

“We Shall Overcome and the Southern Black Freedom Struggle”

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On October 22, 1945, 1,000 members of Local 15 of the Food, Tobacco, Agricultural, and Allied Workers Union (FTA) went on strike at an American Tobacco Company cigar factory in Charleston, SC, seeking to increase their pay to 30 cents-per-hour. The biracial group of strikers began picketing outside the brick factory building, and in later years surviving participants would recall two African American women, Delphine Brown and Lucille Simmons, as important song leaders who led the strikers in singing. Simmons was a choir member at Jerusalem Baptist Church, and fellow union members would remember her singing a well-known hymn, “I’ll Be All Right,” and altering it to give voice to the striking workers’ own aspirations: “We Will Overcome.”¹

1. Robert Shelton, “Rights Song Has Own History of Integration,” *New York Times*, 23 July 1963, at 21; Robert Sherman, “Sing a Song of Freedom,” *Saturday Review*, 28 September 1963, at 65-67, 81; “Moment of History,” *The New Yorker*, 27 March 1965, at 37-39; Josh Dunson, *Freedom In the Air: Song Movements of the Sixties* (International Publishers, 1965), at 29; Lillie Mae Marsh in Guy and Candie Carawan, *Freedom Is A Constant Struggle—Songs of the Freedom Movement* (Oak Publications, 1968), at 138; Bernice Johnson Reagon, “Songs of the Civil Rights Movement 1955-1965: A Study in Cultural History,” Ph.D. dissertation, Howard

The strike ended without success in April 1946, but one month later, two participants, Anna Lee Bonneau and Evelyn Risher, traveled to the Highlander University, 1975, at 65, 68-75; Caryle Murphy, “The Rise of a Rights Anthem,” *Washington Post*, 17 January 1988, at G1, G11; Noah Adams, “Tracing the History of the Song ‘We Shall Overcome,’” *All Things Considered*, National Public Radio, 15 January 1999; Robert R. Korstad, *Civil Rights Unionism: Tobacco Workers and the Struggle for Democracy in the Mid-Twentieth Century South* (University of North Carolina Press, 2003), at 239; Bo Peterson, “‘We Shall Overcome’: Civil Rights Anthem Rose to Prominence in Charleston Strike,” *Post and Courier*, 21 September 2003; Otha Jennifer Dixon (Marjorie Amos-Frazier Interview), 24 June 2008, Charleston, SC, Southern Oral History Program U-0385, University of North Carolina at Chapel Hill, at 8; Lillie (Mae) Marsh Doster (Jennifer Dixon Interview), 25 June 2008, Charleston, SC, Southern Oral History Program U-0386, University of North Carolina at Chapel Hill, at 20-21; Stuart Stotts, *We Shall Overcome: A Song That Changed the World* (Clarion Books, 2010), at 23; Stephen A. Schneider, *You Can’t Padlock an Idea: Rhetorical Education at the Highlander Folk School, 1932-1961* (University of South Carolina Press, 2014), at 158; “Cigar Factory Embarks on a New Life,” and “The Cigar Factory Strike Anthem,” *Commercial Architecture*, 27 July 2016. By seeming happenstance, a similarly titled ballad had been sung almost forty years earlier by white miners in Walker County, AL. See Daniel Letwin, *The Challenge of Interracial Unionism: Alabama Coal Miners, 1978-1921* (University of North Carolina Press, 1998), at 151-52 (citing the *United Mine Workers Journal*, 4 February 1909, wherein a letter from one William Leach stated “that good old song was sung at every meeting”).

Folk School in Monteagle, TN, to take part in a one-week workshop for FTA members from across the South. There they shared what the careful scholar Stephen A. Schneider has called their “collectively oriented iteration of the hymn” with Highlander song leader Zilphia Horton. Fellow Highlander staff colleague Aleine Austin, who was also present that week, would recall in a 1982 oral history interview that “Zilphia just felt the power of that song,” and Professor Schneider’s impressively thorough research details how “song sheets for union institutes from 1947 on,” available in the Zilphia Horton Folk Music Collection at the Tennessee State Library and Archives in Nashville, “provide evidence that the song was taught more or less continuously after its arrival at the folk school.” In those early songsheets, Horton renders the song as “We Will Overcome,” including the phrase “down in my heart,” while crediting those lyrics to “Highlander students FTA term ’46.” Likewise, Dr. Alicia Ruth Massie-Legg’s painstaking scholarship has established how Horton’s unpublished 55 page mimeographed “Sing Out Brother” manuscript, located in Box 3, Folder 8 of the Horton Collection, and which includes on page 43 the first full musical rendering of “We Will Overcome,” was compiled during “the week of April 16 through April 22, 1948,” pursuant to Massie-Legg’s careful review of Horton’s correspondence with potential publisher Lynn Rohrbough. As fellow Horton

scholar Felicia M. Miyakawa confirms, Horton had anticipated summer 1948 publication of that songbook but plans “fell apart at the last minute.” However, it merits considerable emphasis to stress how Schneider, Massie-Legg, and Miyakawa’s independent scholarship all consistently support a conclusion best articulated by Andrew Aprile in the 2015 scholarly collection *We Shall Overcome: Essays on a Great American Song*, namely that Zilphia Horton “learned and then disseminated the tune that would become “We Shall Overcome.””²

2. Shelton, “Rights Song Has Own History of Integration,” supra n. 1, at 21 (identifying the two women from whom Zilphia learned the song as simply “Anna Lee and Evelyn”); Aimee Isgrig Horton, *The Highlander Folk School* (Carlson Publishing, 1989), at 152-53; Myles Horton, *The Long Haul: An Autobiography* (Doubleday, 1990), at 158; Aleine Austin, “Zilphia,” *Social Policy*, Winter 1991, at 48-52; Korstad, *Civil Rights Unionism*, supra n. 1, at 239 (fully naming Bonneau and Risher); Schneider, *You Can’t Padlock an Idea*, supra n. 1, at 159 (and noting that Bonneau and Risher “are the only two members of the Charleston Food and Tobacco Workers’ Union listed in the 1946 workshop roll”); Alicia Ruth Massie-Legg, “Zilphia Horton, a Voice for Change,” Ph.D. dissertation, University of Kentucky, 2014, at 107-08, 143-44 (quoting from Austin’s 19 August 1982 oral history interview with Sue Thrasher in the Austin Papers at Johns Hopkins University, Box 6); Ethan J. Kyle & Blain Roberts, “Birth of a Freedom Anthem,” *New York Times*, 15 March 2015, at IV-5 (naming Bonneau, but not Risher); Felicia M. Miyakawa, “‘Solidarity, Forever’: Zilphia

