</sup> *Supra* note 3.

<sup>20</sup> Cap. 390, LHK, s. 2.

<sup>21</sup> *Supra* note 4.

<sup>22</sup> *Jade* and *Eastweek*.

the police,<sup>23</sup> and never initiated a civil claim for invasion of privacy. Chu considered withdrawing her suit in the midst of the litigation.<sup>24</sup> She dropped the charges against Tsai, her former lover<sup>25</sup> and was forced to continue with her suit when the government threatened to summon her as a witness if she insisted on withdrawal.<sup>26</sup> One may attribute the reluctance of both Lau and Chu to the fact that they are public figures, and taking a case to court would risk further exposure of their private lives. On careful analysis, regardless of whether they were required to appear in court or not, both women had to withstand further violations that are embedded in the law, in judicial attitudes, and in the entire legal system. The courts in both Hong Kong and Taiwan put both Lau and Chu on trial.

### A. What is Obscene: The Body or the Article?

The judicial exercise to determine whether or not the articles published were obscene was quickly transformed into a judicial anatomical review aimed at identifying the parts of the female body that were deemed obscene. This attitude is rooted in the legal requirements of the obscenity laws of both territories.

Under section 2(1) of the Hong Kong *Control of Obscene and Indecent Articles Ordinance* [the *Ordinance*],<sup>27</sup> it is a criminal offence to publish, sell or process an obscene article. An article is obscene "if by reason of obscenity it is not suitable to be published to any person,"<sup>28</sup> and obscenity includes the elements of violence, depravity and repulsiveness. However, this says little about what constitutes obscenity. Under the *Ordinance*, it is the sole jurisdiction of the Obscene Articles Tribunal [the Tribunal] to classify articles, and to consider whether an article is obscene or indecent.<sup>29</sup> The only guideline in place is that the Tribunal must consider five elements.<sup>30</sup> For the purpose of the present discussion, only the first two elements are relevant. They are the standards of morality, decency and propriety that are generally accepted by reasonable members of the community, and the dominant effect of an article as a whole.

<sup>23</sup> In 1990, after Lau was kidnapped, she reported the case to the police but later dropped her complaint. In 2002, Lau took no steps to approach the police following the publication of the photographs. It was the Secretary for Security and the Director of Crime and Security who urged Lau to assist in the police investigation. See Antoine So & Cheung Chi-fai, "Nude-photo Furore Halts Magazine" *South China Morning Post* (3 November 2002) at 1.

<sup>24</sup> Jimmy Chuang, "Chu Mei-feng Claims She is Too Ill to Appear at Sex-VCD Hearing" *Taipei Times* (25 January 2002) at 2.

<sup>25</sup> "Taiwan Woman Drops Sex Video Lawsuit" *BBC News* (26 June 2002), online: BBC News <<http://news.bbc.co.uk/1/hi/world/asia-pacific/1806315.stm>>.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Supra* note 20.

<sup>28</sup> *Ibid.*, s. 2(2).

<sup>29</sup> *Ibid.*, s. 8.

<sup>30</sup> *Ibid.*, s. 10(1). The five elements are (1) the standards of morality, decency and propriety that are generally accepted by reasonable members of the community; (2) the dominant effect of an article as a whole; (3) the target readers of the article and their age; (4) the location where the article would be displayed and the class of persons likely to have access to it; (5) whether the article has an honest purpose.

Likewise, the distribution and sale of obscene articles is a criminal offence under Article 235 of the Taiwanese *Criminal Code*.<sup>31</sup> An article is obscene if it intentionally depicts sexual intercourse between a man and a woman or exposes the sexual organs of a man or a woman in a manner that appeals solely to prurient interest without any artistic, medical or educational value, and causes shamefulness, offends moral sentiments and depraves public morality.<sup>32</sup> Although the Hong Kong *Ordinance* does not explicitly state that the depiction of sex is grounds for censorship, this is well understood to be the case. The practice adopted by the Tribunal is that the depiction of a woman's nipples and genitalia, a man's penis, or the actual process of sexual intercourse in an article is classified as obscene.

To a great extent, as pointed out by MacKinnon, "the obscenity law is a state's approach to address the issue of pornography."<sup>33</sup> The close link between obscenity and pornography is undeniable, and the definitions of both of these terms are problematic. As mentioned previously, the statutory attempt to pinpoint what constitutes obscenity is far from precise. On the one hand, the judicial interpretation adopted by both the Hong Kong and Taiwanese courts is often technical, with an overemphasis on the display of the genital organs. On the other hand, pornography is an equally difficult term to define, and is best summed up by Justice Stewart Potter of the U.S. Supreme Court, "I can't define pornography, but I know it when I see it."<sup>34</sup> Tracing the word pornography to its original roots, Sheryl Grana reminds us that the word has its Greek origin in *porne*, meaning a prostitute, a female captive, or a slave, and *graphein* which refers to writing.<sup>35</sup> Putting the two terms together, pornography means "the portrayal of women in a degrading, humiliating, violent, exploitative and offensive sexual manner."<sup>36</sup> It is the nudity, explicitness, excess of candour, arousal or excitement, prurience, and unnaturalness in pornography that raise concerns under the obscenity laws.<sup>37</sup>

The common thread that runs through both the definitions of pornography and obscenity is sex, and the common character is often a bad woman. Yet a difficult issue arises when sex is forced on women who are either the victims of sexual violation or are participants in a private sexual activity that is exposed to the public. Their naked bodies must be classified as a form of pornography before obscenity laws can be invoked to ban the public display and viewing of the images. However, it is degrading to the victims to be viewed as characters in pornography, and misleading to categorize the context as pornographic. As the following discussion of the cases concerning Lau and Chu will show, the complex intertwining of the relationships

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<sup>31</sup> *Taiwan Criminal Code*, *supra* note 12.

