

LECTURE

BEARING WITNESS TO ENVIRONMENTAL INJUSTICE: THE PATH FORWARD

REMARKS BY
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I. INTRODUCTION

Thank you, Lewis & Clark’s Environmental, Natural Resources, and Energy Law Program, its Director, Professor Janice Weis, and support staff for the warmest of welcomes I received during this visitorship.

I do not know what it means to be distinguished as in Distinguished Lecturer, but I am an environmental lawyer and we often litigate definitions, so I looked up the definition to figure out what I had to do here.

Distinguished apparently means successful and commanding great respect.

Commanding great respect? No, at least not from my children.

“Successful?” I asked. Over the course of my career, I have successfully sued polluters and agencies, but was I successful? By what

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standard? The regulators that we targeted at Golden Gate University School of Law's Environmental Law and Justice Clinic still have not managed to figure out how to protect the most vulnerable from water and air pollution despite advocacy from our clients and the clinic.

But I can tell you what I have aspired to be successful with—and that is bearing witness, the title of my talk. This title comes from “Bearing Witness,”¹ a story I heard on the radio show, *The Moth Radio Hour*, a story that really resonated with me. The storyteller is a journalist, D. Parvaz,² who was captured by the Syrian military³ while reporting on what has now become the civil war there,⁴ and she witnessed the most horrific of tortures.⁵ In the midst of her detention in a cell that bore the signs of atrocities,⁶ she thinks she will be killed because who in their right mind would allow a journalist to witness the horrors of what the military is doing and release her.⁷

But worse than her fear of dying is dying alone because, then, no one would know what happened to her.⁸ That was worse than dying. And, even though at first she tries not to hear, she forces herself to listen to the screams of one very young man because she wanted to say, “I hear you. You are not alone.”⁹

All she “had was the ability to bear witness.”¹⁰ She felt like “it was . . . the least [she] could do.”¹¹

In looking back on my career, that is sometimes how I felt in representing clinic clients who felt so dismissed and devalued by the very government that is supposed to represent their interests and even by us, who could not provide legal representation in every case of injustice.

Sometimes all I could say was: I hear you.

It was both a recognition of the injustice and the helplessness and anger I sometimes felt. True, the type of violence done to communities of color is not the fast-unfolding violence that Ms. Parvaz witnessed. It is the kind of violence that Professor Rob Nixon has written of: slow violence—“a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all.”¹²

¹ D. Parvaz, *Bearing Witness*, MOTH (Oct. 12, 2017), <https://perma.cc/STY8-BLJ2>.

² *Hear Stories by D. Parvaz*, MOTH, <https://perma.cc/KFH9-H73Y> (last visited Jan. 21, 2024).

³ Parvaz, *supra* note 1, at 5:55.

⁴ *Id.* at 4:01.

⁵ *Id.* at 8:23, 10:08.

⁶ *Id.* at 7:29.

⁷ *Id.* at 9:42.

⁸ *Id.* at 8:42.

⁹ *Id.* at 11:30.

¹⁰ *Id.* at 11:48.

¹¹ *Id.* at 12:01.

¹² ROB NIXON, SLOW VIOLENCE AND THE ENVIRONMENTALISM OF THE POOR 2 (2011) [hereinafter NIXON, ENVIRONMENTALISM OF THE POOR]; see also Rob Nixon, *Slow Violence and Environmental Storytelling*, NIEMAN STORYBOARD, (June 13, 2011) [hereinafter Nixon,

But this so-called slow violence reveals itself as quite explosive, told in one sitting.

I compress the environmental history of the Bayview District since the 1930s to show how environmental violence unfolded for Black residents of San Francisco. While I focus on San Francisco, this dynamic was replicated all through the nation. Finally, I will talk about what follows from that history.

