

IADC Multinational Legal Privilege Project- Part III

INTRODUCTORY NOTE

There is nothing more fundamental to any legal system than the right it gives to clients to speak freely to their lawyers in private. When one needs to acquire or assert rights in another country or jurisdiction, one of the first things one needs to know is the extent of that right. In 2008, The International Association of Defense Counsel's International Committee compiled a set of papers, in a standard format for ease of reference, which provide readily accessible and easy to read basic guidance about those rights in no fewer than thirty-one countries. In 2011 the project was updated and represented more countries to reflect the expansion of IADC's international membership. Now in 2012 we offer the same information with respect to the jurisdictions of the United States of America.

Our warm thanks are due to Emmanuèle Lutfalla, IADC International Committee Chair, who cheerfully, thoroughly, and in a very timely manner undertook the extensive coordination and compilation involved in 2007, 2011, and now 2012. Also a huge debt of gratitude is owed to IADC Member and 2012 Director of the International Corporate Counsel College, Christopher S. D'Angelo, who undertook compiling all of the U.S. jurisdictional information and then drafting it into the product you see today. We of course thank all our past contributors too for their time and work in providing the entries for their respective countries. We hope that this reference tool will prove useful to IADC members.

This Multi-National Legal Privilege Survey is published by the International Association of Defense Counsel (IADC), Suite 925, 303 West Madison, Chicago, Illinois 60606, United States of America. For more information, please call: 312.368.1494 or visit www.iadclaw.org. The opinions and positions stated in each article are those of the author and not by the fact of publication those of the IADC. Such opinions and positions are informational and do not constitute and may not be relied upon as legal advice.
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ADDENDUM

ATTORNEY CLIENT PRIVILEGE: 50 STATE SURVEY (SELECTED TOPICS)

<u>State</u>	<u>Source of Privilege</u> (See Article, § 2)	<u>Upjohn "Subject Matter Test" or Control Group Test?</u> (See Article, § 3)	<u>"Selective Waiver" Theory Allowed?</u> (See Article, § 3 - Waiver)	<u>"Partial Waiver" Doctrine (Subject Matter Waiver) Accepted?</u> (See Article, § 3 - Waiver, fn 49)
Alabama	ALA. R. EVID. 502	Upjohn "Subject Matter Test" ALA. R. EVID. 502(a)(2)	Not Yet Decided	Not Yet Decided
Alaska	ALASKA R. EVID. 503	Control Group Test ALASKA R. EVID. 503(a)(2)	No, under applicable federal law. <i>See In re Pacific Pictures Corp.</i> , 2012 WL 1293534 (9th Cir. Apr. 17, 2012) (arguing that selective waiver "does little, if anything, to serve the public good underpinning the attorney-client privilege," and merely encourages cooperation with the government, rather than encouraging full disclosure to an attorney).	Not Yet Decided
Arizona	ARIZ. REV. STAT. § 12-2234	Upjohn "Subject Matter Test" ARIZ. REV. STAT. § 12-2234(B)	No, under applicable federal law. <i>See In re Pacific Pictures Corp.</i> , 2012 WL 1293534 (9th Cir. Apr. 17, 2012) (arguing that selective waiver "does little, if anything, to serve the public good underpinning the attorney-client privilege," and merely encourages cooperation with the government, rather than encouraging full disclosure to an attorney).	Not Yet Decided

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Arkansas	ARK. R. EVID. 502	<p><i>Upjohn</i> "Subject Matter Test"</p> <p><i>See Corteau v. St. Paul Fire & Marine Ins. Co.</i>, 821 S.W.2d 45 (Ark. 1991)</p>	<p>Yes, under applicable federal law. <i>See Diversified Indus., Inc. v. Meredith</i>, 572 F.2d 596, 611 (8th Cir. 1978) (<i>en banc</i>) (contending that a selective or "limited" waiver should exist because, "To hold otherwise may have the effect of thwarting the developing procedure of corporations to employ independent outside counsel to investigate and advise them in order to protect stockholders, potential stockholders and customers.").</p>	Not Yet Decided
California	CAL.EVID.C ODE § 954	<p><i>Upjohn</i> "Subject Matter Test"</p> <p><i>D.I. Chadbourne, Inc. v. Super. Ct.</i>, 388 P.2d 700 (Cal. 1964) (<i>en banc</i>); <i>see also Costco Wholesale Corp. v. Superior Court</i>, 219 P.3d 736 (Cal. 2009)</p>	<p>No, under applicable federal and state law. <i>See In re Pacific Pictures Corp.</i>, 2012 WL 1293534 (9th Cir. Apr. 17, 2012) (arguing that selective waiver "does little, if anything, to serve the public good underpinning the attorney-client privilege," and merely encourages cooperation with the government, rather than encouraging full disclosure to an attorney); <i>see also McKesson HBOC, Inc. v. Superior Court</i>, 9 Cal. Rptr. 3d 812, 818 (Ct. App. 2004) (where the Court rejected the claim that the selective waiver doctrine applies because the disclosing party shared a "common interest" with the government and should thereby be excepted from absolute waiver).</p>	Not Yet Decided

