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Book Reviews

Resistance Songs: Mobilizing the Law and Politics of Community

REDEMPTION SONGS: SUIING FOR FREEDOM BEFORE DRED SCOTT. By Lea VanderVelde. New York, New York: Oxford University Press, 2014. 305 pages. \$29.95.

Anthony V. Alfieri*

And those poor people that lived down there on Washington, I mean, they caught the blues. They got it all. They got the smell, the fumes, excuse me the maggots, and everything else around there. It was just terrible around there. It was contaminated badly.¹

—Jimmie Ingraham

Introduction

In 1834, twenty-three years before the United States Supreme Court's decision in *Dred Scott v. Sanford*,² an illiterate young African-American woman, mother, and slave known only by the name of Rachel sued her master, the Missouri slave trader William Walker, for her freedom.³ Like other freedom petitions of the antebellum era, Rachel's suit risked both

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1. Interview by Ariel Mitchell with Jimmie Ingraham, in Miami, Fla. 19 (Jan. 10, 2014) (transcript on file with author).

2. 60 U.S. (19 How.) 393 (1857).

3. LEA VANDERVELDE, REDEMPTION SONGS: SUIING FOR FREEDOM BEFORE DRED SCOTT, at xi (2014).

retaliation from her master and imprisonment by the Missouri courts.⁴ Nevertheless, two years later in *Rachel v. Walker*⁵ a St. Louis, Missouri, court declared Rachel a free woman,⁶ redeeming her rights claim to liberty and ratifying her power to resist enslavement.

In 1925, the City of Miami built a trash incinerator in the de jure segregated Afro-Caribbean-American community of Coconut Grove Village West (the West Grove) amid rows of shotgun style houses and Jim Crow schools. Commonly known as Old Smokey, the incinerator discharged airborne carcinogenic chemicals (arsenic, benzo(a)pyrene, barium, and lead) and produced residual toxic waste (ash, liquefied plastic, and melted glass) for forty-five years until Florida courts finally ordered it closed in 1970.⁷ In 1978, the City of Miami converted the 4.5 acre Old Smokey site and incinerator building into its Fire-Rescue Training Center,⁸ which continues to operate today in a still impoverished and segregated West Grove community battered by inner-city decay (abandoned homes and vacant lots, drug gangs, and public-school-to-prison pipelines); deteriorating demographics (aging church congregations and black middle- and working-class flight); dwindling skilled and unskilled labor markets (deindustrialization, immigrant competition, and geographic isolation); and commercial and residential displacement (private-sector gentrification and public-sector disinvestment).⁹

In 2013 and 2014, the University of Miami School of Law's Historic Black Church Program (the Program)¹⁰ learned from a whistleblower-

4. VanderVelde notes that Walker "was well-known in the [St. Louis] community for being ruthless. [Rachel] must have also known that she and her infant son faced months of life in a dank, dark jail, the only safe haven she could count on, while the court considered her case." *Id.* at xi (footnote omitted).

5. 4 Mo. 350 (1836).

6. *Id.* at 354.

7. Jenny Staletovich, *Ash Dumped at Coconut Grove Park Called Biggest Health Risk, Remains Under Investigation*, MIAMI HERALD, Sept. 17, 2013, <http://www.miamiherald.com/news/local/community/miami-dade/coconutgrove/article1955048.html>, archived at <http://perma.cc/D2SX-E6FL> [hereinafter Staletovich, *Ash Dumped at Coconut Grove Park*]; Jenny Staletovich, *City Inaction on Polluted Soil Angers Residents*, MIAMI HERALD, Sept. 8, 2013, <http://www.miamiherald.com/news/local/environment/article1954788.html>, archived at <http://perma.cc/Q43S-ERR3>.

8. *Training Division—Fire-Rescue Training Center*, CITY MIAMI DEPARTMENT FIRE-RESCUE, http://www.miamigov.com/Fire/pages/Divisions/Training_Center.asp, archived at <http://perma.cc/K2SH-93RM>.

9. See Anthony V. Alfieri, Essay, *Post-Racialism in the Inner City: Structure and Culture in Lawyering*, 98 GEO. L.J. 921, 941–50 (2010) (surveying economic conditions and the effect of poverty in the West Grove). But see Andres Viglucci, *The Resurgence of Coconut Grove*, MIAMI HERALD, Nov. 29, 2014, <http://www.miamiherald.com/news/local/community/miami-dade/coconut-grove/article4199797.html>, archived at <http://perma.cc/4ZKB-67KC> (addressing redevelopment plans for the area).

10. See generally Anthony V. Alfieri, *Community Education and Access to Justice in a Time of Scarcity: Notes from the West Grove Trolley Garage Case*, 2013 WIS. L. REV. 121, 125–28 [hereinafter Alfieri, *West Grove Trolley Garage Case*] (discussing the Historic Black Church Program and its involvement in the West Grove); Anthony V. Alfieri, *Educating Lawyers for*

leaked, municipal environmental report and a series of subsequent environmental studies that long-term exposure to Old Smokey's airborne carcinogens and toxic-waste dump sites had caused extensive soil and possibly groundwater contamination of homeowner properties and public parks in Coconut Grove and across the City of Miami and Miami-Dade County.¹¹ Founded in 2008 through a partnership with the Coconut Grove Ministerial Alliance, a consortium of West Grove black churches and housed at the law school's Center for Ethics and Public Service, the Program helps engineer antipoverty and civil rights campaigns through legal (direct service, impact litigation, and law reform) and political (civic engagement, coalition building, government lobbying, media networking, public education, and grassroots protest) interventions in impoverished inner cities.¹² The mission of the Program is to train law students to facilitate local legal-political interventions by providing rights education, conducting interdisciplinary research, and fostering economic justice-based urban policy initiatives in collaboration with struggling communities.¹³ In the West Grove, recent Program supported legal-political campaigns have addressed public education,¹⁴ civil rights law,¹⁵ and public health.¹⁶ The hope is that such interventions will disrupt and transform the disempowering roles, relationships, and institutions of the inner city and, thereby, enable economically subordinated and politically disenfranchised individuals and groups to gain enlarged access to economic opportunity and to obtain expanded forums for political participation.¹⁷

Community, 2012 WIS. L. REV. 115 (discussing the "teaching or pedagogy of community and public citizenship in legal education and professional training" as influenced by the author's work in impoverished Miami neighborhoods).

11. See Nick Madigan, *In the Shadow of 'Old Smokey,' a Toxic Legacy*, N.Y. TIMES, Sept. 22, 2013, http://www.nytimes.com/2013/09/23/us/old-smokey-is-long-gone-from-miami-but-its-toxic-legacy-lingers.html?_r=0, archived at <http://perma.cc/C27B-E2NM>; David Villano, *Old Incinerator and New Cancer in Coconut Grove*, MIAMI NEW TIMES, Apr. 10, 2014, <http://www.miaminewtimes.com/2014-04-10/news/old-smokey-incinerator-miami-cancer-cluster/>, archived at <http://perma.cc/4PAA-JJGQ>.

12. For a discussion of antipoverty and civil rights intervention strategies, see generally LANI GUINIER, *LIFT EVERY VOICE: TURNING A CIVIL RIGHTS SETBACK INTO A NEW VISION OF SOCIAL JUSTICE* 220–47 (1998); Anthony V. Alfieri, Essay, *(Un)Covering Identity in Civil Rights and Poverty Law*, 121 HARV. L. REV. 805 (2008).

13. See Alfieri, *West Grove Trolley Garage Case*, *supra* note 10, at 125.

14. Anthony V. Alfieri, *Fidelity to Community: A Defense of Community Lawyering*, 90 TEXAS L. REV. 635, 635–37 (2012) (book review).

15. Anthony V. Alfieri & Angela Onwuachi-Willig, *Next-Generation Civil Rights Lawyers: Race and Representation in the Age of Identity Performance*, 122 YALE L.J. 1484, 1555–56 (2013) (book review).

16. Zachary Lipshultz, Anthony Alfieri & Steven Lipshultz, *Miami's West Grove: 'Old Smokey' Incinerator Remains Health Hazard*, MIAMI HERALD, July 19, 2013; Staletovich, *Ash Dumped at Coconut Grove Park*, *supra* note 7.

17. Anthony V. Alfieri, *Integrating into a Burning House: Race- and Identity-Conscious Visions in Brown's Inner City*, 84 S. CAL. L. REV. 541, 601–03 (2011) (book review); Alfieri & Onwuachi-Willig, *supra* note 15, at 1555–57.

Initially launched as a means to devise a West Grove-specific action agenda for law school- and university-sponsored rights education workshops, capacity-building seminars, and self-help courses,¹⁸ and grounded in the social movement traditions of community organization and legal mobilization,¹⁹ the Program gradually evolved from lawyer-led outreach clinics into joint lawyer–community partnerships encompassing neighborhood field investigations, university research alliances, and multidisciplinary policy practicums with West Grove residents, faith-based groups, and nonprofit entities, in cooperation with like-minded law firms, legal services organizations, foundations, and government officials. Currently, each of the Program’s main projects—civil rights and poverty law, documentary film production, environmental justice, public health, and social enterprise—seeks to enhance economic opportunity and to increase political participation within the West Grove, the City of Miami, and Miami-Dade County. For each project and its matching social movement, “the legal piece is only one tactic of organizing. It is not the goal.”²⁰

In the case of Old Smokey, the goal of the campaign currently underway is to integrate South Florida civil rights, environmental, and public-health stakeholders into a unified legal–political reform coalition. To that end, the Program’s Environmental Justice Project is aiding a citizen-led steering committee to organize the cleanup of city- and county-wide public parks by enlisting residents adversely affected by contaminated soil or groundwater; recruiting a local pro bono team of law firms and national environmental advocacy organizations to advise on legal strategy; retaining foundation-backed environmental science and health experts independently to verify testing and remediation procedures; assembling a campus–community environmental law and science summer consortium to train undergraduate and graduate students; and reaching out to consult with local, state, and federal governmental officials responsible for environmental protection in the region.²¹ This sweeping campaign draws continuing strength from the fact that during the forty-five years of Old Smokey’s noxious operation and the forty-five years of its lingering toxic aftermath, past and present West Grove residents reported troubling rates of respiratory illness and cancer incidence.²²

Yet, despite decades of community distress and anecdotal evidence of incinerator-related illness and mortality, there is no record of a West Grove resident ever taking action to sue the City of Miami or Miami-Dade County

18. Alfieri, *supra* note 9, at 927.

19. Anthony V. Alfieri, *Faith in Community: Representing “Colored Town,”* 95 CALIF. L. REV. 1829, 1832–33 (2007).

20. GUINIER, *supra* note 12, at 226.

21. Anthony V. Alfieri, *Paternalistic Interventions in Civil Rights and Poverty Law: A Case Study of Environmental Justice*, 112 MICH. L. REV. 1157, 1169–70 (2014) (book review).

22. Madigan, *supra* note 11; Villano, *supra* note 11.

for personal injury, property damage, or injunctive relief associated with the wounds caused by Old Smokey. Even now, in the three-year wake of continuing revelations of private-property and public-park contamination, no West Grove resident has stepped forward to sue the City of Miami or Miami-Dade County to enforce Florida's "right to know" laws; to ensure comprehensive testing and remediation of contaminated property and park sites; or to establish a health registry and medical-monitoring system to document past, present, and future disease clusters.