A few months later, Horton's "We Will Overcome" achieved its first appearance in a publication in the September, 1948 issue of *People's Songs*, with a photo of Zilphia accompanying the music and lyrics. Clearly by that time, and indeed perhaps some time earlier in 1946 or 1947, Horton had shared "We Will Overcome" with folk singer Pete Seeger, and Seeger's musical colleague Fred Hellerman would recall that they first "introduced it to New York audiences" at a November 24, 1948 "Thanksgiving Hootenanny" at Irving Plaza, an event whose occurrence was contemporaneously documented by the *New York Times*. A little over a year later, the first commercial recording of Horton's "We Will

Horton's Labor Songs, Communism, and the CIO," *TheAvidListener.com*, 14 September 2015; Andrew Aprile, "The Missing Blue Note: Transmutation and Appropriation from the Gospel Lineage of 'We Shall Overcome,'" in Victor V. Bobetsky, ed., *We Shall Overcome: Essays on a Great American Song* (Rowman & Littlefield, 2015), 43-57, at 51. Given how inconsistent the contents of edited volumes can be, it bears special noting that in the most prominent scholarly review of the Bobetsky volume, Stephen Stacks of the University of North Carolina at Chapel Hill singles out Aprile's chapter as "the highlight of the volume." *Notes: Quarterly Journal of the Music Library Association* 73 (September 2016): 115-117, at 117.

Overcome” was issued by Joe Glazer and the Elm City Four on a record titled *8 New Songs For Labor*.³

But changes were afoot. By no later than early 1952, New York musical friends of Seeger, most significantly Robert DeCormier, in conducting the Jewish Young Folksingers, had recorded Horton’s song under a new title: “We Shall Overcome,” as evidenced by contemporaneous documents from Hootenanny

3. “We Will Overcome,” *People’s Songs* Vol. 3 #8, September 1948, at 8; “Music Notes,” *New York Times*, 24 November 1948, at 20; Robbie Lieberman, “My Song is My Weapon”: *People’s Songs, American Communism, and the Politics of Culture, 1930-1950* (University of Illinois Press, 1989), at 112; Victor V. Bobetsky, “The Complex Ancestry of We Shall Overcome,” *Choral Journal* 54 (February 2014): 27-36, at 34. In subsequent years Seeger would recall that “Zilphia taught me the song in 1946, as I remember, when she came to New York City,” and in 1963 he played a recording of Zilphia singing “down in my heart, I do believe, we will overcome some day.” “Pete Seeger Comments ‘We Shall Overcome,’” 10 July 1963, 17pp. transcript, at 2, 4, LUDLOW00001330-46; Pete Seeger (Joseph Mosnier Interview), 19 September 2011, New Market, TN., Civil Rights History Project, Library of Congress, at 8 (“Zilphia taught me the song when she was North in 1946”). Glazer would later recount that he first learned “We Will Overcome” from his friend Agnes Douty, who had learned it at Highlander. Harry Golden, “History of a Song,” *New York Post*, 26 February 1964, at M3; Glazer, *Labor’s Troubadour* (University of Illinois Press, 2001), at 33-35.

Records showing 1952 sales of 500 copies of “H-104-B We Shall Overcome” and by a published report in *New York Guild Lawyer* stating that at an October 29, 1952 concert at Town Hall, “the closing number, ‘We Shall Overcome’” was “sung by the entire ensemble and joined in by large segments of the audience.”⁴

A decade later, in a private 1963 recording, Pete Seeger would acknowledge how “somewhere along the line, I seem to have made it ‘we shall overcome,’ instead of ‘we will overcome,’” and he self-effacingly added that “my guess is probably my sole contribution, great contribution, has been to have—change the

4. People’s Artists Inc., “Two New Hootenany Records Feature Songs For Negro Rights,” n.d., WSOPL000311 & 315; Hootenany Records to Jewish Young Folksingers, and to Laura Duncan, “Royalty Statement,” 8 January 1953, WSOPL 322-23 & 365-66; “Guild’s Town Hall Concert Draws Raves from Membership,” *New York Guild Lawyer*, November 1952, at 7; Susan Jackson, “Spotlight on Robert DeCormier,” *Juilliard Journal*, September 2011 (DeCormier recounts first meeting Seeger in the late 1940s and performing with him into the early 1950s); Christopher Flannery-McCoy, “Analysis and History of Major Choral Arrangements of ‘We Shall Overcome,’” in Bobetsky, ed., *We Shall Overcome*, supra n. 2, 59-75, at 63 (DeCormier’s 1952 recording was the first of “We Shall Overcome”). See also Mickey Flacks, “Secular Judaism Offers an Alternative,” *Sh’ma: A Journal of Jewish Ideas* Vol. 13/no. 253, 29 April 1983, at 100-01 (recalling how she “sang in the Jewish Young Folksingers . . . where I learned ‘We Shall Overcome’ in 1954”).

