

HOW CAN YOU TELL IF A CONSENT SEARCH IS VOLUNTARY?

Roseanna Sommers and Vanessa K. Bohns

The Fourth Amendment guarantees the right to be free from unreasonable searches and seizures. Most searches conducted by police—over 90%—are undertaken pursuant to consent, rather than by warrant or probable cause. In these so-called “consent searches,” the officer simply asks for permission to perform the search.

Consent searches are legal so long as they are agreed to voluntarily and not “coerced, by explicit or implicit means.”¹ The key legal question in consent search cases is whether a reasonable person would have felt free to refuse the officers’ request to perform the search.

In this research, we assess whether people are able to judge the voluntariness of consent in a fair and unbiased manner. The answer is no: people systematically underestimate the pressure to comply and overstate the likelihood of refusal.

“Before we begin the study, can you please unlock your phone and hand it to me? I’ll just need to take your phone outside of the room for a moment to check for some things.”

Our Research

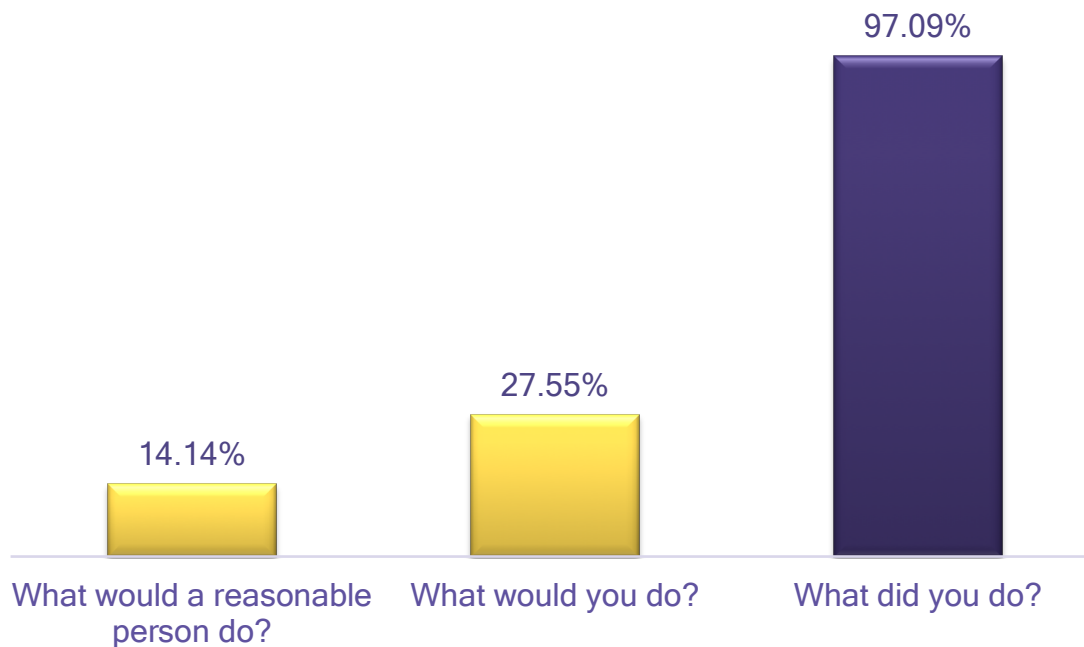
We conducted a series of laboratory experiments to shed light on the psychology of consent. We approached hundreds of research participants and asked them to unlock their password-protected personal smartphones to be searched while they waited in another room. A separate set of participants (the control group) was approached by the same researcher and asked whether they thought a reasonable person would agree to the same request. This allowed us to compare what people *think* they would do when faced with an intrusive search request against what people *actually* do.

¹ *Schneckloth v. Bustamonte*, 412 U.S. 218, 228 (1973).

Lesson 1: Refusing consent is more difficult, and more rare, than people think.

Whereas most people believe a reasonable person would refuse to hand over their phones, most people we approached—97%—promptly unlocked their phones and handed them to us when we asked (Figure 1).

