Foundation Action

The bi-monthly newsletter of the National Right to Work Legal Defense Foundation, Inc.

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Foundation Spurs Prosecution of "Card Check" Organizing Tactic

UAW union status at 1,100-worker facility called into question

WINSTON-SALEM, NC — Responding to mounting legal and public pressure brought by the National Right to Work Foundation, the federal agency charged with enforcing federal labor law may have begun to take baby steps in confronting "top- down" organizing abuses.

Until this summer, the National Labor Relations Board (NLRB) General Counsel's massive bureaucracy has failed even to begin issuing complaints when presented with clear evidence of union coercion during increasingly prevalent "top-down" organizing drives.

However, perhaps acting independently of the central bureaucracy in Washington, DC, the agency's Winston-Salem-based field office announced that it will prosecute the nation's largest automotive union and Freightliner for illegally coercing workers to sign union authorization cards at the Thomas Built Bus facility in High Point, North Carolina.

Upon learning of the NLRB's decision (which quickly hit the nation's newswires), Freightliner officials initially announced that they "suspended recognition" of the union—but quickly backpedaled, stating that they had merely "put everything on hold."

Presidential candidate John Kerry (D-MA), flanked by AFL-CIO bosses Richard Trumka and John Sweeney, has filed formal legal arguments against the Foundation's defense of employees whose rights have been violated during union organizing drives.

Foundation efforts lead to first known prosecution

When it formally issues the complaint, the NLRB's regional office will begin the first known prosecution of its kind against the use of coercive "captive audience" speeches and granting union operatives sweeping access to company facilities during work hours for the purposes of browbeating workers into signing union authorization cards.

The NLRB prosecutor cited company and UAW officials for jointly conducted mandatory pro-union "captive audience speeches" to coerce the plant's workers to sign union authorization cards which were counted as "votes" in favor of unionization pursuant to the so-called "neutrality agreement."

Before the NLRB Regional Director's decision, the Foundation had continuously shone a media spotlight on the abuses suffered by workers in High Point, including three different rounds of news articles and television reports in the regional media. The later news of the forthcoming complaint ultimately sparked coverage in dozens of the nation's largest newspapers and wire services.

Employees petition for election to throw out union

A few weeks after Foundation attorneys filed the original unfair labor practice charges on behalf of Jeff Ward,

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IN THIS ISSUE

Foundation Hosts Independent Educators Conference

Professional educator leaders gather in Washington, DC

WASHINGTON, DC — The National Education Association (NEA) and American Federation of Teachers (AFT) union hierarchies have vowed to make forced unionism a way of life for teachers. But with the help of the National Right to Work Foundation, independent teachers are mobilizing to fight back.

Concerned Educators Against Forced Unionism (CEAFU), a special project of the Foundation, hosted a remarkable conference this summer intended to equip education reformers and independent professional teacher groups with the tools to build their organizations and offer a viable alternative to the militant union hierarchy.

Top leaders from 17 non-union professional educator groups and many individual teachers traveled from across the United States to this year's conference—convened in Washington, DC—immediately after millions of America's school children began their summer vacations in June.

An umbrella organization of state and national groups, CEAFU applies the principles of National Right to Work specifically to education.

While CEAFU supports independent educator groups across America, member groups are especially successful in those states where state laws do not hand teacher union officials monopoly bargaining privileges—the power to foist unwanted union "representation" on teachers.

Independent educator groups promote genuine reform

Among the many distinguished speakers at this year's annual conference, the Honorable Eugene Hickok, Deputy Secretary of the United States Department of Education, was perhaps the most prominent. The former Pennsylvania secretary of education kicked off the conclave with a stirring speech of encouragement.

A former school board member and college professor in the Keystone State, the Deputy Secretary professed the Bush administration's commitment to education reform and thanked

Syndicated columnist Deroy Murdock (right), pictured with Deputy Secretary of Education Eugene Hickok, has helped expose the corruption and betrayal of the NEA teacher union.

CEAFU's guests for their leadership and deep concern for their profession, the students, and the institutions they serve. He concluded by reflecting that any monopoly bargaining undermines "the true professionalism of educators." Forced unionism is the antithesis of freedom, he pointed out. "If America stands for anything, it stands for individual rights."