word ‘down’ to ‘deep,’ and ‘will’ to ‘shall.’” Beginning with a 1965 essay in *The New Yorker*, journalists and academics would acknowledge Seeger as the author of those wording changes, and in time the list of thorough scholars who would credit Seeger’s authorship of those words would become a lengthy one: the acclaimed Bernice Johnson Reagon, historian John M. Glen, historian Bradford D. Martin, the distinguished historian Allan M. Winkler, who characterized Seeger’s substitution of “shall” for “will” as “a significant change,” and English professor Stephen A. Schneider, to name just five. On some occasions, Seeger would forthrightly confirm that “I changed it to ‘We shall,’” because that verb “opens the mouth wider.” Highlander Folk School co-founder and longtime director Myles Horton would expressly confirm that “Seeger changed it to ‘We *Shall* Overcome,’” and Seeger’s fellow musician Joe Glazer, who continued to perform the song as “We Will Overcome” into the 1960s, would emphasize how Seeger “made a critical change in the lyric. He substituted the word *shall* for *will*.” Subsequent scholars who appreciated “Seeger’s dedication to equity and music as a vehicle for social change,” as Andrew Aprile put it, could with insight and empathy gauge how what Sam Rosenthal called his “humble” nature accounted

for what Stephen Stacks termed “Seeger’s own reticence” in some later interviews “to take credit for changing ‘will’ to ‘shall.’”⁵

5. “Seeger Comments on ‘We Shall Overcome,’” supra n. 3, at 5; “Moment of History,” supra n. 1, at 37-38; Irving Lowens, “‘We Shall Overcome’: Origin of Rights Song,” *Washington Sunday Star*, 11 July 1965, at E8; Robert E. Smith, “‘We Shall Overcome’—Where the Civil Rights Anthem Came From,” *Southern Courier*, 22-23 January 1966, at 4; James J. Fuld, *The Book of World-Famous Music* (Crown, 1971), at 626; Reagon, “Songs of the Civil Rights Movement,” supra n. 1, at 77, 132; Seeger in David K. Dunaway, *How Can I Keep From Singing?* (McGraw-Hill, 1982), at 275; Murphy, “The Rise of the Rights Anthem,” supra n. 1, at G11; Richard Harrington, “The Hymn to Hope,” *Washington Post*, 27 August 1988, at C1, C7; Seeger in William R. Ferris & Michael K. Honey, “Pete Seeger, San Francisco, 1989,” *Southern Cultures* 13 (Fall 2007): 5-38, at 30 (“somewhere along the line I’d changed the ‘will’ to ‘shall’”); Horton, *The Long Haul*, supra n. 2, at 158; Glazer, *Labor’s Troubadour*, supra n. 3, at 35; John M. Glen, *Highlander: No Ordinary School*, 2nd ed. (University of Tennessee Press, 1996), at 177; Ron Eyerman & Andrew Jamison, *Music and Social Movements* (Cambridge University Press, 1998), at 3; Bradford D. Martin, *The Theater Is in the Street* (University of Massachusetts Press, 2004), at 32; Joe Street, *The Culture War in the Civil Rights Movement* (University Press of Florida, 2007), at 23 (Seeger “substituted” ‘shall’ for ‘will’); Allan M. Winkler, *‘To Everything There Is A Season’: Pete Seeger and the Power of Song* (Oxford University Press, 2009), at 98; William G. Roy, *Reds, Whites, and Blues: Social Movements, Folk Music, and Race in the United States* (Princeton University Press, 2010), at 193 (Seeger “changed the title”); Schneider, *You Can’t Padlock an*

Indeed, some items of pre-1960 documentation suggest the possibility that Zilphia Horton, prior to her 1956 death from accidental poisoning, herself adopted Seeger's revision of her own earlier lyrics. Aline Austin's papers in the Johns Hopkins University Special Collections include an item identified as "Recording: 'We Shall Overcome' 1946 under the supervision of Zilphia Horton," and Horton's own Folk Music Collection at the Tennessee State Library

Idea, supra n. 1, at 159 (Seeger "was responsible for changing 'We Will Overcome' to 'We Shall Overcome'"); Aprile, "The Missing Blue Note," supra n. 2, at 54; Sam A. Rosenthal, "A Folksong in Flight: Pete Seeger and the Genesis of 'We Shall Overcome,'" in Bobetsky, ed., *We Shall Overcome*, 17-25, at 18, 23; Stacks in *Notes*, supra n. 2, at 116. *See also* Kristen Meyers Turner, "Guy and Candie Carawan: Mediating the Music of the Civil Rights Movement," M. A. thesis, University of North Carolina Chapel Hill, 2011, at 19 n.44 (Seeger changing 'will' to 'shall'); Marianne Mueller, "Spirituals of the African American Freedom Struggle: Building Community and Organizing Protest," M.L.A. thesis, Stanford University, 2012, at 71 ("Seeger changed 'We *will* overcome to 'We *shall* overcome' in the 1950s"); Kate Stewart, "Tracing the Long Journey of 'We Shall Overcome,'" LOC.gov/folklife, 6 February 2014 ("Seeger *notably changed* the lyrics from 'We Will Overcome' to 'We Shall Overcome'") (emphasis added); Greg A. Phelps, "Zilphia Mae Johnson Horton (1910-1956)," *Encyclopedia of Arkansas History & Culture*, 23 December 2014 (Seeger changing 'will' to 'shall'); Kyle & Roberts, "Birth of a Freedom Anthem," supra n. 2 (Seeger "changed its chorus and title to 'We Shall Overcome'").

and Archives include two “songs on tape,” one identified as “We Will (Shall) Overcome” and the second as simply “We Shall Overcome.” What’s more, Horton’s papers also include a typed but undated songsheet, annotated in what may or may not be Horton’s own handwriting, setting forth the revised lyrics to “We Shall Overcome”:

“We shall overcome, we shall overcome, We shall overcome someday.

Oh deep in my heart I do believe We shall overcome some day.”

The four ensuing verses—“2. We shall organize 3. The truth shall make us free 4. We’ll walk hand in hand 5. We’re on to victory”—almost unquestionably pre-date mid-1959; Horton herself died on 11 April 1956.⁶

Less than eighteen months later, when Martin Luther King, Jr., delivered the closing address at Highlander Folk School’s Twenty-Fifth Anniversary Celebration on 2 September 1957, a fellow special invitee was Pete Seeger, whom Myles Horton had asked to attend to fill the musical gap left by his wife Zilphia’s death. Seeger performed his revised version of “We Shall Overcome,” and

6. Register #397, Aline Austin Papers, Johns Hopkins University Special Collections, Box 8; Inventory, Zilphia Horton Folk Music Collection, Tennessee State Library and Archives, 14 February 1964, Box 6 [“We Will (Shall) Overcome”], Box 7 [“We Shall Overcome”]; Songsheet headed “World Anthem,” n.d., Horton Folk Music Collection, Box 4 Folder 12, WSOPL022682.