This Review investigates the historical absence of civil rights and environmental-justice-incited legal and political mobilization around Old Smokey in light of Professor Lea VanderVelde's important new book *Redemption Songs: Suing for Freedom Before Dred Scott*. For advocates educated in multidisciplinary curricular models and trained in community-centered legal-political methods, VanderVelde's antebellum history of freedom suits offers long forgotten exemplars of individual and collective resistance and surprisingly instructive contemporary lessons in how to "journey" with a community—that is, how to engage the diverse members of a community in "really getting a sense of who they are" and how "to understand their own power."²³ The resistance stories retain meaning today, VanderVelde reminds us, because the constitutional abolition of slavery in 1865 under the Thirteenth Amendment "has not completely curtailed social and economic subordination of some working people who struggle for survival."²⁴

The purpose of this Review is to draw out the lessons of antebellum freedom suits and, by comparison, modern civil rights and environmental-justice suits. In so doing, this Review seeks to learn how to tell better stories of community power and resistance in Miami and elsewhere. For historians and advocates alike, better stories are not only more accurate descriptively but also more potent emotionally or expressively and more effective instrumentally or prescriptively.²⁵ To draw out the historical comparison between freedom and civil rights or environmental-justice suits and to hone better legal-political stories of resistance, the Review revisits the principal set of questions animating VanderVelde's nineteenth-century investigation. However basic these questions may appear at first glance, they warrant continuing reassessment and reconsideration by lay and legal advocates, law school clinical faculty, law students, and university scholars.

Consider, for example, the threshold question—how do subordinated communities of color learn of their legal rights? Further, how do they advance their emancipatory, civil, or environmental-justice rights without

23. GUINIER, *supra* note 12, at 221 (internal quotation marks omitted).

24. VANDERVELDE, *supra* note 3, at 3.

25. On emotion and passion in lawyering, see generally Kathryn Abrams & Hila Keren, *Who's Afraid of Law and the Emotions?*, 94 MINN. L. REV. 1997 (2010).

equal access to courts or effective representation? Who does and who should instruct such communities in their legal rights? Who, in St. Louis, Miami, or other inner-city communities across the nation, leads the way? Why do some individuals, families, or groups delay and wait to file suit? What are the end results of civil rights and environmental-justice lawsuits spearheaded by subordinated groups and communities, and what “factors” influence their in-court and out-of-court outcomes? Although beyond the cabined scope of this Review, these fundamental questions of civil rights, environmental justice, and poverty law frame its broad contours and invigorate wider research on law and social movements.

The Review proceeds in three parts. Part I parses VanderVelde’s central notions of subordination, voice, and redemption and illustrates their resonant force in the recently compiled oral histories of Old Smokey survivors. Part II examines VanderVelde’s interpretation of St. Louis freedom suits and the Missouri legal rule of freedom by residence. Part III recasts VanderVelde’s interpretive stance on antebellum freedom suits against the backdrop of Old Smokey to consider legal–political rights campaigns and community resistance strategies in the context of civil rights and environmental-justice claims.

I. Slavery and Segregation Stories: Accommodation, Resistance, and Redemption

Who would think that black folks would speak up for themselves?²⁶

—Dr. Joyce Price

In *Redemption Songs*, VanderVelde, a distinguished legal historian, builds on her much praised biography of *Mrs. Dred Scott*²⁷ and the contemporary work of historians in the field of slavery²⁸ to study the nineteenth-century practices of antebellum freedom suits in Missouri and in

26. Interview by Ariel Mitchell with Dr. Joyce Price, in Miami, Fla. 6 (Jan. 10, 2014) (transcript on file with author).

27. LEA VANDERVELDE, *MRS. DRED SCOTT: A LIFE ON SLAVERY’S FRONTIER* (2009). For reviews of *Mrs. Dred Scott*, see generally Kristin Anderson, *Mrs. Dred Scott: A Life on Slavery’s Frontier*, 72 ANNALS IOWA 2, 175 (2013) (book review); Lolita Buckner-Inniss et al., Book Review, 24 CAN. J. WOMEN & L. 458 (2012); Sally Hadden, Book Review, 114 AM. HIST. REV. 1451 (2009).

28. VANDERVELDE, *supra* note 3, at 10 & n.35 (citing HELEN TUNNICLIFFE CATTERALL, *JUDICIAL CASES CONCERNING AMERICAN SLAVERY AND THE NEGRO* (1968); JUDITH KELLEHER SCHAFFER, *BECOMING FREE, REMAINING FREE* (2003); Jason A. Gillmer, *Suing for Freedom: Interracial Sex, Slave Law, and Racial Identity in the Post-Revolutionary and Antebellum South*, 82 N.C. L. REV. 535 (2004)).

the western territories.²⁹ The genesis of this study, VanderVelde explains, emerged out of her research on the life of Harriet Scott and Scott's attendant travel to St. Louis, Missouri, where she lived before the commencement of the protracted and ultimately failed lawsuit in *Dred Scott v. Sandford*.³⁰ Well-versed in the litigation history of the *Dred Scott* case,³¹ VanderVelde carefully traced Missouri Supreme Court decisions to uncover the lower court case records of a small cluster of freedom suits filed by enslaved persons in St. Louis municipal courts. Initially, in searching the case records of slaves prosecuting suits against their masters, VanderVelde acknowledges that she "had no idea of the extent to which slaves in the western territories actually resorted to the courts in seeking freedom."³² Fortuitously, with the archival help of Missouri courthouse librarians, she soon discovered approximately 300 cases spanning 239 litigants across 38 family groups and extending over more than three decades, lawsuits memorializing the defiant voices of enslaved men and women seeking freedom in the courts of St. Louis.³³

The startling discovery of archival case materials, VanderVelde confesses, "upended" her doctrinal preconceptions "about slaves, legal status, race, and the courts."³⁴ To move beyond those preconceptions and to break new ground in the study of slavery, legal status, and race in nineteenth-century American courts, VanderVelde carves out several lines of inquiry in *Redemption Songs* useful for historians of race and advocates for the legal-political rights of impoverished racial communities. Closely interwoven, the inquiries seek to ascertain how enslaved men and women learned that their residence in free territories conferred the legal right to sue for freedom and, further, how they advanced that emancipatory right in the St. Louis courts. To resolve these questions, VanderVelde parses the extraordinary collection of freedom-suit petitions filed by slaves in St. Louis between 1814 and 1860.³⁵ These freedom suits, according to

29. VanderVelde mentions that the substantial "numbers of enslaved persons traversing through and residing in free territory indicates rather strongly that the antebellum frontier, even north and west of the Ohio River, was not as free from slavery as the law decreed." *Id.* at 204. She also comments that Missouri's extensive border with Illinois gave geographic rise to "most of the St. Louis freedom suits." *Id.* at 12. St. Louis itself, she adds, served as the marketplace for the west in the exchange and transport of slaves and as "a manumission destination . . . because it had an existing free black community." *Id.* at 16.

30. *Id.* at ix.

31. VanderVelde argues that the U.S. Supreme Court in *Dred Scott* not only reversed the Missouri rule of freedom by residence but also undermined freedom suits by declaring that African Americans "had no rights at all." *Id.* at 208. Although never repealed, the Missouri statute was "repurposed" to correct "mistaken status" and to enforce the promise of manumission inscribed in the last will and testament of a master. *Id.* at 210.

32. *Id.* at ix.

33. *Id.* at 194. Of these, VanderVelde selected twelve stories for more detailed accounts. *Id.*

34. *Id.* at x.

35. *Id.* at xi.

VanderVelde, preserve “the voices of slaves who had turned to the courts for justice,” and, moreover, “provide insight into the heroism, hope, determination, and struggle of slaves who sought liberty in a time when it was not guaranteed.”³⁶ In this way, freedom suits tell stories of nineteenth-century caste, class, and racial status, “heartbreaking stories of family members desperate to purchase their brothers, wives, and daughters.”³⁷ Equally important, the freedom suits tell stories of nineteenth-century judges, lawyers, and legal rights consciousness in the contexts of racial advocacy and adjudication.³⁸ In recounting these stories, VanderVelde hews closely to the axioms of liberal legalism, trusting enthusiastically in rights discourse, rule formalism, and the autonomy of law.

In the same way, civil rights and environmental-justice suits tell stories of twentieth and twenty-first century caste, class, and racial status, affecting stories of chronic illness and widespread contamination bound up in the work of judges and lawyers and informed by an expanding legal consciousness of common law, statutory, and constitutional rights. Here in Miami’s West Grove and in similarly situated low-income communities of color across America’s inner cities and rural townships, rights consciousness is roused by local concerns about public health and safety. By discrete turns, freedom suits, civil rights suits, and environmental-justice suits tell stories of individual, group, and community rights under conditions of cultural, political, and socioeconomic subordination. Typically, the stories are about powerless people “who inhabit the *bottom* of political, social, and economic hierarchies” constructed and reinforced by age, class, disability, ethnicity, gender, race, and geography.³⁹ Viewed from the bottom, these same stories of freedom, civil rights, and environmental justice are also about individual and community power expressed through multifaceted forms of legal–political resistance.

Like other modern historians of the antebellum period,⁴⁰ VanderVelde strives to hear and to capture the “muffled voices of a silenced population.”⁴¹ From the outset, she seeks out “the authenticity of subordinates’ voices.”⁴² In nineteenth-century freedom suits, she discovers

36. *Id.*

37. *Id.* at xii.

38. *See id.* at 6, 8–9 (describing the role of lawyers and judges during the freedom suits).

39. Anthony V. Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747, 1748 n.3 (1994) (book review).

40. For example, see ARIELA J. GROSS, *DOUBLE CHARACTER: SLAVERY AND MASTERY IN THE ANTEBELLUM SOUTHERN COURTROOM* (2006); MARK TUSHNET, *THE AMERICAN LAW OF SLAVERY 1810–1860: CONSIDERATIONS OF HUMANITY AND INTEREST* (1981); MARK S. WEINER, *BLACK TRIALS: CITIZENSHIP FROM THE BEGINNING OF SLAVERY TO THE END OF CASTE* (2004); Eric Foner, Hamsworth Professor of Am. History, *Slavery and Freedom in Nineteenth Century America* (May 17, 1994), in ERIC FONER, *SLAVERY AND FREEDOM IN NINETEENTH-CENTURY AMERICA* (1994).

41. VANDERVELDE, *supra* note 3, at 1.

42. *Id.* at 2.

“a rich context of slave life, patterns of oppression and of survival, as revealed by the slaves themselves in seeking their own objectives.”⁴³ The stories enable her to document in noteworthy detail “the lives of subordinated people and their adaptive methods” and to “illustrate how society’s least well-off survive and how and why they approach courts in circumstances of widespread oppression.”⁴⁴ Vital to this endeavor are the notions of accommodation, resistance, and redemption. VanderVelde defines accommodation in terms of the human survival instinct to adapt to and endure conditions of cruelty and privation. Conversely, she denotes resistance in terms of the competing human instinct to defy or oppose such conditions for self- or other-regarding reasons. On this valence, personal redemption occurs when an act of resistance wins or vindicates an individual’s freedom or the freedom of others. Turn first to the notion of redemption stories.

