

QUESTIONS & ANSWERS:
CRIMINAL PROCEDURE —
POLICE INVESTIGATION

QUESTIONS & ANSWERS: CRIMINAL PROCEDURE — POLICE INVESTIGATION

Multiple Choice and Short Answer Questions and Answers

Third Edition

NEIL P. COHEN

*Retired Distinguished Service Professor of Law and W.P. Toms Professor of Law
The University of Tennessee College of Law*

MICHAEL J. BENZA

*Senior Instructor of Law
Case Western Reserve University School of Law*

WAYNE A. LOGAN

*Gary & Sallyn Pajcic Professor of Law
Florida State University College of Law*



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2016
Carolina Academic Press, LLC
All Rights Reserved

ISBN: 978-1-6328-1554-5

Carolina Academic Press, LLC
700 Kent Street
Durham, NC 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.caplaws.com

Printed in the United States of America

ABOUT THE AUTHORS

Neil P. Cohen is a Retired Distinguished Service Professor of Law and W.P. Toms Professor of Law at the University of Tennessee College of Law. He taught evidence, criminal law, and criminal procedure. Professor Cohen is the author or editor of 13 books published in over 30 editions, and numerous law review articles. These publications include treatises on evidence and criminal law and casebooks on criminal law and criminal procedure. He has also participated in drafting state rules of criminal law, criminal procedure, and evidence. His practice experience includes both criminal defense and prosecution. Professor Cohen has received many awards for teaching, scholarship, and public service. His memberships include the American Law Institute.

Michael J. Benza received his Bachelor of Arts (1986) and law degree (1992) from Case Western Reserve University. He also received a Master of Arts degree in Clinical Psychology (1988) from Pepperdine University. He was the 1992 Biskind Fellow from CWRU School of Law and spent a year working for the Legal Resources Centre, a civil and human rights law firm in South Africa. Upon returning to the States, he spent four years in the Capital Defense Unit at the Office of the Ohio Public Defender. He was assistant counsel at the Cleveland Bar Association working with the Certified Grievance Committee as well as other committees. Professor Benza teaches Criminal Law, Criminal Procedure I and II, Death Penalty Issues, the Death Penalty Lab, Federal Prisoner Rights, International Perspectives on the Death Penalty, as well as coaching the International Criminal Court moot court team and he previously coached the Mock Trial team. The Student Bar Association selected Professor Benza as the Professor of the Year in 2007, 2008, 2009, 2010, 2011, 2013, and 2014. In 2009, Professor Benza was elected as an alumni member to the Society of Benchers. Professor Benza continues to represent death row inmates in state courts and federal *habeas* proceedings. He has litigated capital cases in state trial courts, state appellate and post-conviction courts, and federal courts including arguing *Smith v. Spisak*, 558 U.S. 139 (2010), before the Supreme Court of the United States.

Wayne A. Logan, Gary & Sallyn Pajcic Professor at the Florida State University College of Law, teaches and writes in the areas of Criminal Law, Criminal Procedure, and Sentencing. He is the recipient of a university-wide teaching award and is the author of several dozen law review articles, with work appearing in such publications as the *Georgetown Law Journal*, *Michigan Law Review*, the *Pennsylvania Law Review*, and the *Vanderbilt Law Review*. His most recent book, *Knowledge as Power: Criminal Registration and Community Notification Laws in America* (Stanford University Press, 2009), was cited by the U.S. Supreme Court in *United States v. Kebodeaux* (2013). Professor Logan is an elected member of the American Law Institute and a past chair of the Criminal Justice Section of the Association of American Law Schools.

PREFACE

This book will assist your learning and exam preparation for the criminal procedure/police investigation course and for the bar exam. The subject matter of the book extends to all major subjects covered in this course. The book contains both multiple choice questions and answers and short essay questions and answers.

As the following Table of Contents reflects, the book addresses the broad gamut of issues concerning the Fourth Amendment, which regulates searches and seizures by law enforcement; constitutional doctrine limiting government extraction and use of confessions by suspects; limits on techniques used to identify suspects; and the extent to which unlawfully secured evidence is barred from government use at trial (the exclusionary rule).

We suggest that you answer the question before consulting our answer. This approach will aid your learning by alerting you to areas in which you need to improve your understanding.

We have tried to balance brevity with the need to provide realistic, useful questions. Our practice has been to err on the side of usefulness, resulting in some longer discussions. While the answers to our short essay questions vary in length, none is more than three paragraphs. And, unless otherwise indicated, the question can at times be answered in one paragraph (perhaps as long as 12 sentences). But do not fret if your answer comes in slightly longer or shorter than our answer. As long as the substance is adequate, your answer is just fine. If your answer is longer, you may want to consider whether you could have given a shorter response. On some law school exams, where time is limited, brevity may be a valuable asset.

