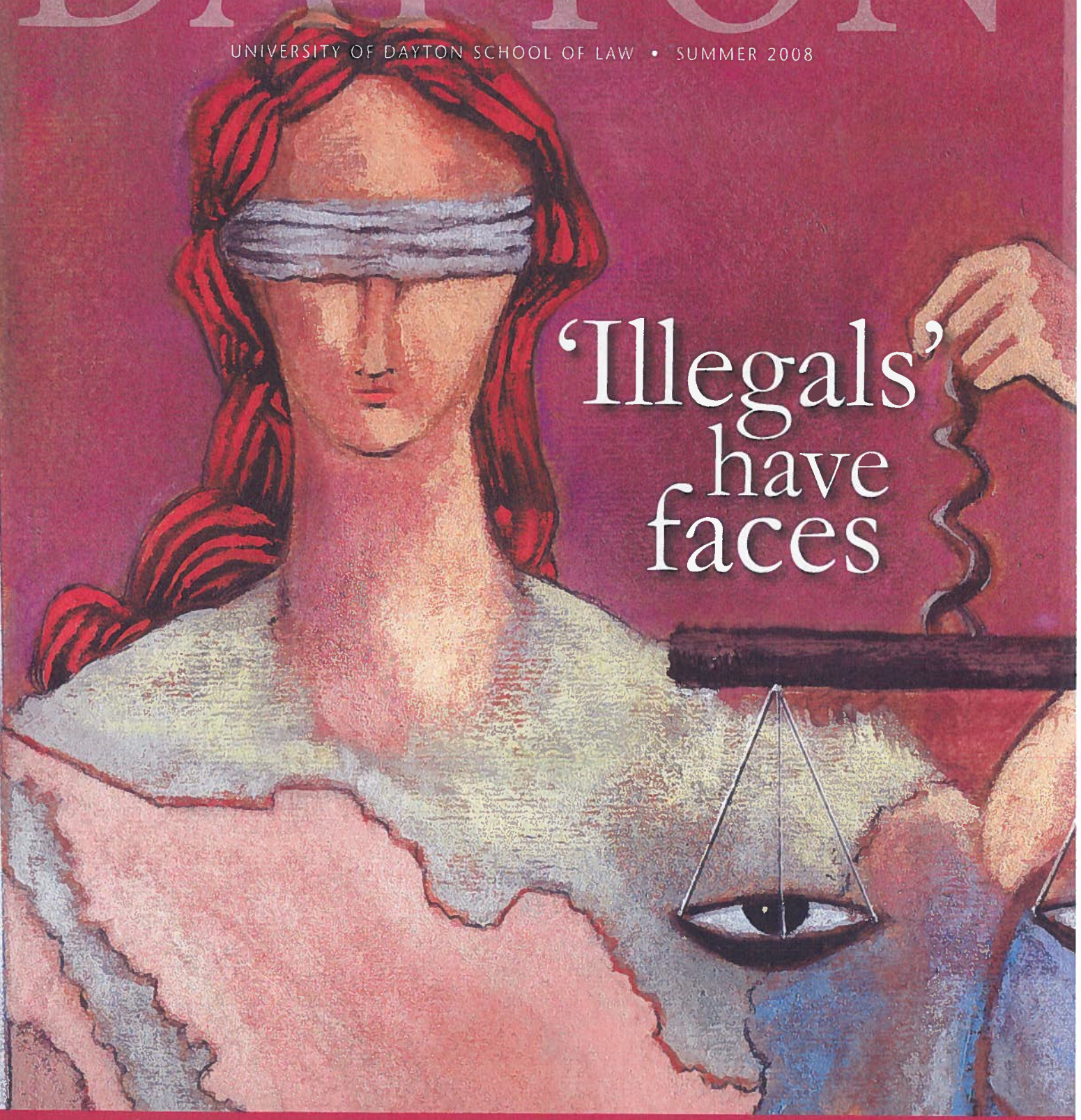


# DAYTON

LAWYER

UNIVERSITY OF DAYTON SCHOOL OF LAW • SUMMER 2008



'Illegals'  
have  
faces

IMMIGRATION AND SOCIAL JUSTICE • FORECLOSURE CRISIS

**I**mmigration is not best represented by a fence but by a human face. It's not an issue centered on foreigners "stealing" jobs or siphoning public funds. Immigration isn't about aliens. It's about human beings — about how all humans, regardless of where they were born or what language they first learned to speak, should be treated with dignity and kindness.

