



LEARNED HAND SINGS, PART ONE

LINER NOTES FOR “SONGS OF HIS YOUTH”

Ross E. Davies

THIS IS PART ONE of a two-part set of liner notes for *Songs of His Youth* — a complete edition of Learned Hand’s 1942 folk music recording session at the Library of Congress.¹ This part deals with the immediate business of how Hand ended up singing and talking into a microphone at the Library, and with what he sang and said. It includes a lightly annotated transcript of the recordings, which can be difficult to follow in places. The second part (in the next issue of the *Green Bag*) will deal mostly with the background and aftermath of the recording session.²

Ross Davies is a professor of law at George Mason University and editor of the Green Bag.

¹ LEARNED HAND, SONGS OF HIS YOUTH (GBRC 2013-1) (limited vinyl LP edition of 500; electronic edition at www.availableat.org); see also Cattleya Concepcion, *Learned Hand Medley* (GBRC4 2013) (video based on the first track on the Hand album; full photo credits for the video are at pages 351-53 below). The *Green Bag* has been working with the Library of Congress, the Harvard Law School Library, and the Learned Hand estate since early 2012 to make sure our ducks are all in a row for this release (correspondence on file with the *Green Bag*). This is our first vinyl publication, although the Green Bag Recording Company has been around for a little while. See, e.g., www.youtube.com/user/GreenBagatelle; Stanley Thompson, *Making Records in the 21st Century*, 16 GREEN BAG 2D 187 (2013).

² When the Library issued an LP featuring two of Hand’s songs, it included liner notes about them. See *Songs and Ballads of American History and of the Assassination of Presidents* 3-5 (1952) (Duncan Emrich, ed.) (notes for Long-Playing Record L29),

On Saturday, October 3, 1942, Hand visited the Library of Congress in Washington, DC, to record a couple of folk songs.³ He had been corresponding with Harold Spivacke, Chief of the Division of Music at the Library, since the springtime. Apparently, Hand had a version of a folk song (I do not know which, though some of the in-studio conversation points to “The Iron Merrimac”⁴) that interested Spivacke sufficiently to prompt an invitation:

Dear Judge Hand:

... We are very pleased to learn the history of your version of the song. In this connection I would like to call your attention to our Archive of American Folk Song which has preserved on phonograph records over 20,000 American folk songs. We have here in the Library an excellent recording laboratory and in addition send out portable sets to all parts of the country. Unfortunately we have no set in New York at present else I should suggest that we record your singing of this song. I do hope, however, that you will come in to see us when you next come to Washington and give us the opportunity to make a record of your version.⁵

Hand was happy to oblige, and plans were made for a recording session in May.⁶ But for reasons unknown the session did not take place until October. Hand, who was at the time Chief Judge of the U.S. Court of Appeals for the Second Circuit, was conveniently in Washington in early October on business — the annual meeting of the Conference of Senior Circuit Judges (now called the Judicial Conference of the United States).⁷ The Conference’s meetings were

www.loc.gov/folklife/LP/SongsofAmHist_opt.pdf; www.availableat.org.

³ *Judge Learned Hand recordings*, Library of Congress Catalog Record, lccn.loc.gov/2009655334.

⁴ See, e.g., pages 277-79 below; see also page 262 (“Merrimac” versus “Merrimack”).

⁵ Harold Spivacke to Learned Hand, Apr. 16, 1942, in Box 138, Papers of Learned Hand, Harvard Law School Library (hereafter “*Hand Papers*”).

⁶ See Learned Hand to Harold Spivacke, Apr. 20, 1942, and Harold Spivacke to Learned Hand, Apr. 22, 1942, in *Hand Papers*.

⁷ See *War’s Effect on Court System Judges’ Topic*, WASH. POST, Sept. 29, 1942, at B9; 28 U.S.C. § 331.

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The Supreme Court (left) and the Library of Congress (right).

(and still are) held at the Supreme Court building,⁸ which meant that getting to the Library to do some recording was not a great inconvenience. Indeed, in a story published several years after the event, the *New York Times* described Hand's visit to the Library as follows:

One day, back in 1942, the music division received a telephone call from Judge Hand.

"Did you mean what you said about making a record?" asked the judge.

"Certainly," was the reply.

"Well, I'm just across the street," informed Judge Hand. At the moment he was visiting his friend, the late Chief Justice Harlan Fiske Stone, whose quarters in the Supreme Court Building were, indeed, "just across the street."

The judge, then in his early seventies, stepped over to the Library, and sang his songs without accompaniment, into the recorder.⁹

⁸ Harlan F. Stone, *Report of the Judicial Conference. September Session, 1942* at 1 (Oct. 1942); *Judicial Conference of the United States: Sessions*, UNITED STATES COURTS, www.uscourts.gov/FederalCourts/JudicialConference/Sessions.aspx.

⁹ *Judge Learned Hand Turns Singer In New U.S. Album of Folk Music*, N.Y. TIMES, May 11, 1953, at 1, 15.

The result of Hand's afternoon of recording at the Library was a pair of 16-inch lacquer-on-aluminum disks, each containing about 12 minutes of transcribed sound.¹⁰ They look very much like (and function exactly like) oversized versions of conventional 12-inch vinyl LPs. Two tracks from the session – “Phil Sheridan” and “The Iron Merrimac” – have been accessible since 1952, when they appeared on a Library-issued LP, *Songs and Ballads of American History and of the Assassination of Presidents*.¹¹ Since then, both songs have been repeatedly reissued, and are now easy to find on the Internet.¹²

The rest of the session, however, has remained out of circulation. On the one hand, this is understandable, because the recordings consist mostly of fragments of songs – sung, hummed, mumbled, and spoken – and related but choppy bits of conversation, all gone pop-and-crackly with age.¹³ On the other hand, the subject of the recordings is folk music, and folk art is best appreciated in context.¹⁴ Here, the context is the performer himself – Hand's connections to and thoughts about the music, and his approach to performing it, as well as the performances themselves. Moreover, it is – as will become obvious to anyone who listens to the record or reads the transcript – a truly and charmingly candid glimpse of Hand the music enthusiast. For someone trying today to imagine what it was like to be in casual company with the great Judge Hand, *Songs of His Youth* might be the best available glimpse.