<sup>32</sup> See Interpretation No. 407 of the *Criminal Code*, Republic of China, art. 235, online: Laws and Regulations Database of The Republic of China <<http://law.moj.gov.tw>> (in Chinese).

<sup>33</sup> MacKinnon, *supra* note 16 at 196.

<sup>34</sup> *Jacobellis v. Ohio*, 378 U.S. 184 (1964). The American approach is to treat hardcore pornography as obscene material.

<sup>35</sup> Sheryl J. Grana, *Women and (In)Justice* (Boston: Allyn & Bacon, 2002) at 151.

<sup>36</sup> *Ibid.*

<sup>37</sup> MacKinnon, *supra* note 16 at 196. MacKinnon is known to be a radical feminist. She advocates a complete ban on pornography because it contributes to women's sexual subordination. However, her view is criticized as universalizing the experience of all women: see Patricia A. Cain, "Feminism and the Limits of Equality" (1990) 24 Georgia L. Rev. 803 and Lucinda Finley, "The Nature of Domination and the Nature of Women: Reflections on Feminism Unmodified" (1988) 82 Nw. U. L. Rev. 352.



between pornography and obscenity, and between innocent victims and the articles that portray their bodies, are very confused.

In the hearing concerning the publication of the photographs of Lau, it was stated that *Eastweek* published the photographs of Lau five times in various sizes.<sup>38</sup> On top of the images, a virtual image was used to illustrate the possible use of force in the situation.<sup>39</sup> *Three Weekly* published the photographs nine times over seven pages in a single issue. The government argued in both cases that the repeated portrayal of the images of Lau under duress was for the sole purpose of selling sex and violence. In the given context and in the lexicon of the Chinese language, “selling sex” shares the same meaning as pornography.<sup>40</sup> The Tribunal ruled that the total effect of the pictures was to achieve the purpose of displaying sex, pornography, violence and crime.<sup>41</sup> In reaching this conclusion, the Tribunal in both hearings had focused much on the body of the victim. In the *Eastweek* hearing, the Tribunal repeated the detailed description of the victim’s naked body—her nakedness, her eyes, her exposed breasts, the clear outline of her breasts and her nipples—eight times (three in the *Three Weekly* hearing). Although the description of the photograph was inevitable and legitimately justified in such a hearing, one could not help but wonder whether the literal parade of the victim’s body in court to such an extent was necessary. The judicial decision highlighted and directed the readers’ attention to the female body without delineating between the depiction of the body, which is obscene, and the body itself, which is innocent. Thus, the double-victimization<sup>42</sup> by the media was compounded by the triple-victimization committed by the Tribunal.

The insensitivity to and further violation of women’s bodies inside the courtroom are marked and even more noticeable in the Taiwanese judgment. First, the Taiwanese court ruled that the publication of Chu’s sexual activities in the form of photographs, and the publication of the entire bedroom conversation between Chu and her lover by the two magazines, had not violated the obscenity law. Only the production of the VCD, which captured the entire process, and its distribution, amounted to a criminal offence. The reason for this was that the photographs did not display any scenes of actual sexual intercourse. Although the naked body of Chu was shown, her nipples were pixelated. In the Court’s opinion, the public might look down on Chu as a result of the publication of the photos, which was a blatant form of privacy intrusion, but the extent was not serious enough to warrant protection under the obscenity law, nor did it cause shamefulness and repulsion in society.<sup>43</sup>

This technical and literal application of the *Criminal Code* resulted in a most unsatisfactory result. The female body parts were put under the scrutiny of the legal microscope and then dissected into detailed sections. Without the exhibition of her nipples or genitals, the portrayal of Chu’s body without her consent and the exhibition of her private life became insignificant. The technical effect of disguising the details of her body parts only helped the offenders to escape legal sanction, and the entire context of the intrusion and violation was ignored. The obscenity law is only able

<sup>38</sup> *Eastweek*, Issue No. 521 (30 Oct. 2002) on the front cover and at 48 and 49.

<sup>39</sup> *Ibid.* at 50.

<sup>40</sup> Sex in Chinese is *xing*, whereas the term adopted by the Government counsel and the Tribunal is *se qing*, meaning pornography.

<sup>41</sup> *Television and Entertainment Licensing Authority v. Three Weekly*, *supra* note 3 at para. 19(3)

<sup>42</sup> *Television and Entertainment Licensing Authority v. Eastweek*, *supra* note 3.

<sup>43</sup> *Republic of China v. Kuo Yu-ling*, *supra* note 4 at 39.

to control the extent to which and the way in which sex and the female body can be publicly shown, without consideration of the entire context. The court should have realized that it was not a particular female body part, but the wide circulation of images of the female body without consent, the circumstances under which these images were taken, and the commercial exploitation involved that were patently offensive and objectionable.