Such were the messages presented during the 2008 Honorable James J. Gilvary Symposium on Law, Religion and Social Justice, which focused on how lawyers can help not only reshape the debate about immigration but also assist immigrants in need of legal services. Held Feb. 27-28, this year's symposium was aptly titled, "Justice for strangers? Legal assistance and the foreign born." It was held in conjunction with the first Miami Valley Forum on Immigration, which examined challenges and achievements of Dayton-area immigrants in such issues as gaining access to health care and education.

"The law is so significant in terms of what is happening with immigration today," said the Rev. Daniel Groody, C.S.C., professor of theology and director of the Center for Latino Spirituality and Culture at the Institute for Latino Studies at the University of Notre Dame.



"There's a tension between human rights and sovereign rights, a conflict between a nation's right to secure its borders and the right of people to seek a better quality of life. Which law is more important?"

The majority of people who illegally cross the U.S. border do so because of economic realities, according to a number of symposium speakers.

"Immigration exists because of the need in the U.S. for cheap, easily exploitable labor," said Victoria Gavito, legal director at Centro de los Derechos del Migrante in Zacatecas, Mexico. "Only 1 percent of people are going across the U.S.-Mexico border because of narcotics or human trafficking — 99 percent are crossing to find work."

Mexican immigrants send billions of dollars in remittances, money earned in the United States, to family in their homeland, Gavito said. This makes remittances one of the largest industries

in Mexico — larger, even, than tourism. Yet immigrants hail from many countries.



Indeed, throughout U.S. history, many immigrants have come from Asian nations and the Caribbean, said Lolita Buckner Inniss, a professor at the Cleveland-Marshall College of Law who has researched black immigrants. "We're constantly changing the way we think of immigrants in this nation," she said.

Groody, who has produced five documentary films and written two books on immigration, said approximately 200 million people worldwide — or one in every 35 — are considered migrants. Of those, approximately 10 million are in the United States, he added.

"It's not true that migrants have few skills; they come from a spectrum of the work force," he said. "The economic push for migrants to leave their families and communities is great. People do not want to migrate; it's not their first choice. It's a complicated issue. But unless we get the human face right, nothing else is going to fall together."

Regardless of country of origin, many immigrants aren't treated well even before they begin their journey to the United States.

"There's no government oversight of recruitment, which makes it rife with abuse," said Gavito of her experiences in Mexico. "We hear lots of stories about recruiters having too much power — even asking people to deed their houses to them and paying them lots of money."

In addition, such treatment often continues once undocumented workers have entered the United States.

For example, many industries that rely on undocumented workers at times don't comply with the Fair Labor Standards Act, said Jed Untereker, staff attorney with the Working Hands Legal Clinic in Chicago. The attorneys at the clinic often see such ►

# People not problems

By Kristen Wicker • Illustrations by MB Hopkins

## EMPOWERING PEOPLE

For second-year law student Julie Reiter, serving as an assistant for the 2008 Gilvary Symposium was a natural fit.

She certainly was familiar with the issues being explored in the symposium: During the summer of 2007, Reiter served as an intern with the migrant farm worker program run by Advocates for Basic Legal Equality, or ABLE, a nonprofit legal organization serving low-income people in western Ohio. Reiter and ABLE staff visited migrant farm worker camps, checking on the migrants' working and living conditions. The ABLE team was able to resolve a wage violation issue, in which workers on H2A temporary agricultural visas were being paid the rate mandated in Kentucky, which is lower than that in Ohio. They also resolved a housing issue in which workers' beds were infested with fleas.

"The workers couldn't explain some of their concerns to their boss, but they could explain them to us," said Reiter, who earned her bachelor's degree in international studies from UD and speaks Spanish.

The team from ABLE, which assists people with civil cases, also spent a lot of time educating the migrant farm workers.

