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"He's My Man!": Lyrics of Innocence and Betrayal in *The People v. Billie Holiday*

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# “He’s my man!”: Lyrics of Innocence and Betrayal in *The People v. Billie Holiday*

Sara Ramshaw

*Le présent article analyse l'arrestation, le procès et l'acquittement en 1949 de la célèbre chanteuse de jazz, Billie Holiday, accusée de possession de stupéfiants. L'auteure y soutient que les démêlés très publicisés de Holiday avec la justice américaine et avec des hommes violents dans les années qui ont précédé ce procès ont contribué à estomper la distinction entre ses angoisses personnelles et la douleur, thème de ses chansons. Ses problèmes réels ont donné à son image publique une authenticité plus marquée et à ses spectacles publics, une consonance de vérité et d'honnêteté. Cette image, à son tour, a ajouté à la crédibilité de son témoignage devant le tribunal et a permis au jury de ne pas tenir compte de la preuve (ou du manque de preuve) présentée. À la fin, son personnage public d'une femme «malchanceuse dans la vie», image reproduisant les mêmes mythes et stéréotypes qui, en règle générale, réduisent les femmes noires au silence tout en banalisant leurs souffrances, a plutôt ici facilité le récit d'innocence et de trahison, relaté par Holiday devant le tribunal ainsi que l'acceptation de ce témoignage comme vérité, par les membres du jury (tous des Blancs).*

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*This article explores the 1949 arrest, trial, and acquittal of prominent jazz singer, Billie Holiday, for possession of narcotics. It argues that Holiday's well-publicized encounters with the United States legal system and with abusive men in the years leading up to this trial worked to blur the distinction between her private anguish and the pain she sang about in her songs. These real life problems gave her public image heightened authenticity and her public performances the appearance of truthfulness and honesty. This image, in turn, added credibility to her testimony in the courtroom and enabled the jury to overlook the evidence (or lack thereof) in front of them. In the end, her "unlucky in life" public persona, an image configured from the same myths and stereotypes that typically operate to silence and trivialize black women's pain, instead facilitated the articulation of Holiday's narrative of innocence and betrayal in the courtroom and the acceptance of this narrative as truth by the members of the (white) jury.*

Fact is, the invention of women under siege  
has been to sharpen love in the service of myth.  
If you can't be free, be a mystery.

Rita Dove<sup>1</sup>

[T]here's no damn business like show business. You had to smile to  
keep from throwing up.

Billie Holiday<sup>2</sup>

It is said that legend has scant respect for fact. One need only glance at the biographical and autobiographical descriptions of the life of Billie Holiday<sup>3</sup> to find proof of this aphorism. Nowhere is there more evidence than in the narratives surrounding Holiday's 1949 arrest and trial for narcotics possession.<sup>4</sup> Several accounts have been written about this trial.<sup>5</sup> No two versions are identical. From each writer springs a unique narrative, a specific construction of Billie Holiday. The only thing that can be stated with any certainty is that Holiday was found not guilty of a violation of section 11500 of the *California Health and Safety Code*<sup>6</sup> in San Francisco on 3 June 1949. She was found not guilty despite having been caught with narcotics in her possession and despite the fact that the "ace investigator" of the Federal Bureau of Narcotics, Colonel George H. White, was the one who caught her.<sup>7</sup>

Holiday's acquittal is interesting in many respects. Particularly intriguing is the attention paid throughout the trial to the racialized, classed, and gendered components of her narrative of innocence and betrayal in the courtroom.<sup>8</sup> It is generally accepted that black women were (and continue to be) deemed "inherently less innocent and less worthy than white women"<sup>9</sup> and that their

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1. Rita Dove, *Grace Notes: Poems* (New York: Norton, 1989) at 64.
  2. Billie Holiday (with William Dufty), *Lady Sings the Blues* (Garden City, NY: Doubleday, 1956) at 61.
  3. Billie Holiday (1915–59) was one of the most famous jazz vocalists of the twentieth century.
  4. *The People of the State of California v. Billie Holiday*, File no. 42483 (San Francisco: 31 May 1949).
  5. See, for example, John Wesley Noble and Bernard Averbuch, "Billie Holiday: A Little Opium and Some Big Blues," in John Wesley Noble and Bernard Averbuch, eds., *Never Plead Guilty: The Story of Jake Ehrlich* (New York: Farrar, Straus and Cudahy, 1955), 235; John Chilton, *Billie's Blues: A Survey of Billie Holiday's Career 1933–1959* (London, UK: Quartet, 1975); Jacob W. Ehrlich, *A Life in My Hands: An Autobiography* (New York: Putnam, 1965); Jacob W. Ehrlich, *The Lost Art of Cross-Examination or Perjury Anyone?* (New York: Putnam, 1970); Holiday *supra* note 2; Stuart Nicholson, *Billie Holiday* (London, UK: Gollancz, 1995); Donald Clarke, *Wishing on the Moon: The Life and Times of Billie Holiday* (London, UK: Penguin, 1994).
  6. *California Health and Safety Code*, Stats.1939, c. 60, p. 758, § 11160, renumbered §11500 and amended by Stats.1945, c. 955, p. 1840, § 8.
  7. Noble and Averbuch, *supra* note 5 at 236–7.
  8. As will be detailed later, Holiday pleaded not guilty to the charge of possession. It was insinuated in court that she had been framed by her manager/boyfriend.
  9. Sherene Razack, *Looking White People in the Eye: Gender, Race, and Culture in Courtrooms and Classrooms* (Toronto: University of Toronto Press, 1998) at 68.

victimization was often trivialized or ignored in the courtroom.<sup>10</sup> And yet, in the trial of Billie Holiday, the racist, heterosexist, and classist violence and victimization she had experienced throughout her life was brought to the fore and highlighted in order to support her trial narrative.

Also significant is the fact that, despite being a "once-confessed addict"<sup>11</sup> and having been caught with drugs in her possession, Holiday's assertion of innocence was found to be credible by the jury. This fact is notable for, as others have pointed out, issues of credibility in a trial rely heavily upon dominant notions of race, class, and gender. Such ideologies "construct some groups of people as believable witnesses, while others are deemed to be untrustworthy and dishonest by virtue of their gender, race, or class background."<sup>12</sup> Holiday, as a black woman, would typically fall into the latter category and her trial narrative would immediately be suspect. In this trial, however, despite the absence of supporting evidence, the jury accepted Holiday's plea of innocence and betrayal as truth.

This article demonstrates that the recognition of Holiday's past victimization and the credibility given to her trial narrative found their way into the courtroom via Holiday's celebrity status and her "unlucky in life" public persona, which was itself founded upon racist, classist, and heterosexist notions regarding black women's sexuality. In other words, Holiday's legacy stemmed from "her ability to render in song the profound emotions underlying her private woes."<sup>13</sup> For Holiday, real life troubles with the legal system and with abusive men in the years leading up to the trial worked to blur the distinction between her personal anguish and the pain she sang about in her songs. These real life problems gave her public image heightened authenticity and her public performances the appearance of truthfulness and honesty. This image or persona, in turn, added credibility to her testimony in the courtroom and enabled the jury to overlook the evidence (or lack thereof) in front of them. In the end, this "unlucky in life" public persona, an image configured from the same myths and stereotypes that typically operate to silence and trivialize black women's pain, instead facilitated the articulation of Holiday's narrative of innocence and betrayal in the courtroom and the acceptance of her account as truth by the members of the jury.

