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## The enemies of free speech

By Jeff Jacoby

WHAT WOULD happen if a powerful union sued a think tank for accurately quoting the union's president in a letter to its supporters? Anyone who went to law school will recognize that as the kind of far-fetched hypothetical that law professors dream up in order to spark classroom discussion. But this is no hypothetical.

On Sept. 27, 2001, Luigi Battaglieri, the head of the Michigan Education Assn., called a press conference to trumpet the opening of the Great Lakes Center for Education Research and Practice. The new organization was being created to provide intellectual ammunition for the public-education establishment - and, in particular, to challenge the work of the Mackinac Center for Public Policy, a market-oriented Michigan think tank known for its support of school choice and privatization.

I pause to note that the Mackinac Center may just be the best regional think tank in America. I know it only through its work, which is informed, engaging, and remarkably wide-ranging. I have read Mackinac Center papers or commentaries on everything from whether Internet purchases should be taxed to the surprising origins of Arbor Day and almost always come away impressed.

Particularly cogent and hard-hitting is the center's work on Michigan education issues; time and again it has put Battaglieri's union on the defensive and bested it in the court of public opinion. When he unveiled his own think tank last year, Battaglieri was surprisingly candid about the center's impact. "I know what's in your minds," he said. "I expect the headline is going to be that the MEA takes on the Mackinac

Center ... I guess I expect their reaction to be [to] welcome us as new kids on the block ... and I assume they're going to scrutinize our research just as much as we've scrutinized theirs. And so, *quite frankly, I admire what they have done* over the last couple of years, entering into the field as they have and being pretty much the sole provider of research to the community, to the public, to our members, to legislators, and so on." (my italics)

Not a bad testimonial, and Lawrence Reed, the center's president, wasted no time sharing it with potential donors. In a year-end fundraising letter, he wrote that the center was doing great work. "But you don't need to take my word for it," he added.

"This fall, Luigi Battaglieri, president of the Michigan Education Assn., stated, 'Frankly, I admire what [the Mackinac Center] has done.'" Reed went on to make it clear that Battaglieri, "whose union is generally at odds with the Mackinac Center," had been speaking about the center's effectiveness in shaping public debate.

Incredibly, the MEA reacted to that letter with a lawsuit. It accused the center of illegally "misappropriating" Battaglieri's name and words, demanded a copy of the center's mailing list, claimed it was entitled to any money the letter had raised, and asked the court to bar the center from ever again referring to Battaglieri or the MEA in a solicitation.

In a Lansing courtroom last week, Judge Peter Houk entertained motions for summary judgment. The weakness of the union's case is suggested by its arguments. It claimed that readers would be deceived by Reed's letter into thinking that the MEA had endorsed the Mackinac Center. It accused the center of commercially exploiting the MEA's name, and cited Johnny Carson's suit

against a portable toilet company that called its product "Here's Johnny." The judge may find such polemics amusing, but he will not miss the real issue: Can a think tank be punished for accurately quoting something said at a press conference?

Like many teachers unions, the MEA is used to deference from the media and kowtowing by public officials, and it no doubt bitterly resents the success the Mackinac Center has had in tarnishing its image. Over the years, the center has exposed the union's abuse of public school health funds, publicized its threat to blacklist student teachers if their alma mater is linked to a charter school, and revealed that numerous MEA officials are paid more than double the average salary of Michigan teachers. It has repeatedly challenged the union's near-monopoly control of public education. No wonder the union wants to stifle its voice.

Or at least eat up some of its money. I suspect the MEA's real motive is to force the Mackinac Center to spend tens of thousands of dollars in legal fees; after all, even a meritless claim can be expensive to fight. Fortunately for the center, the esteemed Institute for Justice, a Washington, D.C.-based libertarian public-interest law firm, has stepped forward to represent it at no charge.

Once it was reactionaries who tried to squelch public discourse; in the famous case of *New York Times v. Sullivan*, a segregationist Alabama official sued for libel when an ad signed by civil-rights leaders criticized his police department. Today it is liberals who are most likely to demand the silencing of speech they disapprove of. But the First Amendment knows neither right nor left. So long as it remains the law of the land, no one will be allowed to padlock the marketplace of ideas.