A. *Redemption Stories*

VanderVelde’s notion of redemption stories informs her understanding of the St. Louis freedom suits and the legal underpinnings supporting the Missouri rule of freedom by residence. In a freedom suit, VanderVelde explains, “the slave defies his or her master.”⁴⁵ Defiance in the form of a redemption song, she notes, “speaks truth to power” albeit “not full truth,” for “the slave is not empowered to tell the whole truth—but enough of the truth to be upsetting to the master, to make a sound discordant with the legitimacy of her master’s dominion, and enough of the truth to meet the elements legally necessary to redemption.”⁴⁶ On this view, each freedom suit offers a partial truth through the vehicle of a story “told by a slave while enslaved, a person who is normally expected to be neither seen nor heard.”⁴⁷

For VanderVelde, each suit and each slave’s story carries a structure and a discursive pattern resembling a song marked by “a beginning, the petition; a middle, the lawsuit; and an end, the judgment.”⁴⁸ Pronounced in the public sphere of “courts, law and legal order,” the judgment describes “multiple changing contexts: a life, other lives, a social relationship, an economic relationship, a social history, and the history of multiple communities.”⁴⁹ At the same time, experienced in private and “often out of hearing,” the judgment also causes “dramatic and transformative” changes in the slave petitioner’s discourse, voice, and status consonant with the

43. *Id.*

44. *Id.* at 2–3.

45. *Id.* at 1.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

instrumental objective of redeeming the legal right to freedom⁵⁰ or, in the current context of the West Grove, the goal of redeeming the right to live in a healthy and safe environment.

To VanderVelde, even the partial truth and the muffled voice of a freedom-suit petition offers “about as authentic as any historical record that slaves could leave.”⁵¹ The petition, typically filed by a slave appearing as a pauper and signed at the bottom with an “X,” presented a claim of entitlement to a juridical official (e.g., a justice of the peace or a clerk of court), named a slave owner as the defendant, and at times prompted the court assignment of legal counsel.⁵² Often, VanderVelde points out, “the petition reads as if the clerk simply took down the petitioner’s account of what had happened to him or her.”⁵³ In this way, the roughly 300 discovered case files and the 239 disclosed litigants⁵⁴ reveal the “variability” of the enslaved lives at stake and the “contested discourse” of lawsuits at the trial court level.⁵⁵

Read closely, VanderVelde remarks, the diverse lives and voices of the enslaved captured in the petitions convey a “sense of the personal, psychological, emotional, and social context of the litigants’ motives” and the “raw authenticity” of their original songs.⁵⁶ Despite the presence of corroborating witness affidavits and depositions, she cautions, the text of freedom suits frequently appears “scripted” though “larger patterns and departures”—recurrent “riffs of fortuity, circumstance, and personality that characterize individual lives”—confirm “some truth in the legal records.”⁵⁷ This basic “truth” echoes in the asserted “grievances that impelled slaves to file suit for freedom” and the efforts by slaves “to negotiate some better situation or buy their freedom.”⁵⁸

For many slaves, according to VanderVelde, the shifting elements of time and place mediated their grievances and negotiations, triggering the filing of petitions sometimes upon their initial arrival in St. Louis and sometimes later upon their sale to or settlement in a slave-owning household.⁵⁹ VanderVelde’s insight here is crucial. As in antebellum St. Louis, in contemporary Miami, and in impoverished communities of

50. *Id.*

51. *Id.* at 2.

52. *Id.* The Missouri statute stated that “slaves were able to sue their masters, or anyone else who held them against their will, if they had reasonable grounds to believe they were free.” *Id.* at 21.

53. *Id.* at 2.

54. *Id.* at 194. VanderVelde reports that “[o]ne hundred and fifty-three litigants were women or girls, while 126 litigants were men or boys.” *Id.* at 5.

55. *Id.* at 6–7.

56. *Id.* at 3.

57. *Id.* at 4.

58. *Id.*

59. *Id.*

color elsewhere, the elements of time and place serve as key factors in mediating local legal–political grievances and negotiations and in triggering legal–political group and neighborhood organization and mobilization. Neither time nor place, however, appears to be singularly determinative in mediating grievances and negotiations or triggering organization and mobilization.

In Miami, for example, the Historic Black Church Program environmental research team’s public investigation and disclosure of a whistleblower-leaked municipal report of contamination at the original site of Old Smokey and the team’s vetting of subsequent government reports corroborating findings of contamination affecting adjacent private properties and nearby public parks comes more than forty years after the court-ordered closing of the facility and the subsequent razing of the incinerator smokestack.⁶⁰ Coupled with the passage of two generations, those much delayed environmental research findings have mitigated but in no way extinguished the embittered sense of community outrage directed toward Old Smokey and, by extension, the City of Miami. In fact, the sizeable architectural preservation of the site, including the central building and weigh station, has proven to be a rallying point for the West Grove community and a place for media photo opportunities and press briefings.

Additionally, in her survey of the St. Louis freedom suits, VanderVelde emphasizes the importance of a “triggering action,” mentioning that slave litigants typically encountered a causal or intervening event to “trigger” the filing of a petition.⁶¹ By trigger, VanderVelde means something beyond the ordinary abuse and violence of enslavement, something that rendered “the risk of escalation by angering one’s master” tolerable.⁶² Given the risks of retaliation, jail, and auction to strangers during the pendency of freedom-suit litigation, this trigger very often involved the protection of children from sale,⁶³ the preservation of extended family,⁶⁴ or the material threat to survival.⁶⁵ VanderVelde comments that the triggering action implied no necessary correlation to the outcome or success of the freedom suit. To assess litigation outcomes, she cites several common factors, including the persistence of the litigant, the presence and quality of lawyer representation, and the degree of slave-owner resistance.⁶⁶ Pointedly, she notes that these factors fail to explain the dismissal of a

60. Madigan, *supra* note 11; Staletovich, *Ash Dumped at Coconut Grove Park*, *supra* note 7.

61. VANDERVELDE, *supra* note 3, at 4.

62. *Id.*

63. *Id.* at 5. VanderVelde points out that enslaved “[w]omen filed more lawsuits than men, and many of the women were mothers.” *Id.*

64. VanderVelde estimates that of the 239 litigants identified in records, “160 persons . . . were related to the 38 identifiable families or housemate groups.” *Id.*

65. *Id.* at 4.

66. *Id.* at 5.

significant number of suits on the grounds of litigant abandonment, lawyer refusal to prosecute, and party settlement or accommodation.⁶⁷

VanderVelde's insight here is critical as well. As in antebellum St. Louis, in present-day Miami, and in other poor communities, the concept of a "triggering action"—defined as a causal or intervening event rising out of a community from the inside or thrust upon a community from the outside—is indispensable to understanding legal-political mobilization in civil rights and environmental-justice disputes. In the context of such interrelated campaigns, a triggering action may mean something beyond the ordinary, long-tolerated discriminatory experience of disparate treatment and environmental degradation. It may mean something more, such as a causal or intervening event that endangers the health and safety of children, imperils the preservation of intergenerational family and neighborhood enclaves, or jeopardizes the economic survival and physical integrity of a whole community. As VanderVelde suggests, the internal or external triggering action implies no necessary correlation to the outcome or success of the legal-political campaign. To be sure, litigation outcomes hinge on multiple factors, including the resoluteness of the litigant, the effectiveness of lawyer representation, and the staunchness of the opposition. Although central to VanderVelde's study, these factors fail to explain fully the process through which poor communities come to adopt accommodation and survival strategies in the face of state-sanctioned racial segregation and city-sanctioned environmental degradation. Likewise, they fail fully to explain or to justify the legal-political grounds for outside intervention by lay activists and legal advocates in the affairs of an indigent community.

The concepts of accommodation and survival stand common to the antebellum freedom suits of slaves in St. Louis and to the Old Smokey stories of West Grove residents in Miami. For St. Louis freedom suit petitioners, accommodation occurred outside the stock structure and typical discursive pattern of public lawsuits in the shadows of private-party negotiation and settlement. Distorted by unequal bargaining power, the abiding threat of violence, and the weight of material family necessity, these private, master-slave shadow negotiations doubtless hindered the ability and willingness of freedom-suit petitioners to press their cases to trial and later to final judgment.

For West Grove residents, accommodation also occurred outside the standard structure and conventional discursive pattern of public and private lawsuits. In the extended Jim Crow era of Old Smokey, neither public institutional reform litigation nor private-party litigation or negotiation were meaningfully available to West Grove residents. Burdened by inadequate political power, entrenched segregation, and everyday economic necessity,

67. *Id.*

private negotiations with white absentee landlords offered no recourse to residents, and public negotiations with municipal and county government officials proved futile. Lacking sufficient private-power and public-interest-group standing to halt the operation of Old Smokey, the appropriate knowledge to press for the remediation of its toxic effects, and the economic and familial resources to flee the close-knit neighborhood boundaries of the West Grove, hundreds of residents adapted, surviving decades of ash dumps, burning embers, foul smoke, and ruining soot.⁶⁸ The next subpart explores the concepts of accommodation and survival through the Old Smokey stories of West Grove residents.

B. *Old Smokey Stories*

This subpart presents selected Old Smokey stories collected from the recently assembled oral histories of past and present West Grove residents. Unlike the freedom-suit petitions recently discovered within St. Louis court archives, the oral histories of long-standing West Grove residents document a segregated culture and society mostly unmediated by the statutory framework of federal or state laws and the interpretive inscriptions and interventions of court clerks, lawyers, and judges.⁶⁹ Compiled by the Historic Black Church Program's Oral History and Documentary Film Project at the Center for Ethics and Public Service, the oral histories form part of an ongoing series chronicling the cultural and social history of race in Miami, the ongoing struggle for civil rights and equitable public education, and the emerging South Florida politics of environmental justice.⁷⁰ The individual subjects of the Old Smokey oral histories include six current and former residents of the West Grove: Delores Patterson Baine, Theodore W. Johnson, Antoniette Price, Francina Hopkins, Jimmie Ingraham, and Dr. Joyce Price.⁷¹ The content of their testimony, especially

68. See Villano, *supra* note 11 (describing how residents of the West Grove endured years of exposure to toxic emissions without any government remedial action).

69. Consider, by contrast, the freedom suit petition of an African-American woman and slave known by the name Winny. Her petition alleges:

That since she has been living in This Territory she has had the following children, to wit: Jerry, Daniel, Jenny, Nancy, Lydia, Sarah, Hannah, Lewis and Malinda. And your Petitioner is informed that by reason of having been held in Indiana, she and her children born since are free. And your Petitioner further showed that she and her children Hannah, Lewis, and Malinda are now claimed as slaves by Phebe Prewitt, that Jerry is claimed as a slave by the representatives of Thomas Whitesides deceased, Daniel by John Whitesides, Jenny by Robert Musick, Nancy by Isaac Voteau, Lydia by John Butler and Sarah by Michael Hatton.

VANDERVELDE, *supra* note 3, at 61.

70. *Oral History Film Project*, U. MIAMI SCH. L., <http://www.law.miami.edu/center-for-ethics-and-public-service/oral-history-film-project.php?op=2>, archived at <http://perma.cc/F7Q9-DFFT>.

71. The transcripts of the six Old Smokey oral histories collected here have been abridged and edited sparingly mainly to reduce redundancy.

the themes of accommodation and survival, inequality, legal rights, political disenfranchisement, restorative justice, and segregation, bear serious consequences for advocates working to marshal legal-political campaigns of resistance from both inside and outside poor communities. The same testimony helps illuminate how such isolated communities, particularly communities of color burdened by the cultural, political, and socioeconomic legacy of Jim Crow segregation, learn of their legal rights. Indeed, the testimony works to elucidate not only how post-Jim Crow communities advance their civil rights and environmental rights without equal access to courts and effective representation but also who instructs such communities in their legal rights and leads the way. It also clarifies why some individuals, families, and groups delay and wait to file suit. Turn first to the oral history of Delores Patterson Baine.