¹⁰ *Judge Learned Hand Recordings* (AFC 1945/007), Archive of Folk Culture, American Folklife Center, Library of Congress, Washington, DC.

¹¹ Recording Laboratory, Library of Congress AFS L29 (1952) (Duncan Emrich, ed.).

¹² See, e.g., STEPHEN WADE, A TREASURY OF LIBRARY OF CONGRESS FIELD RECORDINGS (1997) (CD with “Iron Merrimac”); Learned Hand, *Phil Sheridan*, www.loc.gov/item/ih.as.200197128; Learned Hand, *The Iron Merrimac*, www.loc.gov/item/ih.as.200197127. There will be more on this subject in part two of these notes.

¹³ For *Songs of His Youth* we have done our best to present the entire Hand session as it happened at the time and exists at the Library today, complete with all the pops and clicks on the original lacquers. Other versions of Hand's performances appear to have been subjected to audio scrubbing to remove most of the pops and clicks. So, listeners can choose, or scrub *Songs of His Youth* themselves.

¹⁴ See STEPHEN WADE, THE BEAUTIFUL MUSIC ALL AROUND US: FIELD RECORDINGS AND THE AMERICAN EXPERIENCE xii-xiv, 10-23 (2012).

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The center label of the second of two 16-inch lacquer disks on which Learned Hand's performances were recorded (October 1942).

TRANSCRIPT

What follows is a transcript (a collaboration with my colleague Cattleya Concepcion) – surely imperfect, given some of the incomprehensible conversations away from the microphone, but the best we could do – of the entire *Songs of His Youth* LP. Side A, Track 1 (“Medley: Phil Sheridan/The Iron Merrimac/Springfield Mountain/Where Is Your Boy Tonight?”) is not included in the transcript because it is merely an edited set of some of the clearest and most complete performances from the other tracks. The LP, in turn, contains the entire October 3, 1942 recording session – every snippet of song, every comment, every silent pause, and everything else.¹⁵

¹⁵ See note 13 above.

“LH” is Learned Hand. “AL” is Alan Lomax, the then-youthful Assistant in Charge of the Archive of Folk Song at the Library, whose 60-year career as a folk music collector, scholar, and promoter would make him one of the leading figures in the field.¹⁶ “JL” is John Langenegger, the recording engineer.¹⁷ “HS” is Division of Music head Harold Spivacke. (There are some inconsistencies in the Library’s records of the participants in the session,¹⁸ but when taken all together with the recordings themselves, the preponderance of the evidence suggests that Hand and Lomax were being recorded, Langenegger was doing the recording, and Spivacke stepped in near the end of the session to talk with Hand and Lomax.)

An inconsistency in the transcript and notes should be explained up front. One of the songs sung by Hand has from its first release consistently been titled “The Iron Merrimac,” even though the proper spelling of the name of the ship to which the song refers is “Merrimack” – a U.S. Navy ship that sailed under that name from 1856 to 1861 before being renamed the CSS *Virginia* when it was rebuilt as an ironclad by the Confederacy during the Civil War. As the U.S. Navy explains on its website,

Before, during and after the Civil War, *Merrimack*’s name was often incorrectly spelled “*Merrimac*”. She should not be confused with the Civil War’s actual USS *Merrimac*, which served in 1864-65.¹⁹

¹⁶ *Alan Lomax*, CULTURAL EQUITY, www.culturalequity.org/alanlomax/ce_alanlomax_bio.php; JOHN SZWED, ALAN LOMAX: THE MAN WHO RECORDED THE WORLD (2010). The Hand session was one of Lomax’s last projects at the Library. Disappointed by diminishing support for his work in Congress and at the Library, he resigned the next week to take a position in the Office of War Information. *Id.* at 202-03; Letter from Alan Lomax to Archibald MacLeish, Librarian of Congress, Oct. 9, 1942, reprinted in ALAN LOMAX, ASSISTANT IN CHARGE: THE LIBRARY OF CONGRESS LETTERS, 1935-1945, at 332 (2010) (Ronald D. Cohen, ed.).

¹⁷ *Archive of American Folk Song*, 56 J. AM. FOLKLORE 59, 61 (1943).

¹⁸ Compare, e.g., Emrich, note 2 above (crediting Lomax), with Library of Congress Catalog Record, note 3 above (crediting Langenegger and another engineer, Arthur D. Semmig).

¹⁹ *USS Merrimack (1856-1861)*, NAVAL HISTORY & HERITAGE COMMAND, www.history.navy.mil/photos/sh-usn/usnsh-m/merimak2.htm.

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And so, in these notes the ship in question is called the “Merrimac” in the title of the song performed by Hand, but “Merrimack” in the rest of the transcript and in the annotations.

Side A, Track 2

(partial take of “The Iron Merrimack”²⁰ with discussion)

LH: [singing] . . . Yankee Doodle Dandy-o. [talking] Now I don’t know whether to put an end to, that’s the part, I think that isn’t right. And the next stanza. [singing] The Cumberland went down / Minnesottee ran aground / Which made the Yankee cause look quite dishearted-ho / When hark, three hearty cheers / The Monitor appears / And the music struck up Yankee Doodle Dandy-o / [hmm interjected by a listener] The rebel shot flew hot / But the Yankees answered not / Till they got within a distance neat and handy-o / Said brave Worden to his crew / “Boys, we’ll see what we can do / When we fight for little Yankee Doodle Dandy-o.” [talking] That’s a pretty spirited song!

