WHERE DO YOU GET YOUR WORKERS? WE ASK A certain highly successful roofing contractor in Washington, D.C. Technically speaking, he allows, his employees are all legal. They have papers, and it's not his responsibility to determine if the papers are forged. But he lives on the edge. That's why he recently declined to bid on a lucrative deal offered by the National Security Agency. The spy agency didn't want foreigners working on its premises and could be expected to do a much better job than Immigration & Customs Enforcement does of enforcing the law against employing illegals.

This entrepreneur won't admit that he has hired illegals. But, he concedes, "[If] I need five or ten additional men, I let it be known amongst a certain circle of guys. And I have access to those people immediately."

It's not easy finding American citizens willing to push shingles around on a hot roof during 100-degree weather. It's not easy finding engineers, either. James Goodnight, chief executive of SAS, the world's largest privately held software company, recently went looking for Ph.D. engineers. He needed them for a project to help companies increase profits by getting a handle on their suppliers. Plenty of willing and able foreigners could have done the work but landing the H-1B visas, which allow foreigners with special skills to work in the U.S. for up to six years, would be next to impossible. As a result, Goodnight came close to opening an R&D center in Poland. "I wish I had done it," he laments.

America's immigration policy is a shambles. "The current situation can only be described as untenable," says Craig Barrett, chairman of Intel Corp., which has a voracious appetite for chip designers. The U.S. does a brilliant job educating foreigners in our engineering schools, and then, during the recruiting season, chases this human capital away. Australia and the U.K. have a much better system: They come pretty close to stapling a visa to an engineer's diploma. "If we had purposefully set out to design a
system that would cripple our ability to be competitive, we could hardly do better than what we have today,” says Barrett.

We've been here before. Twenty years ago Congress passed the Simpson-Rodino immigration reform, a bill four years in the making. The law was supposed to halt the flood of illegal immigrants swarming in to take low-paying jobs. It granted a one-year amnesty to aliens who had been living in the U.S. since before 1982 and let them apply for legal status; it also slapped businesses with criminal penalties for knowingly hiring illegals. But the government did not enforce the law. The public, it seems, does not have the appetite for chasing millions of workers back to Mexico. And so the government has settled on a half-hearted enforcement scheme that combines a game of tag played out in the Arizona desert with very few raids on employers. Every now and then some meatpacker or night cleaning firm is scolded and fined. The penalty for individuals caught employing an undocumented nanny is loss of a cabinet appointment.

Illegals keep cascading in, recently at the rate of 700,000 a year, and businesses and families keep hiring them. The Pew Hispanic Center estimates that in the last decade the number of undocumented aliens living in the U.S. has doubled to 12 million. This despite a growth in spending on domestic security averaging 13.4% a year. President Bush recently requested $42.7 billion for the Department of Homeland Security and $2.6 billion for guarding the border with Mexico, the source of no known terrorist.

Adding to this morass of ambivalence about foreigners doing our dirty work: the fear and xenophobia that grew out of Sept. 11. The resulting crackdown did nothing to stop the unskilled workers walking across the border, but it did choke off the engineers from India and China. Since 2001 Congress has whacked the number of H-1B visas from 195,000 to 65,000 a year. Separately, green cards—permanent resident visas that allow for work, among other things, and granted to noncitizens—are handed out at the rate of 140,000 a year. Rationing of these precious documents is done not by setting employment priorities but by trying applicants’ patience and forcing them to spend money on lawyers. For employment visas the waiting period for an initial interview with the U.S. consulate in the home country can be up to 149 days. Homeland Security says it does 35 million security checks a year before issuing visas to workers, tourists, visiting lecturers and the like.

Chipmaker Texas Instruments was trying to secure 65 visas last summer when the federal limit ran out and was told it would have to wait for many of them until April, when applications for 2007 are accepted, to begin the process all over again. That means advertising the jobs for 30 days to find “minimally qualified” U.S. workers, sifting through résumés, submitting paperwork to the Labor Department and trying again to lure talented recruits from abroad, a process that can cost up to $30,000 for each employee—and increases the risk that a company will lose foreign candidates it has its eye on, as Texas Instruments did.

“The more barriers we have in place and more process steps we have to take, the more we’re going to see these things happen,” says Steve W. Lyle, TI’s director of worldwide staffing.