1. Delores Patterson Baine.—

I don't know of anyone that got sick from Old Smokey. I do know I have a sister that died from pancreatic cancer, and I have a sister that died from lung cancer. So am I thinking that that might have had something to do with it? You bet your life I am.⁷²

—Delores Patterson Baine

The oral history of Delores Patterson Baine describes the incinerator ash, smoke, and soot of Old Smokey and its fetid garbage dump. Her description points to the inequities of state-enforced segregated schools, the duplicities of public officials, and the indeterminate health risks of long-term exposure to airborne and soil contaminants. Most striking, it adverts to the intractability of race-motivated inequality.

What comes to mind is seeing the garbage truck come down Washington Avenue from Carver Park, and going around what is now called the Barnyard, they had a weighing station [now a nonprofit-sponsored after-school program]. There was a platform that the truck would drive up on, and they would weigh the truck, and then it would go to the back of the Barnyard, go up the hill, dump their garbage. And when the incinerator was fired up it would dump all this ashes into the sky and would end up everywhere. We were often bathed in ash.

Our football players practiced out there, our PE classes practiced out there. After school we played out there. It was just a part of our lives. Often our teachers wouldn't even want us to be out there in it. It was a way of life. What were we going to do? We had to go to

72. Interview by Ariel Mitchell with Delores Patterson Baine, in Miami, Fla. 9–10 (Jan. 10, 2014) (transcript on file with author).

school. And that was the school that was earmarked for us, and so that's where we went. We made the best of it. You could not escape the smell. We all complained about it.

There was a mango tree that was on the right of our house. We loved the mangos off of there. But my dad told us don't eat it if we didn't have a lot of rain because the rain washed the soot and the film off of the mangoes. I can remember washing mangoes in the washtubs that mom and my sisters used to wash our clothes in.

I think they need to stop making too little of this and think about how many lives have been impacted from things that happened way back when. There's no telling what kind of effect it had on us as children and our children's children. And the fact that they knew that this was a problem and didn't say anything until it came to light. It is sickening to know that this is the case. Do your job. Do what you're supposed—what you need to do to make sure that this isn't revisited years and years later. It's just the same old, same old over again.

When I became a teenager and all this stuff was coming, the soot and everything that came out of there, the smell and all that, yeah, we wondered. We talked about it. But we had a community and we had our school and we had each other, so that wasn't something that we focused on as much as now. Now when I think about it, it angers me that this was done, and how many people that was affected by this stuff. We don't—we'll never know. They put Old Smokey in there in a time when nobody was aware of what was happening and what the causes and effects were going to be farther down the line. So they don't care enough. The same thing when they put Old Smokey there and all the black faces were surrounding Old Smokey, they didn't care enough for them, so it's inequality. Same as it was back when.⁷³

Turn next to the recollections of Theodore W. Johnson.

73. *Id.* at 5–8, 12, 15, 17–18.

2. *Theodore W. Johnson.*—

Looking back on it is easy as an adult now and a more educated person, to say how in the heck could we have lived in a situation like that that was totally harmful, potentially causing respiratory or cancer diseases? How could we put up with all that?⁷⁴

—Theodore W. Johnson

Like the account of Delores Patterson Baine, the oral history of Theodore W. Johnson describes the burning trash, falling ash and soot, and belching smoke of Old Smokey. His description notes the inability of segregated communities to control their physical environment in the struggle against poverty and the tendency of such communities to misplace their trust in government without articulating strong or sustained dissent. It also mixes narratives of accommodation and survival with painful recollections of asthma and cancer-related family deaths, adaptive narratives which seem to recede only when confronted by alternate readings of medical causation and by increasing demands for government cleanup, compensation, and apology.

I do recall the days that they were burning the trash because the smell was prominent and soot would fall down. I kinda remember black stuff being on clothes if they were hanging outside. If the incinerator was being fired up at that time, soot and ash would fall down. It was there, it was a fact of life, and it was accepted. There are people I know that had asthma. I guess there's some things, if you get accustomed to it, you get accustomed to it and you move on. I guess there was too much trusting as a community during that time. Because of the way things were. We were in segregated communities, predominantly black people, and we got accustomed to it. There was an acceptance of it because we felt that, okay, it has to be somewhere. It's in our area. I mean, I'm born and raised in this area, I have no control over it. But you feel that if it was really bad for you it wouldn't be there. It wouldn't—smoke and ashes and soot—wouldn't be falling down on a whole group of people because it would be harmful and why would someone do something like that?

I never really heard that much dissension or overly concern about it. I don't remember any—when I went to church, there was a lot of concern about desegregation and the plight of black people as far as jobs and poverty. But there is seldom that I hear anything about Old Smokey as really something that people were up in arms or fired up about. How could we put up with all that? But the fact of life is that

74. Interview by Ariel Mitchell with Theodore W. Johnson, in Miami, Fla. 9–10 (Jan. 10, 2014) (transcript on file with author).

we did. And I think it made us, not better, but it made us, as we grow up living in a situation like that, to question a lot more things that we took for granted. So yes, the trucks came. Old Smokey belched down smoke and ashes on us. Somehow we survived as a community. Hopefully it made us better as people. Hopefully it will cast light on the administrations and governments around here to realize this was something wrong that shouldn't have been done. And to address it and hopefully not hide from it, do something about it, clean it up.

My mom died from pancreatic cancer. There's been other cancers in my family. If it can be tracked down that Old Smokey was the cause of medical conditions and that there are families who lost loved ones as a result of that, and it can be directly traced to it, I think they should be remunerated for it. And definitely I think an apology should be forthcoming, and recognition that this is something that shouldn't have been done. I think they have to own to that.⁷⁵

Turn next to the memories of Antoniette Price.

3. *Antoniette Price*.—

It was nice to look at it. It used to lean slightly. We had no idea it was a problem, a health problem.⁷⁶

—Antoniette Price

Like the chronicles of Delores Patterson Baine and Theodore W. Johnson, the oral history of Antoniette Price describes the burning smoke and “stink” of Old Smokey. Her description refers to lasting, racially motivated discrimination in the allocation of public school and park resources to the West Grove. It also mentions the absence of past, neighborhood-based knowledge of a possible causal connection between Old Smokey and harm to West Grove families and the inconsequence of a public, government-sponsored apology for such harm.

There was certain days you didn't go out there when Old Smokey was smoking. We used to, after we got out of school, it was like a hill, we used to run up on the hill. We would walk up there with homemade skates and get on them and skate back down. The boys would go up there and roll back down. That was our fun. We never thought anything of it. But with certain days it used to stink.

75. *Id.* at 4–12.

76. Interview by Ariel Mitchell with Antoniette Price, in Miami, Fla. 16 (Jan. 10, 2014) (transcript on file with author).

Sometimes the teacher would have the boys close the windows. Monday morning usually was the heaviest of burning, that was the bad day.

We had no idea it was a problem, a health problem. We were close in this neighborhood. I heard they went up there to Blanche Park and Merrie Christmas Park. Well, what about us? We were right under Old Smokey. Why are they going that far and this late in the game to look for arsenic? Did they dig up down here?

What good would an apology do? That's not going to help us. They're dead now. If it was a contributing factor to our family members' health, if you want to reimburse us to a certain percentage. But apologies are not going to help us because they're dead now. And if it caused or contributed to that, you know, an apology won't help that. Apology, what's that going to do? In my brother's case we just thought he, you know, was the weakest one. We just thought, hey, got a bad cold. Come to find out it was asthma. As far as contributing from Old Smokey, we had no idea.⁷⁷

Turn next to the reminiscences of Francina Hopkins.

4. *Francina Hopkins*.—

Where else was they gonna put it but in the black neighborhood?⁷⁸

—Francina Hopkins

Like the narratives of her West Grove neighbors, the oral history of Francina Hopkins describes the burning fire, blowing smoke, and rotting smell of Old Smokey. Her description mentions the widely shared unfamiliarity with environmental health risks and alludes to the local economics of segregated labor markets. It also links her own cancer-marred family history to a rising fear that West Grove children remain vulnerable to the risk of harmful environmental exposure for which only monetary compensation, rather than public apology, will suffice as a remedy.

My father worked at the Old Smokey. I know he used to ride on the garbage truck picking up garbage. One sister, she had asthma since she was a little girl. Real bad asthmatic, but she died of lung cancer. And my mom died of pancreatic cancer. My brother died of esophagus cancer. And Peg, she died of lung cancer.

When we were kids we didn't pay no attention. Cause we had our PE out there on the park. That's where we had all our festivities, football games and everything. We didn't know it was dangerous

77. *Id.* at 5, 7, 10, 14, 16–19, 22–24.

78. Interview by Ariel Mitchell with Francina Hopkins, in Miami, Fla. 9 (Jan. 10, 2014) (transcript on file with author).

breathing all that. We used to play up there, me and my other two sisters. We used to go up there with our skates. We had, like, a homemade skateboard we made with two-by-four and Union Aid skates we put on there and made our scooters. We would go up there late in the afternoon, all the way up the hill and come back down. And the dangerous part my other two sisters used to do which I thought was very dangerous, they held onto something and they used to swing over that fire while that fire was burning. It had to, you know, calm down some, but they used to do that, them two. When all that ash and stuff be blowing, it used to smell real bad, it smelled like old rotten food.

I feel like they still got the park open and they still utilizing it, so they not afraid that them kids that go out to that park every day, they're not afraid that they might get cancer? I think they should close it down until they resolve the problem. What, all these many years we been living around Old Smokey, now they coming up with this? I don't think they owe no apology. They should pay us off. All of my siblings, my mom, everybody dead from cancer.⁷⁹

Turn next to the remembrances of Jimmie Ingraham.

5. *Jimmie Ingraham.*—

Now could you imagine in a community where they be burning the garbage, could you imagine the smell? My, my, my, my, it was terrible. I think it was a miracle that we survived.⁸⁰

—Jimmie Ingraham

Like the recorded stories of other West Grove residents, the oral history of Jimmie Ingraham describes the smoke, ash, dust, noise, and smell of Old Smokey. His description evokes a community-wide struggle to survive garbage trucks, trash dumps, soiled clothes, fire-scorched homes, and tainted school classrooms and playgrounds. It attests to the pervasive unawareness of public-health risks in spite of everyday evidence of cancer and respiratory-related illness. It also confirms the racially disparate supply of municipal services (e.g., fire, water, and sewer) to the West Grove and the broader racial geography of class and political power in Miami, a geography enforced by police force and vigilante violence. Most vividly, it captures the ethnic and racial diversity of West Grove families, their enmeshed multigenerational culture, and their perceived lack of socioeconomic alternatives.

79. *Id.* at 1–2, 4–10.

80. Interview with Jimmie Ingraham, *supra* note 1, at 12–13.

Old Smokey, it was a big old, big tall thing, that we was kinda excited to see it because of the frightening smoke and the fire that's coming out. You would see all these garbage trucks going all day up there, dumping, dumping, dumping, dumping trash. And fire and smoke and ashes and dust, yeah, it was a mess. Your house was full of dust, ashes. It was terrible.

All our sports that we had to do was right there at Carver, on the field. We played basketball, football, tennis, ping-pong, track. You was running and you're inhaling that smoke. And you can't run down the court with your mouth closed, you gotta run with your mouth open. When we was in class the smoke was terrible. We would be sitting in class and all the windows was up. We had to close them or we had to go out to the cafeteria and lockup in there to try to make the day through. And then you would look out the window, and from the chimney, ashes and fire and all that stuff on the buildings. Like I said, in trying to learn, it was kinda hard on us. The smell was terrible, the smoke smell, it would get in your clothes. Some of us would have a little rag or something to put over our face.