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Colorado	COLO. REV. STAT. § 13-90-107	<p><i>Upjohn "Subject Matter Test"</i></p> <p><i>Denver Post Corp. v. Univ. of Colo.</i>, 739 P.2d 874 (Colo. Ct. App. 1987)</p>	No, under applicable federal law. <i>See In re Qwest Communications Int'l Inc.</i> , 450 F.3d 1179, 1192 (10th Cir. 2006) (declining to apply selective waiver doctrine and stating that the disclosing party actually sought the "substantial equivalent of an entirely new privilege, i.e., a government-investigation privilege").	Not Yet Decided
Connecticut	Case Law - see, e.g., <i>Rienzo v. Santangelo</i> , 160 Conn. 391 (1971)	<p>Not Yet Decided</p> <p><i>See Blumenthal v. Kimber Mfg., Inc.</i>, 826 A.2d 1088 (Conn. 2003) (reserving "for another day the question of whether to engraft a limitation as to which particular employees constitute the corporate client.").</p>	No, under applicable federal law. <i>See In re Steinhardt Partners, L.P.</i> , 9 F.3d 230, 236 (2d Cir. 1993) (contending that when a party decides to make certain disclosures, "it necessarily decides that the benefits of participation outweigh the benefits of confidentiality.").	Yes. <i>See Harp v. King</i> , 835 A.2d 953, 966 (Conn. 2003) (Generally, the voluntary disclosure of confidential communications or attorney work product to a third party, such as an adversary in litigation, constitutes a waiver of the privilege as to those items)

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Delaware	DEL. R. EVID. 502	<p>Not Yet Decided*</p> <p>*Although Del. positively cites <i>Upjohn</i>. See <i>Deutsch v. Cogan</i>, 580 A.2d 100, 106 (Del. Ch. 1990) (citing <i>Upjohn</i>, in dicta, for the assertion that the lawyer-client privilege applies even when the client is a corporation, and . . . the corporate lawyer-client privilege [may not] be limited by the application of tests like the 'control group' test.").</p>	<p>No, under applicable federal law. See <i>Westinghouse Elec. Corp. v. Republic of Philippines</i>, 951 F.2d 1414, 1425 (3d Cir. 1991) ("[S]elective waiver does not serve the purpose of encouraging full disclosure to one's attorney in order to obtain informed legal assistance; it merely encourages voluntary disclosure to government agencies, thereby extending the privilege beyond its intended purpose.").</p>	<p>Yes. See <i>Citadel Holding Corp. v. Roven</i>, 603 A.2d 818, 825 (Del. 1992) (contending that disclosure of a privileged communication does not open the door to discovery of all communications but rather "limits the waiver to the subject matter of the disclosed communication.")</p>
Florida	FLA. STAT. ANN. § 90.502	<p><i>Upjohn</i> "Subject Matter Test"</p> <p><i>S. Bell Tel. & Tel. Co. v. Deason</i>, 632 So. 2d 1377 (Fla. 1994)</p>	Not Yet Decided	<p>Yes. See <i>E. Air Lines, Inc. v. Gellert</i>, 431 So.2d 329, 332 (Fla. 3d DCA 1983) (waiver by disclosure limited "to other unrevealed communications only to the extent that they are relevant to the communication already disclosed")</p>

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Georgia	GA. CODE ANN. § 24-9-24	<p>Not Yet Decided*</p> <p>*Georgia's Court of Appeals, however, has adopted a "modified" subject matter test. See <i>Marriott Corp. v. Am. Acad. of Psychotherapists, Inc.</i>, 277 S.E.2d 785, 792 (Ga. App. 1981) (adopting a "modified" subject matter test where the privilege applies if the communicating employee and superiors intended that the communication result in legal advice).</p>	No, under applicable state law. See <i>McKesson v. Adler</i> , 562 S.E.2d 809, 811, 814 (Ga. Ct. App. 2002) (noting that, as the disclosing party "contemplated that the documents would be provided to a third party almost from the inception of its investigation," the documents were not subject to the attorney-client privilege).	Not Yet Decided
Hawaii	HAW. R. EVID. 503	<p>Control Group Test</p> <p>HAW. R. EVID. 503(a)(2)</p>	No, under applicable federal law. See <i>In re Pacific Pictures Corp.</i> , 2012 WL 1293534 (9th Cir. Apr. 17, 2012) (arguing that selective waiver "does little, if anything, to serve the public good underpinning the attorney-client privilege," and merely encourages cooperation with the government, rather than encouraging full disclosure to an attorney).	Not Yet Decided

