

By Marc Falkoff

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Several months ago, I was invited to speak at McHenry County College about my experience representing Guantánamo detainees.

The event was scheduled to take place last week, but after I received a slew of threats of violence to myself and my family, it's not going to happen.

In blog postings and expletive-filled messages left on my personal cell phone, I was called a traitor, asked how I slept at night, and told that I would burn in hell. My clients were called murderers, and my family was threatened. After consultation with the Crystal Lake Police Department, the college understandably chose to cancel my talk.

It's a shame. A handful of people, purporting to be patriots, have silenced the community's right to hear a different perspective on our national detention policy. So I'd like to tell you some of what I would have said about Guantánamo at MCC last week.

I would have said that my former law firm began working on the Guantánamo cases just after we'd finished representing, pro bono, the families of firefighters and police officers who were killed in the World Trade Center.

I would have explained that we went to court for a dozen men who had been held for years without charge or trial because we felt no inconsistency in representing the victims of terror while also fighting for the rule of law.

I would have said that many – although not all – of the men at Guantánamo are entirely

innocent of any wrongdoing. I would have pointed out that most of the men imprisoned at Guantánamo were not picked up on a battlefield and were not taken prisoner by American troops. According to the military's own records, 86 percent of the men were picked up by Pakistani security forces at the Pakistan border.

I would have said that there's a real problem when you capture someone wearing civilian dress, because you don't know whether he's a civilian or an enemy soldier. How do you tell the difference? I would have pointed out that Army regulations and the Geneva Conventions give us an answer: Hold a status hearing near in time and place to the capture to determine whether you've made a mistake.

I would have said that during the first Gulf War, American troops captured 1,196 men, held status hearings, and concluded that we had made mistakes in 886 cases – a 74 percent error rate.

I would have said that during the Afghan conflict, in contrast, we held no hearings to screen out errors that had been made by Pakistani soldiers.

I would have said that the Bush administration eventually acknowledged most of its mistakes at Guantánamo by releasing more than 500 of the 770 men who were detained there. I would have said that my colleagues and I have won three Supreme Court decisions, affirming that a Guantánamo prisoner's right to a day in court is a constitutional principle that cannot be taken away by the government.

I would have said that the trial courts have looked at the cases of 38 of the prisoners at Guantánamo, and determined that in 30 of them the prisoner was actually an innocent civilian, not an enemy soldier or terrorist.

I would have said that, as part of my representation of my clients, I wanted to show the public that these men were human beings, not a dozen Muslim variations on Hannibal Lecter.

I would have said that I decided to gather some of the poetry they had written while "inside the

wire" at Guantánamo. I would have described my inspiration for the project, which was my experience reading the poems of Brian Turner, an American veteran of the Iraq War, whose poems bridged the cultural gap between civilian and soldier, Iraqi and American.

I would have said that the Guantánamo prisoners wrote their poetry in part to reaffirm their humanity while living in extreme isolation. I would have told my audience that although the prisoners were denied pen and paper, they wrote nonetheless by using a pebble to scratch a line or two onto the Styrofoam cups that they were served with their lunch.

I would have said that my clients were not terrorists. I would have discussed their cases in more detail, explaining why they were in Afghanistan or Pakistan or Egypt when they were taken into custody.

I would have said that it is un-American to deny any person his day in court.

I would have said much more if the lecture had not been shut down, and I would have answered questions from skeptics. Maybe, if we can all remain civil, we'll have the chance to actually have a discussion soon at MCC.

- Marc Falkoff is a law professor at Northern Illinois University College of Law. Since 2004, he has been a lawyer for sixteen Guantanamo detainees.