

traditional definition of that word but engaged in the kind of brutality against humanity, today there is a codified body of laws that would certainly make those people subject to international law let alone our own kind of crimes.

The point I am trying to make is, it just gives it some clarity. What are they? What is the legal status in that category? If you are a POW, there is one set of laws that apply. If you are an enemy combatant, there is a set of laws and regulations that apply. If you are a non-enemy combatant and have engaged in the very activities my colleague described, what is the law that applies to those individuals under those circumstances? There is no status at all being attributed to these people. They are in limbo. That is what I am concerned about.

Mr. SESSIONS. Mr. President, I certainly respect the Senator's thoughts about that. I must follow up a little bit.

First, what happened at Nuremberg happened after the war was over.

Mr. DODD. I agree.

Mr. SESSIONS. We held German prisoners in the northern campus of the University of Alabama where I lived when I was in law school. They had German prisoners there during World War II.

But what I want to try to reassure my colleague about is that we do have a proper procedure that is ongoing. For example, we have defined these as combatants. We give them a combatant status review tribunal when they come in. They are reviewed in that fashion. They have a three-judge panel. They actually go beyond the requirements that the U.S. Supreme Court said in the Hamdi case.

In addition to that, they created an Administrative Review Board that, on an annual basis, must make an assessment of whether there is continued reason to believe that the enemy combatant poses a threat to the United States or its allies, or whether there are other factors bearing upon the need for the kind of detention, including its enemy combatant intelligence value in the gulf war on terrorism.

For example, in the first year of those Administrative Review Board hearings, there were 330 decisions to continue to detain the prisoners, 119 decisions to transfer them to other jurisdictions, other countries perhaps, or possibly other countries, and 14 release decisions. This second year, to date, the review board had 12 findings of continued to detain, 6 transfers, and no release decisions.

At least there is a procedure. In response to criticisms in the Congress, around the word, in response to the Supreme Court decision, they have taken it carefully because the military is proud of its standards. The military wants to do this right. But they have a responsibility not to release those who should not be released as they continue to pose a threat to the security of our Nation.

Mr. DODD. If my friend will yield further, I am sure he is a good lawyer. In the Rasul v. Bush case in 2004, of course, the Supreme Court ruled "a state of war is not a blank check for the President," and "enemy combatants have the right to challenge their detention before a judge or other neutral decisionmaker."

That took a court case basically going to the highest Court of our land—I don't know what the ruling was, 5 to 4 or 6 to 3—and they ruled in that case enemy that combatants have a judicial right to challenge their status.

All I am saying, I am not trying to determine the outcome, just what is the status for the people to be detained or moved other places.

Our highest Court has said it is not a blank check, that they have a right to make a case. I don't want to be seen as perceiving—because I am saying they have a right to make a case, do I like these people? Am I trying to befriend them? I am saying the rule of law has to apply.

We are different. That is what makes us different from these people. These people would never give their victims a right to a judicial system proceeding as they engage in the kind of activity my colleague from Alabama properly described.

What makes my colleague from Alabama, and I hope myself and our colleagues, different is this very point the Supreme Court made. Even these enemy combatants have the right to make a case before a judge or other "neutral decisionmaker," that the state of war is not a blank check for the President. That is the point I am trying to make. I am not trying to characterize the people in any other way than what my colleague has described.

The point the Senator and I need to come together on is the rule of law. That is all I am trying to suggest. I don't have an amendment to offer, but we have to find this common ground on this issue because it is who we are. It is what we want the world to know and appreciate what the United States is. That is really what did so much for us in the wake of World War II where we became this symbol of nations that rise above their passions and their emotions.

He is absolutely right on Nuremberg. Several people got limited sentences, some got off, and many got executed, as they should have, but it went through a legal process. To read those transcripts, where people went on and talked as Goering—I am tempted to draw the comparison of Goering to Saddam Hussein, who talks endlessly. Goering did almost the same, and there was concern by some that he might have gotten away had it not been for a very aggressive prosecution.

It was the rule of law, and how proud these people were that showed the world—and the United States led—were different.

The fact situations are very different between the end of a conflict and an ongoing conflict and how you deal with it, but the rule of law does deserve stronger support than I am afraid we are giving. That is my concern.

Mr. SESSIONS. I thank the Senator.

I believe care has been taken to comply with the Supreme Court cases. The Department of Defense has gotten the system in a way that has a combatant status review tribunal and an administrative review board, and there have been multiple hearings. The Department is giving these prisoners—whether they are prisoners of war, lawful or unlawful combatants who are being detained—the rights to which they are entitled. I really do believe they have.

That is the only concern I have about the perception that might be out there, even around the world, that we are acting outside the rule of law. I do not believe that is so.

MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

CELEBRATE WEST VIRGINIA

Mr. BYRD. Mr. President, on June 20, 1863, a new State was added to the Union. Today, 143 years later, we celebrate the birthday of West Virginia. I am always happy to have an excuse to share my love for West Virginia with the rest of the Nation.

The story of West Virginia is unique and fascinating, a one-of-a-kind juxtaposition of geography, history, and politics. It is a story as interesting as the State is beautiful.

The steeply folded mountain ridges that define the southern edge of the State, and her rich mineral and natural treasures that more than made up for her paucity of flat agricultural terrain, defined her early years and set her apart socially and economically from the rest of Virginia. West Virginia's natural attributes attracted a hardy, can-do breed of opportunistic settlers determined to scratch a living for their families from her rocky hillsides. They mined salt and coal, hunted and trapped, and cut small family farms out of the hillsides. These mountaineers had little in common with the gentrified, land-owning and slave-owning plantation masters of eastern Virginia's tidewater and piedmont regions. Thus, even as the issue of slavery began to strain the relations between the Nation's industrial North and her agricultural South, the contrasts within Virginia were sharp.

A child of conflict, West Virginia's birth was surprisingly peaceful. Before the Civil War, the Commonwealth of Virginia was a large State, fraught with its own internal divisions, based