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10. *Ibid.* at 157–8.

11. Noble and Averbuch, *supra* note 5 at 236.

12. Brenna Bhandar, "A Guilty Verdict against the Odds: Privileging White Middle-Class Femininity in the Trial of Kelly Ellard for the Murder of Reena Virk" (Vancouver: FREDa Centre for Research on Violence against Women and Children, 2000) at 9, available online at <<http://www.harbour.sfu.ca/freda/articles/bhandar.htm>> (date accessed: 21 June 2004); see also Razack, *supra* note 9.

13. Angela Y. Davis, *Blues Legacies and Black Feminism: Gertrude "Ma" Rainey, Bessie Smith, and Billie Holiday* (New York: Pantheon, 1998) at 194.

## Configuring "Lady Day"<sup>14</sup> in Western Popular Culture

One cannot speak to the configuration of Holiday's celebrity, nor the ways in which this configuration influenced the stories told and believed in her trial, without first looking at how "otherness"<sup>15</sup> is represented in Western popular culture. Treatments of difference in the mass media are typically read in terms of how they stand up against "reality" as experienced by members of the viewing community.<sup>16</sup> Accordingly, the sense of authenticity derived from certain representations in popular culture will depend on the social experience of those interpreting these images. Popular culture thereby acts as an arena within which the struggle over meaning is fought. Dominant groups try to naturalize the meaning that best serves their interests, while subordinated and marginalized groups try to resist this process. The effort and success of both groups varies.<sup>17</sup>

Factors such as race, class, and gender have tremendous influence over the meaning given to cultural images and symbols. For the most part, popular and commercial representations of otherness simply perpetuate racist, sexist, and classist stereotypes.<sup>18</sup> These images rarely challenge the status quo. Instead, they tell familiar stories and rely on popular myths, which simply affirm dominant ideology.<sup>19</sup> That being said, representation in popular culture is doubly complex for black women. In both high and popular culture, racist representations of black women are compounded by sexist stereotypes.<sup>20</sup> Classic portrayals of black women include the asexual, white-loving "Mammy" (or "Aunt Jemima"),<sup>21</sup> the strong black "matriarch," the sexually promiscuous "Jezebel," and the

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14. The title "Lady Day" was given to Holiday by saxophonist Lester Young: Holiday, *supra* note 2 at 50.
  15. The term "otherness" has gained much force and recognition since Edward Said's critique of "Orientalism." Edward W. Said, *Orientalism* (New York: Random House, 1978). According to Said, "the Orient has helped define Europe (or the West) as its contrasting image, idea, personality, experience" (at 1-2); "[t]he Oriental is irrational, depraved (fallen), childlike, 'different'; thus the European is rational, virtuous, mature, 'normal'" (at 40). On the role of the Western Imperial gaze in constructing "otherness," see Leslie G. Roman, "Denying (White) Racial Privilege: Redemption Discourses and the Uses of Fantasy," in Michelle Fine *et al.*, eds., *Off White: Readings on Race, Power, and Society* (New York: Routledge, 1997) 270; and John M. Kang, "Deconstructing the Ideology of White Aesthetics" (1997) 2 *Michigan Journal of Race and Law* 283.
  16. Herman Gray, *Watching Race: Television and the Struggle for "Blackness"* (Minneapolis: University of Minnesota Press, 1995) at 7.
  17. Michael Madow, "Private Ownership of Public Image: Popular Culture and Publicity Rights" (1993) 81 *California Law Review* 125 at 141.
  18. Gray, *supra* note 16 at 5.
  19. Cheryl I. Harris, "Myths of Race and Gender in the Trials of O.J. Simpson and Susan Smith—Spectacles of Our Times" (1996) 35 *Washburn Law Journal* 225 at 225.
  20. Glenn Jordan and Chris Weedon, *Cultural Politics: Class, Gender, Race, and the Postmodern World* (Oxford, UK: Blackwell, 1995) at 198.
  21. bell hooks, *Ain't I a Woman: Black Women and Feminism* (Boston: South End, 1981) at 84. See also Jennifer Wriggins, "Rape, Racism, and the Law" (1983) 6 *Harvard Women's Law Journal* 103, reprinted in D. Kelly Weisberg, ed., *Applications of Feminist Legal Theory to Women's Lives: Sex, Violence, Work, and Reproduction* (Philadelphia: Temple University Press, 1996), 495.

domineering, shrill, "Sapphire."<sup>22</sup> bell hooks asserts that black women are negatively defined in relation to both white women *and* black men. They find themselves excluded from acceptable definitions of femininity, standards that draw on white middle-class norms regarding sexuality and beauty.<sup>23</sup> Moreover, these negative images are used to explain the social position and behaviour of black men and operate to blame black women, rather than racist social structures and practices, for black men's disadvantage.<sup>24</sup>

As Marlee Kline and others<sup>25</sup> have demonstrated, issues of sexuality and gender are intricately connected to those of race and other categories of analysis such as class and sexual orientation.<sup>26</sup> To represent race and gender as separate conditions of oppression, which is the norm in popular culture, simply obscures and gives power to myths surrounding both race and gender.<sup>27</sup> Black women's experience of intersecting patterns of oppression accordingly demands an analysis that looks at the ways in which racism, sexism, and classism intersect in their lives. An intersectional analysis is required in order to decipher the ways in which gender and sexuality are inherently linked to issues of race and class as well as the ways in which the concerns and experiences of non-white women are silenced and/or trivialized in feminist and anti-racist discourse.<sup>28</sup>

Applying an intersectional analysis to the representations of Billie Holiday in Western popular culture requires that we attend to the ways in which racism, classism, and (hetero)sexism influenced Holiday's celebrity status and the construction of her public persona. As a jazz vocalist, Holiday worked within a genre that was intrinsically racialized and sexualized. When jazz first became popular in New York City in the early 1900s, it was considered a "naughty