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Idaho	IDAHO CODE ANN. § 9-203	Not Yet Decided	No, under applicable federal law. <i>See In re Pacific Pictures Corp.</i> , 2012 WL 1293534 (9th Cir. Apr. 17, 2012) (arguing that selective waiver "does little, if anything, to serve the public good underpinning the attorney-client privilege," and merely encourages cooperation with the government, rather than encouraging full disclosure to an attorney).	Not Yet Decided
Illinois	Case Law - see, e.g., <i>Fischel & Kahn, Ltd. v. van Straaten Gallery, Inc.</i> , 189 Ill. 2d 579 (2000)	Control Group Test <i>Consol. Coal Co. v. Bucyrus-Erie Co.</i> , 432 N.E.2d 250 (Ill. 1982)	No, under applicable federal law. <i>See Burden-Meeks v. Welch</i> , 319 F.3d 897, 899 (7th Cir. 2003) ("Knowing disclosure to a third party almost invariably surrenders the privilege with respect to the world at large; selective disclosure is not an option.").	Yes. <i>See Ctr. Partners, Ltd. v. Growth Head GP, LLC</i> , 957 N.E.2d 496, 501 (Ill. App. Ct. 2011), <i>appeal allowed</i> , 962 N.E.2d 480 (Ill. 2011) (asserting that the privilege can be waived by the client when the client voluntarily discloses the privileged information to a third party, and "the scope of the waiver extends to all communications relating to the same subject matter.")
Indiana	IND. CODE ANN. 34-46-3-1	Not Yet Decided	No, under applicable federal law. <i>See Burden-Meeks v. Welch</i> , 319 F.3d 897, 899 (7th Cir. 2003) ("Knowing disclosure to a third party almost invariably surrenders the privilege with respect to the world at large; selective disclosure is not an option.").	Not Yet Decided

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Iowa	IOWA CODE ANN. R. 5.501	<p><i>Upjohn</i> "Subject Matter Test"</p> <p>See <i>Keefe v. Bernard</i>, 774 N.W.2d 663, 672 (Iowa 2009) (stating, in relevant part, "We agree with the United States Supreme Court that the corporate attorney-client privilege should not be limited to those in the 'control group.' Instead, the test must focus on the substance and purpose of the communication.")</p>	<p>Yes, under applicable federal law. See <i>Diversified Indus., Inc. v. Meredith</i>, 572 F.2d 596, 611 (8th Cir. 1978) (<i>en banc</i>) (contending that a selective or "limited" waiver should exist because, "To hold otherwise may have the effect of thwarting the developing procedure of corporations to employ independent outside counsel to investigate and advise them in order to protect stockholders, potential stockholders and customers.").</p>	Not Yet Decided

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Kansas	KAN. STAT. ANN. 60-426	<p>Not Yet Decided*</p> <p>*KAN. STAT. ANN. 60-426(c)(1), however, defines "client" with the control group analysis in mind: "'Client' means a person or corporation or other association that, directly or through an authorized representative, consults an attorney or attorney's representative for the purpose of retaining the attorney or securing legal service or advice from the attorney in a professional capacity."</p>	<p>No, under applicable federal law. <i>See In re Qwest Communications Int'l Inc.</i>, 450 F.3d 1179, 1192 (10th Cir. 2006) (declining to apply selective waiver doctrine and stating that the disclosing party actually sought the "substantial equivalent of an entirely new privilege, i.e., a government-investigation privilege").</p>	Not Yet Decided
Kentucky	KY. R. EVID. 503	<p><i>Upjohn</i> "Subject Matter Test"</p> <p>KY. R. EVID. 503(a)(2)</p>	<p>No, under applicable federal law. <i>See In re Columbia/HCA Healthcare Corp. Billing Practices Litig.</i>, 293 F.3d 289, 302 (6th Cir. 2002) ("The attorney-client privilege was never designed to protect conversations between a client and the Government—i.e., an adverse party—rather, it pertains only to conversations between the client and <i>his or her</i> attorney.").</p>	Not Yet Decided

