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Piercing the Corporate Veil: A Different Delaware beyond the Boardrooms

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PIERCING THE CORPORATE VEIL: A DIFFERENT DELAWARE BEYOND THE BOARDROOMS

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I. INTRODUCTION

Highways 13 and 113 cut a narrow north-south swath through Delaware, connecting America's most popular corporate domicile, 4 Wilmington, with the fashionable seaside resort, Rehoboth Beach. Just a few steps beyond the shadows of Wilmington's office towers and a short distance from the Delaware gold coast that runs from Rehoboth Beach to the Maryland state line, there exists another Delaware 5 that has not shared in the state's celebrated,
To look at Delaware beyond its boardrooms today is to witness the contradictions and consequences of an economy fueled by the promise that what would be good for the nation’s banks and the wealthy would necessarily be good for all Delawareans—and most notably Delaware’s poor.

Over the course of the last ten years, Delaware’s economic renaissance and its legislative centerpiece, the 1981 Financial Center Development Act (FCDA) has been chronicled and praised by virtually every national publication that reports on the American economy. From The Wall Street Journal to Forbes and The New York Times, Delaware’s attempt in the early eighties to do an end-run around the declining fortunes of the American economy has uniformly received high grades. Its success has been confirmed by balanced budgets, revenue surpluses and a nationally acclaimed low unemployment rate throughout the eighties.

There exists, however, another Delaware which has remained virtually unaffected over the last decade: it is most readily distinguished by its legacy of enduring poverty. That such a legacy continues to exist, after years of heralded economic growth, raises serious questions about the efficacy and equity of the economic policies pursued by Delaware during the eighties.


10Delaware Development Office, supra note 6, § I, at 1-8; Davis, supra note 8, at 29-31.

11See sources cited supra note 5.
II. A MIRACLE ON THE MASON-DIXON

In 1990, Delaware's per capita income increased by 8 percent and exceeded the national average by 8.8 percent. Another 1,900 new jobs were created in 1990, raising the total number of new jobs created since 1982 to 87,200. The state's gross product increased steadily throughout the eighties and increased again in 1990 by an estimated 7.9 percent. And the hallmark of macroeconomics, the level of unemployment, remained below the national average in 1990 and for much of the eighties was among the lowest in the nation.

In the fall of 1989, Delaware's Governor, Mike Castle, hosted the annual Southern Governor's Association meeting in Wilmington. The conference provided a forum for Delaware to showcase its supply-side success story and was given wide coverage in the local press. The News Journal reported that Delaware's lavish display of southern hospitality included moonlight garden parties with orchestral serenades and state dinners for the eleven visiting southern state chief executives and their staffs. The local press also reported that the conference was underwritten by a long list of blue-chip corporations and banks. Explaining Governor Castle's success in finding corporate donors so willing to finance the conference, one anonymous contributor told the News Journal that "When you're getting all sorts of favors from the administration, what do you expect?"

Some would argue that there has been no greater favor bestowed upon the nation's banking industry than the passage of the FCDA. What may have been the exclusive political handiwork in 1980 of former Republican Governor Pierre S. du Pont IV is now accepted and marketed as the proud example of bipartisan cooperation among Delaware's Republicans and Democrats. Launched on the heels of the recession-ridden seventies, the FCDA, boiled down to its barest essentials, was Delaware's hunch that if it were to jettison its restrictive credit laws and make the sky the limit in consumer and commercial lending, it could entice the credit card subsidiaries of major banks.
national banks and affiliated financial institutions to move their operations to
Delaware.22 This would create new jobs and new sources of state revenue.
Besides eliminating ceilings on consumer and commercial usury rates, the
FCDA cleared the way for using alternative methods of computing interest on
loans, removed existing limitations on the type of terms that could be included
in credit agreements and allowed banks to charge a variety of fees in credit
transactions.23 By removing what supporters of the new law deemed "artificial
constraints," the FCDA effectively deregulated the credit industry in Delaware,
and allowed the marketplace to define the fairness of rates and terms.24