Some of them had emphysema. It was just a mess. In fact, my wife, she was down there. She died from emphysema. I don't know if it's from the smoke or cigarettes. At that age, we didn't know all about all this contaminated stuff, cause we didn't have the knowledge of it. We were still compassionate about how we were living. We loved where we were, we loved the Grove. It was just nice, it's hard to explain.

The houses used to catch fire. They were wooden shacks. And you call the fire department, it was just like calling nobody because they wouldn't come 'til it was all over with. Some of the people had to go out with buckets of water, no water holes [i.e., fire hydrants], because they didn't have the outlet like there is now.⁸¹ They didn't care if we breathed it or whatever. Then, when it got over in the other section,⁸² that's when the ball started rolling, see. Some of their houses caught fire.

But the community itself really suffered back in the days. At that time people didn't know anything about suing or contamination. You had all these people from Georgia, Alabama, Mississippi, Bahamas, they didn't think about anything like that. People didn't talk about contamination. Some of 'em got sick. We were put through something that we had no control over because we were here

81. For background on the municipal history of water segregation in the West Grove, see generally Margaret Hickey, *Communities Face Their Slums . . . in Coconut Grove, Florida*, LADIES HOME J., Oct. 1950, at 23.

82. The term "other section" refers to white-majority neighborhoods on the eastern border of the City of Coral Gables. Matthew Fowler, *Building Social Capital Through Place-Based Lawmaking: Case Studies of Two Afro-Caribbean Communities in Miami—The West Grove and Little Haiti*, 45 U. MIAMI INTER-AM. L. REV. 425, 440 (2014).

to stay with our parents, and our parents had us here. A lot of us was born right here in this Grove. They didn't care what it was until it went to the other side of the track.

The city should do something, even if they have to tear up everything over there and clean it up. I think they should compensate those people for their illness for all those years. It's just amazing that a lot of us didn't really get sick and die. It was bad for the community and for us to be breathing stuff like that, but we had no alternative. We had to take it. But we had nobody to care. Noise, that thing would run early in the morning, late in the evening.

They talking about this dog park. Every time they talk about people's lives over here, and they over there across talking about the darn dogs. But when we started this one with Old Smokey you couldn't find no reports. You couldn't find Sarnoff,⁸³ you couldn't find none of them. What about these people down there for the old—70, 80 years down there getting all them fumes going inside their bodies? We weren't even allowed over there [in Coral Gables] after dark. I'm serious, you had to have a pass or a card. Anything pertaining to the black community, it seem as if it get whitewashed away. But soon as something happen across McDonald [Avenue]—McDonald's the dividing line—they jump to it. So just like this incident here with the park, it ain't nothing compared to what's down there on Washington [Avenue across the street from Old Smokey]. Now they go all the meeting down there, they wanna take pictures, they wanna have a meeting at Merrie Park,⁸⁴ this and that.

It's not right. Back in the day the black police couldn't arrest a white person. That was out of the question. That was seriously out of the question. You could come down there and beat up any black you wanted and call the police, you couldn't arrest 'em. It was terrible.⁸⁵

Last turn to the recollections of Dr. Joyce Price.

83. The name "Sarnoff" refers to City of Miami District 2 Commissioner Marc D. Sarnoff. *District 2, CITY MIAMI*, <http://www.miamigov.com/district2/>, archived at <http://perma.cc/9DG6-MG4Z>.

84. The name "Merrie Park" refers to Merrie Christmas Park, one of a number of Old Smokey contaminated-ash dump sites located in the affluent eastern section of Coconut Grove.

85. Interview with Jimmie Ingraham, *supra* note 1, at 2–10, 13–14, 16, 18–24.

6. *Dr. Joyce Price.*—

It makes me feel like really that nobody cared about the health status of the poor blacks in the area. It was just another thing that, you know, those people—those people, we don't care about them.⁸⁶

—Dr. Joyce Price

Like the account of Jimmie Ingraham and others, the oral history of Dr. Joyce Price describes the soot, smoke, and stench of Old Smokey and the suffering of local students trapped in segregated classrooms and consigned to sullied playing fields. Her description points to a lack of health and environmental education, economic and political power, and rights consciousness among West Grove residents. It also calls for remedial soil testing and medical monitoring, invoking the moral, spiritual, and legal obligations of city and county government to inform, protect, and compensate the citizens of the West Grove.

Old Smokey was very active at the time. Two times a week we could not go out on the field to play physical education because Old Smokey would be booming and the soot and the smoke and the stench would be coming from the smokestack which is right across the street, as neighbors to the Carver High School. It was a very active incinerator and sometimes we would even watch the trucks go up the hill and dump their contents, and the next thing we knew they were booming out the smoke. The smell was powerful, the stench was really loud and potent. There were times they would just close the windows because of the powerful smell of the burnings. The football team really suffered the most, especially in the afternoons when they had to go out there. I think every other day in Miami was a horrible day. We were bused from South Miami to Coconut Grove and our buses lined up on the side where Old Smokey is, and we had to stand out there and wait for the bus to come, and if they were still burning at that time it was horrible.

The incinerator was an in-grown thing in the community. We all knew it was there and we all hated it, and realized when it was being used, that it was something that we had to suffer through. I don't think anybody thought about rights—their rights at that time. They always put things in our area, where they wouldn't put them in other areas. There wasn't one in Coral Gables, there wasn't one even in South Miami, but it was in a concentrated black area. They thought it was land they figured they could use and nobody would object to.

86. Interview by Ariel Mitchell with Dr. Joyce Price, in Miami, Fla. 10 (Jan. 10, 2014) (transcript on file with author).

I think a remedy would be for them to complete the needed tests that are being asked of them to complete. And I think that there should be something gone back to see about the health status of those people that lived in the area. There are several people who have had several deaths, we don't know why. The cause has not been known. But I think they owe it to the community to go back and find out the content of the soils, and the health status of their families. There are several people that I thought died young with respiratory issues, with cancer, with heart disease, that could be a contributing factor. I'm very concerned about the children and lead poisoning.

People in Coral Gables are very powerful and they have had money to get a lawyer—get lawyers to fight their case. And they were more knowledgeable about the effects of it than the blacks in Coconut Grove. I think had the blacks been more knowledgeable and have the type help that we have now with the Center of Ethics [and Public Service], I think we would have had a good chance of stopping it many years ago. I think they owe more than an apology. Ethically and spiritually they need to come together and do something for that community because those people that have lived through that, they need to make sure that their health status is not compromised. That's my biggest problem, the health status of the people and the people that are still playing on those fields. I was an asthmatic. There are other people who had respiratory problems, asthma, and a high incidence of cancer and heart disease in that area. You've got to really look at it and follow-up clinically about how those things happened and how effective they've been to the people involved.

The city of Miami has a duty because they're supposed to protect the citizens. Morally they need to go out and comply, find out exactly what the status of the area is. Notify the people, and if need be, do some remuneration for those people that are involved. But they definitely need to come out and defend their actions one way or the other because they're supposed to be taking care of all the people of Miami and the surrounding area. Miami-Dade County needs to get involved in this also. The Barnyard is next door to Old Smokey, right down the street St. Alban's, [a nonprofit preschool] they're in close proximity. I think that this is an item that needed to come out for the community's sake. And I think that there should be something that the city owes to the community, the city administration, the commissioners, to come out and say what they plan to do about it. And to say that we don't have money to do a study is ludicrous. They need to come together and fund whatever project is necessary to let the people know what's really happening. They owe it to us as citizens of Miami-Dade County, Miami, for our

protection. We pay taxes, we live, we work, and we support the city. They owe it as a moral obligation to us.⁸⁷

The Old Smokey stories collected here from the recently assembled oral histories of current and former West Grove residents—Delores Patterson Baine, Theodore W. Johnson, Antoniette Price, Francina Hopkins, Jimmie Ingraham, and Dr. Joyce Price—illustrate the complexity of environmental accommodation and survival strategies during Jim Crow segregation and the civil rights era. Recounted in multiple, overlapping narratives, these strategies seem intertwined with individual, family, and group struggles against political disenfranchisement, socioeconomic subordination, and racial inequality and violence. At times the strategies, or the residual traces of those strategies, give current voice to legal rights and restorative justice claims. At other times, marked by a lack of full rights awareness and by a lack of meaningful access to counsel and courts, the strategies, or their trace effects, lend themselves more to the preservation of private relationships (e.g., family, church, school, or neighborhood associations).

To the extent that the West Grove and other poor communities of color never experienced a robust, civil rights era turn to public engagement in local interest-group politics and in federal and state court-managed legal remedies or, alternatively, to the extent that those same communities experienced a post-civil rights era retreat to private relationships due to the collapse of public and nonprofit urban infrastructure, concentrated inner-city poverty, and socio-cultural isolation, VanderVelde's originating question—who instructs such communities in their legal rights and leads the way—gains greater import for both advocates and lay activists. The answer to that question may explicate why some individuals, families, and groups adversely affected by Old Smokey continue to delay and wait to consider Old Smokey-specific civil rights and environmental lawsuits, and, likewise, what "factors" influence in-court and out-of-court outcomes of such lawsuits. To search out these questions, turn to a further exploration of VanderVelde's vision of redemption songs.

II. Redemption Songs

These voices sound, these songs of freedom. Redemption songs.⁸⁸

—Lea Vandervelde

87. *Id.* at 1–3, 5–9, 11–12, 14–16.

88. VANDERVELDE, *supra* note 3, at 22.

This Part examines VanderVelde's interpretation of the St. Louis freedom suits and the Missouri legal rule of freedom by residence. The first subpart considers her analysis of subordinate clients and communities. The second subpart addresses her assessment of freedom-suit cases and the decisions of the St. Louis courts.

A. Subordinate Clients and Communities

VanderVelde's account of subordinate clients and communities appraises the law and rights of the subordinated, as well as the role of lawyers for the subordinated. Consider first the law of the subordinated in the nineteenth-century legal-political context of Missouri.

1. Law of the Subordinated.—VanderVelde evaluates both the function and the “tensile strength” of the Missouri rule of law in protecting the rights of slaves in the early-to-middle nineteenth century.⁸⁹ Canvassing St. Louis court records, she reports that for three decades antedating the *Dred Scott* decision the Missouri legal rule of freedom by residence “held” in spite of retaliatory action and remedial (e.g., financial recoupment) litigation by slave masters.⁹⁰ During this period, she points out, the St. Louis freedom suits upended the “power relations” buttressing the law of slavery.⁹¹ To that extent, VanderVelde observes, the “contested discourse” of freedom suits destabilized and stressed the Missouri legal system.⁹² She adds, however, that the degree of instability and stress varied in accordance with the nature of the entitlement or redemptive claim. Freedom suits seeking to restore free blacks to their “rightful status” or “to uphold a dead master’s promise of freedom” scarcely destabilized the slavery system.⁹³ Of the 239 freedom-suit claims asserted in St. Louis courts, only 43 litigants asserted “rightful” or “mistaken” status claims in attempting to regain their freedom.⁹⁴ By contrast, suits that granted “free status and a new independent life to slaves without their master’s consent and even over their master’s objection” effectively transformed the Missouri system of slavery.⁹⁵ Significantly, transformational free-status claims comprised the largest group of petitioners, grounding their entitlement claim directly on residence, or derivatively on their mother’s residence, in free territory. In this group of cases, VanderVelde emphasizes, “the master never intended, consented, contracted, or

89. *Id.* at 194.

90. *Id.* at 6–7, 202.

