

The Banking Law Journal

Established 1889

An A.S. Pratt™ PUBLICATION

JULY-AUGUST 2020

EDITOR'S NOTE: THE FEDERAL RESERVE ACTS

Steven A. Meyerowitz

**THE FEDERAL RESERVE BOARD SIGNIFICANTLY REVISES INTRA-AGENCY
APPEALS PROCEDURES**

Pinchus D. Raice, Jeffrey Alberts, and Dustin N. Nofziger

TALF 2020: SUMMARY OF REVISED TERM SHEET AND 1940 ACT CONSIDERATIONS

David H. Joseph, Joseph F. Dell'Aquila, David P. Glatz,
Prufesh R. Modhera, Stephen LaChine, and John Dikmak Jr.

BANKS: 5 TIPS TO AVOID BEING BLINDSIDED BY A LAWSUIT FOR A CUSTOMER'S MISDEEDS

Alex C. Lakatos

HOMELESSNESS IN AMERICA

Timothy D. Naegele

THE BANKING LAW JOURNAL

VOLUME 137

NUMBER 7

July-August 2020

Editor's Note: The Federal Reserve Acts

Steven A. Meyerowitz

353

The Federal Reserve Board Significantly Revises Intra-Agency Appeals Procedures

Pinchus D. Raice, Jeffrey Alberts, and Dustin N. Nofziger

355

TALF 2020: Summary of Revised Term Sheet and 1940 Act Considerations

David H. Joseph, Joseph F. Dell'Aquila, David P. Glatz,
Prufesh R. Modhera, Stephen LaChine, and John Dikmak Jr.

365

Banks: 5 Tips to Avoid Being Blindsided by a Lawsuit for a Customer's Misdeeds

Alex C. Lakatos

371

Homelessness in America

Timothy D. Naegele

378

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the **Editorial Content** appearing in these volumes or reprint permission, please call:

Matthew T. Burke at (800) 252-9257
Email: matthew.t.burke@lexisnexis.com
Outside the United States and Canada, please call (973) 820-2000

For assistance with replacement pages, shipments, billing or other customer service matters, please call:

Customer Services Department at (800) 833-9844
Outside the United States and Canada, please call (518) 487-3385
Fax Number (800) 828-8341
Customer Service Website <http://www.lexisnexis.com/custserv/>

For information on other Matthew Bender publications, please call

Your account manager or (800) 223-1940
Outside the United States and Canada, please call (937) 247-0293

ISBN: 978-0-7698-7878-2 (print)

ISSN: 0005-5506 (Print)

Cite this publication as:

The Banking Law Journal (LexisNexis A.S. Pratt)

Because the section you are citing may be revised in a later release, you may wish to photocopy or print out the section for convenient future reference.

This publication is designed to provide authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks of RELX Inc. Matthew Bender, the Matthew Bender Flame Design, and A.S. Pratt are registered trademarks of Matthew Bender Properties Inc.

Copyright © 2020 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved.

No copyright is claimed by LexisNexis or Matthew Bender & Company, Inc., in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material may be licensed for a fee from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
www.lexisnexis.com

MATTHEW  BENDER

Editor-in-Chief, Editor & Board of Editors

EDITOR-IN-CHIEF

STEVEN A. MEYEROWITZ

President, Meyerowitz Communications Inc.

EDITOR

VICTORIA PRUSSEN SPEARS

Senior Vice President, Meyerowitz Communications Inc.

BOARD OF EDITORS

BARKLEY CLARK

Partner, Stinson Leonard Street LLP

MICHAEL J. HELLER

Partner, Rivkin Radler LLP

SATISH M. KINI

Partner, Debevoise & Plimpton LLP

DOUGLAS LANDY

Partner, Milbank, Tweed, Hadley & McCloy LLP

PAUL L. LEE

Of Counsel, Debevoise & Plimpton LLP

TIMOTHY D. NAEGELE

Partner, Timothy D. Naegele & Associates

STEPHEN J. NEWMAN

Partner, Stroock & Stroock & Lavan LLP

THE BANKING LAW JOURNAL (ISBN 978-0-76987-878-2) (USPS 003-160) is published ten times a year by Matthew Bender & Company, Inc. Periodicals Postage Paid at Washington, D.C., and at additional mailing offices. Copyright 2020 Reed Elsevier Properties SA., used under license by Matthew Bender & Company, Inc. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner. For customer support, please contact LexisNexis Matthew Bender, 1275 Broadway, Albany, NY 12204 or e-mail Customer.Support@lexisnexis.com. Direct any editorial inquiries and send any material for publication to Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@meyerowitzcommunications.com, 646.539.8300. Material for publication is welcomed—articles, decisions, or other items of interest to bankers, officers of financial institutions, and their attorneys. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher.

POSTMASTER: Send address changes to THE BANKING LAW JOURNAL LexisNexis Matthew Bender, 230 Park Ave, 7th Floor, New York, NY 10169.

POSTMASTER: Send address changes to THE BANKING LAW JOURNAL, A.S. Pratt & Sons, 805 Fifteenth Street, NW., Third Floor, Washington, DC 20005-2207.