In recent years, nationally syndicated Scripps-Howard columnist Deroy Murdock has delved into the fray of education reform. Not content with "merely" writing hard-hitting newspaper columns about the havoc teacher union officials have caused in education, Mr. Murdock helped spearhead an education reform movement in Washington, DC's school system amidst one of the most egregious teacher union scandals in history.

During his presentation, Mr. Murdock counseled CEAFU key leaders to showcase differences between professional educator groups and teacher union officials; to present a vision of how teachers' lives would change if each teacher had a choice regarding union membership; and to use anecdotal evidence to show that not all teachers march to the beat of Big Labor's drum.

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Foundation *Action*

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The Foundation is a nonprofit, charitable organization providing free legal aid to employees whose human or civil rights have been violated by abuses of compulsory unionism. All contributions to the Foundation are tax deductible under Section 501(c)(3) of the Internal Revenue Code.

Punitive Damages Loom for Unlawful Dues Seizures

Federal court excoriates lawyers at nation's top union law firm

ALBUQUERQUE, NM — In an extraordinary rebuke of "unethical" conduct by lawyers at Big Labor's "go-to" law firm, Bredhoff & Kaiser, a federal court based in the Land of Enchantment certified a federal civil rights lawsuit as a class action and ruled that the employees may be entitled to punitive damages for the unlawful seizure of union dues.

Opening the door for hefty damage awards for union malfeasance across America, the ruling of the U.S. District Court for the District of New Mexico has undoubtedly sent shock waves through the union legal community.

A jury verdict awarding punitive damages in such a case would not only be unprecedented, but it would enable National Right to Work Foundation attorneys to put sharper teeth into its series of U.S. Supreme Court victories which forbid union officials from seizing compulsory dues for politics and establish certain due process rights.

> *"The National Right to Work Legal Defense Foundation has played a significant role in shaping the law applicable to this case," wrote the court.*

The court handed down three rulings in recent weeks in two closely related civil rights lawsuits filed by Foundation attorneys on behalf of more than 300 City of Albuquerque employees. The defendants in the *Wessel* and *Harrington* cases are the City, American Federation of State, County, and Municipal Employees (AFSCME) Union Local 624, New Mexico AFSCME Council 18, and AFSCME International.

In his ruling certifying the suit as a class action, Senior District Judge C. Leroy Hansen dismissed the arguments of AFSCME union lawyers to prevent Foundation attorneys from being recognized as class counsel, stating, "all [AFSCME union] Defendants have really shown is that Plaintiffs' counsel want to win this lawsuit... The Defendants do not allege that Plaintiffs' counsel has acted unethically or otherwise inappropriately, as the Defendants' counsel have repeatedly done themselves."

A federal court recently lambasted Gerald McEntee's AFSCME union lawyers for acting unethically.

The court's criticisms referred to the union lawyers' disingenuous arguments in attempting to disqualify the Foundation's attorneys and the named plaintiffs as class representatives. The court, for example, excoriated the union's lawyers for citing language from cases taken "...out of context under the apparent, and mistaken, impression that the Court would not read the cases cited in their briefs."

Union lawyers made "deliberate misrepresentations"

"The credibility of both the Defendants' counsel and the arguments they make has suffered by counsels' repeated and deliberate misrepresentation of case law and false statements of law," the court continued.

In sharp contrast, the court cited the expertise of Foundation attorneys stating, "The National Right to Work Legal Defense Foundation has played a significant role in shaping the law applicable to this case, and the Plaintiffs' attorneys have ample knowledge of it to represent the class in this case."

Court punishes city government for complicity

After certifying the class, the court handed down two more decisions in favor of the union-abused employees. In addition to ruling that the employees may be entitled to punitive damages, the court ruled that the union did not properly disclose the true use of employees' dues and ordered the City of Albuquerque to foot the bill for its own legal costs because of its failure to protect its employees' constitutional rights.

