

12. This question, obviously based on the Penn State scandal, calls for use of the materials in Chapters 14 and 15 on the attorney-client privilege and conflicts of interest. There is much basis on which to criticize this lawyer's performance. (Indeed, the facts were adapted from a PA bar opinion sanctioning a lawyer in the Penn State matter.) The failure to provide adequate warnings clarifying the nature of representation and the scope of the privilege, the failure to consider whether separate counsel was needed in any event, the failure to investigate thoroughly within the university before making key decisions, the ambiguity about the extent of the privilege given the lack of clarity in any warnings and disclosures, and thus the arguable breach of the privilege in her grand jury testimony. And perhaps more. This is a how-not-to manual for lawyering on behalf of a corporation in the early stages of a serious potentially criminal matter. Don't forget that State U is a legal entity and also potentially exposed to prosecution in this matter—depending on the nature of the underlying crimes.