In addition to financial deregulation, new lower tax rates and reduced
government spending contributed to Delaware's economic growth. A key
selling feature of the FCDA was a regressive corporate income tax structure
which proved to be irresistible to out of state banks.25 Before the FCDA, banks
paid a flat tax of 8.7 percent on net income. The FCDA reduced the tax rate on
income in excess of 20 million dollars reaching the lowest rate of 2.7 percent on
income over 30 million dollars.26 Personal income tax cuts also were the order
of the day in Delaware during the eighties.27 At the close of the seventies, the
highest personal rate was 19.8 percent.28 Numerous successive personal
income tax cuts brought the top rate down to 7.7 percent in 1991.29 Other
reasons for the state's supply-side success story included slashes in state
spending, an amendment to the state constitution that limits expenditures,30
and a mandated annual set-aside of state revenue into a "rainy day" reserve
fund.31 At the same time, the state constitution was amended to require a
super-majority, three-fifths vote for passage of any new tax measure.32

In 1986, an article on Delaware appeared in Forbes magazine. Not
surprisingly, it was titled, "Supply Side Success Story". The article proclaimed,
"[t]ax cuts for the wealthy helped create jobs that are trickling down - even to

22Id.; see also sources cited supra notes 8-10 and 20.
24See William Prickett, et al., A Preview of Delaware's Financial Center Development Act
25DEL. CODE ANN. tit. 5, §§ 941(b)(c)(d), 961(b)(c), 964.
26See McBride, supra note 20, at 32.
27DELAWARE DEVELOPMENT OFFICE, supra note 6, §§ I, II.
28Id. § I at 3; see also MCDONOUGH, supra note 6, at 55.
29DELAWARE DEVELOPMENT OFFICE, supra note 6, §§ I, at 3, II.
30DEL. CONST. art. VIII, § 6(b)(c)(d).
31See CRAIG, supra note 6. DELAWARE DEVELOPMENT OFFICE, supra note 6, at § I;
DELAWARE STATE CHAMBER OF COMMERCE, supra note 4, at 4.
32DEL. CONST. art. VIII, §§ 10, 11.
mothers struggling to get off welfare."33 That same article, however, also pointed out that a key ingredient in Delaware’s strategy was "an aggressive accommodation to what business wants."34 Delaware’s historical appreciation for the profit motive is something that both admirers and critics agree has made the state the most hospitable corporate domicile in the United States.35

Delaware got its start in the business of servicing America’s corporations around 1913 when New Jersey, which had been the first state to devise a modern corporate code designed to accommodate big business, experienced a wave of corporate reforms initiated by Governor Woodrow Wilson.36 The result was a rapid decline in the number of corporations willing to call New Jersey home.37 One of Delaware’s most prominent corporate lawyers, Rodman Ward, Jr., in a recent article on why Delaware continues to be the nation’s favorite corporate domicile, explained that New Jersey’s loss was Delaware’s gain because "Delaware did not repeat Wilson’s mistaken foray into corporate reform."38

However, it is not just the executive and legislative branches that have helped make Delaware the corporate capital of America. Delaware’s Court of Chancery and Supreme Court have long been the forums of choice for corporate boards in legal battles with dissident shareholders and raiders. The Delaware judiciary has willingly served as a safe harbor for corporate boards, and in many instances has done so under the banner of the business judgement rule.39 In a recent speech to the Wilmington Kiwanis Club, E. Norman Veasey, the chief justice of Delaware’s state supreme court took special note of the intimate relationship between Delaware’s judiciary and corporate America. Excerpts from Chief Justice Veasey’s speech appeared in the Delaware Business Review:

Businesses are attracted to Delaware, and have been for over seven decades, because of the even-handed, intellectually honest and

33Novack, supra note 8, at 149.

34Id.


36See sources cited supra notes 4 and 35.

37Id.

38Ward & Kelly, supra note 4, at 16.

39The business judgment rule is a court made doctrine used as a legal litmus test to measure the legal propriety of the decisions of corporate management, namely the board of directors, officers or shareholders. The rule in general says a court will not interpose its judgment for that of the board of directors if the board exercises its decision in good faith, maintains a reasonable basis for its decision, and makes its decision not influenced by any interest other than the best interest of the corporation. See HARRY G. HENN & JOHN R. ALEXANDER, THE LAW OF CORPORATIONS, 661-63 (1983).
predictable decisions of our courts. . . . I know from personal experience that the Delaware judiciary is held in the highest regard by corporate decision-makers, lawyers, and judges around the world. We see the evidence of this Delaware benefit everyday. We all know what a major contributor the corporate franchise tax alone is in our state budget last year.40

It is therefore not surprising that over 200,000 companies are now incorporated in Delaware, and that more large corporations have incorporated in Delaware than in the 49 other states combined.41