Kentucky civil rights activist Anne Braden, who later that day drove Dr. King to Louisville, remembered how King had kept humming “We Shall Overcome” during their drive. “There’s something about that song that haunts you,” Braden would recount King saying.⁷

By the summer of 1959, young white musician Guy Carawan had arrived at Highlander from California as Zilphia Horton’s musical successor. As Carawan would recount in a 6 July 1974 interview with Bernice Johnson Reagon, he already knew “We Shall Overcome,” which he had first learned several years earlier from his fellow southern California musician Frank Hamilton, who in turn had learned it from someone who had learned it from Pete Seeger, whom Hamilton himself also knew well.⁸

7. Martin Luther King, Jr., “A Look to the Future,” in Clayborne Carson et al., ed.s, *The Papers of Martin Luther King, Jr., Vol. IV: Symbol of a Movement* (University of California Press, 2000), at 269-76; Glyn Thomas, “Hear the Music Ringing,” *New South*, Summer 1968, 37-46, at 41; David J. Garrow, *Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference* (Morrow, 1986), at 98 (quoting from a 24 March 1982 interview with Anne Braden); John M. Glen, *Highlander: No Ordinary School*, 2nd ed. (University of Tennessee Press, 1996), at 170.

8. Carawan in Reagon, “Songs of the Civil Rights Movement,” supra n. 1, at 79-80; Peter D. Goldsmith, *Making People’s Music: Moe Asch and Folkways Records*

“We Shall Overcome” remained a mainstay of Highlander’s program, including during the final week of July, 1959, when the school hosted a Developing Community Leadership Workshop for about fifty participants, including thirteen young students from Montgomery, AL. On Friday night July 31 the group was watching a documentary film in Highlander’s dining room when a raiding party of twenty armed law enforcement officials arrived in a bogus search for illegal liquor. In Myles Horton’s absence, the lawmen targeted workshop director Septima Clark, well-known to colleagues as a teetotaler, with other attendees sitting in darkness as the hooligans searched the property. As Guy Carawan described three days later, “someone started whistling” what he still called “We Will Overcome” and “the whole place broke out in song. They sang for a couple hours” as the lawmen continued their futile search. Six years later, Carawan would recount how “somebody began to hum We Shall Overcome, and then someone else took it up,” spontaneously adding a new verse: “we are not

(Smithsonian Institution Press, 1998), at 354, 448n22; Carawan in Adams, “Tracing the History,” supra n. 1; Hamilton and Carawan in Stotts, *We Shall Overcome*, supra n. 1, at 31; Noel Morris, “‘We Shall Overcome’: From Work Song to Civil Rights Anthem—An Interview With Frank Hamilton,” 14 September 2015, noelmorris.net (Hamilton recounts first meeting Pete Seeger, who was “a mentor,” in 1952).

afraid.” More than two decades later, workshop attendees would credit one of the young Montgomery students, Mary Ethel Dozier, who later changed her name to Jamila Jones, with initiating “we are not afraid.” In a lengthy 2011 oral history interview, Ms. Jones would expressly avoid saying that she had been the first to utter the new words, but her riveting account of that night captures the power that the song now had for civil rights movement participants confronted by the threatening demeanor of southern white law enforcement. “I was probably fourteen years old,” Jones explained. “They turned out all the lights . . . we were in complete darkness . . . we could not see each other. . . . And something said, ‘We are not afraid,’ and everybody started singing.”

And we got louder and louder with singing that verse, until one of the policemen came and he said to me, ‘If you have to sing,’ and he was actually shaking, ‘do you have to sing so loud?’ And I could not believe it. Here these people had all the guns, the billy clubs, the power, we thought, and he was *asking* me, with a *shake*, if I would not sing so loud. And it was that time that I *really* understood the power of our move—of our music, how powerful it was that this—it unnerved him so much that he had to come and ask that I not sing so loud.

And I can just tell you that I got louder and louder. . . . And from then on, I

knew exactly how powerful our songs were.

When the lawmen finally left, they carted off both Guy Carawan and Septima Clark to the county lock-up. “Carawan later said that he could hear Mrs. Clark in the jail cell below him singing ‘We Shall Overcome’ softly into the night.”⁹

9. Guy Carawan to Pete Seeger, Moe Asch, Irwin Silber, 3 August 1959, Moses and Frances Asch Collection, Smithsonian Institution, WSOPL 350-53; “Moment of History,” supra n. 1, at 38; Carawan in Lowens, “We Shall Overcome,” supra n. 5; Carawan in Frank Adams, *Unearthing Seeds of Fire: The Idea of Highlander* (John F. Blair, 1975), at 132; Reagon, “Songs of the Civil Rights Movement,” supra n. 1, at 81-82 (first identifying Mary Ethel Dozier Jones); Maggie Lewis, “Guy and Candie Carawan: Song Leaders for Social Change,” *Christian Science Monitor*, 2 September 1982, at B2 (first publicly crediting Dozier with initiating “we are not afraid”); Septima Clark in Cynthia Stokes Brown, ed., *Ready From Within: Septima Clark and the Civil Rights Movement* (Wild Trees Press, 1986), at 57 (“It made the police feel nervous”); Harrington, “The Hymn to Hope,” supra n. 5 (Jamila Jones); Glen, *Highlander*, supra n. 7, at 172, 231-32; Mike Hudson, “Song of History, Song of Freedom,” *Roanoke Times*, 14 January 2001 (Jamila Jones); Ronald D. Cohen, *Rainbow Quest: The Folk Music Revival and American Society, 1940-1970* (University of Massachusetts Press, 2002), at 152, 310n69; Troy A. Murphy, “Rhetorical Invention and the Transformation of ‘We Shall Overcome,’” *Qualitative Research Reports in Communication* 4 (2003): 1-8, at 5; Street, *The Culture War*, supra n. 5, at 23 (“By 1959, Carawan was spreading Seeger’s version to the new generation of activists”); Katherine Mellen Charron,