II. GEOGRAPHY IS DESTINY

The first part of this talk is called, “Geography Is Destiny.”¹³

You know it from authors like Isabel Wilkerson who wrote about the Great Migration.¹⁴ Following the emancipation of enslaved persons and the failure of the Reconstruction era to provide compensation and properly protect the newly emancipated from racial violence, Black Americans migrated to cities north and west, including to San Francisco.¹⁵ They did so to escape the cruelty of Jim Crow laws, which were literally killing Black people and re-enslaving them.¹⁶ But instead of a warmth of other suns, they met, in the words of one African American warning another, James Crow.¹⁷

In San Francisco, for example, the city government and the U.S. Navy remade Jim Crow by intentionally creating new segregated neighborhoods.¹⁸ The government agencies created segregated public housing to accommodate wartime workers and separated Black workers and families from their white counterparts.¹⁹ The Navy explained that integration would cause conflicts among workers and interfere with ship repair much needed in the war.²⁰

Storytelling] <https://perma.cc/B3U2-5AU4> (“As the journalistic chestnut goes, ‘If it bleeds, it leads.’ And as a corollary, if it’s bloodless, slow-motion violence, the story is more likely to get buried.”).

¹³ THOMAS J. SUGRUE, *THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT* xxii (1998). The phrase “geography is destiny” is attributed to historian Thomas Sugrue who was referring to the impacts of federal housing policy in Detroit. *Id.*

¹⁴ See generally ISABEL WILKERSON, *THE WARMTH OF OTHER SUNS: THE EPIC STORY OF AMERICA’S GREAT MIGRATION* (2010) (chronicling the migration of Black citizens from the American South to northern and western cities).

¹⁵ Helen H. Kang, *Looking Toward Restorative Justice for Redlined Communities Displaced by Eco-Gentrification*, MICH. J. RACE & L., Winter 2021, at 23, 24–25 [hereinafter Kang, *Restorative Justice*]; see also WILLIAM A. DARITY JR. & A. KIRSTEN MULLEN, *FROM HERE TO EQUALITY: REPARATIONS FOR BLACK AMERICANS IN THE TWENTY-FIRST CENTURY 151–204* (2020) (describing the end of the Civil War and the failure of the Reconstruction period).

¹⁶ WILKERSON, *supra* note 14, at 45.

¹⁷ *Id.* at 211.

¹⁸ Kang, *Restorative Justice*, *supra* note 15, at 25.

¹⁹ *Id.* at 26–27.

²⁰ RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 28 (2017).

This demographic pattern hardened through the actions of various government agencies and the Home Owners' Loan Corporation (HOLC). You are familiar by now with redlining,²¹ a term that comes from HOLC's practice.

Let me show you two areas of San Francisco that HOLC colored red. Here is Bayview.

Here is the HOLC map from 1937 in which Bayview is redlined as hazardous, representing the worst ranking for mortgage risks.²² Notably, the reason for its hazardous ranking is interesting to us environmental lawyers: it was not redlined because of the presence of people of color and immigrants as many hazardous areas were. The Bayview District was redlined for its proximity to industry and malodorous fumes.²³ Simply stated, it was redlined because of pollution.

Here is the second area I will talk about this evening: the Western Addition and Fillmore Districts. This area was redlined as hazardous because Black residents and other people of color such as Japanese Americans and Italian immigrants lived there.²⁴ Their low income is also mentioned in the notes.

²¹ Kang, *Restorative Justice*, *supra* note 15, at 27–28 (describing HOLC's "Residential Security Maps" that used color-coding to purportedly designate home loan risk; red was used to indicate the highest risk areas, which often coincided with property owned by African Americans); Robert K. Nelson et al., *Mapping Inequality: Redlining in New Deal America*, DIGIT. SCHOLARSHIP LAB (Robert K. Nelson & Edward L. Ayers, eds., 2023), <https://perma.cc/VJT6-Z8LE> (defining and describing redlining as a "practice of categorically denying access to mortgages not just to individuals but to whole neighborhoods" in such a way that "dramatically affected the relative wealth—as well as the health—of different racial groups in America").