AL: . . . uh, a piece of a song . . .

LH: Now that one, I, I think there’s probably more of, but that’s all I ever, I can’t recall, and apparently you have no trace of it whatever.

AL: I have a fragmentary record of, of a song about the Merrimack and the Monitor, but . . .

LH: Oh, they’re quite, Dr. Spivacke, I thought, wrote me that there are quite a number of Merrimack-Monitors.

AL: Well, I mean, I have a, a record of . . .

LH: With the Yankee Doodle Dandy-o at, at the burden?

AL: I don’t think it’s, I don’t think so. I don’t think so. I, I’m not sure. It’s been five or six years since I made it. But that will appear on the correspondence too, I think, because I looked it up at the time. I’m sure I’ve heard this song though. I’m just trying to . . .

LH: This Monitor?

AL: Yeah.

LH: Have you?

AL: I’m just trying to remember where I heard it.

²⁰ Notes on this song accompany the first full take on pages 271-73 below.

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- LH: You may find it in your records you know.
- AL: Mm-hm. I'm afraid not. It's not in the catalog, it's not in the records. But, doggone, I bet I know, uh . . .
- LH: It's, uh, it's, uh . . .
- AL: I bet I know . . .
- LH: It's really an awfully good, I mean, it has a lot of, of lilt in it. It's a good song, and I wanted to get all of it if I could, and supposed there was more.²¹
- AL: Well, I, uh, I, I'll sit down and write. There's several people I can think of, whom I might write, who will in all likelihood would have it.
- JL: Oh Alan?
- AL: Yeah?
- JL: Can we have the General Sheridan song that you want?
- AL: Yeah. Mm-hm.
- LH: Anytime now?
- AL: No, they'll give us, you'll give us a buzz, won't you?
- LH: Let's see now, how did it begin?
- AL: They'll give us a buzz.
- LH: Let's see, what was it, oh [singing-humming] Phil Sheridan was . . .
- JL: Alan, we'll give you the on-the-air light.
- AL: All right.
- LH: [singing-humming] No. [singing-humming] Phil Sheridan was [talking] I think that will be all right. If it isn't, if I get it too high, you can do it again.
- AL: All right.

Side A, Track 3
(partial take of "Phil Sheridan")

- LH: [singing] Phil Sheridan was an Irishman who rose to high degree / A-fightin' for his counteree, as everyone can see / He proved himse [talking] No, that's too high. [laughs]

²¹ Hand was correct. See, e.g., *The Monitor and Merrimack*, in TONY PASTOR'S NEW UNION SONGBOOK at 5, in TONY PASTOR'S COMPLETE BUDGET OF COMIC SONGS (1864) (John F. Poole, ed.) (nine-verse version of the song).

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AL: Set's over. You can go right ahead.

LH: I've got to go down. Can I?

AL: Yeah.

Side A, Track 4 *(first full take of "Phil Sheridan")*

AL: Whenever you're ready.

LH: [singing] Phil, Phil Sheridan was an Irishman who rode to high degree / A-fightin' for his counteree, as everyone can see / He proved himself a gineral at the battle of Winchester²² / Another Irishman who rose, his name was Daniel Webster²³ / "Be good, be good," me father said / "Although the way be stormy / Some day you may be Priz-eye-dent / Or a general in the army."

AL: And who sang this?

Side A, Track 5 *(discussion of "Phil Sheridan")*

AL: Go ahead and explain.

LH: That was sung to my, when I first heard it, it was about 45 or more years ago by George. Let me see. Wait a minute now, I've got his name [mumbling] that isn't right.

JL: Alan, repeat that. Have him repeat that song again.

LH: Wait, ah, wait'll I get the man's name though. Twasn't Battle. That's George Battle, he's alive.²⁴ Who . . .

²² Sheridan was a career U.S. Army officer who rose from first lieutenant to major general during the Civil War. He was perhaps best known for leading a campaign in the Shenandoah Valley of Virginia in the late summer and early fall of 1864 in which one of the key events was the Battle of Third Winchester, a September 19 victory over Confederate troops led by General Jubal Early (who was a practicing lawyer before and after the war). See 2 PERSONAL MEMOIRS OF P.H. SHERIDAN 8-32 (1888); JUBAL A. EARLY, A MEMOIR OF THE LAST YEAR OF THE WAR FOR INDEPENDENCE, IN THE CONFEDERATE STATES OF AMERICA 78-91 (2d ed. 1867); Gary W. Gallagher, *Two Generals and a Valley*, in THE SHENANDOAH VALLEY CAMPAIGN OF 1864 at 3 (2006) (Gary W. Gallagher, ed.).

²³ Webster was one of the great lawyers and public servants of 19th century America. See ROBERT V. REMINI, DANIEL WEBSTER: THE MAN AND HIS TIME (1997).

²⁴ Probably a reference to George Gordon Battle, a prominent member of the New

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AL: Cut for a minute, John.

LH: Who the hell was that fellow? Oh dear . . .

Side A, Track 6
(discussion of “Phil Sheridan”)

AL: Well, just tell the circumstances of how you learned it and what he did with it.

LH: Now let me see if I can think of it.

AL: They want us to, uh, . . .

LH: The George, ah, goddammit. George [mumbling] when you get old, you’ll be like this. George . . . Elliott. George B. Elliott. George Bottom, Bottom Dollar Elliott. He was general counsel of the Atlantic Coast Line afterwards. Elliott. George B. Elliott. It’s all right now. Shall I say this first before I . . .

AL: You’re gonna have to sing it again. Something happened and, uh . . .

