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PART I (90 minutes)

QUESTION I (30 minutes)

Anna Lujan is a real estate lawyer in the State of Ames. Over the years one of her clients has been Packard Aerospace, Inc., a multi-billion dollar airplane manufacturer that is publicly traded on the New York Stock Exchange. On three previous occasions in the past six years, Anna helped Packard's manufacturing plant obtain zoning variances. The last time she did legal work for Packard was 18 months ago.

To Anna's surprise, on the morning of April 2, 2003, she saw a short article in the *Wall Street Journal Times* entitled, "Crash Landing for Packard Aerospace." The article read:

Packard Aerospace stock tumbled sharply yesterday, down 5, from 42 to 37, after rumors circulated that the company would be investigated on allegations of defense contractor fraud. Word on the street has it that millions in cost overruns on government contracts were illegally billed to the government. When contacted, the U.S. Attorney's Office in Ames refused to comment, or to confirm or deny that a grand jury investigation would soon be initiated. A spokesperson for Packard Aerospace denied all allegations of wrongdoing.

Later that day, Jim Smith, a mid-level engineer at Packard Aerospace, called Anna and asked if she wanted to meet for lunch at noon at Les Compromis, a noisy but popular French bistro. Anna met Smith years ago because their children played on the same soccer team. Over the years, they became friends, and their families often socialized. Smith also knew that Anna had done legal work for Packard in the past.

At noon, the bistro was packed; every table was taken. Just to hear one another, Smith and Anna were forced to speak loudly. Smith said, "You see the *Wall Street Journal* article? I need to talk to someone, someone with good judgment. I'm worried. No, I'm very worried. No one at Packard knows I'm talking to you, and I don't want anyone to know. As far as I know, our company hasn't done anything wrong, but people are freaking out. I don't mean to burden you, but records and e-mails are getting destroyed in my department alone. By the boxload, all day today and tomorrow. What do you think I should do?" Anna was so surprised she didn't know what to say.

Part A

Anna returned to the firm and went to your office. You are a partner in the firm. Anna closed the door and asked you for advice on whether she had to report the information she received from Smith and, if so, to whom. **What should she do and why?**

## Part B

Assume Anna did nothing. A week later, she is served with a federal grand jury subpoena. **If asked, must she testify about the substance of her conversation with Smith at Les Compromis? Why or why not?**

### QUESTION II (30 minutes)

Fred Campbell was driving across the State of Ames, when he was stopped for speeding by the Ames State Police. The officer asked to search the car and its contents; Campbell agreed. Campbell's suitcase, which was inside the trunk of the car, contained a bag of white powder that was later determined to be four ounces of cocaine. Campbell was arrested and retained Karen Paley as his defense lawyer.

Paley filed motions to suppress the fruits of the search on Fourth Amendment grounds but the trial court denied the motion. (For purposes of this question, you should assume that the court's ruling was correct.) Paley reviewed the discovery provided by the State and learned that (1) Campbell had a two-year old prior conviction for drug trafficking; and (2) the car was registered to Campbell.

Paley met with Campbell on numerous occasions prior to trial. At each meeting, Campbell insisted on his innocence. "I'm clean," he said. "You have to believe me. I never knew my suitcase had drugs. I must have been set up by Jack, my roommate back home." Paley made repeated efforts to locate Jack but was unsuccessful; Jack had disappeared.

One week before trial, the court ruled that if Campbell testified at trial he could be impeached with the fact that he had a prior felony conviction. The prosecutor gave Campbell one last chance to enter a guilty plea to the lesser-included offense of Attempted Possession with Intent to Distribute Cocaine, which required the knowing attempted possession of drugs. This was a felony offense but did not carry a mandatory-minimum sentence of 10 years imprisonment.

Campbell met with Paley and insisted that he wanted to accept the plea offer. "I'm innocent," he said, "but who's going to believe me at trial? There's no way I'm going to do 10 years. I'm taking the plea offer." Paley tried to dissuade Campbell, but he was adamant about accepting the plea offer in spite of his innocence. Consistent with her client's wishes, Paley informed the court that Campbell wished to enter a guilty plea.

At the change-of-plea hearing, the court asked Campbell why he was pleading guilty to the charge of Attempted Possession with Intent to Distribute Cocaine. Campbell replied, "I'm pleading guilty because I am guilty." The court asked Paley why her client was entering a guilty plea. She said it was to avoid the ten-year sentence that would result if Campbell were convicted at trial. The court asked if she knew any reason why the guilty plea should not be accepted. Paley said that she didn't. The court accepted the plea and Campbell was later sentenced to three years imprisonment.

Two years later, Jack was arrested in a nation-wide drug sting. Jack became a government informant. He confessed to planting the cocaine in Campbell's bag and said that Campbell was unaware of the drugs. A newly developed type of DNA testing not available at the time of trial confirmed that Jack's DNA, but not Campbell's, was on the plastic bag that held the drugs.

Part A

Campbell's new lawyer seeks post-conviction relief based on an ineffective assistance of counsel claim. **What result and why?**

Part B

Now assume that the State credited Jack's admission and moved to set aside Campbell's conviction. Campbell was then set free. Campbell sues Paley for malpractice. **What result and why?**

Part C

Campbell refers Paley to bar counsel. **Should Paley be disciplined for any violations of the Rules of Professional Responsibility? If so, what rules and why?**

QUESTION III (30 minutes)

Paul Chino worked as a staff attorney for a victim's rights group for five years. He recently left the victim's rights group to enter private practice as a solo practitioner. Paul believes that victims of crime are often unaware of their rights and fail to pursue civil claims against the perpetrators of crime. He views litigation as a way to empower victims of crime and to let them express their feelings about the wrong that occurred to them.

Paul wants to continue his work on behalf of victims of crime. He considers himself a public interest lawyer and his firm a public interest law firm, but recognizes that he still needs to support himself and his family. Thus, he plans to handle plaintiffs' cases on a contingency basis but at a reduced rate. He would charge a 15% contingency, instead of the usual 33% contingency charged by plaintiffs' lawyers in the State of Ames. To that end, he is considering several different marketing approaches:

The Booth: At the next conference for victims of violent crime, he wants to set up a booth prominently situated outside the room in which conference participants will be meeting. All participants would have to pass by the booth in order to enter the room. Paul would have a stack of brochures available but would not hand them out. He would also answer any questions people had.

Internet Chat Room: There are internet chat rooms set up for victims of crime. These chat rooms allow participants to engage in virtually instantaneous communications with one another over the internet. The conversations that occur can be downloaded and printed so that a hard copy can be made of them. Paul would like to enter a chat room to tell all of its participants of the legal services he can provide to them.

The Brochure: Paul has previously been listed in a book called *Greatest Lawyers in America*. Paul's friend, an advertiser, has written copy for the brochure and thinks it should read, "It says a lot when a lawyer is listed in a book called the *Greatest Lawyers in America*. If you've been injured, call the lawyer other lawyers have called the greatest. The greatest in personal injury. The greatest in victim's rights. The greatest for you."

Paul turns to you for advice on the legitimacy of his marketing strategies. **What advice do you give him and why regarding the booth, the internet chat room, and the brochure?**