²² Robert K. Nelson et al., *Mapping Inequality: Redlining in New Deal America, San Francisco, California, Area D16*, DIGIT. SCHOLARSHIP LAB (Robert K. Nelson & Edward L. Ayers eds., 2023) [hereinafter Nelson et al., *Area D16*], <https://perma.cc/BQD2-PNZY> (showing a map of the redlined Bayview District). Price Fishback et al., *New Evidence on Redlining by Federal Housing Programs in the 1930s* 25 (Fed. Rsrv. Bank of Chi., Working Paper No. 2022-01, 2022 <https://perma.cc/Y26F-PV44> (presenting evidence from three cities that the HOLC maps did not have the outsized influence that the Mapping Inequality project and other authors, including Rothstein, attribute to the maps, but rather that they were not broadly accessible to entities such as private lenders; but still concluding that the Federal Housing Administration, starting before the creation of the HOLC maps, "substantially restricted its insurance to segregated suburban areas where new construction was taking place, and away from lower income core urban neighborhoods where virtually all urban Black Americans lived").

²³ See Nelson et al., *Mapping Inequality: Area D16*, *supra* note 22 (describing the Bayview District in HOLC map notes, stating that "[o]ccasional winds from the northeast bring obnoxious odors from stockyards and packing plants located in that direction").

²⁴ Robert K. Nelson et al., *Mapping Inequality: Redlining in New Deal America, San Francisco, California, Area D3*, DIGIT. SCHOLARSHIP LAB (Robert K. Nelson & Edward L. Ayers, eds., 2023), <https://perma.cc/F827-5TBP> ("[The Western Addition District shown in HOLC map] is what might be termed the 'melting pot of the West' and is the nearest approach to a slum district in San Francisco. It has a highly congested population consisting of Japanese, Russians, Mexicans, Negroes, etc. having a very low income level. In the north-central part of the area is the largest concentration of Japanese in the City, and Negroes predominate in its northwest section. The southern part is much less affected by the racial

In categorizing areas for loan risks, the HOLC maps treated Black people, other people of color, immigrants, and environmental harms—presence of industry, presence of odorous facilities—as similarly “undesirable.”²⁵

As we know, the residents in redlined areas missed out on big government benefits and giveaways. The Federal Housing Administration and U.S. Department of Veterans Affairs put policies in place to deny people in redlined areas what has become the quintessential American dream of owning a home. Most white Americans since the 1930s did so through obtaining a government-backed mortgage.²⁶ This kind of mortgage was a big change from previous versions. A home buyer could put less of a down payment than before, with a longer repayment period, and the buyer could accumulate equity.²⁷

The actions of these government agencies largely barred Black Americans from this opportunity, while simultaneously allowing white Americans to accumulate wealth and also propelling the migration of white Americans into suburbs.²⁸

situation which has been described, and has many of the qualities of Area D-4.”); Robert K. Nelson et al., *Mapping Inequality: Redlining in New Deal America, San Francisco, California, Area D1*, DIGIT. SCHOLARSHIP LAB (Robert K. Nelson & Edward L. Ayers, eds., 2023), <https://perma.cc/R53D-844W> (“[In the Fillmore District shown in HOLC map] [t]here is a decided concentration of undesirable racial elements. More than half the Negro population of San Francisco are located here, and it is considered a highly hazardous area.”).

²⁵ Ta-Nehisi Coates, *The Case for Reparations*, ATL. MONTHLY, June 2014, at 54, 58 (“Neither the percentage of black people living there nor their social class mattered. Black people were viewed as a contagion.”); EPAgroups, U.S. Env’t Prot. Agency, *The Mapping Inequality Project: EPA Environmental Justice and Systemic Racism Speaker Series*, YOUTUBE (March 4, 2020), <https://perma.cc/P5YQ-9LDZ> (filming Professor LaDale Winling, a co-founder of the Mapping Inequality Project, pointing out that environmental factors were incorporated into HOLC redlining categorization); Nelson et al., *Area D16*, *supra* note 22, (showing HOLC map which, in categorizing most of Bayview as “hazardous” in 1937, noting on area D16 that “[o]ccasional winds from the northeast bring obnoxious odors from stockyards and packing plants located in that direction.”); Robert K. Nelson et al., *Mapping Inequality: Redlining in New Deal America, San Francisco, California, Area D17*, DIGIT. SCHOLARSHIP LAB (Robert K. Nelson & Edward L. Ayers, eds., 2023), <https://perma.cc/ZTL8-8RBV> (showing area D17 on HOLC map and noting that “proximity to industrial districts and low level of income and improvements, together with other handicaps, preclude a higher rating”).