How to fix the mess? Herewith, a few proposals from the Beltway and the academic braintrust—and their chances of being adopted.

**Compassionate compromise.** President Bush has a plan that he claims "serves the American economy and reflects the American dream." Those illegals already in the U.S. would receive temporary worker cards that allow them to stay for up to three years and renew once for an unspecified period—then, vamoose. The same offer would apply to new aliens once a U.S. employer identifies a job and certifies that no American is qualified for or wants to take it. This isn't an amnesty program, the administration has been at pains to point out to avoid torpedoes...
If we had set out to design a system to cripple our competitiveness, we could hardly do better.

from the hard right. (A bill introduced by John McCain and Edward Kennedy last May would let illegals apply for citizenship, once they pay a fine, clear up tax problems and learn English.) "I oppose amnesty—placing undocumented workers on the automatic path to citizenship," the President has said. Nor would he give them a leg up on foreigners who come legally and apply for a green card, which offers permanent resident status. He also supports lifting the ceiling on H-1Bs, but his plan doesn't say by how much.

On the tough side, Bush's proposal would turn the screws on businesses that flagrantly break the law but don't spell out the penalties. Enforcement would fall under the Department of Homeland Security, working with the Labor Department and other federal agencies. "Our homeland will be more secure when we can better account for those who enter our country," said Bush. Hard to disagree with that nostrum.

What's the likelihood we'll see some version of the plan? Not high, considering that no one in Congress has run with it—and the President introduced the idea on Jan. 7, 2004.

**Build up that wall.** Last December, by 260-159, the House passed an amendment that would mandate the construction of a 700-mile fence along the 1,952-mile border with Mexico. Calling for a series of steel barriers armed with motion detectors, floodlights and surveillance equipment, the plan has been the pet project of Representative Duncan Hunter (R-Calif.) for the past 20 years. He finally got it on the radar as part of a get-tough immigration bill that would beef up security and

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**The Human Spigot**

A nation of immigrants, the U.S. has long used legislation to control who—and how many people—can enter the country legally.

1891-92: Immigration Service created; Ellis Island opens
1882: Law cuts off flow of Chinese immigrants
1848: Citizenship granted to Mexicans; height of the potato famine

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1996: Law supposedly tightens borders, makes deportation easier

- 2000
- 1800
- 1600
- 1400
- 1200
- 1000
- 800
- 600
- 400
- 200
- 0

**Sources:** U.S. Census; estimates by Department of Homeland Security; Pew Hispanic Center.

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tighten enforcement. Construction costs: $2.2 billion by Hunter’s estimate; proponents of the idea, like Colin Hanna, president of Weneedafence.com, think it could easily reach $8 billion.

Good fences don’t always make good neighbors, as Israel’s recent attempt to wall itself off from the Palestinians most vividly illustrates. The House amendment drew immediate fire from Mexican President Vicente Fox, who complained that Congress had given into “xenophobic groups that impose the law at will.” It would be hard for Mexico to swallow any reform plan that threatens the flow of dollars from Mexican expats to their families back home. Chance of success: iffy; there isn’t much support in the Administration.

Caps off. Some people argue the best way to deal with illegals is to create so many opportunities for legal immigration that no rational migrant would risk a deadly trek through the desert. (Last year, 460 people died trying to get into the U.S., up from 61 in 1995.) Daniel Griswold, director of the Cato Institute’s Center for Trade Policy Studies, suggests letting in at least 300,000 temporary workers on three-year, renewable visas each year. Undocumented workers here could receive the same visa. But unlike Bush’s proposal, this one does not force illegal residents to go home; they could pursue citizenship, as long as they pay an unspecified fine ("not chump change," Griswold says) and have clean records.

Douglas S. Massey, a Princeton University professor of sociology and public affairs and author of Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration (Russell Sage, 2002), would also let in 300,000 temporary workers every year. Each of them would pay $400 or so, about one-third what a "coyote" charges to smuggle people across the border, giving immigrants a financial incentive to play by the rules. Griswold agrees, adding that such reform would "drain the swamp of human smuggling and document fraud that facilitates illegal immigration."