Furthermore, the Taiwanese court equated the obscene article with obscene activities in Chu's case. It was quick to condemn the VCD as an obscene article because it showed the process of intercourse, including kissing and caressing, oral sex, and sexual intercourse. The display of all these elements together satisfied the test of obscenity. The content of the VCD therefore became pornographic in the eyes of the court,<sup>44</sup> and not only was the publication of the VCD viewed as obscene, but the court also ruled that the sexual activities themselves were obscene.<sup>45</sup>

In condemning the activity as obscene, the court reasoned in the following manner—as Chu and her lover Tseng had engaged in an obscene activity, the exposure of their activity and the distribution of materials displaying it were necessarily obscene. Many people would find it puzzling that an ordinary consensual sexual act between two adults in private would amount to an obscene activity. Later arguments in this paper will show that this judicial disapproval was largely due to the fact that Chu and Tseng had committed adultery. The shamefulness, repulsion and moral corruption which the protagonists were accused of had more to do with the condemnation of their moral character than with obscenity. That the private lives of Chu and Tseng had been violently violated and forced to undergo public scrutiny, and that Chu and Tseng had been coerced into being characters in pornography, were all marginalized in the courtroom.

While the Hong Kong Tribunal treated the female body and the article that violated the body as being equally obscene, the Taiwanese court put an ordinary act of private consensual sex and the article that intruded on the act on the same footing of obscenity. The disproportionate emphasis of both courts on the physical nakedness of the female body amounted to a continuation of the journey of voyeurism started by the tabloid magazines. By examining the female bodies in themselves, the courts took visual control of the bodies and reinforced the illusion of looking in on a private world that the media had created.<sup>46</sup> In Lau's case, it was voyeurism bordering on sadism, whereas in Chu's case the court in Taiwan took over narrative control in labelling the activities as obscene.

### B. *Who is Protected, the Victim or the Public?*

The tabloid magazines in both jurisdictions were taken to court, but if it is asked whether the victims have been or could ever be fully vindicated, the answer is, sadly, in the negative. This is due to the innate inadequacy of the obscenity laws. The

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<sup>44</sup> Due to the "pornographic content" of the VCD, the court asked the public to leave the courtroom so that part of the VCD could be played. See Jimmy Chuang, "Chu Mei-feng finally admits it was her in sex video" *Taipei Times* (9 May 2002) at 1.

<sup>45</sup> The Court used the description "obscene activities" three times in the judgment: see *Republic of China v. Kuo Yu-ling*, *supra* note 4 at 27, 36 and 47.

<sup>46</sup> Van Zoonen, *supra* note 8 at 89, in which the author describes pornography in patriarchal culture.

control of obscene materials is not designed to protect the women concerned, in particular the victims of sexual offences or sex scandals. Rather, their goal is to protect public sentiment from being offended by obscene materials.

The dichotomy between the protection of public sentiment and the protection of the women's interests was acute enough to make the counsel representing *Eastweek* and *Three Weekly* worry that a new expansion of the obscenity law might be warranted in the Lau incident. Their concerns, however, proved to be unfounded. The counsel in both hearings conceded that the publication of the photograph of a victim being tortured during sexual harassment might reflect poor editorial judgment, intrude on the privacy of the victim, violate ethical standards of media practice, cause emotional and mental pain to the victim, and even have breached the *Crimes Ordinance*, which forbids the revelation of the identity of a victim of a sexual offence.<sup>47</sup> However, they argued that none of these issues had any relevance to the obscenity law.

The Tribunal in the *Eastweek* hearing never addressed the argument raised. In the *Three Weekly* hearing, the Tribunal agreed that the possible infringement of the *Crimes Ordinance* was beyond its jurisdiction.<sup>48</sup> Nevertheless, the Tribunal reasoned that, in considering whether an article is obscene or not, the standards of "morality, decency and propriety of reasonable members of the community"<sup>49</sup> have to be taken into account. Thus, the possible violation to privacy, the infliction of mental distress, and the affront to the victim's dignity caused by the publication of the article were all legitimate concerns for the Tribunal in deciding whether the morality of the public had been compromised.<sup>50</sup>

This is indeed a broad and flexible approach that takes into account the various forms of sexual violation that may render an article unfit to be read by anyone. It is a pity that the Tribunal refused to consider the possible violation of the *Crimes Ordinance* as a legitimate concern. The Tribunal ought to have understood that it was not being asked to rule on whether there had been a violation of the *Crimes Ordinance*, but to bear in mind that the revelation of the identity of a victim of a sexual offence through a photograph that captures the process of sexual violation has a direct correlation to the question of what constitutes obscenity or whether a publication is unfit to be seen by anyone.

In its ruling, the Tribunal may have taken a large step forward in the protection of victims of sexual offences under the obscenity law, but this protection still has to be framed by the level of offence to public sentiment. In the *Three Weekly* hearing, the Tribunal emphasized the fact that the photograph was taken under duress, and that it could be seen that the victim was under duress, crying, with eyes shut tight, face swollen, and clearly in distress.<sup>51</sup> The Tribunal stated that the publication of such a photograph was an exhibition of violence and crime that logically triggered public resentment.<sup>52</sup> In the *Eastweek* hearing, the Tribunal condemned the double victimization of Lau. In the Tribunal's opinion, this act was unacceptable

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<sup>47</sup> *Crimes Ordinance*, Cap. 200, LHK, s. 156.

<sup>48</sup> *Television and Entertainment Licensing Authority v. Three Weekly*, *supra* note 3 at para. 13(3)(a).

<sup>49</sup> This is the required standard under the *Control of Obscene and Indecent Articles Ordinance*, *supra* note 20, s. 10(1).

<sup>50</sup> *Television and Entertainment Licensing Authority v. Three Weekly*, *supra* note 3 at para. 12(5)(b).

<sup>51</sup> *Ibid.* at para. 19(1) and (2).