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22. Sharon Angella Allard, "Rethinking Battered Woman Syndrome: A Black Feminist Perspective" (1991) 1 University of California at Los Angeles Women's Law Journal 191, n. 15, 16. See also Regina Austin, "Sapphire Bound!" (1989) Wisconsin Law Review 539.
  23. Jordan and Weedon, *supra* note 20 at 208.
  24. Dorothy E. Roberts, "Racism and Patriarchy in the Meaning of Motherhood" (1993) 1 American University Journal of Gender and the Law 1, reprinted in Martha Albertson Fineman and Isabel Karpin, eds., *Mothers in Law: Feminist Theory and the Legal Regulation of Motherhood* (New York: Columbia University Press, 1995), 224 at 238.
  25. See, for example, Marlee Kline, "Complicating the Ideology of Motherhood: Child Welfare Law and First Nation Women" (1993) 18 Queen's Law Journal 306, reprinted in Martha A. Fineman and Isabel Karpin, eds., *Mothers in Law: Feminist Theory and the Legal Regulation of Motherhood* (New York: Columbia University Press, 1995), 118; Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color" (1991) 43 Stanford Law Review 1241, reprinted in D. Kelly Weisberg, ed., *Applications of Feminist Legal Theory to Women's Lives: Sex, Violence, Work, and Reproduction* (Philadelphia: Temple University Press, 1996), 363; Angela P. Harris, "Race and Essentialism in Feminist Legal Theory" (1990) 42 Stanford Law Review 581, reprinted in D. Kelly Weisberg, ed., *Feminist Legal Theory: Foundations*, vol. 1 (Philadelphia: Temple University Press, 1993), 348; and Angela Y. Davis, *Women, Race and Class* (New York: Vintage Books, 1983).
  26. Marlee Kline, "Race, Racism, and Feminist Legal Theory" (1989) 12 Harvard Women's Law Journal 115 at 118.
  27. Harris, *supra* note 19 at 230.
  28. See Kline, *supra* note 26 at 115.

novelty."<sup>29</sup> White patrons would flock to a row of clubs in Harlem called "Jungle Alley" to listen to "jass" bands<sup>30</sup> (the word "jass" referred to sexual intercourse).<sup>31</sup> They came to listen to the "'hot' and 'barbaric' jazz," with its "risqué lyrics," and to watch the "'junglelike' dancing" of the cabaret floor shows.<sup>32</sup> Singer Lena Horne recalls:

The shows had a primitive, naked quality that was supposed to make a civilized audience lose its inhibitions. The music had an intensive, pervasive rhythm—sometimes loud and brassy, often weird and wild. The dances were eloquently provocative.<sup>33</sup>

A supposed sense of adventure brought white people to these clubs. They perceived themselves as abandoning the restraints of respectability—a perception intensified by the fact that Harlem clubs were some of the few places in the segregated United States where people of different races could mix.<sup>34</sup>

Further, women on stage during Holiday's heyday were viewed as sexual commodities and often assumed to be publicly available to men, both on stage and off.<sup>35</sup> This perception was particularly problematic for black female performers as their sexuality was (and continues to be) intricately connected to issues of race. As noted earlier, black women have endured a legacy of myths and stereotypes regarding their sexuality. Joan Tarpley locates these stereotypes within two categories—Mammy and Jezebel—which reflect "the duality syndrome of either/or, black or white, good or evil that is prevalent in normative thinking."<sup>36</sup> Tarpley explains:

Jezebel was the wanton, libidinous black woman whose easy ways excused white men's abuse of their slaves as sexual "partners" and bearers of mulatto offspring. Jezebel was both free of the social constraints that surrounded the sexuality of white women as to whom she represented a threat, and isolated from the men of her own community.<sup>37</sup>

In contrast, Mammy was "asexual," "maternal," and "deeply religious." She took care of the slave master's household and "was said to be so enamored of her white

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29. Paul Chevigny, *Gigs: Jazz and the Cabaret Laws in New York City* (New York: Routledge, 1991) at 40.

30. *Ibid.*

31. Jeff Taylor, "The Early Origins of Jazz," in Bill Kirchner, ed., *The Oxford Companion to Jazz* (Oxford, UK: Oxford University Press, 2000) 39 at 43.

32. Jervis Anderson, *This Was Harlem: A Cultural Portrait, 1900–1950* (New York: Farrar Straus Giroux, 1982) at 139.

33. Chevigny, *supra* note 29 at 40.

34. *Ibid.* at 41.

35. Nicholson, *supra* note 5 at 132.

36. Joan R. Tarpley, "Black Women, Sexual Myth, and Jurisprudence" (1996) 69 Temple Law Review 1343 at 1344.

37. *Ibid.* at 1345.

charges that she placed their welfare above that of her own children."<sup>38</sup> Both myths began as "ideological constructs that supported slavery" and "justified the economic and sexual exploitation of black female slaves."<sup>39</sup>

Holiday was not immune to these stereotypes. It was rumoured, for instance, that she was fired from the Count Basie band<sup>40</sup> because she would not be "a coloured mammy."<sup>41</sup> While Holiday states in her autobiography that she actually quit the Basie band, the reasons she provides for her departure bear a striking resemblance to those alleged in the rumour. Holiday recalls performing with the Basie band in Detroit, where the show opened and closed with a line of white chorus girls, doing barelegged kicks like the Rockettes. After three performances the first day, the theatre manager ordered Basie to change the show because of the "complaints about all those Negro men up there on the stage with those barelegged white girls."<sup>42</sup> The whole show was subsequently revamped and the chorus was required to do their numbers in blackface, wearing "damn mammy getups."<sup>43</sup> To make matters worse, Holiday had to "darken down" with grease paint because she was seen as "too yellow to sing with all the black men in [Basie's] band."<sup>44</sup> After a "few more months with more of the same,"<sup>45</sup> Holiday explains, she had had enough and decided to quit, perhaps throwing away, in her words, "the biggest opportunity of [her] life."<sup>46</sup>

This anecdote demonstrates the importance of the Mammy/Jezebel dichotomy in the configuration of Holiday's celebrity in American culture. In refusing to be typecast in the role of Mammy, Holiday had little choice but to take on the hypersexualized Jezebel persona and become branded as a black female performer who "stripped [the American popular song] of its innocence, [and] transform[ed] simple love songs into narratives of sexual desire."<sup>47</sup> Holiday's configuration in popular culture thereby became that of an unsophisticated woman whose (hyper-)sexuality condemned her to poor relationships with men. In other words, her public persona became that of someone "unlucky in love."<sup>48</sup> Almost all of her songs at the time contained lyrics that "drew on the romantic conventions of being let down or stood up, about loneliness and frustration in love."<sup>49</sup> In this role of

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38. *Ibid.*

39. *Ibid.*

40. Billie toured with Count Basie from 13 March 1937 to early 1938.

41. Clarke, *supra* note 5 at 134, quoting drummer Jo Jones.

42. Holiday, *supra* note 2 at 61.

43. *Ibid.*

44. *Ibid.*

45. *Ibid.*

46. *Ibid.*

47. Nicholson, *supra* note 5 at 229.

48. *Ibid.* at 112.