On February 1, 1960, southern college student sit-ins against segregated lunch-counters kicked off in Greensboro, NC, and in subsequent weeks similar protests spread all across the Southeast. On April 1, Highlander hosted an annual college workshop which drew 83 students from twenty colleges, including more than half a dozen from Nashville, TN, home to the region's most vibrant student protest movement. On Saturday evening April 2, Guy Carawan introduced the attendees to "We Shall Overcome," and Nashville divinity student John Lewis and white exchange student Candie Anderson would both long recall that evening. "I can remember this electrifying feeling when we heard it," Candie—by then Candie Carawan, having first met her future husband that weekend too—would recount. As the best chronicler of the Nashville student movement, Pulitzer Prize-winning journalist David Halberstam, would later write of that evening, "from the first instant they heard it, the young seminarians knew that it

Freedom's Teacher: The Life of Septima Clark (University of North Carolina Press, 2009), at 268-70; Roy, *Reds, Whites, and Blues*, supra n. 5, at 193 ("popularized in the 1960s by Guy Carawan"); Stotts, *We Shall Overcome*, supra n. 1, at 33; Jamila Jones (Joseph Mosnier Interview), 27 April 2011, Atlanta, GA, Civil Rights History Project, Library of Congress, at 15-17; Guy and Candie Carawan (Joseph Mosnier Interview), 19 September 2011, New Market, TN, Civil Rights History Project, Library of Congress, at 14.

was perfect for the Movement; its words, its chords, above all its faith seemed to reflect their determination and resonate to their purpose perfectly.” As song leader Guy Carawan would likewise recall, “people just heard that song and knew it was theirs—it expressed exactly what they felt. That weekend at Highlander was incredibly important,” as history would show.¹⁰

Two weeks later, at the instigation of Ella Baker of the Southern Christian Leadership Conference (SCLC), sit-in leaders from across the South convened at Shaw University in Raleigh, NC, to found what would become the Student Nonviolent Coordinating Committee (SNCC). On Saturday night April 16 Highlander’s Guy Carawan led the entire group in singing “We Shall Overcome,” and remembering that first gathering several years later, SNCC’s first official staff

10. Dunson, *Freedom In the Air*, supra n. 1, at 30, 39-40; Adams, *Unearthing Seeds of Fire*, supra n. 9, at 144-46; Reagon, “Songs of the Civil Rights Movement,” supra n 1, at 110; Lewis, “Guy and Candie Carawan,” supra n. 9; Glen, *Highlander*, supra n. 7, at 176; Pete Seeger & Bob Reiser, *Everybody Says Freedom* (Norton, 1989), at 8, 35, 39; John Lewis, *Walking With the Wind* (Simon & Schuster, 1998), at 90; David Halberstam, *The Children* (Random House, 1998), at 232; Candie Carawan in Adams, “Tracing the History,” supra n. 1; Winkler, “To Everything There Is A Season,” supra n. 5, at 99; Charron, *Freedom’s Teacher*, supra n. 9, at 290-91; Turner, “Guy and Candie Carawan,” supra n. 5, at 18; Seeger (Mosnier Interview), supra n. 3, at 9; Guy and Candie Carawan (Mosnier Interview), supra n. 9, at 3.

member, Jane Stembridge, recounted how “the most inspiring moment for me was the first time I heard the students sing ‘We Shall Overcome.’” Carawan realized how “that song caught on that weekend,” and Bernice Johnson Reagon later wrote that “from that point on it was the signal song of the movement.”¹¹

The following Tuesday, the Nashville protestors confronted Mayor Ben West on the steps of City Hall, and Guy Carawan was again present to lead the students in singing their now favorite song. “It was probably the first time that ‘We Shall Overcome’ was used at a mass gathering as part of the movement” at an actual protest, Carawan remembered, “and you could see the tears in people’s eyes. Singing really had that kind of impact.” Newspaper reporter David Halberstam was there too, and would render a unforgettable description of the song.

11. “Sitdowners Meet To Outline Future Strategy,” *Afro-American*, 30 April 1960, at 8 (a photo caption stating that “‘We Shall Overcome Some Day’ is the song Guy Carawan is leading an enthusiastic mass meeting in singing”); Irwin Silber, “He Sings for Integration,” *Sing Out!* 10 #2 (Summer 1960): 4-7; Stembridge in Howard Zinn, *SNCC: The New Abolitionists* (Beacon Press, 1965), at 33; Pat Watters, *Down To Now* (Pantheon Books, 1971), at 132; Adams, *Unearthing Seeds of Fire*, supra n. 9, at 154; Bernice Johnson Reagon, “Let the Church Sing ‘Freedom,’” *Black Music Research Journal* 7 (1987): 105-18, at 117; Carawan in Adams, “Tracing the History,” supra n. 1;

Suddenly the sound seemed to sweep across the courthouse square. Verse followed verse, the sound becoming ever more powerful. . . . It was a modern spiritual which seemed to have roots in the ages, the perfect song for this particular moment. . . . it expressed not just a sense of long-suffering grievance but an optimistic belief that these grievances could and would be corrected. It was religious and gentle, just right for a Gandhian protest, but its force and power were not to be underestimated; it not only emboldened those who were setting out on this dangerous path, but it helped affect and bring in those on the sidelines, those watching television at home who had seen the young blacks . . . sing this haunting song. It was an important moment: The students now had their anthem.¹²

As Pete Seeger later reflected, over the course of April 1960 “We Shall Overcome” “became ‘the’ song, not just ‘a’ song. It was like an official song,” and musician Joe Glazer rightly observed that Guy Carawan “was undoubtedly the catalyst in making ‘We Shall Overcome’” what it had now become. A few weeks later at the national NAACP’s annual Freedom Fund Dinner in St. Paul, MN, a student rose to request two minutes to lead the audience in singing “We Shall