²⁶ ROTHSTEIN, *supra* note 20, at 182–83; *see also* Terry Gross, *A ‘Forgotten History’ of How the U.S. Government Segregated America*, NAT’L PUB. RADIO (May 3, 2017), <https://perma.cc/76Z5-SUVH> (interviewing Richard Rothstein, who summarizes the inequitable effects of the FHA policies).

²⁷ Matthew Wells, *A Short History of Long-Term Mortgages*, ECON. FOCUS, FED. RSRV. BANK RICHMOND, First Quarter 2023, at 18–20; ROTHSTEIN, *supra* note 26, at 64–5; Fishback et al., *supra* note 22, at 6 (“Ultimately, access to FHA insurance was valuable to borrowers, as the FHA required lenders to offer lower interest rates, longer terms, and lower down payments than might otherwise have been available.”).

²⁸ DARITY & MULLEN, *supra* note 15, at 225; ROTHSTEIN, *supra* note 20, at 153–54.

Over a 30-year period, the federal government nationwide backed \$120 billion in home loans, 98% of which went to white Americans.²⁹ The newly created segregation in Bayview became further intensified, however, through the City's zoning and "urban renewal" policies.

At the time a thriving cultural center, the Western Addition and Fillmore Districts were demolished for what was supposed to be the largest redevelopment project on the west coast.³⁰ These urban renewal projects, deemed urban removal by those who knew better, received development funding under the federal 1949 Housing Act.³¹

In the process, from the 1950s to the 70s over 4,700 households and tens of thousands of people were expelled from their homes through eminent domain, often with little advance notice, in the Western Addition and Fillmore Districts.³² Of the nearly 900 businesses that were shuttered, 600 were reportedly Black-owned.³³

The displaced were given largely meaningless vouchers to return—largely meaningless because housing effectively failed to materialize at the end of the decades-long and failed redevelopment process.

Most of the expelled had to find homes elsewhere, many of them in polluted Bayview and others in places outside of the city such as Antioch, Vallejo, West Oakland, and Stockton in California.³⁴ Over a quarter century, this kind of destruction dispossessed families in cities all over the United States with federal funding.³⁵

III. POLLUTION BURDENS

Bayview became hyper-segregated through these forces of urban removal in other areas where Black residents lived and through white residents moving away to suburbs. And Bayview became more and more polluted. Let us turn to a measure of inequity based on pollution burden and socio-economic factors, developed by the State of California: CalEnviroScreen.

Because the data is based on post-1970 information, it does not exactly capture the worst environmental pollution that Bayview residents

²⁹ *Race—The Power of an Illusion*, PUB. BROAD. SERV., <https://perma.cc/XDB2-QZ5Z> (last visited Jan. 17, 2024). This kind of inequitable distribution of wealth of course had other precedents, dating back to slavery and the 1862 Homestead Act, which distributed 270 million acres mostly free to mostly white Americans and dispossessed Native Americans. *Id.*; *Land Acquisition and Dispossession: Mapping the Homestead Act, 1863–1912*, DIGIT. SCHOLARSHIP LAB, <https://perma.cc/SU5V-P4VW> (last visited Jan. 17, 2024) (showing dispossession of lands from Native Americans through maps).

³⁰ Kang, *Restorative Justice*, *supra* note 15, at 30.

³¹ *Id.* at 30, 39 n.58.

³² Leslie Fulbright, *Sad Chapter in Western Addition History Ending*, SFGATE (July 21, 2008), <https://perma.cc/W79J-VCRT>.

³³ Arnold Townsend, *It Was Too Late*, (DIS)LOCATION: BLACK EXODUS, Aug. 18, 2019, at 51, 52, <https://perma.cc/4GEM-NJJR>; *see also* Fulbright, *supra* note 32, at 9.

³⁴ Kang, *Restorative Justice*, *supra* note 15, at 25, 31.