<sup>52</sup> *Ibid.* at para. 19(3).

because “reasonable members of the community” would consider this to be a form of “violence, depravity and repulsiveness.”<sup>53</sup>

In both hearings, the Tribunal pointed out that the victim of the photograph was not a nude actress or a model for nude pictures, but a victim of an actual sexual offence. This sounds correct but does not resonate deep enough or far enough. It is important to point out that the sympathy for the victim, Lau, in the given case is not representative of the general approach of the Tribunal. In effect, the offensiveness of the photograph was measured not by the pain and humiliation inflicted on the victim, but by the nuisance caused to the public. It is doubtful whether the Tribunal fully understood the concept of double-victimization or the proposition that the offence to the victim’s sentiment is part of the offence to the public sentiment.

One month before the publication of the photographs of Lau, a completely naked prostitute was held at knifepoint by a robber in broad daylight on a busy street. The confrontation between the robber, the naked victim, and the police was captured by the cameras of newspaper reporters. The photographs were published on the front page of several Hong Kong newspapers,<sup>54</sup> but the articles were classified by the Tribunal as neither indecent nor obscene.<sup>55</sup> This incident was mentioned and highlighted in the *Eastweek* hearing.<sup>56</sup> The Tribunal reasoned that the genitals and face of the prostitute were pixelated, and the focus of the photograph was a confrontation between police and robber, rather than the body of the prostitute, and that the incident was therefore different from the case of the Lau photograph. This approach completely sidelined the issue of whether the victim and public sentiment were offended. It also begs the question whether an ordinary citizen without an established reputation whose body, including genitals, was put under public scrutiny would ever be protected under the obscenity law in Hong Kong.

Nevertheless, Lau fared far better than Chu. At first glance, it seems that Chu won an easy and swift legal battle. The factual evidence was overwhelmingly on her side. Indisputably, the planting of pinhole cameras in her residence to record her sexual activities was a blatant intrusion of privacy, and the publication of the scenes captured by these cameras was an outrageous violation of the obscenity law. However, other than being a legal forum, the court was also the venue for the dissection of ethical issues. The fact that Chu was involved in an extra-marital affair downgraded her from victim to culprit. In deciding whether Chu was the character shown in the VCD, the court treated Chu’s admission as conclusive, for the reason that one would not readily admit to engagement in “obscene activities” or adultery if it were not true.<sup>57</sup> The court further pointed out that adultery was a criminal offence, and that both Chu and her lover should have been aware of the consequences.

The trial and the decision were overshadowed by Chu’s moral character and her sexual habits. Kuo, who betrayed Chu and installed the secret devices in Chu’s place of residence, alleged that Chu was a promiscuous person and had had several

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<sup>53</sup> *Television and Entertainment Licensing Authority v. Eastweek*, *supra* note 3 at 51 para. B-F.

<sup>54</sup> For example, see, “Failed Robbery at Brothel, Police Rescued Naked Lady” *Apple Daily* (8 October 2002) at [in Chinese, translated by the author].

<sup>55</sup> “Eastweek Claimed Nude Photo was a Warning to the Public” *Ming Pao* (29 January 2003) at A10 [in Chinese, translated by the author].

<sup>56</sup> *Television and Entertainment Licensing Authority v. Eastweek*, *supra* note 3.

<sup>57</sup> *Republic of China v. Kuo Yu-ling*, *supra* note 4 at 27.

partners at the same time.<sup>58</sup> When *Scoop Weekly* faced prosecution for criminal defamation, it defended itself by arguing that adultery committed by a public figure was a newsworthy event of public interest. Under Taiwanese law, truth is a defence to defamation, but private affairs of morality that do not bear any connection to public interest are excluded.<sup>59</sup> The court did not find the argument convincing because the *Scoop Weekly* articles never discussed the implication of Chu's private affairs on her duties as a civil servant or a politician.<sup>60</sup> The magazine treated the story purely as sensational news, using catchy titles that put the articles firmly in the category of "yellow" journalism. In the court's opinion, the defence of public interest and freedom of the press raised by *Scoop Weekly* was mere camouflage for commercial exploitation by the magazine.<sup>61</sup>

Although this is a fair and legitimate criticism, the extension of this logic would unfortunately mean that had the magazine distributed the VCD accompanied by a serious discussion on Chu's capability to carry out her duties, the magazine would not have been found liable for criminal libel. Thus, indirectly and by implication, the court invited both the scrutiny of Chu's private life and the questioning of her ability to discharge her official duties. This logic would indeed be hard to follow, because serious political discussion should never need the company of a vivid depiction of the sexual life of a politician. In holding the defining power to prescribe the way in which an issue should be understood, the court also caused the legitimacy of the victim's complaint to be doubted. In Chu's case, the proper standard of moral behaviour was construed against her before she could even qualify as a victim in the eyes of the court.

I have argued that, other than undergoing a traumatizing experience, the victims of sexual offences and sex scandals also have to go through a different form of "sexual terrorism" in the judicial system. Their bodies are objectified rather than respected. Their concerns and feelings are sidelined by the attention placed on public morality and sentiment. The forms of violence that females experience in the legal systems may be verbal and ideological, but are no less humiliating and dehumanizing. Naturally, many female victims therefore do not consider legal action as a prudent strategy to resolve their problems.

### III. WOMEN, KNOW YOUR LIMITS

Grana warns that "one cost of being female is the cost of violence."<sup>62</sup> Although violence is manifested in many different forms, the law usually only recognizes its narrowest form, that is, physical violence. Sadly, in doing so, the law often perpetuates another form of symbolic violence. This is illustrated in the cases discussed by the fact that, although the tabloid magazines were punished, a more lasting form of violence was inflicted on the victims and females in the public sphere in general. On a technological and practical level, legal regulation only reached the printed media.