For many, the history of Delaware has been, and continues to be, its long and intimate relationship with corporate America, and in particular, its relationship with the DuPont Company and the family that bears the same name. The histories of the family and the company read like business school textbooks, beginning with the founding in 1803 of a small gunpowder mill on the banks of the Brandywine Creek by Eleuthere Irene du Pont42 and continuing through to 1907 when the United States Government determined that the DuPont Company would do the nation a public service were it to relinquish some of the national market for gunpowder munitions43—in the spirit of competition. DuPont weathered well the demise of what was then known as the "Powder Trust" and today remains one of the largest and most diverse chemical companies in the world.44

No doubt the story of Delaware during the eighties could be sculpted into an update on the corporate conduct of the DuPont Company and its founding family. But that story would be unduly myopic and let pass an opportunity to examine the consequences that follow from the deliberate decision of a state's entire governing body politic to pursue economic policies that attend to the wants of the prosperous instead of the needs of the poor. It was those policies that paved the way for Delaware's supply side miracle.

40E. Norman Veasey, Court System Should Serve As A Model For Nation, DELAWARE BUSINESS REVIEW, April 19-25, 1993 at 36.

41Ward & Kelly, supra note 4, at 15.


44See E. I. du Pont de Nemours, DU PONT (unpublished manuscript on file with du Pont) (External Affairs Department, E.I. du Pont de Nemours and Company); MCDONOUGH, supra note 6.
III. A Different Delaware

The Delaware that has been reported on and admired in the pages of Forbes and many other national publications, however, is one that to this day remains a distant stranger to tens of thousands of Delaware families. Not far from Wilmington’s richly decorated office towers and the rolling estates nestled along Brandywine Creek, thousands of poor people experience hunger and live in conditions that give a nightmarish cast to the American dream.\(^4^5\) In 1989, the Center on Budget and Policy Priorities, a liberal research organization in Washington, D.C., reported that, midway through Delaware’s renaissance in 1985, 11.5 percent of its population lived in poverty.\(^4^6\) By the following year, one out of every five Delawareans were under, or just above, the poverty line. More startling is the incidence of poverty among children in Delaware and particularly among minority children. During the eighties, one out of every four white children and one out of every two black children in Delaware lived in or near poverty.\(^4^7\)

Although in 1987 tiny Delaware ranked 11th in the nation in per capita income, the state’s economic picture also includes less attractive features. The level of AFDC benefits paid, in 1987, to Delaware’s neediest children who lived in families with either an absent parent or an unemployed parent, ranked 32nd among the fifty states.\(^4^8\) A report released in 1989 by the Public Assistance Task Force, a coalition of social service groups, revealed that hunger in Delaware remains a pressing concern for tens of thousands of Delaware citizens.\(^4^9\) Furthermore, throughout the eighties, Delaware was one of the minority of states that did not elect to implement the medically needy provisions of the Medicaid Program that extend health care to the working poor.\(^5^0\) Nor does Delaware supplement the minimal monthly grant the elderly and disabled may receive under the federally funded Supplemental Security Income Program.\(^5^1\)

According to the Center on Budget and Policy Priorities, the number of very poor Delaware families in need of rental housing in 1985 exceeded the number of very low cost rental units by 123.7 percent, while over 10,000 Delaware families in need of housing in 1985 remained on waiting lists.\(^5^2\) The number of poor Delawareans in need of decent and affordable housing remains virtually

\(^{4^5}\) See supra note 5; see also Stapleford & McDuffie, supra note 5, at 14-15, 34-40.

\(^{4^6}\) Shapiro & Greenstein, supra note 5, at 1.

\(^{4^7}\) Stapleford & McDuffie, supra note 5, at 86.

\(^{4^8}\) Shapiro & Greenstein, supra note 5, at 1.


\(^{5^0}\) Shapiro & Greenstein, supra note 5, at 7-16.

\(^{5^1}\) Id.

\(^{5^2}\) Id. at 14-15.
unchanged five years later.\footnote{Delaware Housing Coalition, Fostering Nonprofit Housing Development in Delaware 3 (1991). Detailed Study Points to Need for Low Cost-Housing, News J., Sept. 19, 1989, at A6 (editorial).} Families with children constitute half of all homeless households,\footnote{Peuquet & Leland, supra note 5, at 22.} and thirty-nine percent of Delaware’s homeless are children.\footnote{Id. at 20.}