³⁵ *Renewing Inequality: Urban Renewal, Family Displacements, and Race 1950–1966*, DIGIT. SCHOLARSHIP LAB, <https://perma.cc/T9R8-7ADQ> (last visited Jan. 23, 2024).

experienced when the Black population was at its highest in the 1970s, when 72% of the residents were Black.³⁶

As you see, Bayview ranks among the most impacted [areas] in the state. The census tracts in Bayview score between 75th to 92nd percentiles, meaning that the burden in Bayview is higher than 75 to 92% of all the census tracts in California.³⁷ The area outlined in green in the slide is a representative area within Bayview.

Here is the detail from CalEnviroScreen for one of the census tracts in Bayview: Diesel pollution, which the State of California recognizes as the biggest cause of cancer, is in the 99th percentile; asthma, which recognizably contributes to school absenteeism is at the 96th percentile.³⁸

On average, Bayview residents live fourteen *fewer* years than the residents in the wealthier Russian Hill neighborhood.³⁹

Indeed, associations have been shown between poor health and redlining: residents in historically redlined areas in most of the metropolitan areas researchers looked at are “nearly twice as likely to have poor health than in nonredlined areas.”⁴⁰

Researchers say,

“[R]edlining is associated with substantial intraurban air pollution disparities for NO₂ and PM_{2.5}. These findings are consistent with a broad body of evidence that adverse historical HOLC designations are associated with worse present-day local environmental quality and health outcomes, including air pollution, green space, tree canopy, COVID risk, and urban heat.”⁴¹

A study also showed that “predominantly white neighborhoods overall had fewer dilapidated buildings, fewer non-single family homes,

³⁶ Kang, *Restorative Justice*, *supra* note 15, at 31–32 (“As of 2017, Black residents were ten percent of the neighborhood’s population, as compared to 72 percent in 1970.”).

³⁷ See *SB 535 Disadvantaged Communities*, CAL. OFF. ENV’T HEALTH HAZARD ASSESSMENT, <https://perma.cc/MBV8-RFFL> (2022). The census tracts do not correspond neatly to the neighborhood boundaries of Bayview.

³⁸ See *CalEnviroScreen 4.0 Indicator Maps—Diesel Particulate Matter Results*, CAL. OFF. ENV’T HEALTH HAZARD ASSESSMENT, <https://perma.cc/N9CX-9YT>; *CalEnviroScreen 4.0 Indicator Maps—Asthma Results*, CAL. OFF. ENV’T HEALTH HAZARD ASSESSMENT, <https://perma.cc/DU4W-RYX2>; Kang, *supra* note 15, at 38 n.55 (citing James K. Boyce et al., *Three Measures of Environmental Inequality* 6–7 (Inst. for New Econ. Thinking, Working Paper No. 12, 2015), <https://perma.cc/AHE4-63VD>).

³⁹ S.F. HEALTHY HOMES PROJ., COMMUNITY HEALTH STATUS ASSESSMENT 4 (2012), <https://perma.cc/R379-78J>.

⁴⁰ Anthony Nardone et al., *Historic Redlining and Urban Health Today in U.S. Cities*, 13 ENV’T JUST. 109, 109 (2020) (discussing the relationship between redlining and the health of residents in those areas today); see also JASON RICHARDSON ET AL., NAT’L CMTY. REINV. COAL., THE LASTING IMPACT OF HISTORIC “REDLINING” ON NEIGHBORHOOD HEALTH: HIGHER PREVALENCE OF COVID-19 RISK FACTORS 6, 26, 29 (2020) (examining redlining, its negative impact on health outcomes in minority neighborhoods, and its contribution to compounding the impacts of COVID-19).

⁴¹ Haley M. Lane et al., *Historical Redlining Is Associated with Present-Day Air Pollution Disparities in U.S. Cities*, 9 ENV’T SCI. & TECH. LETTERS 345, 348 (2022).

fewer single-lane roads, and more green space compared with neighborhoods” of people of color.⁴²

Bayview residents could have told you all of that: Where you live determines how long, and well, you live. Geography is destiny.

They know about the two power plants that operated in the city for decades—the only two in the city—and the radioactive contamination at the naval shipyard that attests to our nation’s nuclear past.