Homelessness in America

Timothy D. Naegele *

Poverty, and living in vehicles or on the streets or wherever, has reached epidemic proportions in the United States, resembling the Great Depression era for many. The author believes that there are a myriad of causes, including untreated mental health problems, the absence of work or homes or other dwellings at affordable prices, and – to be blunt – a lifestyle that encourages that way of living. The Brooke Amendment and the Housing

* Timothy D. Naegele served as counsel to the U.S. Senate Committee on Banking, Housing, and Urban Affairs (and as counsel to the late Senator Edward W. Brooke of Massachusetts), 1969-1971, where he authored a series of laws that remain in effect to this day. Mr. Naegele, currently managing partner of Timothy D. Naegele & Associates and a member of the Board of Editors of THE BANKING LAW JOURNAL, may be reached at tdnaegele.associates@gmail.com.

This article is the tenth in a series of articles by the author for THE BANKING LAW JOURNAL that examine important and timely subjects, which are of interest to our readers. See (1) Timothy D. Naegele, *The Coronavirus and Similar Global Issues: How to Address Them*, 137 BANKING L.J. 285 (June 2020) (Naegele June 2020); (2) Timothy D. Naegele, *So You Want To Sue A Bank, Or Defend One?* 137 BANKING L. J. 164 (April 2020) (Naegele April 2020); (3) Timothy D. Naegele, *Are Banks Irrelevant?* 137 BANKING L. J. 3 (January 2020) (Naegele January 2020) (<https://naegeleblog.files.wordpress.com/2020/01/timothy-d.-naegele.pdf>); (4) Timothy D. Naegele, *Wells Fargo: An American Banking Nightmare*, 136 BANKING L. J. 493 (October 2019) (Naegele October 2019) (<https://naegeleblog.files.wordpress.com/2019/09/timothy-d.-naegele.pdf>); (5) Timothy D. Naegele, *The Brooke Amendment And Section 8 Housing: Revisited*, 136 BANKING L. J. 245 (May 2019) (Naegele May 2019) (<https://naegeleblog.files.wordpress.com/2019/05/timothy-d.-naegele.pdf>); (6) Timothy D. Naegele, *Standby Letters Of Credit And Other Bank Guaranties: Revisited*, 136 BANKING L. J. 198 (April 2019) (Naegele April 2019) (<https://naegeleblog.files.wordpress.com/2019/04/timothy-d.-naegele-standby-letters-of-credit.pdf>); (7) Timothy D. Naegele, *The Bank Holding Company Act's Anti-Tying Provision: Almost 50 Years Later – Part I*, 135 BANKING L. J. 315 (June 2018) (Naegele 2018, Part I) and Timothy D. Naegele, *The Bank Holding Company Act's Anti-Tying Provision: Almost 50 Years Later – Part II*, 135 BANKING L. J. 372 (July/August 2018) (Naegele 2018, Part II) [The combined article, Parts I and II, can be read at <https://naegeleblog.files.wordpress.com/2018/08/timothy-d-naegele-banking-law-journal.pdf>]; (8) Timothy D. Naegele, *The Bank Holding Company Act's Anti-Tying Provision: 35 Years Later*, 122 BANKING L. J. 195 (Naegele 2005) (http://www.naegele.com/documents/antitying_3.pdf); and (9) Timothy D. Naegele, *The Anti-Tying Provision: Its Potential Is Still There*, 100 BANKING L. J. 138 (1983) (Naegele 1983) (<http://www.naegele.com/articles/antitying.pdf>). See also Timothy D. Naegele, *Are All Bank Tie-Ins Illegal?* 154 BANKERS MAGAZINE 46 (1971) (Naegele 1971) (<http://www.naegele.com/articles/banktieins.pdf>); Timothy D. Naegele, *Fed Plan Would Simply Gut Enforcement Of Ban on Tying*, AMERICAN BANKER (January 21, 2005) [see https://naegeleblog.files.wordpress.com/2018/08/op-1158_56_1.pdf (letter sent by Timothy D. Naegele to each member of the Federal Reserve Board (“Fed”) (March 16, 2005), and the AMERICAN BANKER article)]; Timothy D. Naegele Resume (<https://naegeleblog.files.wordpress.com/2020/06/timothy-d.-naegele-resume-20-6-30.pdf>).

Allowance program that morphed into the Section 8 housing program have been vital in providing a critical safety net for many. But, the author says, existing federal programs are not enough; and severe budgetary and bureaucratic constraints challenge even the most creative seekers of solutions to these problems. Banks and other financial institutions partner with housing authorities and builders, but vastly more is needed. The author shares examples of possible solutions in this article, and discusses how Congress and America's financial institutions can help.