LH: Shall I sing it first or tell, or, or tell about it first?

AL: Why don’t you sing it first?

LH: All right. [coughs] [singing] Phil, Phil [singing-mumbling]

Side A, Track 7
(full take of “Phil Sheridan”)

LH: [singing] Phil Sheridan was an Irishman who rose to high degree / A-fightin’ for his countree, as everyone can see / He proved himself a gineral at the battle of Winchester / Another Irishman who rose, his name was Daniel Webster / “Be good, be good,” me ffather said / “Although the way be stormy / Some day you may be Priz-eye-dent / Or a general in the army.”

York bar whose path crossed Hand’s in many contexts. See, e.g., *Lawyers and Legal Events*, 18 BENCH AND BAR, July 1909, at 39 (“A number of judges and lawyers participated in a luncheon on July 1, 1909, in honor of Judge Learned Hand, recently appointed United States District Judge for the Southern District of New York. . . . Among those present were . . . George Gordon Battle”); *Hiram Walker & Sons v. Grubman*, 222 F. 478, 479 (S.D.N.Y. 1915) (Hand, J.) (“George Gordon Battle . . . for plaintiff”); *Reunion of the Greatest Law Office in the World*, 10 BENCH AND BAR (n.s.), Mar. 1916, at 482 (“Among the many distinguished lawyers and judges at the various tables were . . . Learned Hand, . . . George Gordon Battle”).

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Side A, Track 8 *(discussion of “Phil Sheridan”)*

LH: That song, I first heard in the Harvard Law School sometime about 1895 or 6. It was then sung by a man named George B. Elliott, who was afterwards general counsel of the Atlantic Coast Line, and has since died. He was from North Carolina.²⁵

AL: Was that all there was to the song or . . . ?

LH: That was all there was to the song, except he had a way, he would sit and cross one leg over the other and keep time with the free leg. And then at the end, after he said, ah, “general of the army,” he would say, “One, two, three, shift!” And when he shifted, he would cross the, take the free leg and put it down, and put the other leg over the free leg, and it was quite, it had to be quite quick, to do it and keep the time. But I know of no more of the song, never heard him sing any more of the song, nor have I any idea where it, ah, came from or where he got it.²⁶

²⁵ Hand was wrong. Elliott was still alive, and had been promoted from general counsel to vice president of the Atlantic Coast Line railroad in 1918 and then to president in 1928. Elliott’s health was failing, however, and he would retire a few days after Hand’s session at the Library. Garbled news of that situation might have left Hand with the impression that Elliott was gone not just from the president’s office but also from this world. See *Railroad Chooses a New President*, N.Y. TIMES, Oct. 16, 1942, at 29; *George B. Elliott, Railroad Man*, 74, N.Y. TIMES, Feb. 20, 1948, at 27. One other odd, though not impossible, feature of Hand’s memory of this song is that he has Elliott, a 19th-century son of Dixie, singing a song in praise of the hated Sheridan who had burned and blasted a “swath of destruction” through Virginia during the Shenandoah Valley campaign of 1864. See note 22 above; JAMES MCPHERSON, *BATTLE CRY OF FREEDOM: THE CIVIL WAR ERA* 779 (1988).

²⁶ Hand is recalling just one part of a longer song attributed to Francis J. Bryant – “Be Good, Be Good, My Father Said” – that was popular in the mid-1890s. The second verse went:

Phil Sheridan was an Irishman
Born on American soil,
He raised himself to the foremost rank
By bravery and toil.
He proved himself a hero
At the battle of Winchester,
And another Irishman that rose,
His name was Daniel Webster.

- AL: Where would he sing the song, just at some party?
- LH: Sing it, well, sing it when we were sitting around? Yes, smoking or drinking or something of that sort.
- AL: Was there a good deal of singing at Harvard in those days?
- LH: Well, I don't know that, more or less, yes. Those of us that liked to sing, sang. And those that didn't, didn't.²⁷ He had another song which, ah, I can't sing, called "Adam Had an Old Grey Mule, These Bones Gwine to Rise Again," but I, that's entirely gone.
- AL: All right.
- LH: You never knew that, did you?
- AL: Uh, yeah. I know the . . .
- LH: [singing] Adam had an old grey mule / These bones gwine rise again.
[talking] That came out, I don't remember [humming-singing] These bones gwine rise again.
- AL: Oh, I think we can find every bit of that.
- LH: That I think you've probably got.
- AL: And I, I, I think we'll, uh, I'll be able to locate this other one for you. Now, I just, I thought of four or five people whom I could write.

See, e.g., *Novelty From a Rolling Mill*, N.Y. SUN, Sept. 18, 1895, at 7; *Novelty From a Rolling Mill*, READING EAGLE (PA), Sept. 22, 1895, at 12; see also *id.*:

Then these 5 words, familiar to any one who has been in a rolling mill, are spoken:

Yes! One, Two, Three. Shift!

This is the chorus which follows after each verse, the word shift:

Be good, be good, my father said,
Though the road be rough and stormy,
Some day you may be president,
Or a general in the army.

The *Boston Globe* had published the entire song a few years before Hand's recording session. See *Everybody's Column of Old Songs and Poems*, BOSTON GLOBE, Oct. 30, 1938, at 15.

²⁷ See GERALD GUNTHER, *LEARNED HAND: THE MAN AND THE JUDGE* 26-53 (1994). There is a 2011 second edition of Gunther's biography of Hand, but the combination of its obvious defects (for example, the relatively unhelpful index and user-unfriendly arrangement of endnotes) and non-obvious corrections or other improvements make it easier to stick with the excellent original.

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LH: Which one do you mean?

AL: The Merrimack.

LH: Oh.

AL: I'm, I'm going to go to, go to work on that now.

LH: Oh really?