Foundation attorneys had previously won a U.S. Court of Appeals ruling that the common union practice of reimbursing a public employer for legal fees in such cases—a practice which increases the incentive for government officials nationwide not to question whether a union's dues demands and procedures comply with the U.S. Constitution—is "void as against public policy."

Union accounting tricks akin to "money laundering"

In one of the related rulings, Judge Hansen wrote, "accounting inconvenience is an insufficient excuse to allow the union to continue to violate

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NLRB Slowly Begins to Get Off the Dime

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roughly 400 Thomas Built workers also signed and submitted a petition demanding a secret ballot decertification election to strip UAW union officials of their newly granted "exclusive representation" power over approximately 1,100 of the company's employees. That petition has been placed on hold while the NLRB decides whether the unfair labor practices were severe enough to warrant canceling the union's recognition in the first place.

The top-down organizing campaign implemented in High Point—similar to campaigns rolled out in dozens of other workplaces across America—resulted from UAW pressure on Daimler Chrysler, which owns Freightliner, Thomas Built's parent company. Freightliner ultimately signed a so-called "neutrality agreement" that prohibits the traditional, less-abusive secret ballot election process in favor of a coercive "card check" process.

NLRB's General Counsel has been "AWOL"

Meanwhile, the NLRB's General Counsel's office continues to sit on numerous other key cases arising from workplaces across America, despite evidence of union coercion.

"Until now, the NLRB's General Counsel and subordinate offices have been effectively AWOL in prosecuting the variety of abuses that occur during 'card check' drives," said Raymond LaJeunesse, Vice President and Legal Director of the National Right to Work Foundation. "This is a small, but encouraging, first step towards protecting the rights of tens of thousands of workers across the country facing this coercive union organizing tactic."

Foundation's lead case opened to public comment

Recent weeks have seen significant developments on another front, the Board side of the NLRB, which holds original jurisdiction over representation election matters. The Board solicited formal comment from the entire labor relations community regarding the lead Foundation cases challenging the enforceability of "card check" recognition agreements, resulting in an avalanche of legal filings.

Earlier this summer, the Board voted 3–2 to reconsider whether petitions signed by employees opposing the union may be completely ignored during or after a "card check" organizing drive (see **Foundation *Action*** page 1, May/June 2004). As former NLRB member John Raudabaugh pointed out in the *Detroit Free Press*, "This is starting a discussion on the most important issue in American labor law of the current period, certainly in the last 10 years."

> *"This is starting a discussion on the most important issue in American labor law of the current period, certainly in the last 10 years."*

Roughly over a dozen *amicus curiae* briefs filed supported the position taken by Foundation attorneys that the employees should be allowed to obtain a decertification election after their employers recognized the union as monopoly bargaining agent without an election, on the basis of coercively obtained cards. Those filing briefs against the employees were mostly unions, union-label academics or front groups, or unionized employers who find themselves over a barrel.

UAW union chief Ron Gettelfinger (left) and Bill Ford (right) have teamed up with other automotive giants to hand industry workers over to compulsory unionism.

Scores of companies, unions, congressmen, and groups file arguments

Three former members of the NLRB (Raudabaugh, Right to Work Foundation Trustee J. Robert Brame, and Dennis Devaney) filed an unprecedented joint brief for Congressman Charlie Norwood (R-GA) and 20 other Members of Congress arguing in support of the employees' efforts to obtain a secret ballot election. On the other side, Senators John Kerry (D-MA) and John Edwards (D-NC) joined a brief filed by Senator Ted Kennedy (D-MA) and Congressman George Miller (D-CA) opposing the employees.

Kennedy and Miller are also lead sponsors of a bill pending in Congress that would effectively eliminate the secret ballot election process for unionization and replace it with a mandatory "card check" recognition process. (The National Right to Work Committee is currently mobilizing grassroots opposition to this massive

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union power grab.)

Among others filing arguments in opposition to the employees were UAW, AFL-CIO, and a sham group called "American Rights at Work," which was set up specifically for the purpose of attacking the successful employee advocacy work of National Right to Work.