Figure 1. Predicted vs. Actual Compliance

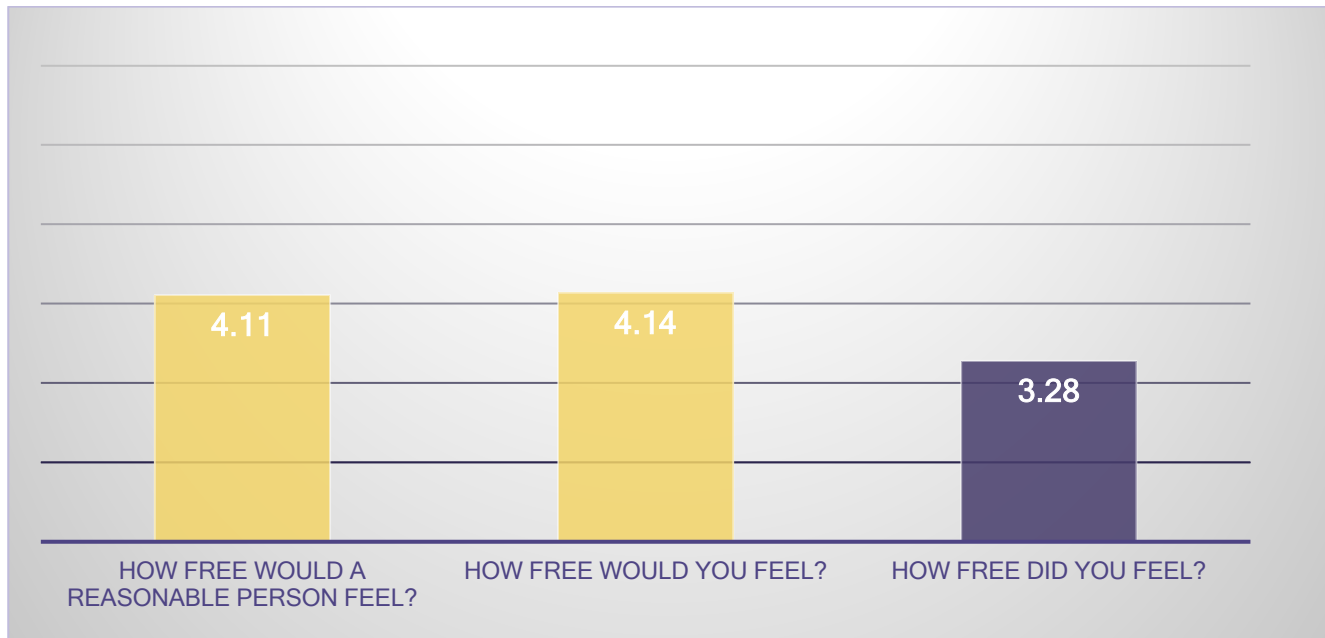


We also asked the control group to imagine what they personally would do if hypothetically approached with the request. Again, they vastly overstated how likely they would be to refuse: 72% reported that they would have declined the experimenters' request if they had been asked. Our experiment suggests, however, that only about 3% would have refused.

Most people in the treatment group (97%) do something that most people in the control group (86%) think is unreasonable.

We also asked both groups how free they felt (or would have felt) to refuse our request. Results show that those who were actually asked found it more difficult to refuse than the control group imagined it would be. Those who were actually approached reported feeling more pressured, less comfortable, and less free overall to refuse (Figure 2).

Figure 2. How difficult was it to refuse?



The psychology of compliance is more powerful than we realize.

In summary, people vastly underestimated the likelihood of compliance as well as the psychological pressure to comply. Moving outside the laboratory setting, we also examined traffic stop data showing how often drivers who are stopped by police grant consent to permit a search of their car. The data shows that well over 90% of drivers say yes when the police ask to perform a vehicle search. But when we asked a separate group of participants to guess the percentage of drivers who consent, and offered a bonus payment if their guesses were close to the correct number, they guessed an average of 65%. Again, this shows that our intuitions about consent significantly understate the likelihood of compliance.

Lesson 2: Telling people they have the right to refuse is not enough to make them feel free to refuse.

Consent searches have been roundly criticized by civil liberties groups such as the ACLU. These groups object that consent searches are undertaken without probable cause or reasonable suspicion, and that they disproportionately affect racial minorities. A commonly proposed reform is to require police to notify people that they have the right to refuse a consent search, much as police are required to give a *Miranda* warning before

interrogating a suspect in police custody.

We tested what happens when people are told they have the right to refuse a search. We found that giving out a *Miranda*-like warning changed people's beliefs about whether they could withhold consent, but it did not significantly reduce the rates at which people handed over their phones (Figure 3).

We also examined whether those who received the warning felt less pressured to agree to hand over their phones. We found that the warning had no significant effect on how free participants actually felt (Figure 4).

Figures 3 & 4. Does it help to tell people they have the right to refuse?



This corroborates previous findings from observational studies, which have found negligible effects of *Miranda* warnings on the tendency of suspects to confess to crimes. Previous work has also seen little change in the rates at which drivers consent to searches of their car once police start notifying them of their right to refuse cars.

Our findings suggest a reason why these warnings are ineffective: it is because they fail to address the psychology of compliance. The reason people comply with police, we believe, is

social, not informational. The social aspects of a police officer's request—the authority of the police officer, the awkwardness of refusal—persist even when people are properly informed of their rights. We believe it is high time to abandon the myth that notifying people of their rights makes them feel empowered to exercise those rights.

The reason people comply is social, not informational. Thus, giving people information about their rights is not enough to overcome the social imperatives to comply.

POLICY IMPLICATIONS

People consistently underestimate the psychological pressure to comply with search requests. This is problematic because a key legal justification for consent searches—that they are voluntary—rests on an assessment that is subject to a systematic bias in social perception.

- These results provide support for legal efforts to curtail warrantless consent searches that are not supported by an independent justification, such as probable cause or reasonable suspicion.
- These results cast doubt on a popular reform proposal: requiring police to advise citizens of their right to refuse consent.

Want to learn more?

- Read the [full paper](#).
- Download our [data](#) and [materials](#).

Further reading

- Bohns, V. K. (2016). (Mis)Understanding our influence over others: A review of the underestimation-of-compliance effect, *Psychological Science*, 25(2), 119-120.

Contact us

- E-mail us at sommers@uchicago.edu or vkb28@cornell.edu.