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Louisiana	LA. CODE EVID. ANN. ART. 506	Upjohn "Subject Matter Test" LA. CODE EVID. ANN. ART. 506(A)(2)	Not Yet Decided	Yes. See <i>Four Rivers Gaming, Inc. v. Reliable Amusement Co.</i> , 737 So. 2d 938, 942 (La. App. 3 Cir. June 16, 1999), writ denied, 748 So. 2d 1166 (La. Oct. 29, 1999) ("Disclosure of only part of a privileged communication is deemed a waiver of the privilege on information concerning the same subject matter.")
Maine	ME. R. EVID. 502	Control Group Test ME. R. EVID. 502(a)(2)	No, under applicable federal law. See <i>United States v. Massachusetts Inst. of Tech.</i> , 129 F.3d 681, 686 (1st Cir. 1997) (arguing that when deciding to employ selective waiver doctrine, generally, "courts have been unwilling to start down this path-which has no logical terminus-and we join in this reluctance.").	Not Yet Decided

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Maryland	MD CODE § 9-108	<p>Not Yet Decided</p> <p><i>See E.I. du Pont de Nemours & Co. v. Forma-Pack, Inc.</i>, 718 A.2d 1129, 1141 (Md. 1998) (when discussing the control group test and the subject matter test, the Court stated: "we decline to adopt a particular set of criteria for the application of the privilege in the corporate context until we are required to do so.").</p>	<p>No, under applicable federal law. <i>See In re Martin Marietta Corp.</i>, 856 F.2d 619, 623 (4th Cir. 1988) ("The Fourth Circuit has not embraced the concept of limited waiver of the attorney-client privilege... if a client communicates information to his attorney with the understanding that the information will be revealed to others, that information... will not enjoy the privilege.").</p>	<p>Yes. <i>See Agnew v. State</i>, 446 A.2d 425 (Md. App. Ct. 1982) (generally, disclosure by client to an outside person of conversations covered by attorney-client privilege waives that privilege as to the portions disclosed)</p>
Mass.	Case Law - <i>see, e.g., Panell v. Rosa</i> , 228 Mass. 594 (1918)	<p>Not Yet Decided*</p> <p><i>*But see National Employment Servs. Corp. v. Liberty Mut. Ins. Co.</i>, No. 93-2528-G, 1994 WL 878920 at *1 (Mass. Super. Ct. Dec. 12, 1994) (where the Court followed <i>Upjohn</i> in absence of Supreme Judicial Court action on privilege issue for employee communications with counsel and protected the communication).</p>	<p>No, under applicable federal law. <i>See United States v. Massachusetts Inst. of Tech.</i>, 129 F.3d 681, 686 (1st Cir. 1997) (arguing that when deciding to employ selective waiver doctrine, generally, "courts have been unwilling to start down this path- which has no logical terminus- and we join in this reluctance.").</p>	<p>Not Yet Decided</p>

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Michigan	Case Law - see, e.g., <i>Steketee v. Newkirk</i> , 173 Mich. 222 (1912)	Not Yet Decided* *But see <i>Leibel v. Gen. Motors Corp.</i> , 250 Mich. App. 229, 236 (2002) (positively citing <i>Upjohn</i> principles).	No, under applicable federal law. See <i>In re Columbia/HCA Healthcare Corp. Billing Practices Litig.</i> , 293 F.3d 289, 302 (6th Cir. 2002) ("The attorney-client privilege was never designed to protect conversations between a client and the Government—i.e., an adverse party—rather, it pertains only to conversations between the client and <i>his or her</i> attorney.").	Not Yet Decided
Minnesota	MINN. STAT. ANN. § 595.02	Not Yet Decided* *But see <i>Leer v. Chicago, Milwaukee, St. Paul & Pacific Ry. Co.</i> , 308 N.W.2d 305 (Minn. 1981) (where the Court ruled that its decision was consistent with both the control group and subject matter tests in holding that employee witness statements regarding a railroad accident were not privileged because the employees were not acting within the scope of their employment duties, unlike the employees in <i>Upjohn</i>).	Yes, under applicable federal law. See <i>Diversified Indus., Inc. v. Meredith</i> , 572 F.2d 596, 611 (8th Cir. 1978) (<i>en banc</i>) (contending that a selective or "limited" waiver should exist because, "To hold otherwise may have the effect of thwarting the developing procedure of corporations to employ independent outside counsel to investigate and advise them in order to protect stockholders, potential stockholders and customers.").	Not Yet Decided
Mississippi	MISS. R. EVID. 502	<i>Upjohn</i> "Subject Matter Test" MISS. R. EVID. 502(a)(2)	Not Yet Decided	Not Yet Decided