AL: Well. Are you, you're not cutting,²⁸ are you?

Side A, Track 9

*(only take of "On Springfield Mountain";
discussion of folk music in upstate New York)*

AL: Are you cut off? Uh, well, didn't you have any folk songs from northern New York state, things that you knew when you were . . .

LH: No.

AL: . . . a kid?

LH: No, I don't think of any. There was the one that I have, I was telling Dr. Spivacke about it.

AL: Some of the best song country in the world out there, you know.

LH: You know, the, ah, my uncle used to sing, about 60 years ago, a very mangled version of what you know "Springfield Mountain There Did Dwell."

AL: Uh-huh.

LH: You know that one?

AL: Yes.²⁹

²⁸ Recording, that is.

²⁹ "Springfield Mountain" — a story of the 1761 death of Timothy Merrick — was then and still is one of the oldest and most popular of American folk songs, and both the words and the music have diversified greatly over the centuries. *See, e.g.,* Grace P. Smith, *A Note on "Springfield Mountain,"* 49 J. AM. FOLKLORE 263 (1936); Philip D. Jordan, *A Further Note on "Springfield Mountain,"* 52 J. AM. FOLKLORE 118 (1939); *Springfield Mountain*, 44 SING OUT! THE FOLK SONG MAGAZINE, Spring 2000, at 32; *Queries and Answers*, N.Y. TIMES BOOK REVIEW, Sept. 26, 1937, at 131; *The Springfield Ballad*, MIDDLEBURY REGISTER (VT), May 30, 1855, at 1 ("It is doubtful whether any piece of American doggerel has been so fortunate in the term of its perpetuation."); *Springfield Mountain*, on WOODY GUTHRIE SINGS FOLK SONGS (Smithsonian Folkways Recordings 1962); *Springfield Mountain*, on CHICK-EN ON A RAFT (Antenna Farm Records 2006).

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LH: And that one's been published since, and I've learned from the published book what he said was, oh, had very little of it. Very little of it. George Woodbine is very interested in all that. He's a professor of history in New Haven. I don't know whether you know him or not.³⁰

AL: No.

LH: Well, he, ah, he's got it. His, his, the tune that he sings is a little, a variant from what my uncle sang to me. Just a trifle. But it's, ah, it had, ah, they're not recording us?

AL: I don't think so.

LH: They, ah, for instance, it went like this. One stanza is enough. It's a very long, long song. Ah [singing] On Springfield Mountain / There did dwell / A comely youth / I knowed him weh-eh-eh-eh-eh-ell. [talking] That's the one you mean, isn't it?

AL: Yeah. And then the refrain, did it have, uh . . .

LH: Well, it had [coughs] yes. Well, after two stanzas, then you go, [singing] Ri tu ri lee, ri tu ri la ri tu ri lee, ri tu ri la-ah-ah-ah-ah-ah. [talking] Now that's the way he sang it.

AL: Yeah.

LH: But in the book there's quite a little difference, particularly in the refrain.

AL: Yes. Well, uh, that, that, however, is much closer to the, um, early tune than, uh, than a lot of the variants that we've collected. For instance, in Texas, they sing, um . . .

LH: Does it, does it go down there too?

AL: Oh sure. [singing] A nice young ma-wa-wan / Went out to mow-ow-ow / For to see if he-we-we / Could make a show-ow-ow / Come a rattle, come a roo ra ri. [talking] That's one . . .

LH: Is that the same song?

AL: That's the same song.

LH: Now all my uncle knew . . .

AL: All, all the names . . .

³⁰ Woodbine was a history professor at Yale University for many years. He was also, for a time in the 1920s, a Yale law professor. See Dr. G.E. Woodbine, *Long at Yale, Dies*, N.Y. TIMES, Aug. 21, 1953, at 18; *Yale Establishes New History Chair*, CHRISTIAN SCIENCE MONITOR, May 2, 1927, at 4B.

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LH: . . . all my uncle knew was, [reciting lyrics] On Springfield Mountain / There did dwell / A comely youth / I knowed him well / One summer's day / Long, long ago / He, this youth went in the meadow to mow / He scarce had moo, mowed half 'round the field / When a pizon serpent bit his heel / He lifted up a mighty blow / And laid that pizon varmint low. [talking] Now that was all he ever sang. He left out, [reciting lyrics] Lt. Adams's, ah, only son / A like-ly youth [talking] I think it was . . .

AL: Full twenty-one.

LH: . . . [reciting] full twenty-one. [talking] And then the rest of it, how he picked up the snake and brought it to Molly Bland, and she sipped the poison, she had a hollow tooth, and, you know, how they both died. But I'm not sure I have all of that, but, that I took it, you, I, the original with me, the old one was so very fragmentary, and when all restored, I didn't suppose that would interest anybody now.

AL: Uh, did, uh, did you all sing any cana, any canal songs up there or did you hear of . . . ?

LH: No, I never heard of it, and when I saw that play about the canal, they all called it the canal (kuh-naal). I was brought up in Albany. I certainly never heard that pronunciation. Canal (kuh-naal).

JL: Alan, there seems to be a little trouble finding that letter. I wonder if the judge would try the Monitor and Merrimack from memory.

LH: All right. I, it won't be quite right, but it'll be near enough. [coughs] Now's let's see if I've got . . . [humming]

Side B, Track 1

(first full take of "The Iron Merrimac")

LH: [humming] That's all right. Ready now?

AL: Yes. You ready?

JL: Yeah.