This radioactive contamination is in part because the U.S. Navy brought back for “decontamination” about eighty vessels and ships that were used in Operation Crossroads, where two atomic bombs were detonated in 1946, each the same size as the one that hit Nagasaki.⁴³ This radioactive pollution has not yet been cleaned up.

In addition, Bayview hosts myriad sources of deadly particulate matter and diesel that lodge deeply in the lungs.⁴⁴

The residents know about the sewage overflows and lack of amenities such as access to healthy foods and quality parks and recreational space, in addition to other inequities in education and policing.⁴⁵

This is a submerged park entrance in the Bayview District. From November to March this year, this area was flooded, barring entry. The water looks kind of nice, but it was in reality foul-smelling and dangerous, in some parts up to three feet deep, right near where children play.⁴⁶

IV. DEMOGRAPHIC SHIFT

Bayview has been changing, however. First, the demographic in Bayview has shifted dramatically since 1970.⁴⁷ Residents in this historically Black neighborhood, including those displaced in urban removal, are again facing displacement or have been displaced.

A confluence of factors contributes to this displacement, among them the closure of the shipyard in 1994 where many Black residents worked,⁴⁸

⁴² Yukun Yang et al., *Association of Neighborhood Racial and Ethnic Composition and Historical Redlining with Built Environment Indicators Derived from Street View Images in the U.S.*, J. AM. MED. ASS’N, Jan. 18, 2023, at 1.

⁴³ Helen H. Kang, *Respect for Community Narratives of Environmental Injustice: The Dignity Right to Be Heard and Believed*, 25 WIDENER L. REV. 219, 226–27 (2019) [hereinafter Kang, *Community Narratives*].

⁴⁴ See *CalEnviroScreen 4.0 Indicator Maps—Diesel Particulate Matter Results*, *supra* note 38.

⁴⁵ Kang, *Restorative Justice*, *supra* note 15, at 24, 36 n.49, 38.

⁴⁶ See Griffin Jones, *Toxic Groundwater, Rising Seas a Bad Combo for Southeast S.F.*, MISSION LOC. (Apr. 21, 2023), <https://perma.cc/R9NY-XWGS> (describing the increasing frequency of flooding in Bayview); Meaghan Mitchell, *City Moves to Aid Those Living Outdoors as New Rainstorm Hits*, S.F. STANDARD (Nov. 8, 2021, 5:50 PM), <https://perma.cc/B88B-4BS2>.

⁴⁷ Kang, *Community Narratives*, *supra* note 43, at 222.

⁴⁸ Kang, *Restorative Justice*, *supra* note 15, at 29; Craig Hooper, *Long Abandoned, Bay Area Hunters Point Navy Shipyard Can Be a New Base*, FORBES (Oct. 21, 2023, 12:30 PM), <https://perma.cc/96C6-PKQH>.

the subprime lending crisis of the late 2000s,⁴⁹ and the predatory lending practices targeting Black residents in Bayview as elsewhere in the nation, which resulted in high foreclosure rates.⁵⁰

Further intensifying the economic pressures in a city where a family of four earning about \$117,000 is considered low-income,⁵¹ Bayview is noticeably gentrifying, which increases costs for residents.⁵² When many are living 200% below the federal poverty level, the median value of owner-occupied units in Bayview is over \$900,000.⁵³

As the area gentrifies, the next generation can no longer afford to live in the houses where their grandparents and parents built their lives and a community.

Part of the change afoot that is gentrifying Bayview is the redevelopment of the naval shipyard, once the radioactive and other contamination is cleaned up. It is billed as the largest development project in the city's modern history. The project envisions creating a massive mini-city within San Francisco.

In summary, the federal and local governments created Bayview as a segregated community in a polluted area. The city then intensified this segregation when it destroyed the Western Addition, eliminating one of the two areas where most of the city's Black population lived, resulting in movement of more Black residents into Bayview. In recent years, the city's mega-redevelopment effort is once again displacing the city's Black population.

The second change in Bayview is the greening of the once polluted areas.