It had been raining hard, and I took a walk outside in small-town America and passed by what appeared to be a grocery or other cart stacked high with someone's earthly possessions. No one was around; and it was covered with plastic in part, to protect it from the water. When I came back that way, 15 or so minutes later, the cart and its user were gone. Not far away, on another night, I saw someone wrapped up in a sleeping bag like a mummy, stretched out on hard concrete in an office-building courtyard. A homeless male is often present in the same courtyard, at least part of each night. Earlier, I saw him near a small lake that is miles away. He wheeled his bike and little trailer by; and he must be very cold, especially at night.

Two homeless women serve as striking examples, too. One, an elderly woman in the bushes near a Costco warehouse was sorting out massive quantities of her possessions, which were spread out in front of her. Later I saw a female uniformed police officer talking with her. Another woman watched dogs play at a dog park, where their owners tended to them caringly. Before that and later, I saw her sitting beside a small mound of her possessions on a lawn, next to a busy street as cars passed by.

So go the homeless in the United States today, human beings existing largely in the shadows, and trying to survive amidst depravation, humiliation and often staggeringly-difficult weather conditions with little or no money, food or shelter. The elderly, with Social Security retirement benefits being inadequate to cover the cost of housing¹ – and Section 8 housing constituting no viable alternative even for veterans² – and families with young children, provide a broad spectrum and set of excruciating challenges.

¹ Yearly benefit increases have been offset by increased Medicare premiums, thus leaving recipients with no net gains, while the cost of housing and other essentials have risen dramatically.

² The author wrote the Brooke Amendment for public housing, and the Experimental Housing Allowance Program that morphed into Section 8 housing. The latter program provides for "HUD-VASH, a housing voucher program by the United States Department of Housing and Urban Development and Veterans Administration, [which] gives out a certain number of Section 8 subsidized housing vouchers to eligible homeless and otherwise vulnerable U.S. armed forces

Yet so much wealth is nearby, whose recipients often avert their eyes from such sights, like Americans did years ago when my mother was in a wheelchair and people looked away from her. Pity and shame were all they gave, and had, or so it seemed to a young elementary school student.³ After all, we were living within a few miles of Los Angeles' fabled "Tinseltown," or "Hollywood,"⁴

veterans." But it is "tapped out" in most communities of the nation; it is a bureaucratic nightmare to comprehend; and tragically, it is unavailable to veterans who are in desperate need of decent and safe housing. The author has written about this herein and in a previous article for THE BANKING LAW JOURNAL.

See, e.g., Timothy D. Naegele, *The Brooke Amendment And Section 8 Housing: Revisited*, 136 BANKING L. J. 245, 260 n.25 (May 2019) (Naegele May 2019) (<https://naegeleblog.files.wordpress.com/2019/05/timothy-d.-naegele.pdf>); see also *infra* n.7.

³ My parents were a "golden couple" with everything going for them. My father was in real estate; and he bought part of the Al Jolson-Ruby Keeler estate in Encino, California, which he planned to subdivide – keeping one of the building sites for us. Plans were completed for a new, lovely home on it. Then, like a bolt of lightning out of the blue, my mother was determined to have the convergence of two rare skin diseases: *Lichen Sclerosus et Atrophicus* and scleroderma. They were diagnosed by doctors at the Scripps Clinic in La Jolla, California, and later treated by doctors who had been trained at the Mayo Clinic in Rochester, Minnesota, the state in which my parents were born and raised and where they met in grade school. These conditions occurred before the advent of health insurance, which would have helped our family financially. They affected only the right side of her body; and she came to my sixth grade graduation in a wheelchair. Such conditions ceased abruptly when she had her right leg amputated; and she learned to walk with an artificial leg.

Years later, during the Vietnam War, she organized volunteers at the Red Cross' offices in Westwood, California, where we lived and where the UCLA campus is located. She was honored for the work that she had done by being named the local chapter's "Woman of the Year," in helping U.S. military families and their service members in the war zone connect and cope with the stresses of family emergencies in the states, and emergencies that the service members encountered in Vietnam, Cambodia and elsewhere that the U.S. was engaged. My father worked seven days a week to pay the staggering medical and other bills; and my parents are my only heroes in life.

Today, as a result of the federal Americans with Disabilities Act and other statutes, monumental changes have been made, which were not thought possible when my mother and father struggled with her wheelchair and other issues. For example, accessibility requirements have been levied on public accommodations, which means that simple things like curbs at the corners of streets have been rebuilt into ramps to accommodate wheelchairs; buses today have lifts for such wheelchairs; and the list goes on and on.

See, e.g., https://en.wikipedia.org/wiki/Americans_with_Disabilities_Act_of_1990 ("Americans with Disabilities Act of 1990").

It is not too far-fetched to believe that the needs of the homeless can be addressed in a similar comprehensive manner.

⁴ See, e.g., https://en.wikipedia.org/wiki/Hollywood#Motion_picture_industry ("Hollywood: Motion picture industry").

where perfect bodies were the lore and bread-and-butter of its movie and television industries. Stigmas attached to those with disabilities – being less than perfect meant not “fitting in” – that much was crystal clear.