As for the illegals already in place, Massey would allow anyone who arrived as a minor to apply for permanent legal status right away. Their parents would have the option to apply for temporary status. But, in any event, Massey wants the U.S. to allow far more than the current 20,000 green cards for Mexicans each year. That would swell their contributions to the U.S. Treasury. Massey’s surveys have shown that a surprising 62% of illegal workers have taxes withheld from their paychecks and 66% pay Social Security. In 2004, illegal workers contributed $7 billion to Social Security and $1.5 billion to Medicare. Yet these workers seldom use social services because they fear getting busted. Massey found that only 10% of illegal Mexicans have sent a child to a U.S. public school, and just 5% have received food stamps or unemployment.

Chances for any legislative action? Maybe some tidbit from the guest-worker program. So far, it hasn’t caught fire with feds or Joe Six-Pack. A recent Zogby International poll says 50% of likely voters oppose giving illegals any chance at citizenship.

**Selling the American dream—for a price.** Nobel laureate Gary Becker, who teaches economics at the University of Chicago, thinks the U.S. should welcome anyone who’s not a criminal, a terrorist or a carrier of a communicable disease—for a fee of $50,000. That buys permanent status. Becker says the plan would lure skilled workers since they have more to gain. For

$50,000 would buy permanent legal status for foreigners; it might help businesses lure more skilled workers.
to pay for the entire budget of the Department of Homeland Security.

Sound weird? There's a version already in place, known as the EB-5 visa, introduced in 1990. It's available to 10,000 foreigners a year who are willing to invest at least $500,000 (in some cases, $1 million) to create a new business or expand an existing one, creating ten or more jobs. But does the government really want to be in the business of marketing U.S. citizenship abroad?

**Bring on Big Brother.** What if we could open our borders and safeguard the country? Technology is a minstep in that direction. Last summer Homeland Security began a $100 million pilot program that embedded radio-frequency identification on the entry documents of those coming in from Canada and Mexico, tracking their arrival and departure, as Wal-Mart does pallets of toothpaste. The test didn't sit well with civil liberties groups or with Senator Patrick Leahy (D.-Vt.), who pointed out that the so-called pass card used an RFID chip that was incompatible with the one the State Department was using in passports. Could bad guys jam the systems or hack into them? That would make our borders less secure.

More plausible is an extension of a new practice that already exists. All foreign applicants for visas must schedule an interview with the U.S. consulate in their host country, where they submit to biometric fingerprint scans of their left and right index fingers and a digital photo. Such high-tech ID is also in 105 U.S. airports, as well as in all American seaports and border crossings. Draft legislation by Arlen Specter (R.-Pa.), the chairman of the Senate Judiciary Committee, would require the same kind of whiz-bang identification on the visas of all immigrants already in the States by 2007 and, by that time, would force compatibility between systems used by the FBI and Homeland Security. To curtail fraud, Specter would require companies to enter a social security number on an online government database for each prospective employee—and if it's bounced, the employer is responsible for reporting the culprit to the Immigration & Customs Enforcement agency.

The Specter bill is a melting pot of competing proposals that draw from the right and the left. Illegals already in the States could stay here indefinitely, as long as they have been employed since January 2004 and passed a background investigation by Homeland Security; whether they could become American citizens is still murky. Newly arrived aliens don't get quite as good a deal. Citizenship is off the table. But as guest workers, they would receive visas and have a chance to stay in the U.S., as long as they had jobs, for up to six years, when they would have to leave. However, they could apply for green cards from their home country. (A competing proposal by Senators John Cornyn [R.-Tex.] and Jon Kyl [R.-Ariz.] would allow temporary workers six years of employment in U.S., so long as they go home for a year every two years, with little chance to gain citizenship.) Specter would also almost triple H-1Bs to 180,000 the first year and thereafter adjust the number to market demand. Anyone with an advanced degree in science, technology, engineering or math is exempt from a visa cap.

Business has warmed to his proposals. "We have talented people we want to hire, whom we've offered a job to—and we can't bring them into the country," says Pamela Passman, vice president of global corporate affairs for Microsoft. "We think Specter's bill does address the [H-1B] crisis."

So what are its chances? It's a complex, omnibus package with many wiggling parts. Nothing will be enacted quickly. The 1986 reform took four years, and that was before Sept. 11. Xenophobia and protectionism combined to defeat an honest airing about whether an Arab ally should operate U.S. ports. Immigration probably won't fare any better.