"The work was less about litigation and more about empowering people to know their rights," Reiter said.

These experiences served as a framework for Reiter as she helped plan the Gilvary symposium, making speakers' travel arrangements and more. Reiter had seen firsthand the human side of immigration that was explored in the symposium.

"Immigration affects so many facets of life, and it's such an expansive issue," she said.

"There's no easy answer, but I don't think we'll find any answers unless we look at the human side of immigration.

"People have built roots here, and they're raising families here. They want a better life for their families, and (if families were deported) kids would be taken from the only culture they know. Some of these kids can speak Spanish but can't read the language."

Reiter, who will graduate in 2009, still hasn't decided whether she'll specialize in immigration law although she said it's a possibility. In addition to her experience with ABLE, Reiter completed an immersion program in Colombia during her undergraduate years and worked in Washington, D.C., for Ayuda, another nonprofit legal organization serving low-income immigrants.

"Immigration is something I've always been interested in," Reiter said. "I definitely want to do public work with immigrant or other low-income populations."

violations as unpaid wages, shorted hours, additional deductions and a lack of overtime pay.

"It's remarkable how many times a worker isn't getting paid the minimum wage," Untereker said, adding that 50 percent of day laborers are victims of wage theft — and the numbers are even higher at such job sites as meat processing plants and restaurants. "But if they're getting shorted hours, it's difficult to show and prove."

Employers sometimes use scare tactics to keep an upper hand on undocumented workers, a number of Gilvary Symposium presenters said.



Gavito told the story of a group of Mexican immigrants who were on their way to work on an orange farm when they noticed white packages being loaded into the side panels of the bus.

"They found out when they arrived that drugs were being smuggled and women were being forced to work as prostitutes on the farm," she said. "When they got to the fields, they were shown coffins and told that's how they'll go back to Mexico if they tell anyone. So one of the big barriers to justice is fear."

The law and legislators often haven't favored such workers, either.

Victor Romero, associate dean for

academic affairs and Maureen B. Cavanaugh Distinguished Faculty Scholar at the Penn State Dickinson School of Law, discussed a century's worth of U.S. Supreme Court cases related to immigration law. Two cases from the 1880s "formed the foundation of the plenary power of Congress to have the right to create laws that exclude," he said.

"What we learn from these cases is that, by and large, the Court is going to defer to Congress and the executive branch in ways that seem contrary to what we think of when we think of human rights law," Romero said. "Once you think of someone as being 'undocumented' and 'illegal,' that person is therefore a nonperson, and it becomes difficult to think of them as a human being."

Still, while the immigration story includes plenty of conflict, symposium presenters noted that law professionals can be part of the solution.

"We have the most success when we approach the rights of immigrant workers from a community and legal angle," Untereker said. "There's not just one way to address this issue."

For example, case law strongly supports wage and overtime protections, while the Fair Labor Standards Act provides a broad definition of employment.

"According to the U.S. Department of Labor, you're obligated to pay wages whether an employee is documented or not, and you may be violating the law by threatening to turn someone in," he said. "Know your clients' status, their employers' names and aggressively defend them."

Lawyers also can be part of the solution by helping communities fight anti-immigration laws, which have been "cropping up" in the past two years in such states as Arizona and Oklahoma and "put a bullseye on the head of every Hispanic," Romero said. Indeed, law



professionals can help advocate pro-immigrant legislation, now the law in such places as New York City and San Francisco.

"New Haven, Conn., issues ID cards for all residents regardless of their status," Romero said. "Texas and California are providing in-state tuition for residents regardless of status. We need to refocus on these positive stories."

One potential solution to the challenges of immigration that was dis-

cussed by a number of symposium presenters is the creation of guest worker programs, which give foreign workers access to the U.S. labor market but don't provide them with access to public benefits.

Yet this solution comes with its own set of challenges, said Howard Chang, Earle Hepburn professor of law at the University of Pennsylvania School of Law. For example, how do other non-citizens, such as students, fit into this

picture? At a more philosophical level, how does a society that declares all humans are created equal justify denying some humans health care and education?