Today, homelessness has reached epidemic proportions. On January 7, 2020, the U.S. Department of Housing and Urban Development (“HUD”) released its 2019 Annual Homeless Assessment Report to the Congress, which was certified by HUD Secretary Ben Carson. It found that “567,715 persons experienced homelessness on a single night in 2019, an increase of 14,885 people since 2018[, while] homelessness among veterans and families with children continued to fall, declining 2.1 percent and 4.8 percent, respectively, in 2019.”⁵

It added:

There is significant local variation reported from different parts of the country. Twenty-nine states and the District of Columbia reported declines in homelessness between 2018 and 2019, while 21 states reported increases in the number of persons experiencing homelessness. Homelessness in California increased by 21,306 people, or 16.4 percent, which is more than the total national increase of every other state combined.

“The Trump Administration is committed to working with local communities to find effective ways to end homelessness,” said HUD Secretary Ben Carson. “HUD will continue these efforts to help end the suffering of our most vulnerable neighbors in the most compassionate way possible.” “As we look across our nation, we see great progress, but we’re also seeing a continued increase in street homelessness along our West Coast where the cost of housing is extremely high,” said HUD Secretary Ben Carson. “In fact, homelessness in California is at a crisis level and needs to be addressed by local and state leaders with crisis-like urgency. Addressing these challenges will require a broader, community-wide response that engages every level of government to compassionately house our most vulnerable fellow citizens.”

HUD’s national estimate is based upon data reported by approximately 3,000 cities and counties across the nation. Every year on a single night

⁵ See https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_003 (HUD No. 20-003, January 7, 2020, “HUD RELEASES 2019 ANNUAL HOMELESS ASSESSMENT REPORT, Homelessness Increase in California Offsets Combined Decrease in All other States; Continued Declines Noted Among Veterans and Families with Children”).

in January, planning agencies called “Continuums of Care” (COC)[,] along with tens of thousands of volunteers, seek to identify the number of individuals and families living in emergency shelters, transitional housing programs, and in unsheltered settings. These one-night “snapshot” counts, as well as full-year counts and data from other sources (U.S. Housing Survey, Department of Education), are crucial in understanding the scope of homelessness and measuring progress toward reducing it.

Key Findings

On a single night in January 2019, state and local planning agencies (Continuums of Care) reported:

- *567,715 people* were homeless, representing an overall 2.7 percent increase from 2018 but a nearly 11 percent decline since 2010.
- *37,085 veterans* were reported as homeless, a *decline of 2.1 percent* from 2018 and 50 percent since 2010.
- *53,692 families with children* experienced homelessness last January, *down nearly 5 percent* from 2018 and more than 32 percent since 2010.
- Homelessness *increased in California by 21,306 people, or 16.4 percent*, accounting for more than the entire national increase.
- The estimated number of persons experiencing long-term, *chronic homelessness* increased 8.5 percent between 2018 and 2019. This increase was concentrated on the West Coast, with the largest increases in California. The number of *unaccompanied homeless youth and children* in 2019 is estimated to be 35,038, a *3.6 percent decline* since 2018.

Homelessness in California

California reported a large increase of 21,306 persons experiencing homelessness, or 16.4 percent. Last year’s increases are particularly noteworthy among unsheltered individuals and the chronically homeless.

Veteran Homelessness

Homelessness among Veterans is half of what was reported in 2010. Last year alone, the number of veterans experiencing homelessness declined by 2.1 percent. These declines are the result of intense planning and targeted interventions, including the close collaboration between HUD and the U.S. Department of Veterans Affairs (“VA”). Both agencies jointly administer the HUD-VA Supportive Housing (“HUD-VASH”) Program, which combines permanent HUD rental assistance with case management and clinical services

provided by the VA. This year, more than 4,400 veterans, many experiencing chronic forms of homelessness, will find permanent housing and critically needed support services through the HUD-VASH program. An additional 50,000 veterans found permanent housing and supportive services through VA's continuum of homeless programs.

Family Homelessness

Local communities continue to report declines in homelessness among families with children in the U.S. In January of 2019, there were 53,692 family households with children experiencing homelessness, a decline of five percent between 2018 and 2019, and 32 percent between 2007 and 2019. Following HUD's guidance and data-driven evidence and best practices, local planners are increasingly relying upon interventions to move families into permanent housing more quickly and at lower cost. Communities are using more robust coordinated entry efforts, which have proven to be an effective response in helping families experiencing temporary crises as well as those enduring the most chronic forms of homelessness.