LH: [singing] The Iron Merrimack³¹ / With others at her back / Com-

³¹ "The Iron Merrimac" is a song about the Battle of Hampton Roads, a Civil War naval battle that took place in the waters off modern-day Newport News and Norfolk, Virginia on March 8 and 9, 1862. It featured a famous clash of early ironclad ships, the CSS *Virginia* (formerly the USS *Merrimack*) and the USS *Monitor*. On the first day of the battle, the *Virginia* sank the USS *Cumberland*, while the USS

manded by Buchan-eye-an the grandee-o³² / From Norfolk started out / For to put us all to rout / And to make an end of Yankee Doodle Dandy-o / The Cumberland went down / Minnesotee ran aground / Which made the Yankee cause look quite dishearted-o / When, hark, three hearty cheers / the Merr-Monitor appears / And the music struck up Yankee Doodle Dandy-o / The rebel shot flew hot / But the Yankees answered not / Till they got within a distance neat and handy-o / Said bold Worden³³ to his crew / "Boys, we'll

Minnesota ran aground. On the second day, the *Monitor* arrived and exchanged fire with the *Virginia*. Both sides claimed victory at the time, and competing characterizations of the outcome and significance of the battle still persist. See, e.g., THE BATTLE OF HAMPTON ROADS: NEW PERSPECTIVES ON THE USS MONITOR AND THE CSS VIRGINIA (2006) (Harold Holzer and Tim Mulligan, eds.).

³² This might be an example of the way folk songs morph over time. During the Civil War, the line was "Commanded by Buchanan, the old granny, oh." TONY PASTOR'S NEW UNION SONGBOOK, note 21 above, at 5. Listeners at that time would have recognized the insult to Buchanan, because "granny" was a notorious term for a timid commander, and in the North the standard story of the Hampton Roads battle had Buchanan's *Virginia* (*Merrimack*) fleeing Worden's *Monitor*. See, e.g., MCPHERSON, note 25 above, at 302 (Confederate General Robert E. Lee called "Granny Lee" after an unsuccessful campaign in 1861); *The Naval Combat in the Chesapeake*, HARPER'S WEEKLY, Mar. 22, 1862, at 177, 183. There may also have been a touch of irony to the use of "granny," because Buchanan was in fact a famously aggressive naval officer. It is also understandable, however, that in a Northern mind — influenced by not entirely inaccurate portrayals of Confederate leaders as Southern grandees fighting to preserve their slavery-based aristocratic lifestyles — an insulting "granny" became a snide "grandee." See, e.g., *The Presidential Election*, 77 CHRISTIAN EXAMINER 351, 358 (Nov. 1864); see also Timothy Thomas Fortune, *Sadie Fontaine*, in DREAMS OF LIFE: MISCELLANEOUS POEMS 47, 51 (1905). But to label Buchanan a grandee would have been inaccurate. He was a sailor. The son of a Baltimore doctor, he enlisted in the U.S. Navy as a midshipman at age 15 and spent most of his life climbing the traditional career ladder in the U.S. Navy, resigning in 1861 only because he expected his native Maryland to secede from the Union. When he realized his error, "he tried in vain to withdraw his resignation. Secretary of the Navy Gideon Welles informed him that his name had been 'stricken from the rolls of the Navy.'" Only then did he opt to become a Confederate naval officer. See William N. Still, *Buchanan, Franklin*, AMERICAN NATIONAL BIOGRAPHY ONLINE, www.anb.org/articles/04/04-00169.html (Feb. 2000).

³³ Then-Lieutenant John Lorimer Worden of the U.S. Navy (he later reached the rank of rear admiral) commanded the Union's *Monitor* during the March 9, 1862

Learned Hand Sings, Part One

see what we can do / When we fight for little Yankee Doodle Dan-
dy-o" [talking] Now there was one, I . . .

Side B, Track 2 (discussion of "The Iron Merrimac")

- LH: . . . broke that in one place [mumbling]
- AL: Well, uh, I'm going to copy that text off and, and look it up. Could you explain for the record where you learned that song. I think we, uh . . .
- LH: That song, I learned, about, I should suppose 60 years ago in Elizabethtown, which is a very small village in the Adirondack Mountains, Essex County, New York, about eight miles from Lake Champlain. It was then sung by boys of my own age, a few, and, ah, I noth, know nothing more about it than that. I think possibly it was sung by my uncle's, ah, hired man, who had been in the Civil War, but that I'm very uncertain of.³⁴ I don't know where we boys picked it up.
- AL: Were, were, were, were you just a country boy at that time?
- LH: No, I was brought up in Albany. I was a city boy.
- AL: What were . . .
- LH: But I came up there because my father had, ah, been born and brought up there, and my cousin, ah, lived there. He was . . .
- AL: And who were, who were the other boys? Explain that . . .
- LH: Why, the only, ah, there was my cousin,³⁵ and then there was a boy called, you mean his name?

battle with the Confederate's *Virginia (Merrimack)*. John C. Fredriksen, *Worden, John Lorimer*, AMERICAN NATIONAL BIOGRAPHY ONLINE, www.anb.org/articles/05/05-00856.html (Feb. 2000).

³⁴ See THE REMARKABLE HANDS: AN AFFECTIONATE PORTRAIT 134 (1983) (Marcia Nelson, ed.) ("Later, Learned Hand recorded Civil War songs taught to him as a child by Moses Smith, the hired man at Augustus's family estate in Elizabethtown.").

³⁵ Augustus Hand, Learned Hand's first cousin and fellow member of the U.S. Court of Appeals for the Second Circuit, was a long-serving and highly regarded judge in his own right. See, e.g., Charles A. Horsky, *Augustus Noble Hand*, 68 HARV. L. REV. 1118 (1955); Charles E. Clark, *Augustus Noble Hand*, 68 HARV. L. REV. 1113 (1955); Charles E. Wyzanski, Jr., *Augustus Noble Hand*, 61 HARV. L. REV. 573 (1948).

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AL: No. I mean, what . . .

