In general conversation, most clients and many lawyers use the term "privilege" when referring either to the attorney-client privilege or to the work product doctrine. However, lawyers must be more precise when justifying the withholding of protected documents in litigation.

In *Prowess, Inc. v. Raysearch Laboratories AB*, the court noted that plaintiff's pleading justifying their withholding of documents "consistently refers to the communications at issue as 'privileged,' without clarifying which doctrine it intends to invoke." Civ. Case No. WDQ-11-1357, 2013 U.S. Dist. LEXIS 21449, at *6 n.4 (D. Md. Feb. 11, 2013). Explaining that the attorney-client privilege and the work product doctrine "include different elements, and serve entirely different purposes," the court bluntly held that it could not find that plaintiff had justified the withholding "without knowing precisely which protection is being asserted, and without knowing which arguments apply to each doctrine." *Id.*

To make matters more complicated for litigants, the work product doctrine itself involves numerous variations among federal courts applying just a single sentence in the federal rules. The next several Privilege Points will focus on some of these differences.