Chronic Homelessness

Long-term or chronic homelessness among individuals with disabilities grew 8.5 percent since 2018, while falling 9.4 percent below the levels reported in 2010. This longer trend is due in large measure to more permanent supportive housing opportunities available for people with disabling health conditions who otherwise continually cycle through local shelters or the streets.⁶

⁶ See *supra* n.5 (emphasis in original; chart omitted); see also <https://www.nytimes.com/2019/12/20/us/politics/homelessness-trump-california.html> (“Homelessness Rises 2.7 Percent, Driven by California’s Crisis, Report Says” – “Ben Carson, the secretary of housing and urban development, blamed welfare programs that he said fostered dependency and despair. . . . Mr. Carson said policies that allowed people to sleep on streets, bridges and other public places were not compassionate. Such policies are creating a ‘health hazard,’ he said, discouraging homeless people from going ‘to the places that are actually designed to help them get out of that situation’” – “We know that there is a lot of homelessness in California, but we also know there’s a lot of homelessness nationally, and what’s driving that is increased housing costs,” said Maria Foscarnis, the founder and executive director of the National Law Center on Homelessness and Poverty”) and <https://apnews.com/8014471051d96583dd3b4da8cc52c095> (“HUD reporting 2.7% percent uptick in homeless population” – “The federal government is reporting a 2.7% increase in the nation’s homeless population driven by a spike in California” – “HUD said the increase seen in its January snapshot was caused ‘entirely’ by a 16.4% increase in California’s homeless population” – “The states with the highest rates were New York, Hawaii, California, Oregon and Washington. The District of Columbia had a homelessness rate of 94 per 10,000 people, more than twice as high as New York”) and <https://www.latimes.com/politics/story/20191216/supremecourtletsstandrulingthatprotectshomelesswhosleeponsidewalk> (“Supreme Court refuses to hear a case about where homeless can sleep”) and <https://reason.com/video/>

While this data and the conclusions seem positive and uplifting, the author defies anyone – much less the finest trained lawyers in America – to pick their way through the bureaucratic nightmare that is the HUD-VASH Program, its forms and requirements.⁷

America's homeless face a multitude of challenges, from (1) complex mental and physical health needs, to (2) food and shelter and basic nutrition, to (3) the need for warmth during inclement weather, and (4) safety from those who might seek to pillage what little they have, and to (5) family members who are sometimes indifferent, or have effectively turned their backs on the plight of their homeless relatives, having problems and multifarious challenges of their own.⁸

They are today's lepers, both forgotten and spurned; and their stories are often tragic. Peter Edelman has written in the UK's *Guardian*:

[I]n America, 10 million people, representing two-thirds of all current and former offenders in the country, owe governments a total of \$50bn in accumulated fines, fees and other impositions. . . . As a result, poor people lose their liberty and often lose their jobs, are frequently barred from a host of public benefits, may lose custody of their children, and may even lose their right to vote. . . . The use of law enforcement both to criminalize homelessness and to drive the homeless entirely out of cities is increasing, as municipalities enact ever more punitive measures due to shortages of funds for housing and other services. . . . Budget cuts have also led to the further deterioration of mental health and addiction treatment services, making the police the first responders and

losangelesisspendingover1billiontohousethehomelessitsfailing/# (“Los Angeles Is Spending Over \$1 Billion To House the Homeless. It’s Failing”) and <https://www.dailymail.co.uk/news/article-7834965/California-salon-owner-welcomes-Trump-intervention-growing-homelessness-crisis.html> (“California salon owner welcomes a Trump intervention on the growing homelessness crisis after the president accused the state of incompetence and insisted they should ‘politely’ ask for his help” – “A salon owner who claims she was forced to close up shop due to California’s homelessness crisis says she would welcome a Donald Trump intervention after the president accused the Golden State’s governor of not being able to handle the problem”).

⁷ See also *supra* n.2.

⁸ This may get exponentially worse now that the coronavirus has become a nationwide and global pandemic, destroying whole economies and populations.

See also <https://www.dailymail.co.uk/news/article-8125825/California-rents-RVs-hotel-rooms-protect-homeless-coronavirus-outbreak.html> (“California rents RVs and hotel rooms to protect the homeless during coronavirus outbreak”).

Also, prison populations nationally and globally may be massive incubators for the virus, creating catastrophes unto themselves. See *infra* n.9.

jails and prisons the de facto mental hospitals, again with a special impact on minorities and low-income people.⁹

They stand on the side of roads and freeways, holding up signs and seeking help. Granted, some may be seeking handouts rather than working. But many are in desperate need. Like the biblical Mary and Joseph, many or perhaps most are turned away *everywhere*, albeit with some receiving a helping hand from total strangers – like that storied night in Bethlehem. Each in his or her own way is courageous for “making it” and just surviving.¹⁰ Lots of Americans, including members of the legal profession, may scoff at this conclusion. What they do not realize, much less comprehend fully, is that tragedy could strike them or a loved one at any moment, as it did my family when I was very young.¹¹

In an article entitled “RV Living Grows as Latest Consequence of Housing Crisis,” perhaps the *Wall Street Journal* described the best of living experiences for many of them:

Across the Western U.S., rising home prices have pushed more people who can’t afford houses or apartments to live in vehicles, including RVs. In Los Angeles, 16,500 people called a vehicle their home last year, according to local counts. In San Francisco that figure was 1,800, up 45% from 2017, and in Santa Clara County, which includes Mountain View, the number nearly tripled over that same time frame

⁹ See <https://www.theguardian.com/commentisfree/2017/nov/06/how-poverty-became-crime-america> (“How it became a crime to be poor in America”); see also <https://www.dailymail.co.uk/news/article-7827455/Homeless-woman-gives-birth-premature-twins-street-outside-Trinity-College-Cambridge.html> (“Homeless woman, 30, gives birth to premature twins in the street outside Cambridge University’s richest college”).

