



Are Consent Searches Truly Voluntary?

Roseanna Sommers, University of Michigan-Ann Arbor

The Fourth Amendment to the U.S. Constitution guarantees Americans the right to be free from unreasonable searches and seizures. Most searches conducted by police are *not* done following the issue of legal warrants due to probable cause that a crime has been committed. Instead, more than nine in ten searches are conducted with the consent of the person being searched. In these so-called “consent searches,” the officer simply asks for permission to perform the search. Consent searches are legal so long as agreement is voluntarily and not “coerced by explicit or implicit means.” 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.

Refusing Consent is More Difficult and Rare than Most Think

In our research on the psychology of consent, we conducted a set of laboratory experiments to assess whether people are able to judge the voluntariness of consent in a fair and unbiased manner. We approached hundreds of research participants and said, “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.” 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 method allowed us to compare what people think they would do when faced with an intrusive search request against what people actually do. The answer is that people systematically underestimate the pressure to comply and overstate the likelihood of refusal.

- Whereas most people in the control group said that a reasonable person would refuse to hand over their phones, virtually all (97%) of the research participants we directly asked to hand over their phones in fact promptly unlocked their phones and handed them to us.
- When we directly asked people in the control group to imagine what they personally would do if hypothetically approached with the request, they again vastly overstated how likely they would be to refuse compliance. Some 72% reported that they would have declined the experimenters’ request if asked. Our experiment suggests, however, that only about 3% would have refused.
- People in both groups were asked how free they felt (or would have felt) to refuse our request. Those who were actually asked to hand over their phones found it more difficult to refuse than people in the control group imagined it would be to refuse. Those who were actually approached reported feeling more pressured, less comfortable and less free to refuse.

The bottom line is stark: Most people in the treatment group (97%) do something that most people in the control group (86%) think is unreasonable. 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 show 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 research 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, on average, that 65% of drivers would consent. Again, this shows that people's intuitions about consent significantly understate their compliance with authoritative requests.

The Psychology of Compliance is More Powerful than Most Think

Telling people they have the right to refuse is not enough to make them feel free to refuse. Civil liberties groups such as the American Civil Liberties Union have roundly criticized consent searches — on the grounds that such searches disproportionately affect racial minorities and are often undertaken without probable cause or reasonable suspicion. 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 official custody.

Would this new approach work? 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, in principle, withhold consent, but in practice did not significantly reduce the rates at which people handed over their phones. We also examined whether those who received the warning felt less pressured to agree to hand over their phones and found that the warning had no significant effect on how participants actually felt.

Our result corroborates previous studies that found negligible effects of Miranda warnings on the tendency of suspects to confess to crimes. Previous work also found little change in the rates at which drivers consent to car searches after police started notifying them of their right to refuse.

Policy Implications

Our findings suggests that people comply with police requests to perform searches for social rather than informational reasons. Crucial aspects of the social context, the authority of the police officer and the awkwardness of refusal, prevail even when people are properly informed of their rights. It is high time to abandon the myth that notifying people of their individual rights is enough. Observers consistently underestimate implicit pressure to comply with search requests, and this underestimation is problematic because it belies a key legal justification for consent searches — that they are voluntary.

Our results provide support for legal efforts to curtail searches not independently justified by warrants or reasonable suspicion of an ongoing crime. Moreover, another popular idea for reforming consent searches — by requiring police to advise citizens verbally of their right to refuse — will not suffice to head off searches most people feel pressured to accept.

Read more in Roseanna Sommers and Vanessa K. Bohns, "**The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance.**" *Yale Law Journal* 128, no. 7 (2019): 1962-2033