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<sup>58</sup> *Ibid.* at 5.

<sup>59</sup> *Taiwanese Criminal Code*, art. 310, *supra* note 12.

<sup>60</sup> *Republic of China v. Kuo Yu-ling*, *supra* note 4 at 39-40.

<sup>61</sup> *Ibid.* at 40 and 52.

<sup>62</sup> Grana, *supra* note 34 at 131.

The controversial photos and clips from the VCD were widely circulated on the Internet. Millions and possibly even billions of fascinated surfers are likely to have participated in this mass voyeurism or “carnavalesque spectacle.”<sup>63</sup> State censorship has only fuelled the publicity of and curiosity toward the incidents.

On an ideological and social level, the manner in which the scandals broke out in the Lau and Chu incidents reflects a deep hostility toward women in society. The way in which the stories were covered, and the way in which the public reacted proved that the issues had more to do with a sensationalist, attention-grabbing media in pursuit of commercial gain. The message sent by the media, which was well received by many members of the public, was “women, know your limits, otherwise be prepared to pay the price.” The exposure of an individual’s sexual history and habits is one of the most effective ways to destroy an individual’s reputation and to take revenge. Such exposure often proves to be more devastating for women than for men. In Thompson’s study of scandals, one finds that the media and the public have been lenient and forgiving towards some leading male political leaders.<sup>64</sup> Thomas Jefferson, J. F. Kennedy and Franklin D. Roosevelt were known to have extra-marital affairs but their political careers were not adversely affected by scandals.<sup>65</sup> In the Clinton-Lewinsky scandal, many thought that the issue was completely blown out of proportion. Thompson argues that had President Clinton been forthright in admitting the affair, the impact would not have been so disastrous.<sup>66</sup> Moreover, much attack at that time was focussed on Monica Lewinsky’s physical outlook, her sexuality and her psychological state rather than on Clinton’s integrity.<sup>67</sup> In the cases of Lau and Chu, the fact that the media were willing accomplices is a telling sign that society expects women to play a stereotypical role.

Perhaps it is deeply rooted in every culture that women are seen as either pure or evil, or as either Eve, the fallen woman, or Mary, the virgin mother.<sup>68</sup> If a woman is an Eve deep down but puts forward an image of being an immaculate virgin, then the perceived hypocrisy gives rise to a legitimate right to expose the truth if she is found out. If the female protagonist involved is a celebrity, then this becomes a fertile source for scandals. Other than being “drama[s] of concealment and disclosure,”<sup>69</sup> scandals are about violation of moral norms and codes that govern the propriety of a relationship.<sup>70</sup> Most significantly, they are about the control, or the loss of control, of the image that one would like to project to the world.

The image that Lau has portrayed is that of a beautiful, talented actress who came from mainland China and worked her way up through Hong Kong’s entertainment industry to become a movie star, winning the hearts of both local and global audiences. Other than being an actress, she is also a famous model for a slimming company.<sup>71</sup> Her image is that of a sexy, healthy and perfect woman who has mastered

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<sup>63</sup> Brian McNair, *Striptease Culture: Sex Media and the Democratisation of Desire* (New York: Routledge, 2002) at 95.

<sup>64</sup> Thompson, *supra* note 1 at 143–158.

<sup>65</sup> *Ibid.* at 143–146.

<sup>66</sup> *Ibid.* at 156–157.

<sup>67</sup> Leora Tanenbaum, *Slut!* (New York: Seven Stories Press, 1999) at 95.

<sup>68</sup> Grana, *supra* note 34 at 4.

<sup>69</sup> Thompson, *supra* note 1 at 18.

<sup>70</sup> *Ibid.* at 120.

<sup>71</sup> Carina Lau is the model for Royal Bodyperfect, a slimming company in Hong Kong.

the control of male attention. She is the representative for a skin product,<sup>72</sup> which she sells with the image of clean, intact, young and unblemished skin. Lau has relied much on her natural assets to build her career, and pictures of her face and body are often seen in Hong Kong.

However, the truth as revealed by *Eastweek* and *Three Weekly*, is that her body is “imperfect.” She has been violated. The title of the *Eastweek* article labelled her as the “alphabet actress” who had been tortured and stripped. The term “alphabet actress” is a demeaning term used to label celebrities in the entertainment industry who are high-class call girls or prostitutes.<sup>73</sup> The *Eastweek* story suggested that Lau, due to ignorance in her younger days, had offended someone powerful and had therefore been punished. The tone of the article also suggested that she was to blame for what happened. In the photograph, sex and violence are intertwined. The wording and the message of the story were full of contempt. The fact that the photograph was released twelve years after the kidnapping, when Lau’s career had become more established and she was more famous than when it originally took place, had a more damaging impact on her and was more shocking to the public. Despite the fact that public denunciation of the articles poured in soon after their publication, much of the discussion surrounding the incident on the Internet focused on Lau’s body and the secret behind her “punishment”. The photograph of a distressed Lau will probably stick in the minds of the many who viewed it, and Lau’s sexual power is thus diminished. Her body may no longer fit the fantasy image of those who used to admire her.

