

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) the disclosed 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) would not be 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 court-annexed and 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, insofar 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 Sen-

ate 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 or their designees, 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 count postcloture.

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 under the previous order.

There being no objection, the Senate, at 7:46 p.m., adjourned until Thursday, February 28, 2008, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate:

POSTAL REGULATORY COMMISSION

NANCI E. LANGLEY, OF VIRGINIA, TO BE A COMMISSIONER OF THE POSTAL REGULATORY COMMISSION FOR A TERM EXPIRING NOVEMBER 22, 2012, VICE DAWN A. TISDALE, TERM EXPIRED.

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 OF FOUR YEARS EXPIRING JANUARY 29, 2012, (NEW POSITION)

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

FRANCIS X. TAYLOR, OF MARYLAND, TO BE A MEMBER OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD FOR A TERM OF TWO YEARS EXPIRING JANUARY 29, 2010, (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:

To be lieutenant commander

KIMBERLY J. AVSEC

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES COAST GUARD UNDER TITLE 14, U.S.C., SECTION 211:

To be lieutenant commander

ANTHONY K. PALMER
 PATRICK J. ST. JOHN

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 531 AND 1211:

To be major

ANDRE G. SARMIENTO

THE FOLLOWING NAMED INDIVIDUAL FOR APPOINTMENT IN THE GRADE INDICATED IN THE REGULAR AIR FORCE UNDER TITLE 10, U.S.C., SECTION 531(A):

To be major

RICKEY J. REYNOLDS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be major

DANIEL E. BATES

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be major

JEFFREY D. LEWIS
 ROBERT J. LOVE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be major

AUSTIN B. DOSH
 CURRAN L. JONES
 JOSHUA M. SILL

THE FOLLOWING NAMED INDIVIDUALS FOR APPOINTMENT IN THE GRADES INDICATED IN THE REGULAR AIR FORCE UNDER TITLE 10, U.S.C., SECTION 531(A):

To be lieutenant colonel

GERALD B. WHISLER III

To be major

LUTHER P. MARTIN
 SAMUEL R. WETHERILL

IN THE ARMY

THE FOLLOWING NAMED INDIVIDUAL FOR REGULAR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY DENTAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be major

LLENA C. CALDWELL

THE FOLLOWING NAMED INDIVIDUAL FOR REGULAR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY VETERINARY CORPS UNDER TITLE 10, U.S.C., SECTION 531 AND 3064:

To be major

DEANNA L. REIBER

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be major

CHRISTOPHER D. YAO

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTIONS 624:

To be lieutenant colonel

MICHAEL L. MANSI

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

MARC FERRARO

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

WENDELL L. KING

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be lieutenant colonel

PAUL C. PERLIK

To be major

KEITH MOORE

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES ARMY DENTAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be colonel

MARC C. HENDLER

To be lieutenant colonel

LEE A. KNOX

To be major

THOMAS J. THRASHER
 JAMES D. TOWNSEND

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be lieutenant colonel

JAMES H. KELLY
 GREGORY PARK

To be major

LUIS RAMOS

KRISTINE R. SAUNDERS

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES ARMY NURSE CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be lieutenant colonel

ALLYSON A. PETERSON

To be major

AMELIA S. JACKSON
BRIAN E. PREHN

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SPECIALIST CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be major

LARRY W. AKE
PATRICK S. CARSON

THE FOLLOWING NAMED INDIVIDUALS TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

GARY L. GROSS
ANTONIO MARTINEZ-LUENGO
PETER M. TAN

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

HAROLD L. CAMPBELL, JR.
WILLIAM A. CARROLL
SCOTT E. CLODFELTER
DARWIN F. CONCON
STEVEN W. LAYTON
ROBERT M. MARCHI
BRENDAN J. OSHEA
SANDRA J. RAVELING
RICHARD W. SELLNER
DAVID O. SMITH
KENNETH P. STORZ

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be major

MAGDALENA A. ACEVEDO
ALAN APPLE
KENNETH J. BACSO
GREGORY B. BATDORFF
JOHN C. BENSON
JOSHUA A. BERGER
ADAM J. BERLIN
STEVE D. BLOOM
LISA R. BLOOM
JEFFREY T. BRELOSKI
ANN B. CHING
JENNIFER C. CLARK
ELISABETH A. CLAUS
CHRISTOPHER R. CLEMENTS
STEPHEN R. COUTANT
TOBY N. CURTO
LARRY W. DOWNEND, JR.
CHE P. DUNGAN
DANIEL J. EVERETT
ANDREW D. FLOR
MICHAEL C. FLORES
MICHAEL A. GOBA
DAVID J. GOSCHA
PATRICK D. GREGORY, SR.
PHILLIP B. GRIFFITH
SEAN G. GYSEN
LAKEYSIA R. HARVIN
PATRICIA K. HINSHAW
SARA F. HOLLAND
NATE G. HUMMEL
SCOTT E. HUTMACHER
ROBERT C. INSANI
STEVEN B. JANKO
WILLIAM J. JOHNSON
MICHAEL D. JONES
MICHAEL L. KANABROCKI
MATTHEW J. KEMKES
SUSAN L. KIM
FREDERICK K. KRANZ
KATHERINE A. KRUI
WILLIAM T. KUCHENTHAL
CHANDRA L. LAGRONE
JEREMY M. LARCHICK
SCOTT E. LINGER
HOWARD T. MATTHEWS, JR.
MARVIN J. MCBURROWS
KEVIN P. MCCART
KEVIN A. MCCARTHY
ANDREW M. MCKEE
MICHAEL J. MEKETTEN
WENDY N. MELLO
ANDREAS C. MILLER
DOUGLAS W. MOORE
JAMES W. NELSON
ROBERT B. NELSON
JAMES L. O'CONNELL
TERESA T. PHELPS
RYAN W. ROSAUER
KAREN L. SHEA
ANDREW J. SLITT
DAVID W. SMITH