"The concern with unauthorized immigrants is ironic because it's clear they have a positive financial impact," said Chang, citing the work of the National Research Council. "Legal immigrants ►

## FAITH AND THE IMMIGRATION DEBATE

How might people of faith — and an institution grounded in Catholic social teaching, such as the University of Dayton School of Law — respond to the immigration issue?

"The challenge to those who profess faith in Christ is to respond to the inclusive demands of the Gospel," said the Rev. Daniel Groody, C.S.C., professor of theology and director of the Center for Latino Spirituality and Culture at the Institute for Latino Studies at the University of Notre Dame, during the Gilvary Symposium's opening session. Four laws give us "ways of looking at the immigration debate beyond the current policy," he said.

"First is the eternal law that governs the universe. Next is divine law or what we know through Scripture. Civil law refers to human codes for social order, and natural law defines ethical norms and behaviors," Groody said.

"In terms of natural law, we are called to respond to (the immigration issue) as children of God," he added. "Under divine law, there are moral imperatives to respond to those in need, and eternal law calls for the will of a provident God for all creatures."

Pope John Paul II often said the foundation on which all human rights exist is the divine image of man, and that the Church must address the immigration issue from the standpoint of Christ, said Michael Scaperlanda, associate dean for scholarship and research, professor of law, and Gene and Elaine Edwards Family Chair in Law at the University of Oklahoma School of Law.

However, maintaining such a standpoint is difficult given the prevalent "enforcement-only model," which includes beefed up border patrols and sanctions for employers who hire undocumented workers.



"A generation after the Immigration Reform and Control Act of 1986 was supposed to solve the problem, it's still a concern," Scaperlanda said. "Given the current political situation, what is a just solution?"

Scaperlanda presented his ideas for a solution, which he said are rooted in his understanding of Catholic social thought. He believes the United States should close the "back door," which often involves a dangerous border crossing, while opening the "front door" for undocumented workers through such policies as guest worker programs. In addition, Scaperlanda said the United States should "devote the human and capital resources needed to ease the economic and social pressures in other countries that cause people to immigrate in the first place."

Groody also shared his thoughts from his Catholic perspective, noting that theology can contribute to the immigration debate in the following "four core dimensions":

- "The Imago Dei," or crossing the problem/person divide. We are not just problems to be solved but people created by God, and we must repeatedly affirm the humanity of the migrant.
- "The Verbum Dei," crossing the divine/human divide. Jesus himself was a refugee, so the ability to cross borders is at the heart of the Christian faith.
- "The Mission Dei," crossing the human/human divide. To bring people into new relationships and create new communities, we cross social boundaries, but the law of compassion cannot be contained in such narrow boundaries. We must go beyond humanly constructed laws that divide and exclude.

• "The Visio Dei," crossing the country/kingdom divide. What matters in the end is the kingdom of God, characterized by justice, love and peace.

"In crossing these borders, we begin to see our interconnect- edness," Groody said. "We know the value of laws — even as we deal with these issues of immigration, we testify to a larger God and to solidarity."

are the ones who may have a negative financial impact because they would have access to the benefits of citizenship."

Symposium presenters agreed the United States must do a better job addressing these issues — from a more socially just, human rights perspective. After all, it is not an issue that will disappear.

"The way society organizes should

be questioned when people are crossing borders and risking their lives just to find work," Groody said. "When we look at global inequalities, these can't help but cause people to move seeking better opportunities."

*Kristen Wicker '98 is a freelance writer in Dayton who is pursuing a master's degree at UD.*

## MORE LAWS?

There just aren't enough laws for this lawyer.

"The most pressing issue in immigration law is the lack of employment visa options," said Sherry Neal '94, an immigration attorney with the Cincinnati-based Hammond Law Group since 1995. "Our immigration laws in the U.S. are pretty limited."

Neal currently practices employment-based immigration law. She works with a range of companies — from Fortune 500s to small businesses, engineering firms to health care providers — who hope to sponsor a foreign employee as well as with the individuals seeking those work authorizations. Neal discusses possible visa options with her clients and then, if a match is found, prepares and submits all the necessary paperwork.