Here, 20th century structural racism, redlining, and expulsive zoning is meeting 21st century structural racism: As the neighborhood is being cleaned up, the Bayview residents who were historically exposed to pollution and fought against it will not get to enjoy the fruits of their labors. As the area is greening, Black residents are 10% to 23.5% of Bayview residents.⁵⁴ This shift marks a massive out-migration, down from 72%.⁵⁵

⁴⁹ Kang, *Restorative Justice*, *supra* note 15, at 32–33.

⁵⁰ *Id.*

⁵¹ Kang, *Community Narratives*, *supra* note 43, at 234 n.64.

⁵² Kang, *Restorative Justice*, *supra* note 15, at 32.

⁵³ *Bayview Home Values*, ZILLOW, <https://perma.cc/ANK2-4MWM> (last visited Jan. 18, 2024).

⁵⁴ *Bayview & Hunters Point PUMA, CA*, DATA USA, <https://perma.cc/5V5J-XULC> (last visited Jan. 19, 2024); David Mamaril Horowitz & Will Jarrett, *2020 Census: As San Francisco Grew, the Ethnic Makeup of its Neighborhoods Changed. Here's How*, MISSION LOC. (Sept. 27, 2021), <https://perma.cc/TA7W-AYBN>; Kang, *Restorative Justice*, *supra* note 15, at 31 n.30.

⁵⁵ Kang, *Restorative Justice*, *supra* note 15, at 32. Of course, the statistics here are pretty dramatic, but consider those that are even more so: Mossville, Louisiana, a town established in the 1790s by formerly enslaved persons, no longer exists. DARITY & MULLEN, *supra* note 15, at 235. Dioxin levels were through the roof in the residents' blood. Heather Rogers, *Erasing Mossville*, INTERCEPT (Nov. 4, 2015), <https://perma.cc/DY3L-J29M>.

The displaced are reportedly moving to other under-resourced and polluted areas.⁵⁶

So, here is where we are: as some Bayview residents poignantly describe, the displaced and the soon-to-be displaced have simply served as human filters, carrying with them body burdens of pollution.

V. WHAT NOW?

Professor Nixon says,

In the long arc between the emergence of slow violence and its delayed effects, . . . [it is] far more difficult to secure effective legal measures for prevention, restitution, and redress.⁵⁷

At this point, I want to go back to what I started with. Was I successful?

No matter the number of lawsuits won, Clean Air Act⁵⁸ and Clean Water Act⁵⁹ cases settled, the residents that I talked about would never be made whole. The legal system is not designed to make those who suffer slow violence whole.

Take the Clean Air Act, which allows up to \$100,000 of civil penalties to be used in beneficial mitigation projects.⁶⁰ For one, that is less than the maximum penalty for one violation.⁶¹ The \$100,000 is not sufficient restitution or mitigation. The other federal statutes do not have any provision for even that level of recompense.

My hope is that this compressed history demonstrates that something more is needed. Ensuring that environmental justice communities have equal access to courts and administrative proceedings and assisting them to fight off toxic sites, while still critically important, is not enough.

⁵⁶ See Adam Brinklow, *San Francisco Has Done Everything to the Bayview Except Fix Problems*, CURBED S.F. (Feb. 18, 2020), <https://perma.cc/7RCD-LFEN> (“Speaking to a Board of Supervisors committee, longtime resident and activist Dr. Espanola Jackson warned, ‘The people living [in Bayview-Hunters Point] now are being forced to move out’ and scolded city lawmakers that ‘we need to stop lying about affordable’ for people living there”); see RANDY SHAW, *GENERATION PRICED OUT: WHO GETS TO LIVE IN THE NEW URBAN AMERICA 12* (2018) (“Oakland [has] long been the place where those priced out of San Francisco ended up living”); see Ezra David Romero, *‘A Lesson in Discrimination’: A Toxic Sea Level Rise Crisis Threatens West Oakland*, KQED (Sept. 13, 2022), <https://perma.cc/2WLK-QJRG> (discussing the presence of toxic waste in Oakland, where most residents also live under “the strain of low wages, high housing costs, and poor health [coming from] increased exposure to pollution”).

⁵⁷ Nixon, *Storytelling*, *supra* note 12.

⁵⁸ 42 U.S.C. §§ 7401–7671q (2018).