Among others filing in support of the employees represented by Foundation attorneys were Wackenhut, Allied Security, Labor Policy Association, Center for National Labor Policy, Automotive Aftermarket Suppliers Association, Tennessee Chamber of Commerce and Industry, the Associated Industries of Kentucky, Associated Builders and Contractors, U.S. Chamber, National Association of Manufacturers, and numerous other organizations.

NLRB insiders and observers believe it is possible, though unlikely, that a decision on these lead cases will issue before the late fall, at which time the presidential election and the expiration of two NLRB members' terms will create uncertainty in the Board's composition.

"Card check" is AFL-CIO's "litmus test"

Support for "card check" over the less-abusive Board-supervised secret ballot election process in organizing unions is Big Labor's primary factor in determining which candidates receive forced-union-dues support this election year. According to the AFL-CIO's recent statement to BNA's *Daily Labor Report*, "we don't have any issue that's a litmus test, but this is as close as it gets."

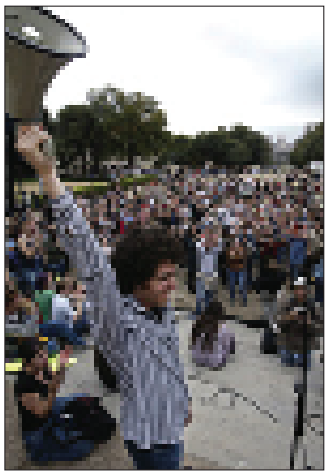
Foundation Helps Strike Blow for Academic Freedom

NLRB returns to long-standing precedent disallowing forced unionization of TAs

WASHINGTON, DC — By a 3-2 vote, the National Labor Relations Board (NLRB) followed the Foundation's prodding and reversed an activist Clinton-era ruling which had allowed union officials to corral university graduate teaching assistants (TAs) into unwanted union affiliation.

In the case involving United Auto Workers (UAW) union officials' attempt to forcibly unionize TAs at Brown University in Providence, Rhode Island, the NLRB voted to return to its long-standing position of more than 25 years that TAs have an academic, rather than economic, relationship with universities. Accordingly, TAs are not "employees" who can be subjected to union monopoly bargaining under federal labor law.

Agreeing with arguments made by National Right to Work Foundation attorneys in an *amicus curiae* ("friend of the court") brief filed two years ago, the NLRB found that, because TAs are admitted into, rather than hired by universities, they are students in, rather than employees of, the institution.



Striking a blow for academic freedom, the Foundation helped stop the forced unionization of graduate student assistants.

Students' Marxist desires to unionize not reason enough

"While some students may have Marxist dreams that they are 'workers,' rather than students, who will be in the vanguard of an economic revolution when the workers of the world unite, the fact remains that they are students and not employees, and have little commonality of interest with most employees," the Foundation pointed out in its brief.

In the brief, the Foundation argued that grades are a central form of "compensation" for TAs and questioned whether grades would ultimately become a mandatory subject of monopoly bargaining if TAs were treated as "employees" for purposes of unionization. The Foundation also argued that allowing union officials monopoly bargaining—and ultimately forced dues—power over all TAs would violate the First Amendment freedom of association rights of dissenting students, thereby undermining academic freedom.

UAW union officials sought monopoly bargaining privileges over roughly 450 TAs at Brown University. UAW officials relied on an NLRB decision in 2000 involving New York University which, for the first time, classified TAs as employees.

Objecting to the NLRB's preliminary finding that this precedent applied at Brown University, university officials pointed out that "[c]ommon sense dictates that students who teach and perform research as a part of their academic curriculum cannot properly be considered employees without entangling the... [National Labor Relations] Act into the intricacies of graduate education."

CEAFU Conference

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Reflecting upon his own experience, Mr. Murdock emphasized the value of cooperation among school reform groups, legal foundations, and policy groups—including joining as co-plaintiffs in lawsuits against egregious actions by teacher union officials.

Conference arms education leaders to fight back

Renowned media relations consultant Hugh Newton and Stefan Gleason, Vice President of the Foundation, shared the secrets of their success—conducting a workshop about how to pitch stories to the media, develop relationships, and get the word out about an organization's work.