In 1989, the Delaware State Housing Authority (DSHA) undertook a comprehensive analysis of the state’s housing needs and found that throughout the state, average wages were not keeping pace with rising housing costs.\footnote{Applied Economic Research, Inc., Delaware Housing Needs Analysis 16 (April 1989) (technical report prepared for Delaware State Housing Authority).} The DSHA also found that very little housing was being developed "which [is] affordable at the income levels of persons working in the major job growth sectors of the state’s economy."\footnote{Id. at ii.} The DSHA reported that throughout Delaware "only about 16 percent of all renter households could afford the monthly cost of a medium priced home in the county of residence . . . ."\footnote{Id.}

For years, Southern Delaware has been home to notorious rural slums that make local residents wince at the mention of their evocative names.\footnote{Carolyn Lewis, The Silent Poor of Sussex County, News J., Feb. 2, 1986, at A1-A23.} Well into the state’s decade of economic revival, most of those rural slums were still home to poor Delawareans. Petty John’s Camp, Eagle Poultry Camp, Blueberry Hill, and others like them, were impoverished communities where hard working Delawareans could be found living in refurbished chicken coops and structures not unlike those that were brought to the nation’s attention by Michael Harrington’s classic work, The Other America: Poverty in America. Some of those slums like Greentop, Eagle Poultry Camp, Petty John’s Camp and Peppertown are gone; however, Shockleytown, Coverdale Crossroads, The Hole, West Rehoboth and others still remain. One of the last refurbished chicken coops that housed Sussex County families in Ellendale came under scrutiny only after several tenants filed lawsuits in 1990.\footnote{Sussex County Bldg. Inspections Office, Notice of Condemnation to Mr. & Mrs. John E. Savage (December 4, 1989); Washington v. Savage, (Del. Justice of the Peace Ct. 1990) (unreported); Baines v. Savage, (Del. Justice of the Peace Ct. 1989) (unreported).} A television commercial in 1989 for one of the nation’s largest poultry processors boasted about the care the company takes in raising its chickens. The chief executive of the company proudly told viewers that his company’s chickens live in houses that are built better than the houses many people call home. In Delaware, that claim has a chilling truth to it.
In a 1988 study on homelessness in the state, researchers Steven W. Peuquet and Pamela Leland of the University of Delaware’s College of Urban Affairs and Public Policy, found that in Delaware, like the rest of the nation, "[t]he cause of more poverty is not the lack of income but its distribution." 61 Peuquet and Leland drew attention to the fact that, despite Delaware’s economic expansion over the eighties, poverty had increased, and "the ranks of the homeless appear to be swelling." 62 So given Delaware’s success in lowering unemployment, reducing personal and corporate taxes, attracting scores of financial institutions to the state, creating thousands of new jobs and balancing its budget, how could so many Delawareans be so poor and so far away from the heart and soul of the American dream—living in, if only to rent, a decent home?

IV. THE POLITICS OF PROSPERITY

Delaware’s economic recovery was built on the rapid expansion of its service sector, particularly in the areas of finance and insurance. However, an unmistakable consequence has been the steady decline in manufacturing jobs. 63 In 1981, manufacturing comprised 28.2 percent of all jobs in Delaware while only four years later, Delaware’s manufacturing base had declined to 25.2 percent of all jobs. 64 During that same period, 83.4 percent of the 33,862 new jobs created in Delaware were in the service sector. 65

In April of 1990, the Bureau of Economic and Business Research at the University of Delaware prepared a report, Delaware Economic Trends: Equity Implications, to be used by the United Way of Delaware in conducting a survey of Delaware’s social service needs. The report, though not openly skeptical of Delaware’s self-proclaimed economic miracle, and in no way intending to revise Delaware’s recent economic history, contained data and conclusions that cast considerable doubt on the credibility of the state’s supply-side success story. It found that Delaware’s economic gains did nothing to halt a striking increase in income inequality among Delaware families. 66 Despite Delaware’s economic expansion over the last decade, real wages declined over the period of its economic growth. 67

A more graphic look at the way Delaware defines prosperity is how Delawareans divided the state’s income. In 1986, the top quintile of Delaware families garnered 43.5 percent of Delaware’s total family income while the next

61 PEUQUET & LELAND, supra note 5, at 81.
62 Id. at 83.
63 See BUREAU OF ECONOMIC AND BUSINESS RESEARCH, supra note 5, at L-3, L-4.
64 Id.; PEUQUET & LELAND, supra note 5, at 84.
65 Id.
66 STAPLEFORD & MCUFFIE, supra note 5, at 14-15.
67 Id. at 16.
highest quintile received another 25.2 percent of total family income. The bottom quintile of Delaware’s families walked away from the miracle with 4 percent of Delaware’s income. The quintile above them managed a mere 10.2 percent. To better appreciate just who prospered in Delaware over the last decade, consider that 44 percent of the new jobs created in Delaware between 1981 and 1987 paid under $5600 and another 24 percent of the jobs that were created during that same period paid somewhere between $5600 and $16,900.