¹⁰ There are very few *public* restrooms or showers available for the homeless or any other Americans to use. For example, one local YMCA, which shut down completely because of the coronavirus, had charged \$12.00 to shower there on a one-time, “Day Pass” basis. Thus, it is not surprising that defecation takes place in public, and that the sanitary conditions of the homeless are decidedly unhealthy. They often have no other choices. Many homeless are (or were) able to use the restrooms at McDonalds’ all-night restaurants and similar businesses.

See, e.g., <https://www.miamiherald.com/news/commissioner-ken-russell-pushes-for-more-public-toilets-downtown-miami-11465055> (“Debate Resumes Over Public Toilets for Miami Homeless”).

Also, when temperatures fall to freezing levels or dramatically below, few Americans or those from other countries are able to function, much less survive. Yet, many who are not similarly affected have little or no empathy for their fellow human beings, which is tragic. Amidst so much wealth as a nation, it is hoped that their best instincts would prevail.

¹¹ See *supra* n.3.

to 1,747. There are no reliable national figures on the trend. . . .

An estimated half a million people are homeless in the U.S., with the problem most acute along the Northeastern seaboard and West Coast where housing costs are highest, White House officials said in a 2019 report. If the problem has an epicenter, it is the San Francisco Bay Area, the nation's most expensive housing market, where median housing prices have nearly doubled to about \$1 million over the past eight years, according to real-estate listing service Zillow.

As with homeless encampments that block sidewalks, RV living is creating its own tensions. . . .

In Seattle, where an estimated 2,147 people live in vehicles, the city is weighing a plan to tow and destroy unsafe RVs. The Bend, Ore., city council last year passed an ordinance to shorten the time vehicles can be parked in any one location to three days from five. Los Angeles in July reinstated a ban on people sleeping in vehicles overnight. . . .

Several local governments have begun to treat RVs as a special case, creating parking lots with portable toilets or showers to temporarily accommodate them. But those efforts have so far tended to be small in scale, such as San Francisco's Vehicle Triage Center, intended for 30 vehicles. . . .

Decades-old RVs and campers, which make up the majority of those seen on city streets, can often be acquired for a few thousand dollars, not much more than two months' rent in many of the West's expensive cities. While RV parks often provide electric and water hookups, RV owners say parks tend to discriminate against older vehicles, leaving the streets as the only option.¹²

It is worth repeating: "living in an RV is considered a step up by many people without shelter[,] from living on the street." Also, as noted previously:

If the average American cannot afford a home without stretching himself or herself (or themselves) to the utmost financial limits, how can we expect the poor (*e.g.*, elderly) to have decent *shelter*, much less housing? If workers in California's fabled Silicon Valley are forced to live in RVs because affordable housing is not available, how can we ever expect to alleviate the plight of our great nation's homeless?¹³

¹² See <https://www.wsj.com/articles/rv-living-grows-as-latest-consequence-of-housing-crisis-11582722004> ("RV Living Grows as Latest Consequence of Housing Crisis") (diagrams omitted).

¹³ See Timothy D. Naegele, *The Brooke Amendment And Section 8 Housing: Revisited*, 136

EXPERIENCES IN OTHER COUNTRIES

Before returning to the issues facing the United States, it is useful to discuss briefly the history of homelessness globally, and the attempts to address it in other countries. Feast and famine have existed side-by-side with war and peace since shortly after people first inhabited the Earth. Survival of the fittest underlies human history, and the history of other animals on this planet. In the 20th Century alone, millions were killed before and during World War II.

It is estimated that the former Soviet Union's Joseph Stalin was responsible for the deaths of more than 30 million men, women and children – his own countrymen – including millions during the collectivization of the Soviet farms in the 1930s. China's Mao Tse-tung was directly responsible for an estimated 30 to 40 million deaths between 1958 and 1960, as a result of what Mao's regime hailed as the "Great Leap Forward." Mao's crimes involved Chinese peasants, many of whom died of hunger from man-made famines under collectivist orders that stripped them of all private possessions.

Recently, refugees from the war-torn Middle East, most notably Syria, have fled to the safety that they perceived in Europe. Many of them have died along the route, as a result of what in Mexico are referred to as "coyotes," or those who take money from and exploit refugees on a global basis. Perhaps two young boys, Aylan and Galip Kurdi – who died in the waters near the Turkish resort of Bodrum, trying to escape – symbolize millions who have given their lives in the quest for freedom, safety and a better life.¹⁴

THE BROOKE AMENDMENT AND SECTION 8 HOUSING

The author has discussed many of these issues in an earlier article for *THE BANKING LAW JOURNAL*.¹⁵ *The Brooke Amendment and the Housing Allowance*

BANKING L. J. 245, 269 (May 2019) (Naegele May 2019) (<https://naegeleblog.files.wordpress.com/2019/05/timothy-d.-naegele.pdf>).