49. *Ibid.* Nicholson (*ibid.* at 141) asserts that Holiday's 1944 recording of "Lover Man" is the "lyric moment" that configured Holiday's "unlucky in love" public persona in American popular culture. See Jimmy Davis, Ram Ramirez, and James Sherman, "Lover Man (Oh, Where Can You Be?)" (Decca, 1944): lyrics available online at <<http://www.lyricsfreak.com/b/billie-holiday/17795.html>>.

hapless victim, she “consum[ed] the original meaning of the song and reveal[ed] another dimension that even the lyricist could surely not have envisioned.”<sup>50</sup>

How much control Holiday actually had over her repertoire and image is open to debate. Credit for her artistry is often given to (and taken by) various white managers and club owners. For example, biographer Clarke claimed that Holiday’s performances of the extremely powerful protest song, “Strange Fruit,”<sup>51</sup> were completely controlled by Barney Josephson, the owner of Café Society where she first performed the song. In an interview given after Holiday’s death, Josephson boasted:

I made her do it as her last number, and no matter how thunderous the applause, she had orders from me not to return for even a bow. I wanted the song to sink in, especially since it closed every show. The room was completely blacked out, service stopped—at the bar, everywhere. The waiters were not permitted to take a glass to the table, or even take an order. So everything stopped—and everything was dark except for a little pin spot on her face. That was it ... The tears never interfered with her voice, but the tears would come and just knock everybody in that house out.<sup>52</sup>

Angela Davis argues that Josephson’s story “capture[s] Holiday in a web of gendered, classed, and raced inferiority and present[s] her as capable of producing great work only under the tutelage of her racial superiors.”<sup>53</sup> It is important to note, however, that, notwithstanding the control (or lack thereof) that Holiday had over her repertoire and image, only Holiday controlled the way in which she sang a song. And this was her genius:

Many of Holiday’s songs are pervaded by loneliness and gloom—and she remains unequaled in her ability to re-create these emotions musically. By the subtleties of her phrasing and her flawless sense of swing, she offers us a glimpse into the human emotion of despair. No other voice has ever given such honest, intimate and profound expression.<sup>54</sup>

The question of how much agency Holiday had with respect to her image and repertoire is extremely complicated. If we accept the argument that images are accepted and found credible as they relate to the viewers’ own experiences, then we can better understand the persuasive power of Holiday’s “unlucky in love” public persona, be it a conscious manipulation or a consequence of circumstance.

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50. *Ibid.* at 112.

51. See Lewis Allen, “Strange Fruit” (Commodore, 1939): lyrics available online at <<http://www.lyricsfreak.com/b/billie-holiday/17859.html>>.

52. Clarke, *supra* note 5 at 164–5.

53. Davis, *supra* note 13 at 187.

54. *Ibid.* at 177.

On the one hand, Holiday was not just acting when it came to being unlucky in love; she had actually been in many abusive relationships with men over the years. As early as 1940, there were reports in the popular press regarding the domestic violence Holiday suffered at the hands of her so-called boyfriends.<sup>55</sup> Thus, for those who shared or understood such experiences of abuse, Holiday's representation in popular culture<sup>56</sup> could easily be perceived as authentic and credible. On the other hand, for those privileged audience members who knew nothing about what it was to grow up poor, black, and female in America, Holiday's image, insofar as it conformed to stereotypical images of the sexually deviant Jezebel,<sup>57</sup> was similarly deemed authentic. Accordingly, if the authenticity of a performer ultimately determines the public's desire to identify with her or him,<sup>58</sup> then the configuration of Holiday as an "unlucky in love" woman in Western popular culture was a move that, whether conscious or not, produced for her the largest following and helped make her the celebrity she later became.

### *Transformation and Authentication of Holiday's Public Persona*

Biographical narratives allege that addiction followed fame and, after the death of her mother in 1945, Holiday turned to alcohol and heroin for comfort.<sup>59</sup> The tale of Holiday's drug habit is saturated with references to white paternalism and masculine attempts to control Holiday through drugs and money. Nicholson states that Holiday's man at the time, trumpeter Joe Guy, began supplying her with heroin and, within months, they "began living together as man and wife."<sup>60</sup> Guy allegedly charged her exorbitant amounts of money, well over the street price, for her drugs.<sup>61</sup> When her drug use started interfering with her performance and began to drain her bank account, Joe Glaser, her white manager, made her check herself into a New York clinic and get the "cure." According to pianist Bobby Tucker, however, it was no cure:

They had glucose to clean out her system, they had great big bottles of that stuff—jugs—it's like purifying the system and those kinds of things don't work, all it does is make her a virgin when she comes out ... And it ended up that she was getting stuff from the nurse.<sup>62</sup>

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55. See, for example, Nicholson, *supra* note 5 at 119.

56. In addition to the newspaper reports written on Holiday, Nicholson (*ibid.* at 55–6) discusses the Duke Ellington film short, *Symphony in Black*, released in September 1935, in which Holiday plays a prostitute who is thrown to the ground from where she sings the song "Saddest Tale" about a woman whose abusive partner leaves her for another woman.

57. Holiday has been described as a "[s]trong, sexually aggressive woman," "physically and sexually dominating," who seems "only to conform by the use of physical violence." *Ibid.* at 132.

58. *Ibid.* at 57.

59. *Ibid.* at 147.

60. *Ibid.* at 142.

61. *Ibid.*

62. Clarke, *supra* note 5 at 249–50.

Holiday left the clinic still addicted to narcotics and two thousand dollars poorer.<sup>63</sup>

When Glaser found out that “the cure” did not work, he decided to go to the police. Glaser confided in Jimmy Fletcher, one of the few black narcotics agents in New York at that time, about “Billie being his girl, how he’d like to save her, and the only way to save her is to have her knocked out by the government.”<sup>64</sup> Thus, Holiday was arrested on 19 May 1947 for a violation of section 174 of the *US Narcotics Act*:<sup>65</sup> “That she did receive, conceal and facilitate the transportation and concealment of drugs.”<sup>66</sup> On 27 May 1947, Holiday appeared in the District Court of the Eastern District of Pennsylvania before Judge J. Cullen Ganey. At Glaser’s behest, she waived her right to legal representation and pleaded guilty to the charge. Holiday requested that she be sent to a hospital in order to get help for her addiction. In her autobiography, Holiday writes that the judge responded to her request for hospitalization by stating: “I want you to know you are being committed as a criminal defendant; you are not being sent to a hospital alone primarily for treatment. You will get treatment, but I want you to know you stand convicted as a wrongdoer.”<sup>67</sup> Holiday was sentenced to one year and a day at the Federal Reformatory for Women in Alderson, Virginia.<sup>68</sup> After serving nine and a half months of her sentence, Holiday was released on parole on 16 March 1948.<sup>69</sup>

Eleven days later, Holiday returned to New York City to perform on the nation’s foremost stage, Carnegie Hall. Despite, or perhaps because of, her stint in jail, she was as popular as ever. Billie’s Carnegie Hall concert set a house record. According to *Time* magazine:

It was jam-packed (300 were seated on the stage) with a crowd of Holiday cultists whose hysterical applause gave the event the quality of a revival meeting. They were telling their martyred Billie that nothing mattered, just so she was back, and that for their money (up to \$3.60 a head) she could do no wrong.<sup>70</sup>

*Time* reported that Holiday’s voice, “a petulant, sex-edged moan, was stronger than ever.”<sup>71</sup> On 17 April 1948, she re-appeared at Carnegie Hall, only to break her own box-office record.<sup>72</sup>

Following her release from Alderson, Billie attracted much media attention, and her public image underwent a transformation. According to Nicholson, “no

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63. *Ibid.* at 249.

64. *Ibid.* at 255.

65. *US Narcotics Act*, 21 U.S.C.A. § 174.