Delaware’s miracle at a distance—and particularly looking down from the top—appears to be an unparalleled triumph, but to venture out of the office towers is to find another generation of poor Delawareans who, as they were in 1981, continue to be ill-housed, in need of more food and better nutrition, and paid less than what they need to adequately support their families. Being poor in Delaware also means living with one of the highest infant mortality rates in the nation and a health-care system that fails to provide coverage to thousands of nonworking poor and to the working poor who fill the thousands of jobs that trickled down over the last decade. The poor remain as distant as ever from the prosperity that in 1981 politicians promised was on the way. The "can do" spirit that characterizes the way corporate America’s and Delaware’s political leaders meet each other’s needs has not carried over when it comes to meeting the needs of Delaware’s poor.

The striking contradictions found in Delaware are evident almost everywhere. Most visitors to the state’s beaches, at one time or another, have passed through the crossroads where Highways 9 and 1 meet. Travel south at that crossroads and it leads down Highway 1, Delaware’s gold coast, lined with homes that cost hundreds of thousands of dollars, many of which stand vacant for nearly two-thirds of the year. Turn left before Delaware’s gold coast, and you come to Belltown, a small, densely populated enclave of black families

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68 Id.
69 Id.
70 Id.
71 STAPLEFORD & MCDUFFIE, supra note 5, at 14.
72 See supra note 5; see also PEUQUET & LELAND, supra note 5, at 89-94.
73 THE PUBLIC ASSISTANCE TASK FORCE, supra note 49, at 8.
74 STAPLEFORD & MCDUFFIE, supra note 5, at 14, 15, 17; PEUQUET & LELAND, supra note 5, at 88.
75 SHAPIRO & GREENSTEIN, supra note 5, at 10.
78 DELAWARE STATE CHAMBER OF COMMERCE, supra note 4, at 83.
who live in a collection of tiny houses and outdated battered mobile homes, many in conditions that seem more likely to be found in the Mississippi Delta.79

V. RURAL POVERTY AND RACISM

As you make your way south into the heart of Sussex County, the land flattens and the highways quickly become bordered by fields of soybean, vegetables and corn, with a chicken house at nearly every turn. Life for poor Delawareans in rural Southern Delaware is a harsh one and something far different than the quality of life described in advertisements taken out by the state in the nation’s leading business magazines.80 Tucked away behind Delaware’s public memory is a history of migrant labor camps, intolerable rural poverty and racial segregation.81

Delawareans in the two lower counties, and particularly Sussex County, have always been more inclined to look south rather than north for their traditions.82 Though Delaware proudly calls itself the "First State", in recognition of its being the first state to ratify the Constitution, it nevertheless failed to ratify the Thirteenth Amendment that outlawed slavery until 1902.83 From public accommodations to public education, Delaware’s social history has been marked by a clear and unmistakable color line.

For example, when the end of state mandated segregation came to Delaware’s public school system in 1954,84 it was Sussex County where the National Association for the Advancement of White People held outdoor rallies.

79Belltown takes its name from Jake "Jiggers" Bell, a black Delawarean, who over a hundred years ago donated the land on which Belltown presently sits for the construction of a church. Federal Writers Project, Delaware A Guide to the First State, 493-94 (1938). Many of the residents in Belltown and other black communities—even poorer than Belltown—that mark the Southern Delaware countryside cannot improve their standard of living because they earn their wages by cleaning the homes and motels that line Delaware’s coastal highway or by laboring in the poultry plants, canneries and other food processing operations located throughout Sussex County. Stapleford & McDuffie, supra note 5, at 22, 50-54; see also Dun’s Regional Business Directory 73-87 (1990).

80See Advertising Supplement, Forbes, Mar. 28, 1983, at Advertisement 3 (Small State, Big On Business); Delaware State Chamber of Commerce, supra note 4.


83Randall L. Broyles, Concepts of Delaware 182 (1974); Federal Writers Project, supra note 79, at 528.