¹⁴ See, e.g., <http://www.dailymail.co.uk/news/article-3219553/Terrible-fate-tiny-boy-symbolises-desperation-thousands-Body-drowned-Syrian-refugee-washed-Turkish-beach-family-ried-reach-Europe.html> and <http://www.wsj.com/articles/image-of-syrian-boy-washed-up-on-beach-hits-hard-1441282847> ("Image of Drowned Syrian Boy Echoes Around World") and <http://www.telegraph.co.uk/news/picturegalleries/worldnews/11843440/The-power-of-photography-How-images-have-changed-world-opinions.html> ("The power of photography: Images that changed world opinions") and <http://www.telegraph.co.uk/news/worldnews/europe/turkey/11847321/Police-officer-who-found-Syrian-toddler-I-prayed-he-was-still-alive.html> ("Police officer who found Syrian toddler: 'I prayed he was still alive'").

¹⁵ See Timothy D. Naegele, *The Brooke Amendment And Section 8 Housing: Revisited*, 136

program that morphed into the Section 8 housing program have been vital in providing a critical safety net for many. As noted previously:

[T]he Brooke Amendment capped the payment of rent at 25 percent of a person's income, with the federal government paying the difference; and it provided funds to improve public housing, and to assure the safety of its residents.

Section 8 was envisioned as giving "vouchers" to those who qualified for public housing, and permitting them to find housing *anywhere*, with the federal government subsidizing their rents when the 25-percent-of-income threshold was passed. Taken together, the Brooke Amendment and Section 8 were America's answer to the needs of decent housing for its poor. Today, there are two million voucher families. . . .

The problem is that vouchers are largely "tethered" to specific housing projects, rather than allowing the poor to obtain decent and safe housing wherever it is located. Like receiving Social Security retirement benefits, where the recipient can use the monies as he or she sees fit, the late Senator Brooke and the author envisioned vouchers as being used in the same way.

In addition to HUD bureaucrats, perhaps the "vested interests" that have opposed the simplicity of vouchers for the poor can be described best as follows:

[M]ortgage lenders, appraisers, packagers, Wall Street investment bankers, bond rating firms, guarantors, and their counsel, taking advantage of very low-income people beguiled by the American home-ownership dream.

. . . Arguably the goals of these vested interests (*e.g.*, the builders of what become "ghettos") are antithetical to the needs of the poor – and certainly those of the elderly poor.¹⁶

Indeed, as the author asked previously:

Query *why* public housing authorities are involved at all? Why does HUD not give the vouchers directly to those who qualify for them, and pay their landlords directly, for use wherever decent and safe housing

BANKING L. J. 245 (May 2019) (Naegele May 2019) (<https://naegeleblog.files.wordpress.com/2019/05/timothy-d.-naegele.pdf>); *see also supra* notes 2, 7, and 13.

¹⁶ *See* Timothy D. Naegele, *The Brooke Amendment And Section 8 Housing: Revisited*, 136 BANKING L. J. 245, 250, 257 (footnotes omitted) (May 2019) (Naegele May 2019) (<https://naegeleblog.files.wordpress.com/2019/05/timothy-d.-naegele.pdf>).

is found? Yes, millions of payments would be involved, but the Treasury does that every month with Social Security retirement benefits. . . .

[T]he Brooke Amendment and the Experimental Housing Allowance Program that morphed into Section 8 were not intended to create new welfare programs, or dependency – except to the extent that the disabled or elderly (including veterans) are involved who may be near the end of their lives.¹⁷

As noted herein, the author defies anyone to pick their way through the bureaucratic nightmare that is the HUD-VASH Program, its forms and requirements. If highly-skilled lawyers are unable to understand the gibberish, how can the homeless – much less homeless elderly veterans – be expected to do so?¹⁸

Perhaps the experiences in California, and specifically in Los Angeles, are illustrative of how severe the challenges have become, and how illusive are the solutions even when money is thrown at the problems. Indeed, it is fair to ask: why give another penny to Los Angeles when more than \$1 billion has been wasted already?¹⁹ Existing federal programs are not enough; and severe budgetary and bureaucratic constraints challenge even the most creative seekers of solutions to these problems. Banks and other financial institutions partner

¹⁷ See Timothy D. Naegele, *The Brooke Amendment And Section 8 Housing: Revisited*, 136 BANKING L. J. 245, 261, 264 (footnotes omitted) (May 2019) (Naegele May 2019) (<https://naegeleblog.files.wordpress.com/2019/05/timothy-d.-naegele.pdf>).

¹⁸ See *supra* notes 2 and 7.