66. Ken Vail, *Lady Day’s Diary: The Life of Billie Holiday 1937–1959* (Chessington, UK: Castle Communications, 1996) at 100. See also *USA v. Billie Holiday*, File no. 14234 (District Court of the United States for Eastern District of Pennsylvania: 27 May 1947).

67. Holiday, *supra* note 2 at 131.

68. Nicholson, *supra* note 5 at 158.

69. Chilton, *supra* note 5 at 118.

70. “New Life,” *Time*, issue no. 51 (12 April 1948) at 68.

71. *Ibid.*

72. Nicholson, *supra* note 5 at 166.

longer was she seen as simply unlucky in love ... Now she was seen as unlucky in life."<sup>73</sup> This new persona was reinforced by a series of articles in the popular press. One article entitled "Lady Day's Comeback" appeared in *American Weekly* and *Negro Digest*:

It told of her fall from grace, her addiction, and her cure culminating in her Carnegie concerts. In interviews for *PM* and *Metronome*, Billie spoke freely of her past addiction: "When I was on it, I was *on* it! she asserted."<sup>74</sup>

All of these articles contributed to her "notorious history," and this reputation in turn, "gave her a new base for singing about life."<sup>75</sup> Truth was now viewed as her "habit"; "heroin, only a part-time crutch."<sup>76</sup>

It was during this time that Holiday's "metaphorical turns of phrase" and her unfolding of a song began to assume greater subjective meaning. Her personal life became intertwined with both the songs she sang and the way she sang them: "Now it was *what* she sang, the *authenticity* of her voice and the way her audience attributed special significance to it, that mattered. Billie's real-life story had become the source of meaningfulness in her voice."<sup>77</sup> The lyrical content had become fused with the singer's personality and her much-publicized personal life. Farah Jasmine Griffin states:

Eventually the stories of her arrests and drug addiction joined with her stage persona of the torch singer to create a new image, that of the tragic, ever-suffering black woman singer who simply stands center stage and naturally sings her words.<sup>78</sup>

This vocal authenticity of experience was reinforced when Holiday went back into the recording studios and recorded "My Man" and "Porgy" on 10 December 1948.<sup>79</sup> The lyrics of "My Man" are particularly important. In this song, Holiday bemoans her man and his bad treatment of her: "Two or three girls / Has he / That he likes as well as me / But I love him / I don't know why I should / He isn't true / He beats me, too / What can I do?"<sup>80</sup> These songs, Nicholson argues, were chosen

73. *Ibid.* at 170.

74. *Ibid.* [emphasis in original].

75. *Ibid.*

76. William Dufty, *The Billie Holiday Story* [cover notes to compact disc] (MGM, 1944; reissued on CD, MCA).

77. Nicholson, *supra* note 5 at 170 [emphasis in original].

78. Farah Jasmine Griffin, *If You Can't Be Free, Be a Mystery: In Search of Billie Holiday* (New York: Free Press, 2001) at 31.

79. Nicholson, *supra* note 5 at 171.

80. See Channing Pollock, Maurice Yvain, Albert Willemetz, and Jaques Charles, "My Man" (Brunswick, 1937): lyrics available online at <<http://www.lyricsfreak.com/b/billie-holiday/17796.html>>. Holiday's first version of the song "My Man" had no direct reference to physical violence. Clarke (*supra* note 5 at 154) speculates that this omission could be because

carefully by Holiday as songs “she felt suited her and with which she could become emotionally entangled.”<sup>81</sup> When she sang “he beats me too” in “My Man,” for instance, the “social truth” of the singer was revealed.<sup>82</sup>

Again, how much control Holiday had over her repertoire at this time is a complicated question. As Holiday’s celebrity and popularity increased, songs were being written specifically for her (often at the request of white record producers and managers) that corresponded with the troubles in her private life.<sup>83</sup> However, it was Holiday’s perceived ability to “musically [convey] her own state of mind”<sup>84</sup> that made almost any song she sang appear honest and truthful: “When you listened to Billie Holiday sing, you felt that she had lived that experience and she was telling a story about it.”<sup>85</sup>

It is against this backdrop that her 1949 encounter with the legal system occurred.

### *Truth, Justice, and the American Way*

The trial of a celebrity “other” involves a complex process of determining the “truth” or “reality” of courtroom assertions. Who can be trusted and who cannot? When is manipulation acceptable and when must it be resisted?<sup>86</sup> These cultural tensions and conflicts inform determinations of guilt or innocence above and beyond the assertions of truth in the trial of a celebrity “other.” I argue that statements made throughout the course of Holiday’s trial owed much of their credibility to the congruence they shared with Holiday’s “unlucky in life” celebrity persona. In the end, this perceived correspondence between Holiday’s private and public lives enabled her narrative of innocence and betrayal—a tale that would normally go unheard in a trial of a black woman—to not only be listened to but also to be believed by the jury.

### *The Crime*

The following facts are generally accepted by varying sources. On 22 January 1949, Billie Holiday and her manager/boyfriend, John Levy,<sup>87</sup> were in her suite at

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violence had not come to the fore in her life or that perhaps “the tougher lyrics would have been less acceptable in 1937.”

81. Nicholson, *supra* note 5 at 172.

82. *Ibid.*

83. *Ibid.* at 148.

84. Davis, *supra* note 12 at 194.

85. Clarke, *supra* note 5 at 296, quoting bassist John Levy.

86. Joshua Gamson, *Claims to Fame: Celebrity in Contemporary America* (Berkeley: University of California Press, 1994) at 12.

87. John Levy’s ethnic background is significant. He described himself as half Jewish and half African-American. However, according to Chilton, Levy could “easily be mistaken for white, and with the name of Levy, he was often considered white. This was really a blessing in disguise, as he was able to book Lady Day at many places that it would have been impossible for her to

a midtown San Francisco hotel.<sup>88</sup> There was a phone call,<sup>89</sup> then a rap on the door. Levy allegedly handed Holiday a small package and told her to flush it down the toilet. Before she could do so, four men darted into her hotel room. One Colonel White grabbed Holiday and the package as she tried to throw it into the toilet.<sup>90</sup> Both Holiday and Levy were arrested for possession of opium.

Immediately following the arrest, Levy allegedly tried to bribe the officials. He was, however, unable to persuade them to drop the charges. Levy and Holiday were taken to the police station and bail was set at five hundred dollars each. Joe Tenner, the boss of the Café Society Uptown where Holiday was scheduled to perform, called Jake "The Master"<sup>91</sup> Ehrlich, a famous San Francisco criminal lawyer. Ehrlich agreed to take on Holiday's case,<sup>92</sup> and she was out on bail the same night, performing at Tenner's club. The publicity paid off and the club was packed nightly.<sup>93</sup> On 7 February 1949, Holiday was indicted by a grand jury for a violation of section 11500 of the *California Health and Safety Code*.<sup>94</sup> The charge against John Levy was dropped.