12. Carawan in Adams, *Unearthing Seeds of Fire*, supra n. 9, at 155; Halberstam, *The Children*, supra n. 10, at 232.

Overcome,” and in late October, when Martin Luther King, Jr., was released from a threatening sojourn in a south Georgia prison, Atlanta student movement members greeted him on a county roadside singing “We Shall Overcome.” Atlanta newspaper reporter Pat Watters was there, and for him as a white southerner, it was a transformative moment. “I had not heard the song before, did not catch all the words, but did feel all through me the spirit of it, its force and its meaning,” he later wrote. “And knowing all that that meant for them, and for me, I cried. I cried for the first time in many years, cried unabashedly. . . . I heard the song that night on the road shoulder and it entered, invaded my life. I think back to how much effect it had on me.” Over time, “the deeper I moved into the meaning of the song, the more it became central to my own life” and “I got from it an increasing sense of that joy and hopefulness that filled me when I first heard it.” Watters would also recall once hearing the much slower-cadenced “Baptist hymn” “I Will Overcome” in a coastal Georgia church.¹³

13. Seeger in Ferris & Honey, “Pete Seeger,” supra n. 5, at 32; Glazer, *Labor’s Troubadour*, supra n. 3, at 35; Louis Lautier, “Capital Spotlight,” *Afro-American*, 2 July 1960, at 4; Watters, *Down to Now*, supra n. 11, at 54-55, 57, 59; Garrow, *Bearing the Cross*, supra n. 7, at 148. See also “Members Meet CORE Director on Return,” *New York Amsterdam News*, 15 July 1961, at 2 (returning to New York after forty days in Mississippi jails, Congress of Racial Equality executive director

The following fall, the nascent SNCC sent its very first field secretary, 22-year-old Charles Sherrod, along with 18-year-old Cordell Reagon, to southwest Georgia's largest city, Albany—"All-BENNY," locals pronounced it—in the hope of starting civil rights organizing in that generally benighted corner of the state. Sherrod and Reagon received an ambivalent welcome from black Albany's adults, but a considerably warmer reception from students at all-black Albany State College. Southwest Georgia natives like 19-year-old sophomore Bernice Johnson knew "I'll Overcome" from church, and as an active member of the NAACP Youth Council, she was one of the first Albany State undergraduates to be recruited by the young man who would later become her husband. "I remember when the organizers came to Albany, I was singing 'I'll Overcome,' and I was stopped by Cordell, who says, 'It's not 'I'll,' it's 'we,'" for "'We Shall' was considered the proper lyric." Indeed, "Cordell stopped me in the middle of the song, saying, 'This song is the theme song of the Movement. Whenever we sing it, we stand, and we join hands right over left. And we don't say, 'I'll overcome'; we say, 'We shall overcome,' because *I* is individualistic and *we* expresses community, and we are in this struggle together." SNCC's Hollis

James Farmer arrives at then-Idlewild Airport. "The enthusiastic group sang 'We Shall Overcome in the TWA Terminal as they awaited Farmer's return.'")

Watkins explained that “we sang it with our arms crossed with the right over the left, showing that the right will finally be victorious, and by holding each other’s hand, the common bond pulled together all of the people.” As historian Bradford Martin later highlighted, “that Reagon so carefully taught the Albany students a specific version of the song with its accompanying rituals, signifying the collective nature of civil rights activism, emphasized the function of ‘We Shall Overcome’ as a powerful tool with which to express movement unity.”¹⁴

On November 22, the Albany movement’s first five sit-in arrests took place, and on Saturday evening November 25 a four-hundred person mass meeting took place at the humble Mt. Zion Baptist Church. Charles Sherrod would recall that at the meeting’s close, “when we rose to sing ‘We Shall Overcome,’ nobody could imagine what kept the church on four corners. . . . I threw back my head and

14. Reagon, “Songs of the Civil Rights Movement,” *supra* n. 1, at 84, 131-32; Reagon in Dick Cluster, ed., *They Should Have Served That Cup of Coffee* (South End Press, 1979), at 21; Garrow, *Bearing the Cross*, *supra* n. 7, at 173-77; Watkins in Seeger & Reiser, *Everybody Says Freedom*, *supra* n. 10, at 180; Reagon in Adams, “Tracing the History,” *supra* n. 1; Martin, *The Theater Is in the Street*, *supra* n. 5, at 33; Bernice Johnson Reagon, “Uncovered and Without Shelter, I Joined This Movement for Freedom,” in Faith S. Holsaert et al., eds., *Hands On the Freedom Plow* (University of Illinois Press, 2010), 119-28, at 122-23.

closed my eyes and sang with my whole body.” On Monday morning, when the five students went on trial, more than 300 protestors circled City Hall “singing ‘We Shall Overcome,’” *Pittsburgh Courier* correspondent Trezzvant W. Anderson reported.¹⁵

In mid-December Martin Luther King, Jr., arrived in Albany for what he intended to be a one-day visit to give his support to the local movement. Atlanta reporter Pat Watters was inside a jam-packed Shiloh Baptist Church as fervent singing welcomed King to the pulpit. Toward the conclusion of his remarks, “King listed all of the evils that would be overcome,” Watters wrote, before moving to his peroration. “Before the victory is won some must face physical death to free their children from a life of psychological handicaps. But we shall overcome.’ ‘Shall overcome,’ the crowd chorused back.” King’s voice, “full of emotion,” almost broke, and “abruptly he stopped speaking, and in the silence the first strong notes of the song ‘We Shall Overcome’ rang out. Verse after verse of it rolled on, kept on, the people putting more into it even than into that first

15. Sherrod in Zinn, *SNCC*, supra n. 11, at 128-29; Watters, *Down To Now*, supra n. 11, at 158; Garrow, *Bearing the Cross*, supra n. 7, at 177; Deanna F. Weber, “The SNCC Freedom Singers: Ambassadors for Justice,” in Bobetsky, ed., *We Shall Overcome*, supra n. 1, 27-42, at 28; Trezzvant W. Anderson, “The Truth About Albany, Georgia’s Mess,” *Pittsburgh Courier*, 30 December 1961, at II-3.

