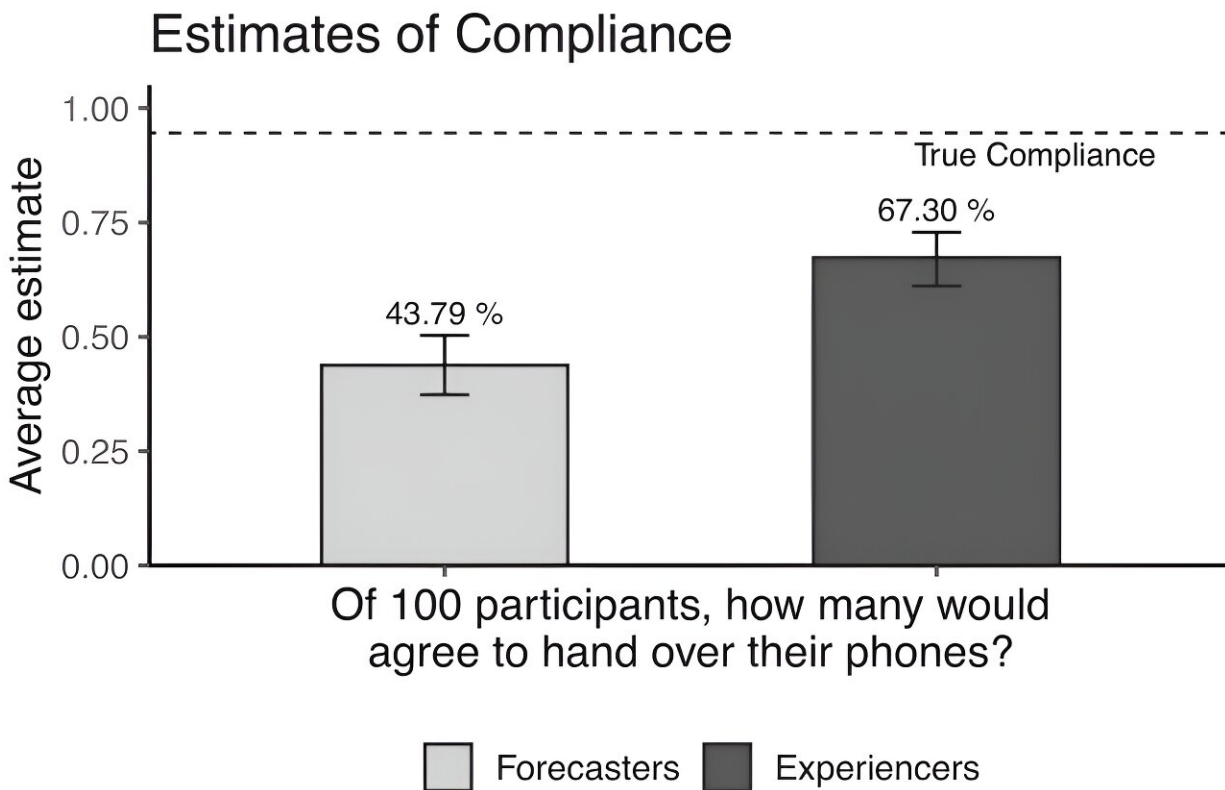


Citizens found to often act against self-interest in granting police consent

March 4 2024, by Julie Greco



Experiencers and Forecasters estimated the percentage of participants who would comply with the search request. Experiencers' average guess (67.30%) significantly exceeded Forecasters' (43.79%), but both groups significantly underestimated compliance when compared to true compliance—the percentage of Experiencers in the experiment who ultimately complied (94.57%). Error bars represent bootstrapped 95% confidence intervals. Credit: *Journal of Empirical Legal Studies* (2023). DOI: 10.1111/jels.12375

More than 90% of searches conducted by police in the United States are based on individual consent rather than a warrant or probable cause, but new ILR School research suggests that obtaining true consent is difficult because most people are compliant and struggle to say "no."

Additionally, judges, who are required to determine if [consent](#) was given freely and voluntarily, cannot recognize the difficulty of saying a face-to-face "no," according to Vanessa Bohns, professor of organizational behavior and co-author of "[Consent Searches and Underestimation of Compliance: Robustness to Type of Search, Consequences of Search, and Demographic Sample](#)," recently published in the Journal of Empirical Legal Studies.

"The big takeaway from this research is that people are going against their preferences," Bohns said. "They are free to say no, but they aren't exercising that right even though they may want to. So how can we align people's behavior with their actual preference for saying yes or no so that consent is truly consensual?"

For the paper, Bohns, and co-author Roseanna Sommers, from the University of Michigan Law School, conducted three studies on how readily individuals complied with [search requests](#), and whether "[decision-makers](#)" could determine how a reasonable person would respond to a search request.

In each study, the subjects were split into two groups—experiencers, who were asked to consent to a search; and forecasters, who were asked to predict how others would respond to a search request.

In two of the three studies, the experiencers were asked to unlock their phones and allow a research assistant to take it from them to view their web search history. At the same time, the forecasters were asked what a reasonable person would do if someone asked them to unlock and hand

over their phone so their web search history could be accessed. They were also asked what they would do if asked to hand over their phone.

The third study was conducted similarly, with the researchers substituting a bag search for cell [phone](#) access.

All three studies showed that experiencers overwhelmingly complied with the searches, while the forecasters significantly underestimated the likelihood of compliance.

"These results are in line with other research I've done over the years regarding consent, but still, they are eye-opening because the stakes are so much higher," Bohns said. "Every time I create a new study, I think this is the time I will ask the subjects to do something so undesirable that they're going to say no, and they don't, and I'm surprised every time.

"We came up with this idea of having people unlock their phones and hand them over, and we thought there was no way anyone was going to do that, and then two weeks went by before the first person said no," Bohns said.

Forecasters reported feeling freer to refuse than experiencers reported, while experiencers reported more mindlessness than [forecasters](#) predicted.

"Even with one of the studies having the incentive of getting paid a 'bonus' for accurately guessing the compliance rate, they couldn't do it," Bohns said. "That's meaningful because it suggests that even someone like a judge or a jury member, who is neutral and has an incentive to get it right, may struggle to predict someone's actual feelings and behavior in that moment."

More information: Roseanna Sommers et al, Consent searches and

underestimation of compliance: Robustness to type of search, consequences of search, and demographic sample, *Journal of Empirical Legal Studies* (2023). [DOI: 10.1111/jels.12375](https://doi.org/10.1111/jels.12375)

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