¹⁹ Compare <https://reason.com/video/losangelesisspendingover1billiontohousethehomelessitsfailing/#> (“Los Angeles Is Spending Over \$1 Billion To House the Homeless. It’s Failing”) and <https://www.dailymail.co.uk/news/article-7834965/California-salon-owner-welcomes-Trump-intervention-growing-homelessness-crisis.html> (“California salon owner welcomes a Trump intervention on the growing homelessness crisis after the president accused the state of incompetence and insisted they should ‘politely’ ask for his help” – “A salon owner who claims she was forced to close up shop due to California’s homelessness crisis says she would welcome a Donald Trump intervention after the president accused the Golden State’s governor of not being able to handle the problem”) with <https://californiaglobe.com/section-2/feds-stepping-in-on-californias-homeless-crisis/> (“Feds Stepping in on California’s Homeless Crisis” – “Los Angeles Mayor Eric Garcetti announced . . . that he and the federal government have reached a preliminary agreement with the Trump administration on a joint plan to help combat the city’s homelessness crisis by erecting temporary shelters. . . . Dr. Ben Carson, U.S. Housing and Urban Development Secretary, believes “[h]ousing is one big problem in California, but he said that California is not approaching the homeless and transient problem correctly by allowing the massive tent cities to flourish; he said it costs cities less to get the homeless off the street than to deal with filthy homeless encampments and the ensuing health and disease concerns. . . .”).

with housing authorities and builders, but vastly more is needed. Clearly, Congress and America's financial institutions can and must help more.

As the author noted previously:

When the Brooke Amendment, the Experimental Housing Allowance Program and Section 8 were conceived, they were in the vanguard and at the cutting edge of creative thinking; and they represented the very best solutions that were at hand. Today, it is necessary to think "outside the box" again, and rethink the problems and solutions, because with the passage of time they have grown exponentially greater and far more crippling and complex.²⁰

CONCLUSION

Again, it is not too far-fetched to believe that the needs of the homeless can be addressed in a comprehensive manner – just like the needs of others with disabilities became a national priority with the enactment of the Americans with Disabilities Act of 1990, and other laws.²¹ First, there must be a national consensus that homelessness is an acute problem in the United States, which it is. Then, the executive, legislative and administrative processes must coalesce and begin to bring about concrete and tangible legislative and actual changes, with respect to how the homeless and their needs are addressed. Without a national consensus undergirding the processes, concrete results may be illusive, nonexistent and disappointing.

Young, well-educated families are being hit hard too, especially because of the coronavirus, and this includes those with young children. They are often saddled with enormous student debts, which require servicing; they cannot afford to buy, so they are forced to rent places in which to live; rentals have gone sky high; and many fall through the cracks and become homeless. Indeed, homelessness is reaching and affecting those up and down the economic spectrum or ladder. It is truly an American tragedy in the 21st Century. The United States cannot allow present conditions to deteriorate further, with no relief in sight. Forget the "unsightliness" of the homeless. They are human beings just like the rest of us, who have fallen through the cracks and societal safety nets, and are often "shell-shocked" in terms of dealing with life.²²

²⁰ See Timothy D. Naegele, *The Brooke Amendment And Section 8 Housing: Revisited*, 136 BANKING L. J. 245, 269 (May 2019) (Naegele May 2019) (<https://naegeleblog.files.wordpress.com/2019/05/timothy-d.-naegele.pdf>).

²¹ See *supra* n.3.

²² Possibly the biggest single issue for the homeless – involving their dignity and self-respect

The global effects of the coronavirus on the lives of the homeless may be catastrophic. Many will not survive.²³ For those Americans who have never been homeless (except perhaps in their college years), and never thought they would be, the virus has changed lives dramatically, from an economic standpoint alone. Vast numbers are out of work, and may never find jobs again. In its starkest terms, non-homeless need to realize that one of the biggest day-to-day issues for the homeless – aside from the paramount matters of finding whatever food they can, and shelter especially in the case of inclement weather – involves their dignity and self-respect, and entails basic necessities such as cleanliness and finding showers and bathrooms to use during times when the coronavirus may severely limit their options.

Please consider the following:

Going through the trash receptacles at a local park was a homeless woman who had been pushing two small carts with her earthy possessions on them. Young girls were playing volleyball in the park; women were pushing their babies in strollers; and still other women were setting up a nice picnic around one of the picnic tables only feet away from the trash bin through which she had been rummaging. All of them were seemingly oblivious to the fact that she was there, or even existed as a human being.

Will this be anyone we know? Absent is basic hygiene – way past the point of embarrassment. Imagine doing this day-after-day, year-after-year, with no relief in sight – living in freezing or near-freezing temperatures and trying to find a place to sleep and something to eat, which is why the numbers of homeless have swelled in temperate climates such as along or near California's coast.

Homelessness in America and globally transcends age, race, gender, ethnicity, religious affiliations, nationalities and political beliefs – and it is *our* problem, as human beings.

– entails finding bathrooms to use, especially during times when the coronavirus and other national calamities close off their options. *See, e.g., supra* notes 8 and 10.

²³ *See, e.g.,* <https://www.gingrich360.com/2020/03/america-italy-and-the-dual-coronavirus-threats/> (“There are tens of thousands of homeless people in Los Angeles, San Francisco, Portland, and Seattle. If the coronavirus ever began spreading among those folks who already suffer from malnutrition and other health problems[,] the losses could be catastrophic”) and <https://news.yahoo.com/california-governor-says-60-000-010314386.html> (“Some 60,000 California homeless could get coronavirus in coming weeks”).