great song of welcome to him.” The local movement’s spokesman called for a mass march the next day, and by the following evening, Martin Luther King, Jr. was a prisoner in a local jail, enmeshed in a protest campaign that would drag on for months. King’s “entire career,” Watters observed, “was turned in the happenstance of the hour and by the fervor in the church. . . . the people in the church that night so caught Dr. King in their fervor that he could not leave them.”¹⁶

Across calendar 1962, “We Shall Overcome” seemed to be everywhere the black freedom movement sprang forth. In the dire southern Illinois town of Cairo, seventeen black youngsters were convicted and fined for protesting racial segregation far outside the Deep South. “Before leaving the crowded court room today, the youths raised their voices in a song called ‘We Shall Overcome,’” a *New York Times* journalist told the paper’s readers. One week later, when a southwest Georgia sheriff and his officers burst into a voter registration rally at a rural church, the black congregation began humming “We Shall Overcome,” and when the officers withdrew, “the song swelled to a crescendo,” the *Times*’ Claude Sitton reported. Back in nearby Albany ten days later, thirteen black protestors were

16. Watters, *Down To Now*, supra n. 11, at 11-15, Garrow, *Bearing the Cross*, supra n. 7, 183-88.

arrested as the *Times*' Hedrick Smith looked on. "About thirty police officers and firemen watched from the City Hall steps, about twenty feet away. Some officers quietly joined in with the Negroes and sang one of their regular hymns, 'We Shall Overcome.'" Albany Police Chief Laurie Pritchett told journalists that was not the first time his men had joined in, and in mid-August 1962 *New York Times* music critic Robert Shelton wrote in a front page story that "We Shall Overcome" had become "the universal theme song of the movement."¹⁷

One year later, at the August 28, 1963 March on Washington, the famed African American singer Mahalia Jackson led the huge crowd in singing "We Shall Overcome" following Dr. King's "I Have a Dream" address. "The

17. F. L. Shuttlesworth, "Shuttlesworth Says: Winds of Change," *Pittsburgh Courier*, 7 July 1962, at 12; Donald Janson, "17 in Racial Case Fined in Illinois," *New York Times*, 20 July 1962, at 23; Claude Sitton, "Sheriff Harasses Negroes At Voting Rally in Georgia," *New York Times*, 27 July 1962, at 1, 9; Hedrick Smith, "Negroes Seeking Albany, Ga., Vote," *New York Times*, 5 August 1962, at 56; Robert Shelton, "Songs a Weapon in Rights Battle," *New York Times*, 20 August 1962, at 1, 14; Shelton, "Singing For Freedom: Music in the Integration Movement," *Sing Out!* 12 #5 (December 1962-January 1963): 4-7, 10-17. See also Shelton, "Rights Song Has Own History of Integration," *New York Times*, 23 July 1963, at 21, and Dave Laing, "Taste-Making and Trend-Spotting: The Folk Revival Journalism of Robert Shelton," *Popular Music History* 1 (2006): 307-28.

unforgettable sight of 200,000 marchers, their arms linked and their hands clasped, swaying in rhythm to the galvanic anthem “We Shall Overcome” was an “unforgettable sight,” wrote journalist Robert Sherman. It represented the song’s “apotheosis as public performance,” historian Bradford Martin explained. “The tone of ‘We Shall Overcome’ is quite different from the way it was in union days,” SNCC’s Reginald Robinson told to Sherman. “We put more soul into it. . . . You really have to experience it in action to understand the kind of power it has for us.”

A decade later, in what one student of the movement would rightly call “the most comprehensive narrative history of ‘We Shall Overcome,’” Albany movement and SNCC veteran Bernice Johnson Reagon expanded upon Robinson’s explanation in her Howard University doctoral dissertation. “The ‘We Shall Overcome’ of the Civil Rights Movement was a new song,” Reagon firmly emphasized. “The song of the Highlander years had the same words and the same melody, but did not have the range of usage of the Civil Rights version. To understand this one must not simply examine notes, melody, and rhythm, but function.”

Come the early 1960s,

“We Shall Overcome” had by this period become a ritual to be properly

acted out by those committed to involvement in Movement activities. And as a ritual, “We Shall Overcome” was now functioning on a new level. “We Shall Overcome” was not “I’ll Be All Right” of the Black church or “We Will Overcome” of the Charleston strike or “We Shall Overcome” in the hands of Peter Seeger and Guy Carawan. It was “We Shall Overcome,” theme song of the Civil Rights Movement. This new identity did not wipe out older identities, nor the early history; however, its strength came not from these earlier efforts but from the power and energy of the Movement of which it was now an integral part.

The updated song that Guy Carawan had first introduced to the movement’s earliest young participants on April 2, 1960, was now, less than four short years later, a defining beacon of the Black freedom struggle.¹⁸

18. Robert Sherman, “Sing a Song of Freedom,” *Saturday Review*, 28 September 1963, 65-67, 81, at 65, 67; Martin, *The Theater Is in the Street*, supra n. 5, at 33; Reagon, “Songs of the Civil Rights Movement,” supra n.1, at 84, 132-33; Brandi Amanda Neal, “‘We Shall Overcome’: From Black Church Music to Freedom Song,” M. A. thesis, University of Pittsburgh, 2006, at 9; Street, *The Culture War*, supra n. 5, at 38 (“Guy Carawan made a huge contribution to the civil rights movement”).

Eighteen months later, Martin Luther King, Jr.'s Southern Christian Leadership Conference launched a major voting rights campaign in Selma, AL. Following a bloody attack on movement marchers by Alabama lawmen on March 7, pressure built for President Lyndon B. Johnson's administration to quickly introduce a muscular voting rights bill in Congress. On Monday night March 15, Johnson stood before a Joint Session of Congress—and some 70 million television viewers nationwide—to deliver the first such presidential address on a domestic issue since the mid-1940s. Embracing the black freedom struggle as part of “man's unending search for freedom,” Johnson then invoked what the next morning's *New York Times* called “the title of the great Negro freedom anthem,” “we . . . shall . . . overcome.” Referencing Johnson's Texas heritage, the *Times*' Tom Wicker wrote that “Mr. Johnson's accent and emphasis imparted an unmistakable determination.”