Public Service Research Foundation President David Denholm shared results of a Zogby poll he recently commissioned to study the nation's attitude towards unions. In his remarks, Mr. Denholm also emphasized the importance of teacher quality and continuing professional development to allow teachers to hone and enhance their skills.

Landmark Legal Foundation President Mark Levin reported about his work in unearthing evidence that the NEA union may have failed to report its expenditures to the Internal Revenue Service (IRS), as required by law. The NEA has recently admitted publicly that it now faces an IRS audit.

Rhea Blanken, of Results Technology, Inc., presented an interactive workshop on membership development, emphasizing how the professional education association leader can position his or her group to meet the needs of specific groups of teachers.

And Mike Antonucci, Director of the California-based Education Intelligence Agency, gave some encouraging words, explaining that the rank-and-file rebellion has now reached the NEA union's Michigan stronghold, where NEA membership is declining for the first time ever.

Long-time independent educator leader from Indiana, Jane Ping, pictured here with CEAFU Director Cathy Jones, received CEAFU's Friend of Freedom Award for her years of tireless service.

"Unfortunately, in Michigan and 19 other states employing more than half of the nation's teachers, even teachers who quit the union are forced to continue paying so-called agency fees if they wish to keep their jobs," noted CEAFU Director Cathy Jones. Jones commended Hickok and the many other excellent speakers at this year's conference, as well as the many members of Congress and their aides that attended CEAFU's congressional reception on Capitol Hill.

Members of Congress show their support

Americans from all walks of life have a stake in confronting the stranglehold that teacher union officials hold over America's teachers, parents, and schools. CEAFU is working to address this problem by supporting the work of non-union professional teaching associations.

One does not have to be a teacher to support CEAFU's work. To receive more information on the Foundation's CEAFU program, supporters may contact Cathy Jones at (800) 336-3600, or via email at info@nrtw.org.

CEAFU membership comes at no cost or obligation, and members gain access to key information on the battle against compulsory unionism in the teaching profession and education reform activities generally.

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the First Amendment rights of the Plaintiffs." He likened the union's funneling of forced dues through its international, state, and local affiliates with no record of how they were being spent to "money laundering."

The Judge ordered the union to refund the entire amount of the dues seized unlawfully, roughly $52,000. Moreover, the AFSCME union now faces the possibility of a jury verdict in the coming months awarding punitive damages far in excess of that amount, for its officials' intentional or callous and reckless disregard of the workers' First Amendment rights.

Substantial punitive damages would increase deterrence

An additional award in any amount would set a new precedent that would help Foundation attorneys fight the unlawful seizure of compulsory dues all across America.

"Union officials now face the possibility of substantial punitive damages for their actions," said Foundation President Mark Mix. "It is our hope that this case will help establish new tools for judges and juries to deter unlawful dues seizures by hitting the union bosses with hefty damage awards. Establishing new precedents like this is what the Foundation's strategic litigation program is all about."

AFSCME union officials' seizure of forced union dues from Albuquerque City employees violated First Amendment protections as articulated in the Foundation-won Supreme Court decision in *Chicago Teachers Union v. Hudson*. Under Hudson, union officials must disclose an independent audit of their expenditures, justifying the lawfulness of those charged to nonmembers, before seizing any forced union dues from employees who choose to refrain from formal union membership.

Nurses Battle Against Militant Union Campaign

Union operatives openly lied to nurses to induce them to sign union "voting" cards

LOS GATOS, Ca. — A nurse employed by Community Hospital of Los Gatos filed class-action federal charges against both Tenet Healthcare and the California Nurses Association (CNA) union for attempting to unlawfully corral hospital nurses into unwanted union representation.

In an ominous new trend in the health care field, hospital management granted CNA union officials wide access to the workplace in order to browbeat nurses into signing union authorization cards. CNA officials even began bargaining with Tenet over wages and working conditions without CNA having first obtained support from a majority of employees.

As part of a recent Massachusetts Nurses Association union strike, union goons littered non-striking nurses' houses with eggs, stuffed rats, and "scab" signs.

CNA officials bully nurses in hospital parking lot

Sherril Hopper, a five-year veteran registered nurse at the San Jose-area hospital, filed the unfair labor practice charges at the National Labor Relations Board (NLRB) with free legal aid from National Right to Work Foundation attorneys.