91. *Id.* at 7.

92. *Id.*

93. *Id.* at 7–8.

94. *Id.*

95. *Id.*

voluntarily tried to manumit the petitioner.”⁹⁶ Instead, free-status petitioners “opposed their owner-master’s volition” and “petitioned the state to override their master’s wishes.”⁹⁷

To VanderVelde, the Missouri freedom-by-residence cases sharply tested the strength of the rule of law and challenged “contrary social norms and pressures” bolstering the legality and desirability of slavery.⁹⁸ Unlike rightful or mistaken status cases, emancipatory, free-status cases offered no claim that the petitioning slaves “had intentionally been taken into free territory with the purpose of effecting their manumission.”⁹⁹ Yet, St. Louis courts declared freedom for enslaved petitioners more than 100 times to the detriment of slave masters and the dominant, slave-upholding classes of Missouri and the western territories.¹⁰⁰ For VanderVelde, the free-status cases taken together prove “the strength and fragility of the rule of law to withstand political pressures and continue to protect the least well-off.”¹⁰¹

Consistent with VanderVelde’s nineteenth-century analysis, the fairly stable formalism of the rule of law and the relative independence of the judiciary in Missouri may partially explain how subordinated communities of color learned of their emancipatory legal rights from the culture and society of the antebellum period. Yet, antebellum legal culture and society fail to explain in a more thoroughgoing sense how freedom petitioners advanced their rights claims without equal access to courts or counsel and without inside instruction from emancipated or enslaved subcommunities or outside leadership from abolitionist or freedmen subcommunities. To gain a fuller understanding of antebellum rights education and freedom-suit claims, consider the rights of the subordinated that emerged under the aegis of the Missouri freedom-by-residence statute.

2. *Rights of the Subordinated.*—VanderVelde’s embrace of the rule of law applied by St. Louis courts under the Missouri freedom-by-residence statute recognizes the power and agency of enslaved people to assert “their legal rights in suing to establish their freedom in direct contravention of their masters’ wishes.”¹⁰² To her credit, VanderVelde concedes that neither power nor agency ensures the “full vindication” of a “subordinated” person’s legal rights in court.¹⁰³ Frequently, she notes, subordinated people must “settle for accommodation.”¹⁰⁴ In the process, they may lose their

96. *Id.* at 8.

97. *Id.*

98. *Id.* at 18.

99. *Id.* at 19.

100. *Id.* at 20–21.

101. *Id.* at 21.

102. *Id.* at 11.

103. *Id.* at 203.

104. *Id.*

litigant voices in court.¹⁰⁵ In fact, VanderVelde remarks, none of the freedom-suit petitioners actually testified on the witness stand.¹⁰⁶ Rather, they “spoke” through their uncompensated and sometimes opportunistic attorneys, themselves regularly slave owners.¹⁰⁷ Conspicuously, she finds “very little evidence of cause lawyering”¹⁰⁸ within this group of attorneys, and furthermore, “no direct evidence of antislavery sentiment at all.”¹⁰⁹ On this ground, it seems unlikely that the antebellum bar in St. Louis and Missouri led the way in educating or instructing freedom-suit petitioners with respect to the nature and scope of their legal rights. On the same ground, however, it seems likely that the antebellum St. Louis and Missouri bar influenced, at least to a degree, the in-court and out-of-court outcomes of freedom-suit controversies. In this respect, turn to VanderVelde’s treatment of cases and courts in the Missouri freedom-suit era.

B. *Subordinate Cases and St. Louis Courts*

This subpart addresses VanderVelde’s assessment of freedom-suit cases and courts in St. Louis during six decades of the nineteenth century. The first section probes her understanding of subordinate accommodation and survival strategies. The second section explores her analysis of freedom-suit triggering actions and court outcomes.

1. *Accommodation and Survival.*—VanderVelde construes the freedom-suit cases to “suggest that survival is a much more significant objective in influencing human behavior than attaining freedom.”¹¹⁰ For the enslaved and for subordinated and vulnerable populations more generally, she comments, the move or path toward exit “must be survivable.”¹¹¹

105. On the silencing of litigant voices in administrative and judicial proceedings, see Anthony V. Alfieri, *The Ethics of Violence: Necessity, Excess, & Opposition*, 94 COLUM. L. REV. 1721 (1994) (book review) and Anthony V. Alfieri, Essay, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991).

106. VANDERVELDE, *supra* note 3, at 197. VanderVelde clarifies that the prevailing “rules of competency for witnesses precluded parties with a direct interest in the case from testifying because their testimony would be deemed legally incompetent as self-interested.” *Id.*

107. *Id.* at 9, 201. VanderVelde reports that petitioner attorneys attempted at times “to extract compensation from their client in one way or another: by carrying a debit on their accounts book in the slave’s name, by negotiating with the slave to do work for the lawyer, or by attempting to collect from some free person in the slave’s extended family who had the wherewithal to pay.” *Id.* at 9.

108. *Id.* On race and lawyering, see generally Anthony V. Alfieri, *Gideon in White/Gideon in Black: Race and Identity in Lawyering*, 114 YALE L.J. 1459 (2005) and Colin Bailey, *Winning Against the Odds: Race-Conscious Community Lawyering and Organizing for Environmental Justice*, 46 CLEARINGHOUSE REV. 456 (2013).

109. VANDERVELDE, *supra* note 3, at 9. VanderVelde notes that Missouri prohibited advocating abolitionism as a crime after 1837. *Id.*

110. *Id.* at 194.

111. *Id.*

Indeed, she points to circumstances under which subordinated people—here enslaved Missouri freedom petitioners—may “find it reasonable to endure continued enslavement as a means of survival and family preservation rather than to risk uncertain survival as a means to freedom.”¹¹² The instrumental logic of submitting oneself to enslavement for purposes of personal survival or family preservation turns compelling “when the path to freedom requires the bravery of challenging one’s master and the perseverance to endure those extra burdens imposed on slave litigants while awaiting judgment.”¹¹³

VanderVelde explicates the “extra burdens” befalling freedom-suit litigants when publicly “exposed” to their masters’ cruelty and to harsh antebellum labor-market practices in the western territories during prolonged litigation battles.¹¹⁴ Such burdens, she notes, included “more stringent captivity,”¹¹⁵ imprisonment in jail with nonslave convicts,¹¹⁶ and “hiring out” to “third-party bidders” willing and able to post bond.¹¹⁷ VanderVelde reports that many petitioners, beset by the weight of additional material burdens, “accepted accommodation” vis-à-vis their masters by declining to “further prosecute” their cases or by defaulting altogether “either through attorney neglect or litigant fatigue.”¹¹⁸ The compelling force of material burdens on freedom petitioners may help explain not only why certain out-of-court outcomes fell short of emancipation but also why some individuals, families, and groups delayed and waited to file suit. And yet, for many prospective freedom petitioners, triggering actions from both inside and outside their communities continued to embolden their legal rights claims.

2. *Triggering Actions and Court Outcomes.*—VanderVelde enumerates a range of triggering actions that sparked freedom suits in Missouri courts even though such courts stood institutionally ill-equipped to protect the rights of the vulnerable.¹¹⁹ Repeatedly referenced by the enslaved,

112. *Id.* at 195.

113. *Id.*

114. *Id.* at 195–98.

115. *Id.* at 198. VanderVelde comments that “expressing the desire for freedom was likely to bring sanction or at least tighter constraints.” *Id.* at 196.

116. *Id.* at 198. VanderVelde elucidates this practice, citing the court’s “first offer to return the petitioners to their master, who could work the individual and feed them, if the master posted bail to ensure their security. If the master did not post bail, the petitioners were jailed, to prevent their escape and for their own security.” *Id.* at 199.

117. *Id.* at 199. VanderVelde adds that “[s]everal petitioners died while hired out to the highest bidder. There was little incentive for any of the temporary custodians of the freedom litigant to provide adequate food or clothing.” *Id.*

118. *Id.*

119. *Id.* at 196–98.

particularly women,¹²⁰ commonplace lawsuit triggers included the seizure of slaves by creditors, the death of a master in a stable household, the disbanding of a household, the sale of slaves to a slave trader, the threat of transport to a southern state, and the threatened removal of children.¹²¹ To translate action into pleading, VanderVelde explains, petitioners “ritually recited” a statutory claim of assault as a “necessary element” of their suit even if the specific allegation proved to be false.¹²²

Surprisingly, for VanderVelde, the identity of the lower court judge assigned to hear the petitioner’s suit “seemed to make little difference to the outcome.”¹²³ On her inspection, the court cases offer “no evidence” that the judges of record “behaved ideologically” in adjudicating the freedom suits.¹²⁴ The same court data, by contrast, “suggest that juries cannot be trusted as much as judges to uphold the law when the law designed to protect the weak runs counter to social norms.”¹²⁵ In fact, she underscores, “juries ruled for the petitioners less often.”¹²⁶ Nonetheless, VanderVelde recounts, when judges and juries ruled in favor of the petitioners, some gained their freedom “immediately or within a relatively short time” or “registered as free Blacks,” some were “later found still within their masters’ estates” or “advertised as runaways,” and some “disappeared without a trace.”¹²⁷

Even when joined together with her thorough catalogue of triggering actions, VanderVelde’s particularized compilation of judge- and jury-influenced outcomes does little to answer fully the chief questions posed by the newly discovered antebellum freedom-suit archives. From the standpoint of those archives, certain limited inferences pertaining to legal-political or social movements may be drawn. First, subordinated communities may very well learn of their legal rights from extrajudicial, at-large sources in culture and society. Second, subordinated communities may effectively advance their rights claims without fair access to courts or counsel and without organized instruction or leadership from lawyers. Third, material circumstances may weigh heavily on individuals, families, and groups from subordinated communities to delay remedial legal or political action. And fourth, various in-court and out-of-court factors, especially the role of lawyers, judges, and juries, and the function of political and socioeconomic power, may shape both litigated and negotiated outcomes. To gain a fuller

120. VanderVelde mentions that “[m]ost St. Louis freedom suits were initiated by women.” *Id.* at 195.

121. *Id.* at 196–97.

122. *Id.* at 196.

123. *Id.* at 6.

124. *Id.*

125. *Id.* at 202.

126. *Id.*

127. *Id.* at 203.

answer to these questions, return to the resistance songs still heard echoing in the West Grove.

III. Resistance Songs

So what's your value? Am I not as valuable as any other human being? Are my children any less valuable of the ones living in Coconut Grove, as the kids living around the affluent areas around Merrie Christmas Park?¹²⁸

—Delores Patterson Baine

This Part recasts VanderVelde's interpretive stance on redemption stories against the backdrop of Old Smokey to consider legal-political rights campaigns and community resistance strategies in the context of the West Grove specifically and in the setting of civil rights and environmental-justice disputes generally. VanderVelde links the notion of rights-inspired redemption stories to defiance—spoken or written—in the face of power and violence. In the legal-political confrontation between master and slave or between white privilege and black disadvantage, she contends, redemption songs or stories enable a subordinate person to speak “truth to power,”¹²⁹ albeit only a partial truth. Too destabilizing and too stressful for most hierarchical social and economic relationships, the full truth oftentimes remains unspoken.¹³⁰

For VanderVelde, each redemption song or story imports a sequential structure and engrafts a pattern that conveys the cultural and social history of a community or multiple subcommunities. Sounded in the public forum of St. Louis courts and in the private space of West Grove homes, churches, and schools, the story asserts previously unheard claims and entitlements (for example, the right to emancipation or the right to live in a healthy and safe environment), thereby altering the status of the speaker and his or her affiliated group and community. To VanderVelde, even the partial truth and the muted voice of a subordinate speaker furnish an authentic account or record of the complex personal, psychological, and emotional life of a community, however scripted by legal conventions and mediated by political negotiations and socioeconomic relationships.