LH: Well, they were country boys, yes, yes. Oh, that's it. Well, then, I, capture, not make an end of. That's it. And capture little Yankee Doodle Dandy.

JL: We do it again, then.

LH: Shall we do it again?

AL: Yeah.

LH: I think I made, ah . . .

AL: Yes, you did.

LH: I think I made a break in it anyway.

AL: You ready to take it again, Johnny?

Side B, Track 3

(full take of "The Iron Merrimac")

LH: All right? [singing] The iron Merrimack / With others at her back / Commanded by Buchan-eye-an the grandee-o / From Norfolk started out / For to put us all to rout / And to capture little Yankee Doodle Dandy-o / The Cumberland went down / Minnesotee fast aground / Which made the Yankee cause look quite dishearted-o / When, hark, three hearty cheers / And the Monitor appears / And the music struck up Yankee Doodle Dandy-o / The rebel shot flew hot / But the Yankees answered not / Till they got within a distance neat and handy-o / Then said Worden to his crew / "Boys, let's see what we can do / When we fight for little Yankee Doodle Dandy-o."

Side B, Track 4

(only take of "Where Is Your Boy Tonight?";

discussion of "The Iron Merrimac" and folk music generally)

LH: I [laughs] I forgot that I . . .

AL: Did you all sing . . .

LH: . . . my high notes are not as certain as they once were. [laughs]

AL: . . . uh, did you all also sing things like, uh, "Frog Went A-Courting" and . . . ?

LH: No.

AL: No, no, no uh . . .

Learned Hand Sings, Part One

LH: No, the nearest, I don't know those. My cousin, who's, ah, a man a couple years older than I am, he remembers those. He, well, one was "Dinah and," ah, what's that one, you know? He has quite a number of them. [mumbling] If he was ever down here, would you like to get him interviewed?

AL: Sure, if he knows some songs.

LH: Yes, he knows more than I do.

AL: Perhaps, uh, perhaps you could get from him the names of the songs he knows. It might be valuable or they might . . .

LH: They might not be. He had that, and then he, when he was a boy, he went to what was called [laughs] music teaching, where they had very curious songs, and he remembers all of those about [reciting] Dainty lady with sparkling robes / Your parlors gleam with light / Think of [talking] something or [reciting] Where is your boy tonight? / Where, oh, where is your boy tonight? / Where is your boy tonight? [talking] then [reciting] Pause ere reason be wholly gone / Where is your boy tonight? [talking] You know that one?

AL: No.

LH: Well, he knows all of that. I don't know that one. I know the tune. I always remember the tune, but I can never remember the words. And this one was [coughs] let me see now. One, he had quite a number of stanzas of that. One was, um [singing] Man of the world with a open purse / Seeking your own delight / Pause ere reason be wholly gone / Where is your boy tonight? / Where, oh, where is your boy tonight? / Where is your boy tonight? / Pause ere reason be wholly gone / Where is your boy tonight?³⁶ [talking] Well, a lot of those, and they're [laughs] awfully good. Now he got those, well, [coughs] it couldn't be far from 60 years ago, 65, up in that little place.

AL: Uh, were they . . .

LH: They were in a book.

AL: Had, had this been a lumbering country up there?

LH: Yes, more or less. They, they lived in any way they could, you

³⁶ This does appear to have been a popular song when Hand (born Jan. 27, 1872) was a boy. See, e.g., *Where Is Your Boy To-Night*, STATE JOURNAL (Jefferson, City, MO), Dec. 6, 1878, at 4; *Where Is Your Boy To-Night?*, NEW BLOOMFIELD TIMES (PA), June 17, 1879, at 1; *Where Is Your Boy To-Night?*, HIGHLAND WEEKLY NEWS (OH), Sept. 4, 1879, at 4.

know. Lumber was one thing. There was an iron, ah, there was an iron movement there for a while, but that didn't last very much. It's coming back. It's an iron country now. West of Port Henry is an iron country.

AL: Do you know, uh, do you know, uh, Thompson's book . . .

LH: No.

AL: . . . on New York state folklore?

LH: No.

AL: I bet you'd, uh, get, uh, a lot of fun out of it. It's a book, uh, kind of a, uh, compilation in a very breezy style of the real New York – and mostly upstate New York – folklore, ballads, and stories, and sayings, and customs. But it, it's a swell job, called *Body, Boots, and Britches*.³⁷

LH: No.

AL: I'll show it to you when you come through the office.

LH: Did you ever, of course, you all know Rogers's Rangers.

AL: I know about Rogers's Rangers. Do you know the . . .

LH: No, it wasn't a song. There was a great deal of folklore about him and . . .³⁸

AL: Yeah.

HS: Would you be interested in hearing any, any of the material we've got here anytime?

LH: I think I've got to go now. I've got, it's already five o'clock. Time for you to go, too.

³⁷ HAROLD W. THOMPSON, *BODY, BOOTS, AND BRITCHES: FOLKTALES, BALLADS AND SPEECH FROM COUNTRY NEW YORK* (1939)

³⁸ A New Hampshire infantry force in British colonial America during and after the French and Indian (Seven Year's) War, Rogers's Rangers became a prominent feature of American folk culture during Hand's youth, courtesy of the *Montcalm and Wolfe* (1884) volume of Francis Parkman's *France and England in North America* series. The iconic status of Rogers and his Rangers was at an all-time high at the time of Hand's recording session due to the publication in 1937 of *Northwest Passage*, a best-selling novel devoted to their exploits by Kenneth Roberts, and the release in 1940 of a film version of the book, starring Spencer Tracy. Today, they remain an inspiration for the modern U.S. Army Rangers. See Guy Chet, *War on the Run*, 96 J. AM. HIST. 818 (2009) (review); *U.S. Army Rangers: History & Heritage*, www.army.mil/ranger/heritage.html.