March 2016

Professor Neil Philip Cohen
San Rafael, California

Professor Michael Benza
Case Western Reserve University
School of Law

Professor Wayne A. Logan
Florida State University
College of Law

TABLE OF CONTENTS

QUESTIONS	1
TOPIC 1	INCORPORATION 3
TOPIC 2	STATE CONSTITUTIONAL PROTECTIONS 5
TOPIC 3	FOURTH AMENDMENT RIGHT OF PRIVACY 7
TOPIC 4	PRIVATE SEARCHES 11
TOPIC 5	MOTION TO DISMISS 13
TOPIC 6	SEARCH WARRANTS 15
TOPIC 7	SEARCHES WITHOUT WARRANTS 19
TOPIC 8	PROBABLE CAUSE: POLICE TRUTHFULNESS 23
TOPIC 9	SEARCH WARRANTS: PARTICULARIZATION 25
TOPIC 10	EXECUTION OF A SEARCH WARRANT 27
TOPIC 11	PLAIN VIEW 29
TOPIC 12	CUSTODIAL ARREST FOR PETTY OFFENSES 31
TOPIC 13	ARREST 33
TOPIC 14	JUDICIAL REVIEW OF AN ARREST 37
TOPIC 15	PRETEXTUAL ARRESTS 39
TOPIC 16	PROTECTIVE SWEEP OF A HOME 41
TOPIC 17	SEARCH OF A PERSON INCIDENT TO ARREST 43
TOPIC 18	SEARCH OF A HOME INCIDENT TO ARREST 45
TOPIC 19	EXIGENT CIRCUMSTANCES 47
TOPIC 20	COMMUNITY CARETAKING FUNCTION 51
TOPIC 21	SEARCH OF AN AUTOMOBILE INCIDENT TO AN ARREST 53
TOPIC 22	AUTOMOBILE EXCEPTION 55
TOPIC 23	SEARCH OF CONTAINERS 57
TOPIC 24	IMPOUNDMENT AND INVENTORY SEARCH OF A VEHICLE 59
TOPIC 25	COMPARING DIFFERENT JUSTIFICATIONS FOR SEARCH OF AN AUTOMOBILE 61
TOPIC 26	STOP AND FRISK 63
TOPIC 27	CHECKPOINT STOPS 67
TOPIC 28	TRAFFIC STOPS: SCOPE OF INQUIRY 69
TOPIC 29	ADMINISTRATIVE SEARCHES 71
TOPIC 30	SPECIAL NEEDS SEARCHES 73
TOPIC 31	CONSENT SEARCHES 75
TOPIC 32	ELECTRONIC EAVESDROPPING 79
TOPIC 33	EXCLUSIONARY RULE 81
TOPIC 34	GOOD FAITH EXCEPTION 83
TOPIC 35	INTERROGATION AND CONFESSION: CUSTODY 85
TOPIC 36	INTERROGATION AND CONFESSION: PUBLIC SAFETY EXCEPTION 87
TOPIC 37	INTERROGATION 89
TOPIC 38	<i>MIRANDA</i> WARNINGS 93
TOPIC 39	WAIVER OF <i>MIRANDA</i> RIGHTS 95
TOPIC 40	FIRST CONFESSION WITHOUT WARNINGS 97
TOPIC 41	EXERCISING <i>MIRANDA</i> RIGHTS 99
TOPIC 42	INVOKING THE RIGHT TO REMAIN SILENT 101
TOPIC 43	RESUMPTION OF INTERROGATION 103
TOPIC 44	SIXTH AMENDMENT RIGHTS 105
TOPIC 45	INTERROGATION AND CONFESSIONS: VOLUNTARINESS 107
TOPIC 46	EYEWITNESS IDENTIFICATION 109
TOPIC 47	STANDING 113
TOPIC 48	APPELLATE REVIEW OF A MOTION TO SUPPRESS 115
TOPIC 49	DERIVATIVE EVIDENCE 117
TOPIC 50	DERIVATIVE EVIDENCE: <i>MIRANDA</i> VIOLATION 119
TOPIC 51	DERIVATIVE EVIDENCE: CAUSAL CONNECTION 121