In her survey of freedom-suit archival records, VanderVelde highlights the importance of an intervening “triggering” event to mobilize action and, correspondingly, to provoke retaliation.¹³¹ The triggering event may bear no correspondence to the outcome of the legal-political confrontation. That

128. Interview with Delores Patterson Baine, *supra* note 72, at 12, 14.

129. VANDERVELDE, *supra* note 3, at 1.

130. *See id.* at 1–2 (describing how and why the full truth can be only partially discovered).

131. *See supra* notes 61–67 and accompanying text.

outcome in fact may turn on other variables such as the level of speaker defiance or litigant resistance, the quality of legal representation and political organization, and the degree of countervailing institutional power exercised by public and private actors. The next subpart explores the law and rights of the subordinated in the West Grove, past and present, by revisiting the Old Smokey stories collected previously from the oral histories of Delores Patterson Baine, Theodore W. Johnson, Antoniette Price, Francina Hopkins, Jimmie Ingraham, and Dr. Joyce Price.

A. Subordinate Clients and Communities in the West Grove

1. Law of the Subordinated.—VanderVelde points to the strength of the rule of law in protecting the rights of the vulnerable in spite of private retaliatory action, public reprisal litigation, and legislative interference. Embedded in formal constitutional, statutory, and common law injunctions, the rules may serve a protective and even transformative function, upending power relations and destabilizing legal agents (judges and lawyers), institutions (courts and legislatures), and relationships (lawyer–client, lawyer–judge, and lawyer–jury). For VanderVelde and for West Grove legal advocates, the level of systemic instability and stress often hinges on the gravity of the redemptive claim of entitlement—here the community right to a healthy and safe environment—and the weight of competing social norms and political pressures—here the dominant norms of white power and privilege and the subordinating politics of black disenfranchisement and economic impoverishment.

In the West Grove, the law of the subordinated has persisted for decades largely without the enforcement of applicable civil rights and environmental laws. Consequently, the law of the subordinated in the West Grove continues to be woven into the history of Jim Crow housing and school segregation, the economics of an increasingly low-wage, unskilled labor market, and the legacy of white-on-black police and vigilante racial violence. Francina Hopkins alludes to the labor-market vulnerability and the economic trade-off embodied by Old Smokey, remarking that her “father worked at the Old Smokey. I know he used to ride the garbage truck picking up garbage.”¹³² Omitted from but implicit in this remark is the material reality of municipal employment discrimination by the City of Miami and the material value or necessity of Old Smokey to full-time employment and household economic stability in the West Grove from 1925 to 1970.

Delores Patterson Baine engages in the same practice of omission or elision when she speaks of public school and incinerator-site segregation, explaining that G.W. Carver High School “was earmarked for us, and so

132. Interview with Francina Hopkins, *supra* note 78, at 1–2.

that's where we went."¹³³ In this respect, the term "earmarked" seems especially striking, connoting a school-assignment process tainted by invidious discrimination, force, and sometimes violence. Mrs. Baine grows bolder, however, in recounting Old Smokey and its deep-seated links to race and inequality. She bluntly states: "The same thing when they put Old Smokey there and all the black faces were surrounding. Old Smokey, they didn't care enough for them, so it's inequality. Same as it was back when."¹³⁴

In the same way, Theodore W. Johnson connects Old Smokey to the local history of segregation, adding "[w]e were in segregated communities, predominantly black people, and we got accustomed to it."¹³⁵ Indeed, he dolefully recalls:

There was an acceptance of it because we felt that, okay, it has to be somewhere. It's in our area. But you feel that if it was really bad for you it wouldn't be there. It wouldn't—smoke and ashes and soot—wouldn't be falling down on a whole group of people because it would be harmful and why would someone do something like that?¹³⁶

Dr. Joyce Price likewise draws on the pain and injustice of municipal segregation. She mentions: "It makes me feel like really that nobody cared about the health status of the poor blacks in the area. It was just another thing that, you know, those people—those people, we don't care about them."¹³⁷ For Dr. Price, the pain of callous neglect was enflamed by discrimination. She adds:

They always put things in our area, where they wouldn't put them in other areas. There wasn't one in Coral Gables, there wasn't one even in South Miami, but it was in a concentrated black area. They thought it was land they figured they could use and nobody would object to.¹³⁸

Antoniette Price also adverts to the legacy of segregation and ongoing unequal treatment in Miami. She exclaims: "I heard they went up there to Blanche Park and Merrie Christmas Park. Well, what about us? We were

133. Interview with Delores Patterson Baine, *supra* note 72, at 6. Dr. Joyce Price also mentions that public school segregation increased exposure to Old Smokey. She states: "We were bused from South Miami to Coconut Grove and our buses lined up on the side where Old Smokey is, and we had to stand out there and wait for the bus to come, and if they were still burning at that time it was horrible." Interview with Dr. Joyce Price, *supra* note 86, at 3.

134. Interview with Delores Patterson Baine, *supra* note 72, at 18.

135. Interview with Theodore W. Johnson, *supra* note 74, at 7–8.

136. *Id.* at 8.

137. Interview with Dr. Joyce Price, *supra* note 86, at 10.

138. *Id.* at 6.

right under Old Smokey. Why are they going that far and this late in the game to look for arsenic? Did they dig up down here?"¹³⁹

Jimmie Ingraham amplifies the legacy of state-sanctioned racism in Miami tying segregation to disparate municipal services such as fire-department assistance, water supply, and sewer access. He observes:

The houses used to catch fire. They were wooden shacks. And you call the fire department, it was just like calling nobody because they wouldn't come 'til it was all over with. Some of the people had to go out with buckets of water, no water holes, because they didn't have the outlet like there is now.¹⁴⁰

In point of fact, Miami segregated its municipal water and sewage systems until the 1960s.¹⁴¹ Furthermore, Mr. Ingraham points to continuing, present-day evidence of municipal inequity. He notes: "They talking about this dog park. Every time they talk about people's lives over here, and they over there across talking about the darn dogs. But when we started this one with Old Smokey you couldn't find no reports. You couldn't find Sarnoff, you couldn't find none of them."¹⁴² Invoking the gospel of community, he demands:

What about these people down there for the old—70, 80 years down there getting all them fumes going inside their bodies. So just like this incident here with the park, it ain't nothing compared to what's down there on Washington. Now they go all the meeting down there, they wanna take pictures, they wanna have a meeting at Merrie Park, this and that. It's not right.¹⁴³

In addition, Mr. Ingraham cites the threat of publicly condoned white-on-black violence in the state-enforced segregation of the West Grove. He recalls: "Back in the day the black police couldn't arrest a white person. That was out of the question. That was seriously out of the question. You could come down there and beat up any black you wanted and call the police, you couldn't arrest 'em. It was terrible."¹⁴⁴ Retracing the forgotten urban geography of race and segregation in Coconut Grove, he adds: "We weren't even allowed over there after dark. I'm serious, you had to have a pass or a card. Anything pertaining to the black community, it seem as if it

139. Interview with Antoniette Price, *supra* note 76, at 19.

140. Interview with Jimmie Ingraham, *supra* note 1, at 4.

141. See *The Civil Rights Movement and the Black Experience in Miami*, U. MIAMI, <http://scholar.library.miami.edu/miamiCivilRights/biography.html>, archived at <http://perma.cc/7XGJ-QZW7> ("In the 1960s, [Reverend Theodore R. Gibson] joined forces with Grove activist Elizabeth Verrick and the Coconut Grove Slum Clearance Committee to ameliorate the standard of living of residents in the Black Grove. These efforts led to the establishment of indoor plumbing and improvements in the sewage disposal system.").

142. Interview with Jimmie Ingraham, *supra* note 1, at 19–20.

143. *Id.* at 20–21.

144. *Id.* at 5–6.

get whitewashed away. But soon as something happen across McDonald—McDonald’s the dividing line—they jump to it.”¹⁴⁵

From VanderVelde’s interpretive stance, the resistance songs of the West Grove seem to echo the post-Jim Crow politics of black disenfranchisement and economic impoverishment rather than to articulate vigorously or coherently a redemptive claim of entitlement to community health and environmental safety. This lack of vigor and coherence may indicate the need for expanded, peer-to-peer legal rights education and outreach efforts in the West Grove by the Historic Black Church Program and affiliated community groups. It may also signal the need for enlarged access to lay and legal counsel specializing in civil rights and environmental-justice advocacy and organizing. Standing alone, however, it does not suggest the need for unilateral lawyer instruction or leadership in mobilizing the legal-political energies of the West Grove. Paternalistic, triage intervention of this sort requires a higher threshold showing of need and urgency to justify.¹⁴⁶ To better grasp such existing legal-political energies, consider the rights of the subordinated in the West Grove.

2. *Rights of the Subordinated.*—VanderVelde’s vision of the rule of law recognizes the power and agency of vulnerable people to assert their legal rights in opposition to the interests of a dominant class or group. She admits, however, that neither power nor agency may be sufficient fully to vindicate a “subservient” person’s legal rights in courthouses or before legislative bodies. In the post-*Brown* era of modern civil rights advocacy, vindication rests not only on rights consciousness but also on access to lawyers and courts adequate to enforce existing constitutional, statutory, and common law entitlements and corresponding governmental duties of compliance and enforcement.

In the West Grove, the rights of the subordinated were and continue to be hampered by a continuing lack of environmental-rights consciousness among residents, a failure of legal compliance throughout local and state government, and an entrenched system of unequal access to justice limiting lawyer retention and court intercession. Delores Patterson Baine explains: “They put Old Smokey in there in a time when nobody was aware of what was happening and what the causes and effects were going to be farther down the line. We all complained about it.”¹⁴⁷ She adds:

I think they need to stop making too little of this and think about how many lives have been impacted from things that happened way back

145. *Id.* at 20–21.

146. On paternalistic, triage interventions in litigation and transactional legal services settings, see generally Paul R. Tremblay, *Acting “A Very Moral Type of God”: Triage Among Poor Clients*, 67 *FORDHAM L. REV.* 2475 (1999) and Paul R. Tremblay, *Transactional Legal Services, Triage, and Access to Justice*, 92 *WASH. U. L. REV.* (forthcoming 2015).

147. Interview with Delores Patterson Baine, *supra* note 72, at 7, 17.

when. And the fact that they knew that this was a problem and didn't say anything until it came to light. It is sickening to know that this is the case. Do your job. Do what you're supposed—what you need to do to make sure that this isn't revisited years and years later. It's just the same old, same old over again.¹⁴⁸

Theodore W. Johnson similarly comments:

I never really heard that much dissension or overly concern about it. I don't remember any—when I went to church, there was a lot of concern about desegregation and the plight of black people as far as jobs and poverty. But there is seldom that I hear anything about Old Smokey as really something that people were up in arms or fired up about. Hopefully it will cast light on the administrations and governments around here to realize this was something wrong that shouldn't have been done.¹⁴⁹

Antoniette Price confirms this posture, mentioning: “We had no idea it was a problem, a health problem.”¹⁵⁰ And Francina Hopkins reiterates: “We didn't know it was dangerous breathing all that.”¹⁵¹ Jimmie Ingraham also notes:

At that age, we didn't know all about all this contaminated stuff, cause we didn't have the knowledge of it. At that time people didn't know anything about suing or contamination. You had all these people from Georgia, Alabama, Mississippi, Bahamas, they didn't think about anything like that. People didn't talk about contamination.¹⁵²

Elaborating on the pervasive absence of rights consciousness, political disenfranchisement, and government duty, Dr. Joyce Price states:

I don't think anybody thought about rights—their rights at that time. People in Coral Gables are very powerful and they have had money to get a lawyer—get lawyers to fight their case. And they were more knowledgeable about the effects of it than the blacks in Coconut Grove. I think had the blacks been more knowledgeable and have the type help that we have now with the Center of Ethics, I think we would have had a good chance of stopping it many years ago. The city of Miami has a duty because they're supposed to protect the citizens. Morally they need to go out and comply, find out exactly what the status of the area is.¹⁵³

Seen from VanderVelde's perspective, the resistance songs of the West Grove portray the thwarted power and frustrated agency of a vulnerable

148. *Id.* at 12–14.