84Gebhart, 91 A.2d at 137; Steiner, 111 A.2d at 574.
that drew thousands of people.\textsuperscript{85} The Milford School District temporarily closed its doors in response to the white community's reaction to the admission of eleven black students, and for several days Milford's racial practices became the focus of the nation's attention.\textsuperscript{86} Carol E. Hoffecker, one of Delaware's leading historians, points out that "[i]n most of Delaware, as in many other states that had maintained legally segregated school systems before 1954, the court's plea for 'all deliberate speed' resulted only in deliberate delay."\textsuperscript{87}

In the twenties and thirties, Southern Delaware was home to scores of canneries that utilized unskilled rural black laborers from the Deep South.\textsuperscript{88} Labor camps during that time often produced squalid conditions.\textsuperscript{89} Although most of the nation's attention focused on the plight of migrants fleeing the Dustbowl, the federal government recognized a need to examine the problems of migrants in the states along the Atlantic seaboard.\textsuperscript{90}

In 1941, the United States Department of Labor published a report, "The Migratory Labor Problem in Delaware," that concluded conditions faced by migrants in Delaware were comparable to those of their brethren out west.\textsuperscript{91} Low wages and poor living conditions were their greatest foes.\textsuperscript{92} Today, only a few canneries remain in Sussex County, though other food processing operations like Vlasic's pickle processing plant have taken their place. A new generation of unskilled Black, Hispanic and Haitian laborers,\textsuperscript{93} not unlike the rural southern migrants who came to Delaware over half a century ago to work in the canneries, now toil in Southern Delaware's remaining canneries, food processing plants, and poultry factories, still contending with low wages and poor living conditions.

On a country road just outside of the farming town of Bridgeville, located on the western edge of Sussex County, stands an old, recently-renovated house that rubs the shoulder of the railroad tracks running behind it. On any hot summer evening, over two dozen men can be seen playing soccer, cooking, or just resting after a long day in the fields or the chicken plants. To the migrants who make the yearly pilgrimage to Delaware, the house has come to be known

\begin{footnotes}
\item[85] 3000 \textit{At Meeting Called to Organize Integration Fight}, \textit{News J.}, Sept. 27, 1954, at 1.
\item[88] See ARTHUR T. SUTHERLAND, \textit{UNITED STATES DEPT OF LABOR, NO. 185 THE MIGRATORY LABOR PROBLEM IN DELAWARE} (1941); U.S. DEPT OF LABOR, \textit{NO. 62 WOMEN'S EMPLOYMENT IN VEGETABLE CANNERIES IN DELAWARE} (1927).
\item[89] Id.
\item[90] SUTHERLAND, supra note 88, at 1-4.
\item[91] Id.
\item[92] Id.
\item[93] Id.
\end{footnotes}
as the "Reservation." 94 Gloria Fernandez, a social worker for Delmarva Rural Ministries 95, explained that "the house got its name because it seems no matter how many times they come and go from Delaware, they ultimately must return to the 'Reservation', just like the Indians." 96

VI. WHERE CHICKEN IS KING

It would be fair to say that what cotton was to the American South, 97 chickens are to Sussex County. 98 Both agricultural products gave rise to an industry and a way of life. The commercial broiler industry was born in Sussex County in the early twenties 99 and now accounts for two-thirds of Delaware's agricultural income. 100 Agriculture dominates life in Southern Delaware and is the state's largest industry, bigger even than corporations. 101

Sussex County has regularly ranked first among counties in the nation for the value of poultry products produced each year and in the production of broiler chickens. 102 Delaware's broiler industry ranked seventh nationally in broiler production. 103 Sussex County is home to national poultry giants like Townsends, Inc., ranked ninth in the nation in weekly production of ready to cook broilers and Allen Family Foods, Inc., ranked fifteenth. 104 Bill Satterfield, a spokesperson with Delmarva Poultry Industry, Inc., a nonprofit trade association that represents the poultry industry on the Delmarva Peninsula, estimates that nearly 9,000 persons are employed in the poultry industry in


95 Delaware Rural Ministries is an agency that provides social services and health care to migrants in Kent and Sussex Counties.

96 See supra note 94.


98 1990 DEL. DEPT AGRIC. STAT. SUMMARY; DELMARVA POULTRY INDUSTRY, INC., FACTS ABOUT DELAWARE'S POULTRY INDUSTRY (Aug. 1991); MCDONOUGH, supra note 6, at 70; GORDON SAWYER, THE AGribUSINESS POULTRY INDUSTRY 36-37 (1971); DELMARVA POULTRY INDUSTRY, INC., COUNTY RANKINGS OF BROILERS AND OTHER MEAT-TYPE CHICKENS SOLD (July 1991); Interview with Bill Satterfield, in Georgetown, Del. (Nov. 27, 1991).