At this point, the facts of the case become less certain. Some sources argue that Holiday was "clean";<sup>95</sup> others argue that Ehrlich delayed the trial date in order to give her time to detoxify. Ehrlich himself recalls that he suggested that

she go and get her personal physician to put her in and dry her out so to speak, because when we went to court I didn't want to have that facing me, or her for that matter. I assumed she was using opium; he handed it to her to throw away.<sup>96</sup>

Most biographers agree that Holiday went and stayed with a friend, Dr. Herbert B. Henderson, because no hotels would allow Levy and Holiday as guests. Henderson referred Holiday to a nearby psychiatrist, Dr. James Hamilton; Hamilton, in turn, arranged that Holiday be admitted to the Belmont Sanitarium in

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work if she had continued associations with her previous 'partners.'" Chilton, *supra* note 5 at 135.

88. Some accounts say Holiday was arrested in Room 203; Holiday herself states it was Room 602. Whichever room it was, the Mark Twain Hotel, 345 Taylor, San Francisco, has "dedicated" Rooms 203 and 204 as the "Billie Holiday Suite." Nicholson, *supra* note 5 at 175.
89. Holiday's lawyer wrote: "It was for Levy. He took the receiver and exchanged a few monosyllables with a person on the other end of the line. Later he claimed that someone had asked for a business appointment and that he had agreed to it." Ehrlich, *Lost Art*, *supra* note 5 at 137. In Holiday's autobiography, she states that a voice she did not recognize asked for Levy. However, the person on the other end of the line hung up before Levy could talk to him or her: Holiday, *supra* note 2 at 157.
90. Clarke, *supra* note 5 at 297.
91. See the Jake Ehrlich Sr. Memorial homepage at <<http://www.neverpleadguilty.com/intro.htm>> (date accessed: 21 June 2004).
92. Noble and Averbuch, *supra* note 5 at 257.
93. Ehrlich, *Lost Art*, *supra* note 5 at 139.
94. *California Health and Safety Code*, *supra* note 6.
95. See, for example, Hettie Jones, *Big Star Fallin' Mama: Five Women in Black Music* (New York: Viking, 1995).
96. Clarke, *supra* note 5 at 299-300.

order to prove that she was not addicted to any narcotics.<sup>97</sup> Holiday willingly underwent urine and blood tests, which proved negative. After two weeks, Holiday left Belmont.<sup>98</sup>

To avoid being subpoenaed as a witness, John Levy left California and went back to New York City. Billie began a tour of northern California, but quit soon after, possibly to be with Levy. However, at the end of May, Holiday returned to California, without Levy, to stand trial for narcotics possession. On 3 June 1949, she was acquitted.

### *The Defence*

Not much else is known for certain about this incident. Even Holiday herself, when asked by friends for the “real lowdown inside story,” confessed that she wished she knew herself.<sup>99</sup> As noted earlier, Holiday pled not guilty to the charge of possession. Ehrlich insinuated in court that Holiday had been set up by Levy. In a book he wrote twenty-one years after the fact, Ehrlich states that he based his reasoning on the following “facts”:

1. with the charges against Levy dismissed, it was obvious that White was “trying to send Billie and *only* Billie to prison”;<sup>100</sup>
2. Levy’s exemption from bribery charges suggested something more sinister was going on. During the pre-trial examination, White put himself on record as having “declined” the offer of a bribe from Levy; yet White did not arrest Levy for this bribe. Why would he tarnish his reputation as a no-nonsense cop unless “White and Levy were partners in the enterprise to dispose of Billie?”<sup>101</sup>
3. Ehrlich had asked Billie whether she had ever noticed Colonel White before. She said she had seen him at a table with John Levy at the Café Society Uptown and Ehrlich found a photo to prove it;<sup>102</sup> and
4. “[w]ord around town” was that Levy had got himself a new “girl.” He had stolen enough of Billie’s money and “[h]e wanted out.”<sup>103</sup> However, he could not just dump Lady Day; he had his image to think about. Instead, “[h]e had to do something more subtle and conclusive, something that would leave him looking loyal and faithful and appealingly noble.”<sup>104</sup> He had to frame her.

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97. *Ibid.* at 302.

98. Chilton, *supra* note 5 at 133.

99. Holiday, *supra* note 2 at 163.

100. Ehrlich, *Lost Art*, *supra* note 5 at 138.

101. *Ibid.*

102. A picture taken by the club photographer proved this meeting did take place, although it is uncertain whether this event happened before or after Holiday’s arrest: Noble and Averbuch, *supra* note 5 at 246.

103. Ehrlich, *A Life in My Hands*, *supra* note 5 at 149.

104. *Ibid.*

Ehrlich's position had obvious deficiencies. To begin with, there was no real evidence to support this claim—Ehrlich could only insinuate that Holiday had been framed,<sup>105</sup> and his insinuation was a dubious one at that. Why would Levy go to all this trouble simply to get out of a relationship? He could simply have walked away from Holiday. Some argue that it would actually have been more in character for Levy to “continue to steal her money as long as he could.”<sup>106</sup> Nonetheless, the jury appears to have accepted Ehrlich's argument. The reason for this decision, I suggest, lies in the blurring of Holiday's personal and public lives and the credibility her celebrity persona lent to her narrative of innocence and betrayal in the courtroom.

### The Trial

As mentioned, Ehrlich implied throughout Holiday's trial that she had been set-up by her boyfriend, John Levy. Two steps were required to establish this insinuation. The first involved convincing the jury of Levy and White's connection and thus “crack[ing] the colonel's austere invincibility,”<sup>107</sup> and casting doubt upon his “apparently ironclad case.”<sup>108</sup> Ehrlich accomplished this by focusing on: (1) the fact that White denied knowing Levy (“I knew him by description and reputation, *but not by sight*”<sup>109</sup>) and yet had been photographed sharing a drink with Levy at Café Society; and (2) the fact that White admitted that Levy had tried to bribe him, and yet he did not arrest or charge Levy for this crime.<sup>110</sup> To Ehrlich, this contradiction provided “unrebuttable evidence that White and Levy were partners in the enterprise to dispose of Billie.”<sup>111</sup>

White played an important role in Holiday's trial narrative. Had Levy allegedly dealt with anyone other than a police officer or government agent, the argument would have been less believable. It was well documented in the popular press that narcotics squads hounded Holiday throughout her life.<sup>112</sup> She herself maintained that ever since she checked herself into a private sanitarium in 1946 to get “clean,” the law had been tailing her.<sup>113</sup> Even Maya Angelou in her autobiography described a scene in which her son, on meeting Billie Holiday for the first time, commented:

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105. J. Alexander Tanford and Sarah Tanford, “Better Trials through Science: A Defense of Psychologist-Lawyer Collaboration” (1988) 66 North Carolina Review 741 at 769, n. 178.

106. Clarke, *supra* note 5 at 296.

107. Noble and Averbuch, *supra* note 5 at 242.

108. Ehrlich, *Lost Art*, *supra* note 5 at 138.

109. Noble and Averbuch, *supra* note 5 at 240 [emphasis in original].

110. “Q—Did you accept the bribe? A—No. Q—Did you arrest him for offering you a bribe? A—No. Q—Did you ever charge him with offering you a bribe? A—No.” *Ibid.* at 248.