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Missouri	MO. STAT. ANN. 491.060	Not Yet Decided	Yes, under applicable federal law. <i>See Diversified Indus., Inc. v. Meredith</i> , 572 F.2d 596, 611 (8th Cir. 1978) (<i>en banc</i>) (contending that a selective or "limited" waiver should exist because, "To hold otherwise may have the effect of thwarting the developing procedure of corporations to employ independent outside counsel to investigate and advise them in order to protect stockholders, potential stockholders and customers.").	Not Yet Decided
Montana	MONT. CODE ANN. 26-1-803	Not Yet Decided	No, under applicable federal law. <i>See In re Pacific Pictures Corp.</i> , 2012 WL 1293534 (9th Cir. Apr. 17, 2012) (arguing that selective waiver "does little, if anything, to serve the public good underpinning the attorney-client privilege," and merely encourages cooperation with the government, rather than encouraging full disclosure to an attorney).	Not Yet Decided
Nebraska	NEB. REV. STAT. § 27-503	Not Yet Decided	Yes, under applicable federal law. <i>See Diversified Indus., Inc. v. Meredith</i> , 572 F.2d 596, 611 (8th Cir. 1978) (<i>en banc</i>) (contending that a selective or "limited" waiver should exist because, "To hold otherwise may have the effect of thwarting the developing procedure of corporations to employ independent outside counsel to investigate and advise them in order to protect stockholders, potential stockholders and customers.").	Not Yet Decided

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Nevada	NEV. REV. STAT. 49.095	Upjohn "Subject Matter Test" <i>Wardleigh v. Second Judicial Dist. Ct.</i> , 111 Nev. 345 (1995)	No, under applicable federal law. See <i>In re Pacific Pictures Corp.</i> , 2012 WL 1293534 (9th Cir. Apr. 17, 2012) (arguing that selective waiver "does little, if anything, to serve the public good underpinning the attorney-client privilege," and merely encourages cooperation with the government, rather than encouraging full disclosure to an attorney).	Yes. See <i>Wardleigh v. Second Judicial Dist. Court In & For County of Washoe</i> , 891 P.2d 1180, 1186 (Nev. 1995) ("where a party seeks an advantage in litigation by revealing part of a privileged communication, the party shall be deemed to have waived the entire attorney-client privilege as it relates to the subject matter of that which was partially disclosed.")
N.H.	N.H. R. EVID. 502	Control Group Test N.H. R. EVID. 502(a)(2)	No, under applicable federal law. See <i>United States v. Massachusetts Inst. of Tech.</i> , 129 F.3d 681, 686 (1st Cir. 1997) (arguing that when deciding to employ selective waiver doctrine, generally, "courts have been unwilling to start down this path-which has no logical terminus-and we join in this reluctance.").	Not Yet Decided
New Jersey	N.J. STAT ANN. 2A:84A-20	Not Yet Decided* *Although N.J. Courts positively cites <i>Upjohn</i> . See <i>Wagi v. Silver Ridge Park W.</i> , 580 A.2d 1093, 1097 (N.J. Super. Ct. App. Div. 1989) ("The privilege unquestionably extends to corporations which must act through agents, including its officers and employees.").	No, under applicable federal law. See <i>Westinghouse Elec. Corp. v. Republic of Philippines</i> , 951 F.2d 1414, 1425 (3d Cir. 1991) ("[S]elective waiver does not serve the purpose of encouraging full disclosure to one's attorney in order to obtain informed legal assistance; it merely encourages voluntary disclosure to government agencies, thereby extending the privilege beyond its intended purpose.").	Yes. See <i>In re Grand Jury Subpoena Issued to Galasso</i> , 913 A.2d 78, 87-88 (N.J. Super. Ct. App. Div. 2006) (Waiver of the privilege also occurs if the holder of the privilege discloses a confidential communication for a purpose outside the scope of the privilege and, "once the holder discloses privileged communications, he has waived the privilege with respect to related privileged information pertaining to the same subject matter.")

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New Mexico	N.M. R. EVID. 11-503	Not Yet Decided	No, under applicable federal law. <i>See In re Qwest Communications Int'l Inc.</i> , 450 F.3d 1179, 1192 (10th Cir. 2006) (declining to apply selective waiver doctrine and stating that the disclosing party actually sought the "substantial equivalent of an entirely new privilege, i.e., a government-investigation privilege").	Not Yet Decided
New York	N.Y. C.P.L.R. 4503 (McKinney)	Not Yet Decided	No, under applicable federal law. <i>See In re Steinhardt Partners, L.P.</i> , 9 F.3d 230, 236 (2d Cir. 1993) (contending that when a party decides to make certain disclosures, "it necessarily decides that the benefits of participation outweigh the benefits of confidentiality.").	Yes. <i>See Stenovich v. Wachtell, Lipton, Rosen & Katz</i> , 195 Misc. 2d 99, 108 (N.Y. Sup. Ct. 2003) ("A client can waive the attorney-client privilege by placing the subject matter of counsel's advice in issue and by making selective disclosure of such advice. The waiver of the attorney-client privilege normally compels the production of other documents protected by the privilege which relate to the same subject.")
N.C.	Case Law - <i>see, e.g., State v. Bronson</i> , 333 N.C. 67 (1992)	Not Yet Decided	No, under applicable federal law. <i>See In re Martin Marietta Corp.</i> , 856 F.2d 619, 623 (4th Cir. 1988) ("The Fourth Circuit has not embraced the concept of limited waiver of the attorney-client privilege... if a client communicates information to his attorney with the understanding that the information will be revealed to others, that information... will not enjoy the privilege.").	Not Yet Decided