⁵⁹ Federal Water Pollution Control Act, 33 U.S.C. §§ 1251–1388 (2018) (commonly referred to as the Clean Water Act).

⁶⁰ 42 U.S.C. § 7604(g)(2).

⁶¹ \$117,468 per day, adjusted for inflation. Civil Monetary Penalty Inflation Adjustment, 88 Fed. Reg. 986, 989 (Jan. 6, 2023) (to be codified at 40 C.F.R. pt. 19).

Those avenues do not lead to restitution and do not put these communities and individuals in a position that they could be without the historical harms of de jure segregation, discriminatory programs, concentrating pollution in their neighborhoods, and leaving them to move away from improving places to yet another place.

And I believe that something more has to include reparations because environmental injustice is but a manifestation of structural racism.

Even if we limit ourselves to the impacts of redlining, and even without going back to the root cause, i.e., slavery and the belief in the supremacy of the white race that excluded Black Americans from massive benefits, I think most of us will see the fairness of placing those who lived in redlined neighborhoods in a position that they would have attained but for the injustice.

And if we see that unfairness, we should consider reparations.

Many works, including the California reparations task force report⁶² and Professor Darity and scholar A. Kirsten Mullen's book, *From Here to Equality: Reparations for Black Americans in the Twenty-First Century*,⁶³ have ideas worth considering, including cash payments commensurate with the loss based on the injustice.

We can tell ourselves that we are mere environmental lawyers and continue hewing to "partitioned knowledge,"⁶⁴ another term from Professor Nixon, staying in our lanes, as some might say, or see ourselves as adherents of justice, and recognize where just looking at so-called environmental solutions fails to achieve justice.

I hope that the resolve for broad justice that began solidifying with the Black Lives Matter movement does not just dissolve, although I am afraid it appears to be doing just that.

But I am hopeful that a vision for complete justice will not fade if we open ourselves up to educating ourselves. I saw the LA Times just this past weekend urging Californians to become educated about the past injustices that continue to today and to consider reparations for Black Californians.⁶⁵

⁶² See generally CAL. OFF. ATT'Y GEN., CALIFORNIA TASK FORCE TO STUDY AND DEVELOP REPARATION PROPOSALS FOR AFRICAN AMERICANS FINAL REPORT (June 29, 2023), <https://perma.cc/3SVU-U6MM> [hereinafter CALIFORNIA REPARATIONS REPORT]. Part IV of the report addresses different methodologies for calculating compensation and restitution. *Id.* at 40. Of particular note, the Task Force's experts "calculated that discriminatory redlining facilitated by the State of California caused the average African American in California to lose \$160,931 in homeownership wealth." *Id.* at 44.

⁶³ DARITY & MULLEN, *supra* note 15, at 256–70 (outlining several strategies for calculating monetary reparations before advancing their own proposal to mobilize national resources to eradicate the wealth gap in Chapter 13: A Program of Black Reparations).

⁶⁴ NIXON, ENVIRONMENTALISM OF THE POOR, *supra* note 12, at xi.

⁶⁵ L.A. Times Editorial Board, Editorial, *Why Skeptical Californians Should Rethink Cash Reparations for Slavery*, L.A. TIMES (Sept. 17, 2023), <https://perma.cc/6XND-9VL7>. The California Reparations Task Force (Task Force to Study and Develop Reparation Proposals for African Americans, with a Special Consideration for African Americans Who

But we have to move beyond just becoming educated.

“Who will be paid? How much will they be paid? Who will pay?”⁶⁶
These are questions I am not qualified to answer. But plenty of people
have made calculations. Our minds, however, must be changed if we
seriously want to confront this question of justice.

Thank you.

are Descendants of Persons Enslaved in the United States), established by the California Legislature, recently made recommendations that include cash reparations. CALIFORNIA REPARATIONS REPORT, *supra* note 62, at 52. San Francisco has adopted its own recommendations that include financial reparations. SAN FRANCISCO HUMAN RIGHTS COMMISSION, SAN FRANCISCO REPARATIONS PLAN 9 (2023).

⁶⁶ Coates, *supra* note 25, at 62.