In comparison, Chu’s image was that of an intellectual and attractive politician. She was perceived to have both looks and brains, being well educated with a master’s degree, and gifted with a sweet and pure-looking face. Before the scandal, she was a promising young politician. When the scandal erupted, she was transformed from an angel to a devil overnight. Although many people condemned the sleaziness of the Taiwanese media, attention was firmly on the sexual habits of Chu.<sup>74</sup> Endless rounds of moral appraisal were carried out in the public arena, and a stream of revelations came flooding in. Chu was described as promiscuous, and was alleged to have had 15 lovers,<sup>75</sup> some of whom were married, and some of whom she had dated concurrently. The criticism levelled against her went beyond the deceptiveness, disloyalty, and social disruption she had caused to the families of others. The illicit sexual activities that Chu, a public official, engaged in meant that more was at stake than sex, and revealed hypocrisy and a potential conflict of interest. All the above reflect legitimate concerns but the issue of sex, which turned Chu into a slut, completely overshadowed the public debate. Annette Lu, Vice President of the Republic of China and a self-proclaimed feminist, cynically commented that some

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<sup>72</sup> She is the spokesperson for SKII, a Max Factor product.

<sup>73</sup> The term originated from a 1993 sensational sex trial in which Chin Chi-ming lured five actresses and models into having sex with him after promising them large amounts of money or roles in films. Chin later blackmailed those ladies. The five ladies involved were identified as Miss A, B, C, D and E during trial. See “Chin Loses Appeal on Sex Trial Delay” *South China Morning Post* (12 March 1993) at 8.

<sup>74</sup> Michael Bristow, “Sex Scandal Grips Taiwan,” *BBC News* (31 December 2001), online: BBC News <<http://news.bbc.co.uk/1/hi/world/asia-pacific/1735739.stm>>.

<sup>75</sup> Lee Seok Hwai, “Her Men were All Tall, Talented and had the X-Factor: Disgraced Taiwanese Politician Chu Gives a Glimpse into Her Love Life and Choice of Male Companions” *The Straits Times* (10 February 2002) (Lexis).

women were practitioners of the “double-B principle.”<sup>76</sup> She was referring to those women who exploited their “breasts and brains” to climb political and social ladders. In her opinion, the image of Chu was of one who was lustful for sex and power.

Lu’s remarks reflect the moral dilemma faced by feminists.<sup>77</sup> Women fight for freedom but do not have the courage to go very far. In Chu’s case, she would not have dared to argue that adultery should be considered a legitimate form of sexual expression and a form of sexual freedom when she had already been condemned as an “ethical slut.”<sup>78</sup> In the entire debate, the necessity and legitimacy of putting adultery in the statute as a criminal offence was never raised or questioned. The role of the male lover, the traitor of the family institution, was almost invisible. The focus was on the female culprit, and the public judged her by her sexual habits. The reality, that Chu’s privacy and dignity had been unduly trampled upon, paled in comparison to the harm she was perceived to have committed against society as a whole.

The revenge instigated by Kuo against Chu was successfully completed. The image of Chu changed from being that of a successful, beautiful and capable career woman to that of a bad woman—undesirable, untrustworthy and unworthy of respect. Chu resigned from her post as the Cultural Affairs Chief of the Hsinchu Bureau and withdrew her parliamentary candidacy. In a written self-declaration, she explained that she was only an ordinary woman and had never deliberately nurtured the image of purity.<sup>79</sup> The media and the reaction of the public had successfully demonized Chu not only in the minds of the public, but in the heart of Chu herself. She bitterly expressed that “if I had died before the scandal, my epitaph would have brought immense pride to my family and ancestors. But now, I have turned overnight into a humiliation ... an object of disgust to society.”<sup>80</sup>

If scandal is the very mirror of society,<sup>81</sup> its reflection in this case reveals that Taiwan is a society obsessed with the control of the sexuality of women, their bodies, their roles, their passions, and their sexual desires. The media have only reflected and reproduced the patriarchal legacy of sexual and social dominance. For women who attempt to control their own sexuality or use sexual power to control men,<sup>82</sup> the consequences can be disastrous, especially for females aspiring to be politicians. Their lives can be immediately derailed by their own sexuality. Sexual prowess, personal capability, and political power are closely related for female politicians. Once the public perceives that they have abused their sexuality, they will be deemed incapable of carrying out their duties, and their political power will vanish overnight.

<sup>76</sup> Quoted in Li Wai Yi, “Radical Women Brave Women—Carina and Prostitutes” *Ming Pao* (19 December 2002) at D8 [in Chinese, translated by the author].

<sup>77</sup> See Laurie Shrage, *Moral Dilemmas of Feminism* (New York: Routledge, 1994).

<sup>78</sup> For discussion, see Li, *supra* note 76.

<sup>79</sup> “Mei-feng has died” *Taiwan Daily* (21 December 2002) 5 [in Chinese, translated by the author].

<sup>80</sup> Chu Mei-feng, quoted in Lee Seok Hwai, “From Neglected Child to Sex Star: Chu Yearned for Marriage and her hopes of settling down with a suitable man never waned—until the sex scandal broke” *The Straits Times* (11 February 2002) (Lexis).

<sup>81</sup> The metaphor is taken from the title of a book, the author of which interviewed Chu: see “Voyeurism—Chu Mei Feng is Taiwan’s Magic Mirror” quoted in Li, *supra* note 76 [in Chinese, translated by the author].

<sup>82</sup> R. Andersen, “The Thrill is Gone: Advertising, Gender Representation, and the Loss of Desire” in E. R. Meehan & E. Riordan, eds., *Sex & Money: Feminism and Political Economy in the Media* (Minnesota: University of Minnesota Press, 2002) 223 at 235.