ISAAC C. SPRAGG
ALLEN D. STEWART
JAY L. THOMAN
CASSEY Z. THOMAS
JACQUELINE TUBBS
KENNETH A. TYNDAL
JOCELYN S. URGESE
MATTHEW C. VINTON
MASON S. WEISS
JACOB G. WOLF
DANIEL A. WOOLVERTON
CORY J. YOUNG

IN THE MARINE CORPS

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

PATRICK T. GROSSO

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

JAMES D. MCCOY

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

WALTER C. MURPHY, JR.

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

DONALD L. BOHANNON

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

CHARLES B. SPENCER

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

JOHN G. OLIVER
ROGER W. SCAMBLER

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

MARK F. BIRK
KENNETH L. KELSAY

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

CHRISTOPHER J. AMBS
TODD E. KUNST

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

TIM J. SCHROEDER
JOSEPH G. SINESE

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

RICHARD D. HARDIN
GEORGE M. SEXTON

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

ROY E. LAWRENCE
DANIEL R. WESTPHAL

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant colonel

PETER D. CHARBONEAU
STEVEN R. FREDEEN

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

SAL L. LEBLANC
RAUL TORRES
KEVIN R. WILLIAMS

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

ROBERT F. EMMINGER
ARMAND J. FRAPPIER
MICHAEL G. MARCHAND

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

CHRISTOPHER F. BERGERON
DARREN R. DEMYER
LLOYD E. EDWARDS, JR.
SEAN P. HEICHLINGER
KELLY M. JONES
DAVID A. MCCOVERY
KENNETHE R. MC MILLAN
MARK B. WINDHAM

IN THE NAVY

THE FOLLOWING NAMED INDIVIDUALS FOR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 531:

To be commander

JEFFREY H. NARD

To be lieutenant commander

PETER PRESSMAN
ROBERT G. SHEU
TODD A. TRITCH
DANIEL J. TRUEBA, JR.

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 531:

To be commander

ANDREW S. LOMAX
NOLAN D. VILLARIN

To be lieutenant commander

ERLINA A. HAUN
RUPERT L. HUSSEY

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 531:

To be captain

DAVID R. COUGHLIN
MATTHEW A. MCQUEEN

To be commander

JOYCE F. RICHARDSON
STEWART B. WHARTON
WILLIAM A. WIMMER

To be lieutenant commander

RONALD W. NEWHOUSE
TIMOTHY S. STYLES

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 531:

To be captain

MICHAEL D. T. EDWARDS
DOUGLAS W. FENSKE
JENNETH E. HOYT
MICHAEL J. KAUTZ
KEVIN S. LERETTE
KATHLEEN M. LINDENMAYER
STEVEN F. MOMANO
AGUSTIN L. OTERO
NORMAN W. PORTER
ROBERT A. WOOD

To be commander

RUSSELL P. ASHFORD
JAMES E. AULL
CRISTOBAL S. BENAVIDES
LAURANCE C. BOYD
TODD A. BROWN
ALEXANDER M. CAVAZOS
ROBERT A. FARLEY
JOHN A. FEDOROWICZ
LAURA R. HATCHER
PATRICK L. LEONHARDT
MICHAEL R. MURRAY
TUAN A. NGUYEN
RENEE R. RICHARDSON
DALE C. SCHULMAN
CHRISTINA L. SIMINGTON
KENNETH R. SMITH
JOSE TORRES, JR.
DOUGLAS B. UPCHURCH III

To be lieutenant commander

TED W. BOYD

February 27, 2008

FELIPE R. DE VEGA
EDWIN D. EXUM
CLAUDIA D. FLORES
JOHN FRIEDENREICH
RICHARD K. GOUGER
DAVID H. GRAY

CONGRESSIONAL RECORD — SENATE

DAVID R. HARRIS
JOHN R. HENDERSON
CHARLES G. LONGLEY
PAMELA Y. MCKENZIE
ANDREW F. MOORE
KIM H. RIGAZZI

JAMES F. SCARCELLI
JOHN M. SMAHA, JR.
HIRAM J. WEEDON
CHAD D. WEST

S1321