Learned Hand Sings, Part One

AL: Oh, we're [laughs] We're here until six or seven.

LH: I know.

HS: We live here. [laughs]

AL: But, Judge Hand, I'm going to . . .

LH: Mr. Lomax was saying about, ah, . . .

AL: I'm going to go to work on that, the Monitor and Merrimack.

LH: . . . he thinks he can maybe trace, he thinks that, he maybe, I . . .

AL: I just, uh, thought of three or four, five people I can write. That occurred to me before Judge Hand came in and, um . . .

HS: Well, the, the, you mentioned before, uh, to Mr. Lomax about the Monitor and Merrimack, so we found, we only found them in published versions in songsters.

AL: Well, this is a songster's song to begin with.

LH: What does a "songster" mean? You mean a book of songs?

HS: Yeah, these little books . . .

LH: Oh.

HS: . . . these little pocket things . . .

LH: Oh.

HS: . . . they used to sell for a penny or five cents . . .

LH: Well, you . . .

HS: . . . but we never found this one.

LH: Yank, ah, the song with the burden "Yankee Doodle Dandy-o," you wrote me went back, I think, to the eighteenth century.

AL: Oh yes.

HS: Yes, that, yes.

AL: That's . . .

LH: That was an old trick.

HS: But we couldn't find anything resembling [flipping through sheets of paper] this is the one. Where is the other copy of the letter?

LH: That you sent me? Yeah.

HS: Yes.

AL: The only time I've ever heard this, I remember now . . .

LH: And that's the, that's the, after the 1812 fight of the Constitution and the Guerriere. [reading] It oft-times has been told / That the British seamen bold / Could flog the tars of France / So neat and

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handy-o. [talking] Well, this, this certainly was borrowed from it.

HS: Yeah.

LH: [continuing to read] But they never found their match / Till the Yankees did them catch / Oh, the Yankee boys for fighting are the dandy-o.

AL: This is the famous one. This is what established this tune in the popular idiom. There are lots and lots of parodies of it, of course.

LH: This tune?

AL: That's, particular ballad established the tune. The tune is older, but this is what made the song so popular.

HS: Yes.

AL: Because that was sung . . .

LH: How many stanzas are there of this? A good many?

AL: Oh yes. It's a long song. And a very good one.

LH: Now you had some Monitors and Merrimacks. Of course, there were bound to be some.

HS: Yes. But we didn't find that one.

AL: Well, I'm going to, um, uh, sit down with Miss Gewehr³⁹ and write three or four letters. I think I might bump into it, Harold.

HS: It'd be a good idea.

AL: I'm really gonna, I hadn't realized what a good song it was until I heard it sung. As usual.

HS: [laughs]

LH: Here you are. [reciting] Upon her side. [talking] That's close to it. Now that certainly seems as if [paper rustling] the opening stanza follows, that certainly seems as though this must have come from it. [reading] I'm going to sing / I won't detain you long / If you listen I will tell you so, tell you how so handy-o / The Monitor went smack up to the Merrimack / Upon her sides played Yankee Doodle Dandy-o.

AL: Well, that's the same song. What, uh, . . .

LH: You suppose that's the song?

AL: . . . where was that found?

³⁹ Frances C. Gewehr was secretary to Spivacke. See ANNAGRET FAUSER, *SOUNDS OF WAR: MUSIC IN THE UNITED STATES DURING WORLD WAR II* at 119 (2013).

Learned Hand Sings, Part One

LH: Well, [reading-mumbling] it may interest you to learn that in searching for your song we discovered two songs, The Monitor and the Merri- and The Monitor and the Merrimack. Both of them printed in broadside form, words only [aside] words only! [reading] during the Civil War. The first was undated and published in at least two different places by Thompson, song publisher, stationer, and R.H. Singleton, bookseller, stationer, Nashville. [aside] That's a queer place for it. [reading] The southern city was of course . . . fall to Union forces February 25th, 1862. [laughs]

HS: 1862.

LH: [reading] Again, again, the words are to be sung to the same tune [aside] oh! [reading] the same tune as the one you quote. [talking] You didn't know that because you never heard that song.

AL: Well, that tune is so familiar.

LH: Oh, it is very familiar?

AL: It's, it's, it's, it's similar. I mean, every time you see Yankee Doodle Dandy-o, it's the same tune.

LH: I see.

AL: It doesn't vary.

LH: [reading-mumbling] Other songs found printed by J.C. Haney were, uh, broadside . . . words to be sung to well-known . . . "Wait for the Wagon." [talking] What is that song?

HS: Do you sing that?

AL: [reciting] Wait for the Wagon / We all take a ride. [talking] That's . . .

HS: Do you sing that?

LH: This has nothing to do with Yankee Doodle. [reading] Wait, boys, for Worden / Wait, boys, for Worden / Wait, boys, for Worden / And he'll beat the Merrimack.

AL: I don't remember the tune. It was one of the classics . . .

LH: But that you say, the one, the tune that I sang is an old, well-known one, right?

AL: Oh yes, yes.

HS: Well, of course, you see, as I told you before, we're always interested in the variants.

AL: Yes.

LH: Well, maybe, maybe . . .

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HS: We've all seen variants of that.

LH: I told, Mr. Lomax that . . .

AL: Yours may be a folk variant of this broadside song. You see, we may never find the original. It may very well have gotten . . .

LH: I told Mr. Lomax before, if my cousin, who is a judge in the same court as I in New York, if, ah, if, ah. He's a good deal richer than I am in this material, and he can sing after a fashion . . .

HS: Does he come to Washington at all?

LH: Well, he doesn't, unfortunately. I was here on a judicial conference this time, and I will tell him though . . .

[Voices fade out amid footsteps.]

GB