As one student of the speech's telecast later carefully described the scene,

Johnson's unexpected declaration, “We Shall Overcome,” was met with stunned silence, followed by thunderous applause and tears. Johnson affirmed “We *shall* overcome” in a somber voice, delivering each word distinctly and slowly, emphasizing *shall*, and looking directly into the camera.

Almost the entire chamber “rose and gave the President a two-minute ovation as he spoke the words.” Watching the telecast together in Selma were SNCC chairman John Lewis and Martin Luther King, Jr. “Tears actually came to Dr. King’s eyes when President Johnson said, ‘We shall overcome,’” Lewis recalled.

African-American journalists were ecstatic over Johnson’s repeated invocation of the signal phrase. “Twice these freedom rallying words rang with gripping sincerity from the lips of a determined, emotionally-moved President,” wrote the *New York Amsterdam News* in a front-page editorial. *New York Times* television critic Jack Gould commented that when Johnson “came to that phrase in the Negro freedom hymn, ‘We Shall Overcome,’ the viewer could feel the rustle of advancing history in the hush of the living room.” Subsequent scholars would acknowledge how “the song’s highest endorsement” had been delivered from “the highest rhetorical platform in the country,” but when *The New Yorker* a few days later telephoned the humble musician who more than anyone was responsible for the song’s remarkable fame, Guy Carawan underscored “We Shall Overcome”’s most important quality. “It’s amazing what strength this song has.

It's just unbelievable sometimes how it can bind people together," including now even a white southern President of the United States.¹⁹

Journalists would later acknowledge that "there has been no greater, and no more powerful song than 'We Shall Overcome,'" and scholars would recognize how "its galvanizing quality" gave the song "perhaps as much staying power as any song ever written." John Lewis remembered how "it gave you a sense of faith, a sense of strength, to continue to struggle, to continue to push on," and

19. Tom Wicker, "Johnson Urges Congress at Joint Session to Pass Law Insuring Negro Vote," *New York Times*, 16 March 1965, at 1, 31; Jack Gould, "TV: President's Rights Plea His Best Performance," *New York Times*, 17 March 1965, at 91; Bernard Lefkowitz, "'We Shall Overcome'—How an Anthem of Adversity Was Born," *New York Post*, 17 March 1965, at 12; "That Speech!—LBJ Goes All The Way!," *New York Amsterdam News*, 20 March 1965, at 1, 2; Ralph E. Koger, "We Shall Overcome: Precious Gems From LBJ Speech Will Roar Across the Centuries," *Pittsburgh Courier*, 20 March 1965, at 1, 4; "Moment of History," supra n. 1, at 38; Garrow, *Bearing the Cross*, supra n. 7, at 408-09; Lewis, *Walking With the Wind*, supra n. 10, at 339-40; Murphy, "Rhetorical Invention," supra n. 9, at 5; Neal, "'We Shall Overcome,'" supra n. 18, at 31; Mueller, "Spirituals of the African American Freedom Struggle," supra n. 5, at 98.

his SNCC colleague Willie Peacock explained how “when we finished singing, there was no fear. It put you in touch with a larger self that couldn’t be killed.”²⁰

* * *

In the years after 1965, journalists reported that Guy Carawan and Pete Seeger had “claimed rights to the song only to prevent others from trying to make money from the song.” Seeger would write that “all royalties and income from the song go to . . . the We Shall Overcome Fund, which annually gives grants to further African-American music in the South,” a fund which Bernice Johnson Reagon chaired and which met annually at Highlander, the song’s birthplace. English scholar Stephen A. Schneider commended that effort, stating that “their copyright prevented others from cashing in on the song” and reflected “the collective-action frame of the song itself, as it preserves the open structure of the song and ensures its availability as an agency for collective action.”²¹

20. Harrington, “The Hymn to Hope,” supra n. 5; Schneider, *You Can’t Padlock an Idea*, supra note 1, at 166; Murphy, “Rhetorical Invention,” supra n. 9, at 2; Lewis in Adams, “Tracing the History,” supra n. 1; Peacock in Stotts, *We Shall Overcome*, supra n. 1, at 40.

21. Smith, “We Shall Overcome,” supra n. 5; Pete Seeger, *Where Have All the Flowers Gone* (Sing Out Corp., 1993), at 34; Pete Seeger, “Appleseeds,” *Sing Out!* 45 (Fall 2001), 66-67; Schneider, *You Can’t Padlock an Idea*, supra n. 1, at 166-67.

* * *

Having reviewed the District Court's 21 November 2016 Opinion and Order in *We Shall Overcome Foundation v. The Richmond Organization*, I am informed that the controlling case law sets forth two decisive standards: "sufficient originality" and "a distinguishable variation that is more than merely trivial" regarding the presently-copyrighted lyrics of "We Shall Overcome."²² I am aware too of opposing counsel's insistent contention that the Horton-Seeger-Carawan alterations to the earlier song's lyrics, most centrally "shall" in place of "will," and also "deep" in place of "down," are "at most, trivial changes," and that "shall" in particular represented what they assert was only a "miniscule change."²³ In my expert scholarly opinion, the richly-documented historical record as reported above demonstrates clearly and convincingly that any claim that the differences between "We Shall Overcome" and the 1945-46 iteration of "We Will Overcome" are merely "trivial" and "miniscule" is risible on its face and unfortunately reflects a profound lack of awareness and understanding of "We

22. *We Shall Overcome Foundation v. The Richmond Organization*, 21 November 2016, at 2, 14 (slip op.).

23. Wolf Haldenstein, "Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss Amended Class Action Complaint," 5 August 2016, at 20-21, 27.

Shall Overcome”’s special and central role in the Southern Black freedom struggle.

David J. Garrow

14 April 2017