SCOPE OF A WAIVER.—When the disclosure is made in a Federal proceeding or to a Federal office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a Federal or State proceeding only if:

‘‘(1) the waiver is intentional;
‘‘(2) it waives undisclosed and undisclosed communications or information concern the same subject matter; and
‘‘(3) they ought in fairness to be considered together.

(b) INADVERTENT DISCLOSURE.—When made in a Federal proceeding or to a Federal office or agency, the disclosure does not operate as a waiver in a Federal or State proceeding if:

‘‘(1) the disclosure is inadvertent;
‘‘(2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and
‘‘(3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Federal Rule of Civil Procedure 26(b)(5)(B).

(c) DISCLOSURE MADE IN A STATE PROCEEDING.—When the disclosure is made in a State proceeding and is not the subject of a State-court order concerning waiver, the disclosure does not operate as a waiver in a Federal proceeding if the disclosure:

‘‘(1) is not a waiver under this rule if it had been made in a Federal proceeding;
or
‘‘(2) is not a waiver under the law of the State where the disclosure occurred.

(d) CONTROLLING EFFECT OF A COURT ORDER.—A Federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court—in which event the disclosure is also not a waiver in any other Federal or State proceeding.

(e) CONTROLLING EFFECT OF A PARTY AGREEMENT.—An agreement on the effect of disclosure in a Federal proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

(f) CONTROLLING EFFECT OF THIS RULE.—Notwithstanding Rules 101 and 1101, this rule applies to State proceedings and to Federal courts unless and until the litigation pending in a Federal court-mandated arbitration proceedings, in the circumstances set out in the rule. And notwithstanding Rule 501, this rule applies even if State law provides the rule of decision.

(g) DEFINITIONS.—In this rule:

‘‘(1) ‘attorney-client privilege’ means the protection that applicable law provides for confidential attorney-client communications; and
‘‘(2) ‘work-product protection’ means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.

(b) TECHNICAL AND CONFORMING CHANGES.—The table of contents for the Federal Rules of Evidence is amended by inserting after the item relating to rule 501 the following:

‘‘502. Attorney-client privilege and work-product doctrine; limitations on waiver.’’

(c) EFFECTIVE DATE.—The amendments made by this Act shall apply in all proceedings commenced after the date of enactment of this Act and, as far as is just and practicable, in all proceedings pending on such date of enactment.

ORDERS FOR THURSDAY, FEBRUARY 28, 2008

Mr. SALAZAR. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 9:30 a.m., Thursday, February 28, that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and that the Senate then proceed to a period for the transaction of morning business for up to 1 hour, with the time equally divided and controlled between the two leaders in their designations, with the majority controlling the first half and the Republicans controlling the final half; further, that the Senate then resume consideration of the motion to proceed to S. 2634 and that all time during any adjournment or morning business court proceedings.

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

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. SALAZAR. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned until Thursday, February 28, 2008, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate:

POSTAL REGULATORY COMMISSION

NANCY R. LANGLEY, OF VIRGINIA, TO BE A COMMISSIONER OF THE POSTAL REGULATORY COMMISSION FOR A TERM EXPIRING NOVEMBER 22, 2013, VICE DAWN A. TISDALE, WHO WILL RESIGN. (S. 1525)

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

RONALD D. ROTUNDA, OF VIRGINIA, TO BE A MEMBER OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD FOR A TERM EXPIRING JANUARY 29, 2012, NEW POSITION. (S. 2383)

DANIEL W. SUTHERLAND, OF VIRGINIA, TO BE CHAIRMAN OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD FOR A TERM EXPiring JANUARY 29, 2014, NEW POSITION. (S. 2383)

FRANCIS X. TAYLOR, OF MARYLAND, TO BE A MEMBER OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD FOR A TERM EXPIRING JANUARY 29, 2013, NEW POSITION.

IN THE COAST GUARD

THE FOLLOWING NAMED INDIVIDUAL FOR APPOINTMENT AS A PERMANENT COMMISSIONED REGULAR OFFICER IN THE UNITED STATES COAST GUARD IN THE GRADE INDICATED UNDER TITLE 14, U.S.C., SECTION 211:

KIMBERLY J. AVYSE

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

RICKY J. REYNOLDS

CONGRESSIONAL RECORD — SENATE S1319