149. Interview with Theodore W. Johnson, *supra* note 74, at 8, 10.

150. Interview with Antoniette Price, *supra* note 76, at 16.

151. Interview with Francina Hopkins, *supra* note 78, at 4.

152. Interview with Jimmie Ingraham, *supra* note 1, at 3, 9–10.

153. Interview with Dr. Joyce Price, *supra* note 86, at 5, 9, 14–15.

community seeking to assert its legal rights in a sociolegal situation where lawyers offered no representation, courts afforded no vindication, and government supplied no protection. In this situation and its debilitating aftermath, still today a situation where the rule of law is ostensibly absent and where access to the law is sparsely available, the need for legal rights education, peer-to-peer and otherwise, is compelling. On the same logic, the need for external resources, for example, intensive fact investigation, legal-political research, independent environmental testing, health monitoring, media outreach, faith-based and nonprofit partnerships, and multineighborhood coalition building is profound. Without these collaboratively designed and collectively implemented interventions, subordinate accommodation and survival strategies recur and triggering actions go unheeded. Consider accommodation and survival strategies and triggering actions in the West Grove.

B. Subordinate Cases and Courts

1. Accommodation and Survival.—VanderVelde from the outset maintains that survival rather than freedom stands out as “a much more significant objective in influencing human behavior” within racially subordinated communities.¹⁵⁴ For such vulnerable communities, she insists, defiance “must be survivable” both for individuals and their families.¹⁵⁵ Today, in poor communities, the logic of accommodation and survival increases when defiance puts an individual at risk of retaliation (e.g., workplace demotion or firing) or a group at risk of reprisal (e.g., government defunding or eviction).

In the West Grove, accommodation and survival defined a way of life in the decades-long shadow of Old Smokey. Delores Patterson Baine recalls: “We were often bathed in ash. It was just a part of our lives. It was a way of life. What were we going to do? We had to go to school. We made the best of it.”¹⁵⁶ Theodore W. Johnson likewise comments:

It was there, it was a fact of life, and it was accepted. I guess there’s some things, if you get accustomed to it, you get accustomed to it and you move on. I mean, I’m born and raised in this area, I have no control over it. How could we put up with all that? But the fact of life is that we did.¹⁵⁷

Jimmie Ingraham confirms this acute experience of helplessness. He remarks:

The community itself really suffered back in the days. We were put through something that we had no control over because we were here

154. VANDERVELDE, *supra* note 3, at 194.

155. *Id.*

156. Interview with Delores Patterson Baine, *supra* note 72, at 6–7.

157. Interview with Theodore W. Johnson, *supra* note 74, at 5–6, 8, 10.

to stay with our parents, and our parents had us here. A lot of us was born right here in this Grove. It was bad for the community and for us to be breathing stuff like that, but we had no alternative. We had to take it.¹⁵⁸

Dr. Joyce Price remembers as well. She notes: “The incinerator was an ingrown thing in the community. We all knew it was there and we all hated it, and realized when it was being used, that it was something that we had to suffer through.”¹⁵⁹

Under VanderVelde’s view of human behavior operating in vulnerable communities like the West Grove, modern survival strategies must contemplate the risk of socioeconomic retaliation against individuals, their families, and their affiliated organizations or institutions. Retaliation may come from private, nonprofit, and public sources, sometimes in combination. To withstand covert and overt retaliatory efforts of racial intimidation or economic punishment (e.g., bullying and harassment in private communications, social ostracism, withdrawal of nonprofit or foundation support, and termination of public funding), lay and legal advocates must openly and publicly treat pernicious, class- or race-motivated acts directed against individuals, organizations, and institutions as *creative opportunities* for legal-political organizing, that is as triggering actions for community mobilization. Put simply, it is not sufficient to bear public witness to acts of cultural, political, or socioeconomic injustice. Rather, it is necessary to name and to call out private and public power brokers and to exploit their class- or race-motivated conduct to rally community opposition, doubly so when the “official” conduct includes constitutional, ethical, or statutory lawbreaking. Indeed, to be a civil rights lawyer, Lani Guinier repeats, “is to be a part of a historic tradition of resistance to overreaching by private and public power.”¹⁶⁰ Consider triggering actions in the West Grove.

2. *Triggering Actions and Court Outcomes.*—VanderVelde catalogues a wide range of triggering actions that spurred defiance and resistance among the enslaved in the nineteenth-century courts of Missouri. Translating isolated acts of defiance and resistance into broader emancipatory or remedial campaigns requires legal-political strategies of mobilization. To mount legal-political rights campaigns and community resistance strategies behind the cause of civil rights and environmental justice in the West Grove and in local communities elsewhere requires a constellation of triggering actions, including public education and outreach; collecting and disseminating independent environmental testing and clean-up information; compiling and distributing health registry and medical

158. Interview with Jimmie Ingraham, *supra* note 1, at 9, 13, 16.

159. Interview with Dr. Joyce Price, *supra* note 86, at 5.

160. GUINIER, *supra* note 12, at 220.

monitoring data; gathering and sharing evidence of personal injury and property damage, and, if and when litigation proves fruitless, encouraging community-wide dialogue about alternative, non-litigation remedies, such as restorative justice remedies (e.g., reconciliation, reparation, and apology).

Recalling the history of Old Smokey in the West Grove, Delores Patterson Baine asserts: "Now when I think about it, it angers me that this was done, and how many people that was affected by this stuff."¹⁶¹ Equally indignant, Theodore W. Johnson declares: "Do something about it, clean it up. And definitely I think an apology should be forthcoming, and recognition that this is something that shouldn't have been done. I think they have to own to that."¹⁶² But Dr. Joyce Price admonishes both, invoking a higher public duty. She states: "I think they owe more than an apology. Ethically and spiritually they need to come together and do something for that community because those people that have lived through that, they need to make sure that their health status is not compromised."¹⁶³

Others, like Antoniette Price, decry any talk of apology. She scoffs: "What good would an apology do? That's not going to help us. They're dead now. If it was a contributing factor to our family members' health, if you want to reimburse us to a certain percentage."¹⁶⁴ More powerfully, she observes: "Apologies are not going to help us because they're dead now. And if it caused or contributed to that, you know, an apology won't help that. Apology, what's that going to do?"¹⁶⁵ Francina Hopkins similarly reasons: "I don't think they owe no apology. They should pay us off. All of my siblings, my mom, everybody dead from cancer."¹⁶⁶ Likewise Jimmie Ingraham proclaims: "The city should do something, even if they have to tear up everything over there and clean it up. I think they should compensate those people for their illness for all those years."¹⁶⁷

The refrain repeated by the survivors of Old Smokey—public education and indignation, environmental testing and clean-up, health registry data and medical monitoring, remedial compensation for personal harm and property damage, and restorative justice—maps a potential legal-political rights campaign and community resistance strategy for environmental justice applicable to the West Grove, the City of Miami, and Miami-Dade County. The shared goal of that community-based campaign strategy—to redeem the collective right to live in a healthy and safe environment—inevitably must grapple with VanderVelde's key historical

161. Interview with Delores Patterson Baine, *supra* note 72, at 15.

162. Interview with Theodore W. Johnson, *supra* note 74, at 10, 12.

163. Interview with Dr. Joyce Price, *supra* note 86, at 11.

164. Interview with Antoniette Price, *supra* note 76, at 22.

165. *Id.*

166. Interview with Francina Hopkins, *supra* note 78, at 9–10.

167. Interview with Jimmie Ingraham, *supra* note 1, at 13–14.

interrogations of legal rights education, judicial and legislative law reform strategies, movement leadership, outside intervention, and legal-political accommodation and resistance.

Plainly, the task of fully pursuing and resolving these inquiries falls beyond the ambit of this Review. Nevertheless, for the impoverished past and present residents of the West Grove, VanderVelde's main theoretical concerns underline the centrality of community to any practical formulation, implementation, and resolution of a civil rights and environmental-justice campaign. The same concerns highlight the elusive and perhaps unknowable quality of community to outsiders, even well-intentioned advocates laboring in constructive, good faith partnership. As Delores Patterson Baine and Theodore W. Johnson observe: "We had a community and we had our school and we had each other,"¹⁶⁸ and "somehow we survived as a community."¹⁶⁹ For Jimmie Ingraham and many others, the West Grove ultimately outlasted Old Smokey because of the strength of its now disintegrating community. "It was just nice," he reminds us, "it's hard to explain."¹⁷⁰

Conclusion

I thank God I'm here today, able to say something. It might not mean too much, but to me it feels like I'm doing a great job in telling some of the stuff that occurred in this community.¹⁷¹

—Jimmie Ingraham

This Review investigates the environmental-justice-based legal and political mobilization today slowly rising out of the public and private contamination wrought by Miami's Old Smokey incinerator. Spurred by VanderVelde's historical findings in *Redemption Songs*, the instant sociological investigation builds upon her own research on *Dred Scott v. Sandford* and the work of historians in the field of slavery to revisit the nineteenth-century practices of antebellum freedom suits in Missouri. Gathering up the fabric of freedom suits, VanderVelde remarkably uncovers hundreds of St. Louis municipal court case records comprising 239 litigants and 38 family groups accumulated between 1814 and 1860. The cases enable VanderVelde to track critical lines of inquiry helpful to historians of race and advocates for the legal-political rights of impoverished racial communities. The inquiries raise hard questions for community-based lay and legal advocates enmeshing rights education and outreach strategies;

168. Interview with Delores Patterson Baine, *supra* note 72, at 15.

169. Interview with Theodore W. Johnson, *supra* note 74, at 10.

170. Interview with Jimmie Ingraham, *supra* note 1, at 3–4.

171. *Id.* at 13.

judicial, legislative, administrative, and street-level tactics; indigenous leadership prerogatives and outside interventions; decision-making protocols; and end-game negotiations.

VanderVelde pursues many of these inquiries in reviewing freedom suit petitions in order, more perceptively, to discern stories of caste, class, and racial status in nineteenth-century America. This Review revisits similar ground to understand the place of caste, class, and racial status in modern civil rights and environmental-justice suits. Although distinguished by time and place, both pathways integrate the lessons of antebellum freedom suits and modern civil rights and environmental-justice suits to learn how best to describe stories, and to prescribe strategies, of community power and resistance. Tailored to enlarge upon VanderVelde's notions of subordination, voice, and redemption, those stories and strategies link the antebellum freedom suits of enslaved men and women to the oral histories of Old Smokey survivors through unexpectedly traditional legal-political rights discourse. For long-impooverished, segregated communities like Miami's West Grove, the dignitary and egalitarian claims of rights discourse remain the starting point for individual hope and collective renewal.