Their own private choices in their personal lives can threaten their autonomy, undermine their self-esteem and limit their freedom and action.<sup>83</sup> Hence, the lesson learnt from the Chu's scandal is that women must monitor their behaviour or they will have to live with the fear of "sexual terrorism". Once they step outside their sexual or moral boundaries, their political careers are at risk.

#### IV. APPEALING TO A HIGHER MORAL GROUND?

Both Lau and Chu have been battered emotionally and psychologically in the public sphere. As scandals are "struggles for name,"<sup>84</sup> Thompson argues that a common strategy for those involved is to aim for the moral high ground and to appeal to higher values when one's reputation is attacked.<sup>85</sup> This advice was duly followed by the two protagonists. Both of them reconceived themselves as martyrs in the face of the growing irresponsibility and unethical practice of the media. As Lau fitted easily into the category of a victim worthy of sympathy, she did not need to fight an uphill battle as Chu did. Winning public support, however, does not necessarily imply that Lau and Chu successfully reached the moral high ground.

##### A. A Cause Worthy of Sacrifice

Indisputably, the media threw the lives of Lau and Chu into chaos. In the immediate aftermath of the publication, the events were turbulent. Lau and Chu avoided all publicity, Lau for a few days and Chu for one month. If it was the media who had ruthlessly destroyed them, ironically, it was by going to the media that both of them regained a sense of power and control over their lives. They were able to speak out about the injustices that they had suffered, and through this they gained a sense of empowerment to help others.<sup>86</sup>

Public support and condemnation quickly poured in over the Lau incident. Two days after the photograph was published, the Television and Entertainment Licensing Authority was flooded with 290 complaints against the magazine.<sup>87</sup> A coalition of eight political parties strongly condemned *Eastweek*,<sup>88</sup> and 500 people marched on the streets in response to a call from the Hong Kong Performing Artists Guild.<sup>89</sup> On that occasion, Lau, dressed in black and wearing a pair of dark glasses, spoke to the crowd, announcing that she was stronger than she ever imagined she could be. In a composed manner, she proclaimed "if this saddening incident can raise people's

<sup>83</sup> Patricia Searles & Ronald J. Berger, "Feminist Foundations for the Study of Rape and Society" in *Rape and Society*, *supra* note 15 at 4.

<sup>84</sup> Thompson, *supra* note 1 at 22.

<sup>85</sup> *Ibid.* at 23.

<sup>86</sup> In Greer's study, she finds that this is an effective way for victims of sexual offences to recover. See Chris Greer, *Sex Crime & the Media* (Portland Oregon: Willan Publishing, 2003) at 138.

<sup>87</sup> Patsy Moy & Ng Kang-chung, "Complaints Flood in Against Eastweek Magazine, Lawmakers Demand Action after Nude Photo Outrage" *South China Morning Post* (2 November 2002) at 1.

<sup>88</sup> *Ibid.*

<sup>89</sup> Chow Chung-yan & Patsy Moy, "I'm Stronger than Ever, Says Actress" *South China Morning Post* (4 November 2002) at 1.

awareness about the importance of media ethics in our lives, then my suffering and dignity does not really matter.”<sup>90</sup>

Lau projected the image of a martyr, sacrificing herself to awaken the long lost sense of righteousness in society to prevent other females from becoming victims.<sup>91</sup> In an interview, she said:

It was a real low for me and my relations with the media, but the result has been positive in a sense. It made me realize that there are a lot of good people in this world, and that good can triumph over evil. Before that incident, I had doubted human nature, kindness, and justice.<sup>92</sup>

Although Chu did not receive any organized support in Taiwan, she also put on a brave face, emerging one month after a self-imposed seclusion. She issued a written statement announcing her “death” at the hands of her executioner, *Scoop Weekly*.<sup>93</sup> She also criticized the sick nature of a society that could do what it had done to her. In her closing remark, she described herself as using her heart and body, through her own sacrifice, to awaken the conscience of society, to protect women from further harm and to call a halt to unethical media practice. In an interview with a television station, she also expressed that she would like to help and encourage all those in a similar situation.<sup>94</sup>

Both Lau and Chu see themselves as martyrs. Their bodies, their interests, and their dignity are insignificant in the face of the noble cause of awakening the media’s conscience and helping others. Many see Lau and Chu as courageous. In particular, Lau was praised as a model for womanhood.<sup>95</sup> Lau also skillfully utilized the incident to appreciably enhance her own reputation. Her past behaviour as a wild party girl suddenly became understandable and excusable, and she painted a new image of herself as a mature and thoughtful woman. Although her career depends much on her outward appearance, she dismissed her body as a shell,<sup>96</sup> and claimed that what she now sought was wisdom. These statements were very uncharacteristic of the Lau that many knew.

In the midst of these grand speeches and idealist sentiments, it should not be forgotten that the dignity of women should never be traded off for media conscience, a seemingly noble virtue, especially when women are not given a chance to consent at the initial stage.

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<sup>90</sup> *Ibid.*

<sup>91</sup> “Carina Lau Stands Up to Urge Media to Exercise Self-Discipline” *Ming Pao* (4 November 2002) at A2 [in Chinese, translated by the author].

<sup>92</sup> Jill Triptree, “Maternal Affairs” *Talkies Hong Kong* 31 (March-April 2004) 47 at 50.

<sup>93</sup> “Chu Mei-feng has Died” *Taiwan Daily* (21 December 2001) at 5 [in Chinese, translated by the author].