99 See sources cited supra note 98.

100 1990 DEL. DEPT AGRIC. STAT. SUMMARY.

101 Id.


103 DELMARVA POULTRY INDUSTRY, INC., supra note 98.

Delaware's poultry industry supports nearly 1200 chicken farmers. The tremendous wealth generated by the poultry industry, not unlike the wealth created during the reign of King Cotton, has failed to benefit those who labor in the fields and factories. Hard work for poultry workers in Southern Delaware has never guaranteed a decent wage or decent quality of life. Currently, poultry plant line workers earn about $6.00 an hour, with slight differences depending on the company or the particular position. One worker at Allen's reported that she had earned a raise of about 60 cents after four and a half years of work. Workers receive a one week vacation each year during their first five years of employment. Workers also maintain that many employees in the poultry plant are fired immediately before they are about to accrue an extra week's vacation after five years, or just before they are to take their time off.

Employment on the poultry plant line also frequently requires that the employees endure physical hardship in exchange for their pay. Poultry workers commonly suffer from a debilitating health problem, Carpal Tunnel Syndrome, which is caused by the rapid repetitive wrist movements made by laborers cutting chicken on the processing line. Fingernails of workers fall off from the damage caused by the arduous and painful task of removing the skin from meat. Another woman who works at a Sussex County poultry plant explained that she is required to inspect thirty five chicken breasts a minute for bones. Repeating this task for eight hours a day, with one fifteen minute break every three hours, the woman remarked, is exhausting.

Of course, physical demands are not the only challenge facing the poultry workers. For recent immigrants from Mexico, Guatemala, and Haiti, who traveled north to find work in Delaware's chicken plants, life is not made any easier by the fact that, for years, company handbooks and safety instructions accompanying plant machinery, not to mention job applications, were all in

105See Satterfield Interview, supra note 98.
106Id.
107See supra note 5; WILSON & WILSON, supra note 82, at 61-62.
109Interview with M. Ramirez, supra note 108.
110See Interview in Georgetown, supra note 108.
111Id.
112Id.
113Id.
114Id.
English.\footnote{See supra note 94.} Bill Satterfield of Delmarva Poultry, Inc., however, points out that "now some companies are offering literacy classes and progress has been made in printing some company literature in Spanish."\footnote{See Satterfield Interview, supra note 98.}

A frequent allegation that circulates among American poultry workers is that poultry plants located in Sussex County underpay and make far greater demands of illegal immigrants, thereby diminishing the bargaining strength of American workers and documented aliens.\footnote{See supra notes 94 and 108.} Evidence to confirm these allegations is difficult to come by, if for no other reason than the reluctance of Hispanic and Haitian workers to complain to labor officials.\footnote{See supra note 94.} Poultry plant workers maintain that the slightest controversy or complaint routinely leads to termination. Workers report that supervisors have Spanish speaking employees sign waivers, in English, that state the employee agrees with the reason for the termination.\footnote{See Interview in Georgetown, supra note 108.}

Interestingly, the size of the labor pool is a contentious issue between labor and management. On one hand, workers and their advocates maintain that with a large labor pool and one that never runs dry, the poultry companies have never been forced to confront serious demands for better wages or effective unions among its work force.\footnote{See supra notes 94 and 108.} On the other hand, poultry industry representative, Bill Satterfield, contends there has always existed a shortage of available workers that at one time even required companies to bus people from Baltimore.\footnote{See Satterfield Interview, supra note 98.}

What has traditionally been a labor intensive industry will someday come to rely more on machines and robots than men—\footnote{Id.; see also 2 Poultry Tech Bull. no. 2, at 4 (Agric. Technology Research Program of the Ga. Tech Research Inst. Spring 1990).} not unlike the mechanization of cotton production. Research on the application of new technology and robotics to the processing end of the poultry industry is being conducted at Georgia Tech Research Institute in Atlanta.\footnote{Craig Wyvill, et al., Speech at the 26th National Meeting on Poultry, Health & Condemnations (Oct. 17-18, 1991).} For the moment, anyway, a steady stream of workers can be seen on any day of the week walking along the sides of desolate rural roads throughout Sussex County in work clothing that closely resembles the garb worn by hospital emergency room staff. For now, the poultry company buses continue to rumble back and forth to every corner of the county picking up and dropping off workers.
VII. BEYOND THE BOARDROOMS