Hopper tells **Foundation *Action*** that CNA union officials confronted nurses in the hospital parking lot and misrepresented that the cards were petitions that would help pass a bill supposedly aiding California nurses. This was a far cry from the truth, as the signed cards were to be counted as official "votes" in favor for unionization. Hopper also reports that CNA union operatives called or visited numerous coworkers at their homes—having already obtained nurses' home addresses and phone numbers from the hospital without consent.

Hopper's charges seek to bar the company from continuing actively to support union organizing efforts at the Tenet California hospital. Tenet had agreed to support unionization of its employees after CNA union officials waged a relentless "corporate campaign," using pressure through the media and public officials to paint Tenet as a bad actor in society.

"CNA union officials are shamelessly using numerous unlawful tactics to strong-arm nurses into union ranks regardless of their wishes," said Stefan Gleason, Vice President of the National Right to Work Foundation.

Employer stifles efforts of "Freedom Team"

In addition to deceiving nurses in order to induce them to sign union cards, Hopper reports that CNA organizers set up on site at the hospital to put daily pressure on nurses to install the CNA as their monopoly representative. Meanwhile, Tenet stifled counter-efforts by nurses calling themselves the "Freedom Team" who wished to remain union free.

Militant organizing drives unleashed on health care industry

Union officials view America's rapidly growing health care industry, which

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Nurses

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now comprises approximately 16 percent of the economy, as a plentiful source of forced union dues. Starting in June 2001, the United American Nurses union joined up with the powerful AFL-CIO, which already collects dues from 1.2 million health care professionals and has vowed to devote large portions of its coercively collected cash into "organizing" even more nurses.

Even the notoriously violent Teamsters union has inserted itself into the medical profession. Other nursing unions are adopting the Teamsters-perfected tactics of threats, vandalism, and violence.

For instance, the Massachusetts Nurses Association union launched a strike in the spring of 2000 where a battalion of union militants terrorized employees who chose to continue doing their jobs. As part of the campaign of harassment, union goons littered employees' houses with eggs, stuffed rats, and "scab" signs.

The Foundation is dedicating increased resources to combating top-down organizing tactics in the health care field and many other industries.

Newsclips Requested

The Foundation asks supporters to keep their eyes peeled for news items exposing the role union officials play in disruptive strikes, outrageous lobbying and political campaigning. Please clip any stories that appear in your local paper and mail them to:

NRTWLDF
Attention: Newsclip Appeal
8001 Braddock Road
Springfield, VA 22160

Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

Big Labor is calling it a "litmus test" issue for candidates seeking its support this election year.

The issue is top-down organizing, and your Foundation is in the thick of the battle against a pernicious strategy in which union officials use sophisticated tactics to bully employers to turn their workers over to compulsory unionism.

And I have some encouraging news. Foundation attorneys have persuaded a regional director for the National Labor Relations Board (NLRB) to prosecute the first known case of its kind after a union and company illegally coerced workers to sign union authorization cards.

Meanwhile, the Board itself has voted 3–2 to consider whether employees may demand a secret ballot election after finding themselves unionized through a "card check" organizing drive. You can read more about both these exciting developments in this issue of **Foundation *Action***.

Big Labor opposes the secret ballot and favors the notoriously abusive card check procedure because it makes it even easier for union officials to claim "majority" support that very well may not exist.

Once union officials are installed in a backroom deal as the "exclusive representative" of a group of workers, they negotiate a forced-dues agreement that gives them a ready source of cash to use in political campaigns and anything else they fancy. That's the payoff.

And that's why Senators John Kerry and John Edwards have filed formal arguments at the NLRB attacking the Foundation's legal position and the employees it is assisting. (Frankly, we are flattered they are focused on the Foundation's work!)

Big Labor will spend a billion dollars to seize power in this year's elections. Changing the law to make top-down organizing even easier is their top goal. Thanks to you, your Foundation is at the center of a battle that will shape the direction of union organizing and politics long into the future. We couldn't do it witout you. Thanks.

Sincerely,

Mark Mix