TABLE OF CONTENTS

TOPIC 52	DERIVATIVE EVIDENCE: WHAT MAY BE SUPPRESSED	123
TOPIC 53	DERIVATIVE EVIDENCE: EXCEPTIONS	125
TOPIC 54	IMPEACHMENT	127
	PRACTICE FINAL EXAM: QUESTIONS	131
PART I	QUESTIONS	133
PART II	QUESTIONS	141
	ANSWERS	143
TOPIC 1	INCORPORATION	145
TOPIC 2	STATE CONSTITUTIONAL PROTECTIONS	147
TOPIC 3	FOURTH AMENDMENT RIGHT OF PRIVACY	149
TOPIC 4	PRIVATE SEARCHES	153
TOPIC 5	MOTION TO DISMISS	155
TOPIC 6	SEARCH WARRANTS	157
TOPIC 7	SEARCHES WITHOUT WARRANTS	161
TOPIC 8	PROBABLE CAUSE: POLICE TRUTHFULNESS	167
TOPIC 9	SEARCH WARRANTS: PARTICULARIZATION	169
TOPIC 10	EXECUTION OF A SEARCH WARRANT	171
TOPIC 11	PLAIN VIEW	173
TOPIC 12	CUSTODIAL ARREST FOR PETTY OFFENSES	175
TOPIC 13	ARREST	177
TOPIC 14	JUDICIAL REVIEW OF AN ARREST	179
TOPIC 15	PRETEXTUAL ARRESTS	181
TOPIC 16	PROTECTIVE SWEEP OF A HOME	183
TOPIC 17	SEARCH OF A PERSON INCIDENT TO ARREST	185
TOPIC 18	SEARCH OF A HOME INCIDENT TO ARREST	187
TOPIC 19	EXIGENT CIRCUMSTANCES	191
TOPIC 20	COMMUNITY CARETAKING FUNCTION	195
TOPIC 21	SEARCH OF AN AUTOMOBILE INCIDENT TO AN ARREST	197
TOPIC 22	AUTOMOBILE EXCEPTION	199
TOPIC 23	SEARCH OF CONTAINERS	201
TOPIC 24	IMPOUNDMENT AND INVENTORY SEARCH OF A VEHICLE	203
TOPIC 25	COMPARING DIFFERENT JUSTIFICATIONS FOR SEARCH OF AN AUTOMOBILE	205
TOPIC 26	STOP AND FRISK	207
TOPIC 27	CHECKPOINT STOPS	211
TOPIC 28	TRAFFIC STOPS: SCOPE OF INQUIRY	213
TOPIC 29	ADMINISTRATIVE SEARCHES	215
TOPIC 30	SPECIAL NEEDS SEARCHES	217
TOPIC 31	CONSENT SEARCHES	219
TOPIC 32	ELECTRONIC EAVESDROPPING	223
TOPIC 33	EXCLUSIONARY RULE	225
TOPIC 34	GOOD FAITH EXCEPTION	227
TOPIC 35	INTERROGATION AND CONFESSION: CUSTODY	231
TOPIC 36	INTERROGATION AND CONFESSION: PUBLIC SAFETY EXCEPTION	233
TOPIC 37	INTERROGATION	235
TOPIC 38	MIRANDA WARNINGS	239
TOPIC 39	WAIVER OF MIRANDA RIGHTS	241
TOPIC 40	FIRST CONFESSION WITHOUT WARNINGS	243
TOPIC 41	EXERCISING MIRANDA RIGHTS	245
TOPIC 42	INVOKING THE RIGHT TO REMAIN SILENT	247
TOPIC 43	RESUMPTION OF INTERROGATION	249
TOPIC 44	SIXTH AMENDMENT RIGHTS	251
TOPIC 45	INTERROGATION AND CONFESSIONS: VOLUNTARINESS	253
TOPIC 46	EYEWITNESS IDENTIFICATION	255
TOPIC 47	STANDING	259

TABLE OF CONTENTS

TOPIC 48	APPELLATE REVIEW OF A MOTION TO SUPPRESS	261
TOPIC 49	DERIVATIVE EVIDENCE	265
TOPIC 50	DERIVATIVE EVIDENCE: <i>MIRANDA</i> VIOLATION	267
TOPIC 51	DERIVATIVE EVIDENCE: CAUSAL CONNECTION	269
TOPIC 52	DERIVATIVE EVIDENCE: WHAT MAY BE SUPPRESSED	271
TOPIC 53	DERIVATIVE EVIDENCE: EXCEPTIONS	273
TOPIC 54	IMPEACHMENT	275
	PRACTICE FINAL EXAM: ANSWERS	279
PART I	ANSWERS	281
PART II	ANSWERS	291
	INDEX	295