111. Ehrlich, *Lost Art*, *supra* note 5 at 138.

112. See, for example, Billie Holiday, “Cured for Good” 14(9) *Ebony* (July 1949) at 27. The FBI opened file number 4855389 on “Billie Holiday: Singer” in mid-1940 in response to her performance of “The Yanks Aren't Coming,” a protest song against American involvement in the Second World War. Nicholson, *supra* note 5 at 121.

113. Holiday, *supra* note 2 at 123.

Billie Holiday? Oh. Yes. I know about you ... I read about you in a magazine. They said the police have been giving you a hard time. And that you've had a very hard life. Is that true? What did they do to you? Is there anything you can do back? I mean, sue them or anything.<sup>114</sup>

Accordingly, the argument that Levy conspired with a federal narcotics agent became credible in light of the trouble Holiday had been having with the law. This alleged conspiracy, in turn, made the implication that Levy framed Holiday more probable.

Also necessary was Levy's absence. Had Levy been present in the courtroom and supportive of Holiday, the jury would likely not have believed he tried to frame her. Ehrlich allegedly encouraged Levy's departure from San Francisco, intimating that Levy might be called as a witness if he stayed in town.<sup>115</sup> Whatever the reason for his leaving, Levy's absence made it easier to construct him as the "bad guy," the "He" in Billie Holiday's "My Man" narrative: "He isn't true/He beats me, too/What can I do?"

Having successfully cast doubt on White's testimony<sup>116</sup> ("White came off the stand a tired, solemn man"<sup>117</sup>) and having made the most of Levy's absence from the courtroom ("I wish he was here, and we *would* be trying him!" asserted Ehrlich<sup>118</sup>), Ehrlich's next task was to convince the jury that Billie Holiday was more credible than the case against her. In other words, Holiday's trial narrative had to be seen as being as truthful and honest as her musical performances.

While issues of race, gender, sexuality, and class are typically ignored in a courtroom, and references to social context are generally absent from legal argument,<sup>119</sup> they were foregrounded in Holiday's trial. Race, class, and sexuality were highlighted in the courtroom in order to resonate with Holiday's "unlucky in life" public persona. This persona, in turn, lent credibility to her narrative of innocence and betrayal in the courtroom, thereby effecting her acquittal. To begin, Holiday entered the courtroom on 31 May 1949, looking uncharacteristically<sup>120</sup> "unkempt in a beige suit."<sup>121</sup> Her eyes were puffy from crying and one eye was bruised and swollen. She told a reporter in the courtroom that Levy had hit her. "You should see my back,"<sup>122</sup> she stated: "He done it Friday night. It looks better now than what it did. He went off Saturday night—even took my mink—eighteen grand worth of coat ... I got nothing now, and I'm scared."<sup>123</sup> Ehrlich used Billie's

114. Maya Angelou, *The Heart of a Woman* (New York: Random House, 1981) at 11.

115. Chilton, *supra* note 5 at 133.

116. Percy Foreman argues that "the first, essential act of the defense [is] to cast a shadow of doubt over the validity of the prosecution's testimony." Ehrlich, *Lost Art*, *supra* note 5 at 7.

117. Noble and Averbuch, *supra* note 5 at 249.

118. *Ibid.* at 248 [emphasis in original].

119. Bhandar, *supra* note 12 at 2.

120. Holiday was renowned for wearing expensive gowns and furs both onstage and off.

121. Noble and Averbuch, *supra* note 5 at 242.

122. Chilton, *supra* note 5 at 134.

123. Noble and Averbuch, *supra* note 5 at 243. A week before trial, a newspaper article stated: "Billie Holiday, the torchanteuse, is singing these days with more than lumps in her throat; she has

obvious emotional and physical pain to his advantage, "let[ting] her pour it out while the indictment was being read and the first twelve jury candidates took their places."<sup>124</sup> Holiday's visible anguish and drab appearance enabled the jury to more readily accept her "unlucky in life" persona.<sup>125</sup>

Issues of race were particularly emphasized in the selection of the jury. As all the prospective jurors were white,<sup>126</sup> Ehrlich's task was to determine who would be most sympathetic to a black woman, notwithstanding her celebrity status. He asked each of the prospective jurors: "Do you believe ... that because Billie Holiday is of another race, though American and entitled to equal protection of our laws, she is more likely than another person to commit the offense charged?"<sup>127</sup> Ehrlich dismissed one woman he thought to be racially prejudiced. He finally accepted a jury of six men and six women, to which Judge Wollenberg further admonished: "Under the law you must have no reservations because Miss Holiday is of a different race."<sup>128</sup>

Ehrlich made obvious the racial, class, and gendered aspects of Holiday's "unlucky in life" persona when she took the stand. Ehrlich led the jury through Holiday's (selectively chosen) humble origins:

She had completed only the fifth grade in school because her father, a guitar player, had died of pneumonia when a Dallas hospital refused to admit him, a Negro. She had waited on table [*sic*] in her mother's restaurant, singing for tips when she was only fourteen.<sup>129</sup>

This tale of poverty and bad luck worked to further blur the distinction between Holiday's private and public lives. Holiday's past drug use was addressed directly: "I been in trouble before!" she told the jury. "Two years ago, it was. I volunteered for the narcotics cure. It wasn't for opium. But I ain't had no drugs since. I came home and society took me back. Thank God for allowing me this second chance!"<sup>130</sup>

The visual and vocal juxtaposition of her "simple and obviously unimprovised story"<sup>131</sup> against the expensive and highly advanced resources of the state also authenticated Holiday's narrative. John Fiske argues that the "rawness"

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lumps elsewhere, too, after being beaten pretty brutally one night last week. She knows some lovely people." Vail, *supra* note 66 at 122, citing "Blues Dept," *San Francisco Chronicle* (23 May 1949).

124. Noble and Averbuch, *supra* note 5 at 243.

125. Trial lawyers have long believed that the witness's appearance and demeanor in court is as important as an actor's costume and conduct on stage: Aaron S. Cutler, *Successful Trial Tactics* (New York: Prentice-Hall, 1949) at 150.

126. In Holiday's words, "Mr. Ehrlich sweated over the picking of the jury. So did I. He asked each one of them if they had anything against Negroes." Holiday, *supra* note 2 at 161.

127. Noble and Averbuch, *supra* note 5 at 243.

128. *Ibid.*

129. *Ibid.* at 249.

130. *Ibid.* at 250.