Rural Delaware is littered with ramshackle shacks and their modren cousins, mobile homes. In Southern Delaware there are families who still do not enjoy the unthinking privilege of running water or indoor toilets. The city of Wilmington is filled with neighborhoods defined by poverty and separated by race.124

The tiny state's single-minded determination during the eighties to make Delaware as popular with the nation's banks as it is with the nation's corporations explains much about the state's continuing legacy of poverty. In a decade that was launched by political rhetoric promising that opportunity for everyone would flow from policies which benefited the nation's banks, the somber reality of that rhetoric for thousands of Delawareans has been declining opportunities. Ten years after the passage of the FCDA, Delaware's welfare rolls are experiencing dramatic increases,125 its unemployment rate has hovered around, or just above, the national average, and its ability to house and feed its poor is no better today than it was ten years ago.126 Wilmington now has a skyline that would be the envy of cities two and three times its size—and an office vacancy rate the highest the corporate capital has seen since World War II, and one of the highest in the country.127

The contrast in how the state accommodates its wealthy and its poor can be startling and at times almost surreal. A businessperson from Delaware, or for that matter, a business person from New Delhi, for example, can conduct her business with the state's Division of Corporations by telephone or by fax until midnight.128 On the other hand, a Delaware family that returns home after 4:30 p.m. to find itself evicted from an apartment, or facing some other emergency that demands immediate assistance, must wait until the next morning to ask for help at the state social service center because emergency social services are available only during business hours and the applicant for emergency assistance must apply in person.129

While Wilmington's minority neighborhoods and small businesses continue to decline, some of the nation's most powerful corporations have successfully persuaded Wilmington politicians to spend federal funds to build new

124RAHEEMAH M. JABBAR-BEY, WILMINGTON AREA COMMUNITY-BASED DEVELOPMENT PROJECT (May, 1991) (on file with College of Urban Affairs and Public Policy, University of Delaware); see also HOFFECKER, supra note 87, at 159-200, 218-27.

125 See BUREAU OF ECONOMIC AND BUSINESS RESEARCH, supra note 5, at K-5.

126 See supra note 5; see also UNIVERSITY OF DELAWARE BUREAU OF ECONOMIC AND BUSINESS RESEARCH, DEL. ECON. OUTLOOK Q. BULL. 5 (1991).


128 Ward & Kelly, supra note 4, at 17.

129 For Delaware's Government, business hours end at 4:30 p.m. Monday through Friday.
corporate headquarters.130 In a recent speech, Jim Sills, a professor at the
University of Delaware, who just became Wilmington's first black chief
executive, pointed out that 80 percent of the 40 million dollars Wilmington
received in Urban Development Action Grants (UDAG) during the eighties has
"been made available as low interest loans to just six large non-community
focused corporations to either build or expand their office buildings."131 Sills
notes that "in only one instance were any of these funds used to foster economic
development in city neighborhoods."132 The News Journal in Wilmington
reported this past October that the construction of the new Delaware
headquarters of corporate and banking giants like Hercules, Inc., Chase
Manhattan, Wilmington Trust and Beneficial Trust was accomplished with the
use of UDAG money.133 Even the Tour de Trump bicycle race got in line for
UDAG money ahead of the thousands of poor Delawareans living in
substandard housing.134 During his campaign for mayor, Professor Sills
contended that Wilmington officials "catered too much to the economic needs
of a few downtown corporate entities, and have neglected to use a proper share
of scarce resources to improve the quality of life in our neighborhoods."135

Given the unchanging realities of life in the "other" Delaware, claims made
by the state's politicians and business leaders about economic prosperity ring
hollow for thousands of Delawareans. The economic policies pursued by
Delaware over the last 10 years advanced a narrow class of interests. In every
venue politicians argued forcefully that those policies would trickle down the
social ladder. Delaware's experience with the politics of prosperity and
supply-side economics, however, lays bare the erroneous assumptions upon
which they rest. Read any report on the state of Delaware's economy over the
last decade and it talks of increases in the number of newly created jobs,
decreasing unemployment rates, decreasing tax rates, new housing starts and
the like. But behind this lexicon of economics lies a separate society for which
conventional measures of prosperity hold little, if any, meaning. If the success
of Delaware's economic miracle is measured by the prosperity and well-being
of those Delawareans who in 1981 were most in need of a miracle, success for
those Delawareans has once again proven illusory.

131See Sills Speech, supra note 127.
132Id.
133See supra note 130.
134Id.
135See Sills Speech, supra note 127.