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ATTORNEY CLIENT PRIVILEGE: 50 STATE SURVEY (SELECTED TOPICS)

<u>State</u>	<u>Source of Privilege</u> (See Article, § 2)	<u>Upjohn "Subject Matter Test" or Control Group Test?</u> (See Article, § 3)	<u>"Selective Waiver" Theory Allowed?</u> (See Article, § 3 - Waiver)	<u>"Partial Waiver" Doctrine (Subject Matter Waiver)</u> Accepted? (See Article, § 3 - Waiver, fn 49)
N.D.	N.D. R. EVID. 502	Upjohn "Subject Matter Test" N.D. R. EVID. 502(a)(2)	Yes, under applicable federal law. See <i>Diversified Indus., Inc. v. Meredith</i> , 572 F.2d 596, 611 (8th Cir. 1978) (en banc) (contending that a selective or "limited" waiver should exist because, "To hold otherwise may have the effect of thwarting the developing procedure of corporations to employ independent outside counsel to investigate and advise them in order to protect stockholders, potential stockholders and customers.").	Not Yet Decided
Ohio	OHIO REV. CODE ANN. § 2317.02	Not Yet Decided	No, under applicable federal law. See <i>In re Columbia/HCA Healthcare Corp. Billing Practices Litig.</i> , 293 F.3d 289, 302 (6th Cir. 2002) ("The attorney-client privilege was never designed to protect conversations between a client and the Government—i.e., an adverse party—rather, it pertains only to conversations between the client and <i>his</i> or <i>her</i> attorney.").	Yes. See <i>Hollingsworth v. Time Warner Cable</i> , 812 N.E.2d 976, 991-92 (Ohio Ct. App. 2004) ("The attorney-client privilege is waived where a client discloses communications with his or her attorney to a third party... Such disclosure waives any subsequent claim of privilege with regard to communications on the same subject matter.")
Oklahoma	12 OKL. ST. ANN. § 2502	Control Group Test 12 OKL. ST. ANN. § 2502(4)*	No, under applicable federal law. See <i>In re Qwest Communications Int'l Inc.</i> , 450 F.3d 1179, 1192 (10th Cir. 2006) (declining to apply selective waiver doctrine and stating that the disclosing party actually sought the "substantial equivalent of an entirely new privilege, i.e., a government-investigation privilege").	Not Yet Decided
Oregon	OR. REV. STAT. ANN. § 40.225 R. 503	Upjohn "Subject Matter Test" OR. REV. STAT. ANN. § 40.225 R. 503(1)(d)	No, under applicable federal law. See <i>In re Pacific Pictures Corp.</i> , 2012 WL 1293534 (9th Cir. Apr. 17, 2012) (arguing that selective waiver "does little, if anything, to serve the public good underpinning the attorney-client privilege," and merely encourages cooperation with the government, rather than encouraging full disclosure to an attorney).	Not Yet Decided

ADDENDUM

ATTORNEY CLIENT PRIVILEGE: 50 STATE SURVEY (SELECTED TOPICS)