Yet that's where the problem comes in: Too often, a match is not found. One type of

visa is available only to multinational companies. Applications for another are accepted only once a year — and all the available visas are gone within a week. Such limits also affect employees seeking green cards. The process takes from two to five years to complete — and during much of this time, employees must stay in the position for which they were hired, prohibiting businesses from promoting or transferring these employees.

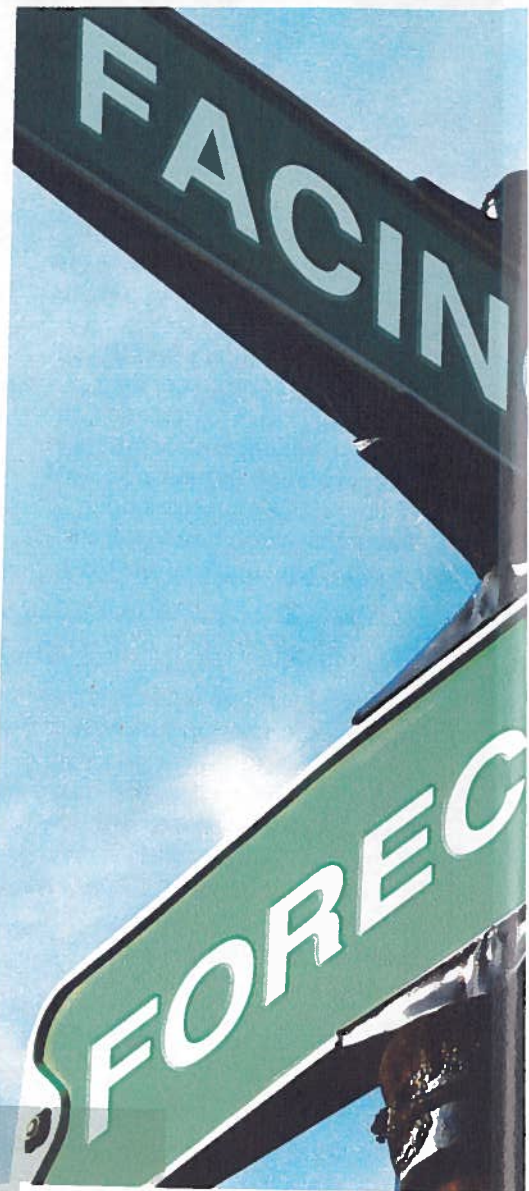
This in turn can limit business growth. Indeed, most businesses don't try to hire foreign workers unless they're certain they can't find an American, who is much easier and less expensive to hire, for the job, Neal said.

"Positions go unfilled, which means something that should be done is not being done in that company," Neal said. "Sometimes, companies just decide to start outsourcing. Essentially, because our immigration laws are so limited, there's really not an issue about protecting U.S. jobs — we're essentially sending jobs overseas. Some companies decide to take their business elsewhere because they can't get past all the hurdles."

These issues are closely tied with the challenges related to undocumented workers that were discussed at length during the 2008 Gilvary Symposium. Again, the lack of employment visa options — especially for low-skill jobs — feeds the problem, Neal said.

"If the number (of undocumented workers) really is 12 million, there's no way we can feasibly deport that many people," she said. "Besides, there are tangential issues. These workers are doing a needed job, their employers are now dependent on them, and they may even have children who were born here and are U.S. citizens."

"Lawyers can help the public see this from a broader perspective," Neal added. "It's likely sometime next year Congress will tackle immigration reform. The issue will be whether this reform deals only with the enforcement piece or if we try to solve some of these other issues and make it a more comprehensive reform."



**Failed and flailing mortgages have shaken a broad swath of America: marquee-famous entertainers; everyday workers caught in an economic squeeze; confused borrowers who fell for predatory lending schemes and are now in a world of hurt.**

Home foreclosures are one dimension of the broad, complex credit crisis crashing through the economy — and the halls of Congress. A number of UD law graduates are involved in the maelstrom's myriad legal aspects: They might represent lenders and defendants in residential and commercial foreclosures; advise multi-billion-dollar corporations on restructuring their debt obligations; or serve on the