131. Ehrlich, *Lost Art*, *supra* note 5 at 137-8.

of language, contrasted with grammatically correct speech, gives the former a heightened sense of authenticity.<sup>132</sup> Holiday's "street-wise" grammar, her unfinished sentences and emotional responses in the courtroom enabled her to speak with "the accent of the disempowered."<sup>133</sup> In other words, the "lowness" of the social position from which she spoke carried with it a heightened sense of authenticity regarding the "experiential truths (or 'true' experiences) of the socially disempowered."<sup>134</sup> In contrast, the abstract and unemotional responses of White represented a lack of fear and, hence, a position of power. At one point, White joked about how bad he looked in the picture of himself and Levy. This joke solidified Holiday's and White's different social positions in the jury's imagination—the jury laughed *with* Colonel White; the jury laughed *at* Billie Holiday, the "big, simple, dark girl."<sup>135</sup>

Ehrlich then put to Holiday the question of whether she had ever seen Colonel White before. She replied that she had, at the Café Society Uptown. Ehrlich started to ask whether White had been accompanied by anyone, but instead, without saying a word, he simply gestured towards the picture of Levy and White sharing a drink. Although this photograph was not actually admitted into evidence, Ehrlich's manoeuvre was extremely effective. Holiday testified that she had seen White at Café Society "[w]ith John Levy. Always with John Levy."<sup>136</sup> This tactic, while extremely suspect, ultimately worked to highlight Holiday's misfortune and to lend credibility to the suggestion that she had been set up by her man, Levy.

Ehrlich then pressed forward, asking Holiday to account for her \$200,000 annual income. She replied that Levy controlled all her finances and that this had been a source of contention between them:<sup>137</sup> "I keep asking him about where all my money go and he keep telling me to shut up. I keep asking him to give me some money and he keep beating me limp."<sup>138</sup> Ehrlich then asked whether she and Levy were to get married. She responded:

Yes. We were sweethearts and I turned my whole life over to him. He took every penny I made. He bought everything, done everything. We were supposed to get married and we didn't and that was why we was arguing and he was so mad at me the day the police came.<sup>139</sup>

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132. John Fiske, *Media Matters: Race and Gender in U.S. Politics*, rev. ed. (Minneapolis: University of Minnesota Press, 1996).

133. *Ibid.* at 30–1.

134. *Ibid.* at 127.

135. Noble and Averbuch, *supra* note 5 at 252. See also text accompanying note 145

136. Ehrlich, *A Life in My Hands*, *supra* note 5 at 154.

137. Noble and Averbuch, *supra* note 5 at 250.

138. Ehrlich, *A Life in My Hands*, *supra* note 5 at 154. Although I have reproduced this quote verbatim from Ehrlich's book in order to highlight the tale of abuse and victimization advanced by Holiday in the trial, I do not endorse Ehrlich's reproduction of Holiday's diction. In contrast, Noble and Averbuch's account of this same trial portrays Holiday as much more articulate.

139. *Ibid.*; compare Noble and Averbuch, *supra* note 5 at 251.

This line of questioning, although irrelevant to the issue of narcotics possession, directed attention towards Holiday's "unlucky in life" public persona, which, in turn, gave power and credibility to Holiday's trial narrative. In the end, the jurors came to despise the absent, abusive Levy, a man who, they were told, stole all of Holiday's money and refused to marry her. Said one jury member to Holiday's doctor after the trial: "We think there's something funny about this whole case, and we think the real culprit is Mr. Levy, who went out of town."<sup>140</sup>

In the final moments of her testimony, Ehrlich asked Holiday whether Levy had left the day before the trial to go back to New York. "Yes, he lef' me," she confirmed.<sup>141</sup> At this point, the prosecution furiously asked the judge to make a ruling regarding this line of questioning. "It is obvious what counsel is doing," Weinberger, the prosecuting attorney yelled: "He is making speeches. He isn't interested in answers!"<sup>142</sup> In a dramatic move, Ehrlich turned to Weinberger and belligerently replied, "I want the truth! I am only interested in the truth."<sup>143</sup> Holiday was asked one final time whether she had used drugs within the past two years; "No!" she professed.<sup>144</sup> The defence rested its case.

During cross-examination, the race, class, and gender features structuring Holiday's "unlucky in life" persona in popular culture were further highlighted and the distinction between her public and private lives eradicated completely. She testified that she had known Levy for about a year, and when asked whether Levy was her business manager, she vehemently replied, "*He's my man!*"<sup>145</sup> At this remark, the judge, jury, and entire courtroom "erupted with spontaneous laughter,"<sup>146</sup> which continued as the district attorney resumed his questioning. Holiday testified that "when Levy gave her something to get rid of, she was just doing what her man told her."<sup>147</sup> One commentator declared that she "did everything but sit on a piano and sing 'My Man.'"<sup>148</sup> When asked why she handed the phone to Levy instead of taking the call herself, she said, "I *never* did anything without John telling me!"<sup>149</sup> When asked why she threw the large package in the toilet she replied, "If your wife asked you to throw something away would you notice how large it was? You'd just *throw!* I'd just do anything John told me."<sup>150</sup>

After Holiday's cross-examination, closing arguments seemed superfluous. Two and a half hours later, the jury came back with a "not guilty" verdict. It took only two ballots for them to decide: the first was nine-three for an acquittal; the

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140. Clarke, *supra* note 5 at 303.

141. *Ibid.*

142. *Ibid.* at 251-2.

143. *Ibid.* at 252 [emphasis in original].

144. *Ibid.*

145. *Ibid.* [emphasis in original].

146. *Ibid.*

147. Clarke, *supra* note 5 at 303.

148. *Ibid.*

149. Ehrlich, *A Life in My Hands*, *supra* note 5 at 155 [emphasis in original].

150. *Ibid.* [emphasis in original].

second was unanimous. In the end, “[t]he jury ... believed the defense contention that she was framed.”<sup>151</sup>

### *Conclusion*

Whether Holiday actually believed Levy had tried to frame her or whether it was simply a shrewd argument advanced by a clever lawyer, the argument worked. She was a woman with a previous record for narcotics possession and a history of drug use (although, at the time, she maintained that she was “clean”). Nonetheless, she was able to overcome an apparently ironclad case against her and emerge victorious. This victory owed some of its success to Ehrlich’s “skilful presentation of Billie’s evidence.”<sup>152</sup> However, it was Holiday’s “My Man” routine, a routine she had been doing for years on the stage, which secured her acquittal.

Holiday’s “My Man” routine, otherwise referred to as her “unlucky in life” public persona, was configured in United States popular culture on the basis of myths and stereotypes regarding black women and their sexuality. Throughout Holiday’s trial, issues regarding race, class, gender, and sexuality were either implicitly or explicitly highlighted in order to direct attention back to Holiday’s “unlucky in life” persona. This persona, in turn, filled gaps and resolved contradictions in the evidence. The heightened authenticity that her “unlucky in life” public persona lent to her trial narrative of innocence and betrayal gave Holiday’s testimony the quality of truthfulness needed to get a jury to overlook the evidence (or lack thereof) in front of them.

While one cannot claim that Holiday’s public persona ultimately challenged those myths and stereotypes that typically act to silence or trivialize black women’s victimization within the courtroom, it did provide a means by which Holiday’s narrative of innocence and betrayal could be believed by the members of the white jury. Holiday’s celebrity status thus aided in her acquittal, but not in the way typically advanced—that is, by reason of a celebrity’s enormous affective and economic power over members of the public. Instead, Holiday’s private life authenticated her public persona, and this persona in turn gave credibility to her courtroom narrative of innocence and betrayal.

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151. Noble and Averbuch, *supra* note 5 at 254.

152. Chilton, *supra* note 5 at 134.

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