<u>State</u>	<u>Source of Privilege</u> (See Article, § 2)	<u>Upjohn "Subject Matter Test" or Control Group Test?</u> (See Article, § 3)	<u>"Selective Waiver" Theory Allowed?</u> (See Article, § 3 - Waiver)	<u>"Partial Waiver" Doctrine (Subject Matter Waiver)</u> Accepted? (See Article, § 3 - Waiver, fn 49)
Pa.	42 Pa.C.S.A. § 5928	<p>Not Yet Decided*</p> <p>*Although Pa. Courts positively cite <i>Upjohn</i>. See <i>Amtrak v. Fowler</i>, 788 A.2d 1053, 1056 (Pa. Commw. Ct. 2001) (holding that "entities may claim the privilege for communications between their attorney and their agents or employees who are authorized to act on behalf of the entities").</p>	<p>No, under applicable federal law. See <i>Westinghouse Elec. Corp. v. Republic of Philippines</i>, 951 F.2d 1414, 1425 (3d Cir. 1991) ("[S]elective waiver does not serve the purpose of encouraging full disclosure to one's attorney in order to obtain informed legal assistance; it merely encourages voluntary disclosure to government agencies, thereby extending the privilege beyond its intended purpose.").</p>	<p>Not Yet Decided*</p> <p>*But see <i>Nationwide Mutual Ins. Co. v. Fleming</i>, 924 A.2d 1259 (Pa. Super. Ct. 2007) (discussing – but not holding – that disclosing unprivileged documents could not form the basis for waiver of attorney-client privilege with respect to document on same subject matter)</p>
R.I.	Case Law - see, e.g., <i>Giammarco v. Giammarco</i> , 959 A.2d 531 (R.I. 2008)	Not Yet Decided	<p>No, under applicable federal law. See <i>United States v. Massachusetts Inst. of Tech.</i>, 129 F.3d 681, 686 (1st Cir. 1997) (arguing that when deciding to employ selective waiver doctrine, generally, "courts have been unwilling to start down this path-which has no logical terminus-and we join in this reluctance.").</p>	<p>Yes. See <i>State v. von Bulow</i>, 475 A.2d 995, 1007 (R.I. 1984) (A "disclosure of, or even merely an assertion about, the communication may effect a waiver of privilege not only as to that communication, but also as to other communications made during the same consultation and communications made at other times about the same subject.")</p>

ADDENDUM

ATTORNEY CLIENT PRIVILEGE: 50 STATE SURVEY (SELECTED TOPICS)

<u>State</u>	<u>Source of Privilege</u> (See Article, § 2)	<u>Upjohn "Subject Matter Test" or Control Group Test?</u> (See Article, § 3)	<u>"Selective Waiver" Theory Allowed?</u> (See Article, § 3 - Waiver)	<u>"Partial Waiver" Doctrine (Subject Matter Waiver) Accepted?</u> (See Article, § 3 - Waiver, fn 49)
S.C.	Case Law - see, e.g., <i>S. Carolina State Highway Dept. v. Booker</i> , 260 S.C. 245 (1973)	Not Yet Decided	No, under applicable federal law. See <i>In re Martin Marietta Corp.</i> , 856 F.2d 619, 623 (4th Cir. 1988) ("The Fourth Circuit has not embraced the concept of limited waiver of the attorney-client privilege... if a client communicates information to his attorney with the understanding that the information will be revealed to others, that information... will not enjoy the privilege.").	Yes. See <i>Drayton v. Indus. Life & Health Ins. Co.</i> , 31 S.E.2d 148, 153 (S.C. 1944) ("A client may call his attorney to the stand and waive privileged communications between them by questioning him concerning such communications, and the attorney may then be cross examined concerning the communications in question. Such waiver, however, extends no farther than the subject matter concerning which the attorney has been interrogated.")
S.D.	S.D. CODIFIED LAWS § 19-13-2	Control Group Test S.D. CODIFIED LAWS § 19-13-2(2)	Yes, under applicable federal law. See <i>Diversified Indus., Inc. v. Meredith</i> , 572 F.2d 596, 611 (8th Cir. 1978) (en banc) (contending that a selective or "limited" waiver should exist because, "To hold otherwise may have the effect of thwarting the developing procedure of corporations to employ independent outside counsel to investigate and advise them in order to protect stockholders, potential stockholders and customers.").	Not Yet Decided
Tenn.	TENN. CODE ANN. § 23-3-105	Not Yet Decided	No, under applicable federal law. See <i>In re Columbia/HCA Healthcare Corp. Billing Practices Litig.</i> , 293 F.3d 289, 302 (6th Cir. 2002) ("The attorney-client privilege was never designed to protect conversations between a client and the Government—i.e., an adverse party—rather, it pertains only to conversations between the client and <i>his</i> or <i>her</i> attorney.").	No. See <i>Arnold v. City of Chattanooga</i> , 19 S.W.3d 779, 787 (Tenn. Ct. App. 1999) (contending that partial waiver of work product as well as attorney/client privilege can act to waive the entire privilege if the immunity is used offensively as a sword)

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ATTORNEY CLIENT PRIVILEGE: 50 STATE SURVEY (SELECTED TOPICS)