<sup>94</sup> Chu Mei-feng, “Let Others Think What They Like, I’m Just Myself” *Phoenix Weekly* (Issue No. 8, 2002), online: Phoenixtv.com <<http://www.phoenixtv.com.cn/home/phoenixweekly/69/62hou.html>>.

<sup>95</sup> “Newsstand Agent Moved to Tears, Considers Carina Lau a Role Model for Women” *Ming Pao* (14 November 2002) at A3 [in Chinese, translated by the author].

<sup>96</sup> “Ridding the Image of Party Girl, Carina Lau Getting to Know Life” *Ming Pao* (23 February 2003) at C4 [in Chinese, translated by the author].

### B. Reaching the Moral High Ground?

Certainly, Lau and Chu had to muster tremendous courage to face the crowd and voice their opinions. In rebuilding their images and reputation, however, they have not ventured deep into a most difficult and sensitive area. Lau announced that justice had been done and that the culprits had been identified, pointing her finger firmly at the media. Nevertheless, it is important not to overlook the fact that the principal culprits were those who had sexually and physically molested Lau in the first place, filmed the disturbing process, and sent the pictures to the media. For whatever reason, Lau was reluctant to report the case to the police, and to this day no one has been arrested in connection with the incident of physical violation. Similarly, Lau's friends in the entertainment business dared to confront and condemn the media, yet it is curious that none denounced the initial assault on Lau. A true act of bravery calls for the divulgence of the truth, and justice will only be fully delivered when the offenders are caught.

Unlike Lau, Chu did not fit the image of a victim well, and was probably aware of her limitations. To prevent any further disclosure of her private life and sexual habits by Kuo or others, Chu took charge and made her own sexual confession. Within two months of the media scandal, she had finished her book and narrated her own version of her sexual history in a "tell-all" fashion.<sup>97</sup> In doing so, Chu stripped herself emotionally before the gaze of the public and betrayed the privacy and trust of her former lovers and suitors. This also had the effect of further "sexualizing the public sphere"<sup>98</sup> by extending invitations to the prurient to peek into her private life.

In this attempt to defend herself and fend off attacks by the media, she played the role of a "bad woman," but she played it as a fallen woman led astray by fate, rather than a woman who exercised her own free will. She wrote that she had kept "bad company and erred."<sup>99</sup> She was apologetic and readily admitted that she was a bad woman at heart.<sup>100</sup> Attributing her fall to her humble upbringing, her lonely childhood, her longing for security and love, Chu presented a complex profile of a bad woman who was, nevertheless, worthy of understanding and, most of all, forgiveness. Chu by no means loaded the blame onto the media or society. From this perspective, it can be seen Chu's ability to start anew is dependent on public approval. She never asserted that she lived her life through her own autonomy and of her own free will. She questioned the media and the public but, inhibited by her own sense of guilt, she dared not accuse them without reservation.

The launching of counter-attacks on the media was not difficult to achieve for either of the two women. Being public figures, Lau and Chu were both in an advantageous position that enabled them to steer the media to their own course. However, in rescuing their bruised images, they never once touched on the core issue that women are held hostage under the scrutiny of a patriarchal society. They merely manipulated the stereotypical images that society assigns to women. Lau regained her purity by

<sup>97</sup> See Chu Mei-Feng, *The Confessions of Chu Mei-Feng* (Taiwan: TVBS Publication Co., 2002) [in Chinese, translated by the author].

<sup>98</sup> McNair, *supra* note 59 at 88.

<sup>99</sup> Michael Bristow, *supra* note 74.

<sup>100</sup> Zhuang Wai Liang, "Chu Mei-feng Admitted Having Extra-Marital Affairs with Politician and Businessman" *Ming Pao* (17 January 2002) at B15 [in Chinese, translated by the author].

portraying herself as a true victim, and Chu confessed that she was a bad woman; a victim of fate.

## V. CONCLUSION

The role that the media played in deepening the personal tragedy of Lau and triggering the personal crisis of Chu is unarguable and indefensible. In both incidents, the media pushed mass voyeurism to an obsessive extreme. The fact that the stories of the victims were eroticized and commercialized demonstrates a “dislocation of erotic desire and a loss of human compassion”<sup>101</sup> in society. Thus, the subsequent legal sanctions imposed on the tabloid magazines, and the scorn and indignation that they received, are legitimate and justified.

Nevertheless, it is not enough simply to call the media to account. It is high time for society to take a careful and thorough look at its own role in the suppression of the identity of women and womanhood in general. These two incidents illustrate that violence against women is pervasive and can take many forms. In the courtroom, women continue to be seen as “watched things”.<sup>102</sup> Their bodies have to be condemned to be pornographic and obscene before they are entitled to claim legal protection. Both inside and outside the courtroom, the moral appraisal of the lives and choices of women continues unabated. Visual and verbal intrusion can be so powerful that the sexual history, sexual habits and sexual misdemeanours of women become occupational hazards. The power over women is so overwhelming that even when they have the courage to stand up and fight, they must wage their wars within the confines of existing sexual stereotypes.

To tackle the trend of sensationalizing sexual offences or sex scandals in the media, society needs to lay down a new workable legal standard, and to work towards the social transformation and self-transformation of all concerned. “Law may change external behaviour but only radical surgery can change the human heart.”<sup>103</sup>

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<sup>101</sup> Andersen, *supra* note 78 at 225.

<sup>102</sup> MacKinnon, *supra* note 16 at 199.

<sup>103</sup> Andy Ho, “Video Voyeurism and the State of the Heart” *The Straits Times* (17 February 2002) (Lexis).