<u>State</u>	<u>Source of Privilege</u> (See Article, § 2)	<u>Upjohn "Subject Matter Test" or Control Group Test?</u> (See Article, § 3)	<u>"Selective Waiver" Theory Allowed?</u> (See Article, § 3 - Waiver)	<u>"Partial Waiver" Doctrine (Subject Matter Waiver) Accepted?</u> (See Article, § 3 - Waiver, fn 49)
Texas	TEX. R. CIV. EVID. 503	Upjohn "Subject Matter Test" TEX. R. CIV. EVID. 503(a)(2)(B)	Not Yet Decided	Not Yet Decided
Utah	UTAH R. EVID. 504	Upjohn "Subject Matter Test" UTAH R. EVID. 504(a)(4)	No, under applicable federal law. See <i>In re Qwest Communications Int'l Inc.</i> , 450 F.3d 1179, 1192 (10th Cir. 2006) (declining to apply selective waiver doctrine and stating that the disclosing party actually sought the "substantial equivalent of an entirely new privilege, i.e., a government-investigation privilege").	Not Yet Decided
Vermont	VT. R. EVID. 502	Upjohn "Subject Matter Test" VT. R. EVID. 502(a)(2)(B); see also <i>Baisley v. Missisquoi Cemetery Ass'n</i> , 708 A.2d 924 (Vt. 1998)	No, under applicable federal law. See <i>In re Steinhardt Partners, L.P.</i> , 9 F.3d 230, 236 (2d Cir. 1993) (contending that when a party decides to make certain disclosures, "it necessarily decides that the benefits of participation outweigh the benefits of confidentiality.").	Not Yet Decided
Virginia	Case Law - see, e.g., <i>Grant v. Harris</i> , 116 Va. 642 (1914)	Not Yet Decided	No, under applicable federal law. See <i>In re Martin Marietta Corp.</i> , 856 F.2d 619, 623 (4th Cir. 1988) ("The Fourth Circuit has not embraced the concept of limited waiver of the attorney-client privilege... if a client communicates information to his attorney with the understanding that the information will be revealed to others, that information... will not enjoy the privilege.").	Not Yet Decided

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ATTORNEY CLIENT PRIVILEGE: 50 STATE SURVEY (SELECTED TOPICS)

<u>State</u>	<u>Source of Privilege</u> (See Article, § 2)	<u>Upjohn "Subject Matter Test" or Control Group Test?</u> (See Article, § 3)	<u>"Selective Waiver" Theory Allowed?</u> (See Article, § 3 - Waiver)	<u>"Partial Waiver" Doctrine (Subject Matter Waiver)</u> Accepted? (See Article, § 3 - Waiver, fn 49)
Wash.	WASH. REV. CODE ANN. 5.60.060	Not Yet Decided	No, under applicable federal law. See <i>In re Pacific Pictures Corp.</i> , 2012 WL 1293534 (9th Cir. Apr. 17, 2012) (arguing that selective waiver "does little, if anything, to serve the public good underpinning the attorney-client privilege," and merely encourages cooperation with the government, rather than encouraging full disclosure to an attorney).	Not Yet Decided
W. Va.	W. VA. R. EVID. 501	Not Yet Decided	No, under applicable federal law. See <i>In re Martin Marietta Corp.</i> , 856 F.2d 619, 623 (4th Cir. 1988) ("The Fourth Circuit has not embraced the concept of limited waiver of the attorney-client privilege... if a client communicates information to his attorney with the understanding that the information will be revealed to others, that information... will not enjoy the privilege.").	Not Yet Decided
Wisconsin	WIS. STAT. ANN. 905.03	Not Yet Decided* *Although Wis. Courts positively cite <i>Upjohn</i> . See <i>Herget v. Northwest Mutual Life Ins. Co.</i> , 1992 WL 191224, at *2 (Wis. Ct. App. May 12, 1992) (noting the <i>Upjohn</i> principle that the privilege applies to communications between corporate employees and corporate council).	No, under applicable federal law. See <i>Burden-Meeks v. Welch</i> , 319 F.3d 897, 899 (7th Cir. 2003) ("Knowing disclosure to a third party almost invariably surrenders the privilege with respect to the world at large; selective disclosure is not an option.").	Not Yet Decided

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ATTORNEY CLIENT PRIVILEGE: 50 STATE SURVEY (SELECTED TOPICS)

<u>State</u>	<u>Source of Privilege</u> (See Article, § 2)	<u>Upjohn "Subject Matter Test" or Control Group Test?</u> (See Article, § 3)	<u>"Selective Waiver" Theory Allowed?</u> (See Article, § 3 - Waiver)	<u>"Partial Waiver" Doctrine (Subject Matter Waiver) Accepted?</u> (See Article, § 3 - Waiver, fn 49)
Wyoming	WYO. STAT. ANN. § 1-12-101	Not Yet Decided	No, under applicable federal law. See <i>In re Qwest Communications Int'l Inc.</i> , 450 F.3d 1179, 1192 (10th Cir. 2006) (declining to apply selective waiver doctrine and stating that the disclosing party actually sought the "substantial equivalent of an entirely new privilege, i.e., a government-investigation privilege").	Not Yet Decided