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Perceptions of Search Consent Voluntariness as a Function of Race

by
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**Professor Groscup
Professor Ma**

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Abstract

The United States Constitution provides its citizens protection from unreasonable searches and seizures from government officials, including police officers, through the Fourth Amendment. This Amendment applies to searches that violate a reasonable expectation of privacy. However, the Fourth Amendment does not protect citizens when they consent to a search voluntarily. It is necessary to determine whether or not a search is voluntary by looking at a variety of factors. Although an infinite number of factors can be considered to make this determination, race of both the police officer and of the person being searched should be considered, due to societal factors and racial stereotypes leading to intimidation factors. Participants ($N=575$) read a vignette about a situation in which a bus passenger was asked to consent to a search. The races of the police officer and the passenger were manipulated in a vignette (White, Latino, Black). Participants then answered a series of questions about privacy expectations and consenting to the search. The results suggested that race of police officers and recipients of search requests affects how search requests perceive the search, indicating that voluntariness of consenting to a search may also have some basis in race.

Perceptions of Search Consent Voluntariness as a Function of Race

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized,” (U.S Constitution, amendment IV).

This amendment in the US Constitution gives US citizens the right to be protected from unreasonable searches and seizures. However, when an officer or other government official obtains consent from the potential searchee to conduct the search, the Fourth Amendment is not violated (*Schneekloth v. Bustamonte*, 1973). Consenting to a search means that the search is considered voluntary and that any incriminating evidence can be used against the individual in a court of law, but there is no standard that is required before a police officer may ask for consent to search; even without probable cause, an officer may request to search. No matter the details of the environment of the search, if the individual says “yes” to the search, it is considered to be voluntary and therefore what is found is valid to use in court. A closer look taken at voluntariness is necessary to fully determine if the consent is voluntary. There are many variables that must be examined to make this determination. The situation and the personnel involved may impact either implicit or explicit coercion. Voluntariness as a function of race is one of these implicit variables that may affect how coerced and pressured an individual may feel. Looking at the perceptions of privacy and voluntariness as a function of race can give a better understanding of the freedom an individual may or may not feel when they are the recipient of a request to search.

The decision to search

Looking at what goes into the decision to request a search is integral to understanding the underlying biases potentially at play. There are many factors that go into the decision to search.

Some of these factors are subjective, such as if the person looks suspicious or if the police officer sees something that he or she believes could be illegal. However, other more concrete factors may make a difference as well, such as race and age. Fallik and Novak (2012) looked at how police officers made the choice as to search someone at a traffic stop by reviewing records collected by the Kansas City Police Department over the course of a year. It was found that Black drivers who were stopped were more likely to be searched, and they were overrepresented among the total number of searches that were conducted. Knowles et. al. (2001) found a similar result in their review of traffic stops—Black people made up 63% of the searches and only 18% of the population. Following this pattern, the search rate of Hispanic people was higher than the search rate for non-Hispanic people (Fallik & Novak, 2012). Both Black and Hispanic people were overrepresented in both discretionary (when an officer asks to search based on some sort of “feeling” that he or she may find illicit materials) and non-discretionary (when an officer sees something illegal or something happens that requires he or she to conduct a search) searches.

However, the research shows that the minorities receive search requests more often due to other factors surrounding the search rather than race, such as initial reason for the stop, previous experience with pulling over others of the same race, or verbal aggression or lack or cooperation from the driver. While this may be true, minorities also receive search requests more often than White people due to the perception that minorities engage in more illegal activity. In searches, illegal items tend to be found equally within Black and White groups (Higgins, Vito, & Grossi, 2012). Furthermore, Hispanics had a low outcome rate for drugs when searched, showing that they were assumed by police officers to have more drugs far more often than was justified (Kowles et al., 2001). With a higher search rate comes more detection of illegal activity, which in turn makes police officers more likely to search minorities in the future

due to the belief that they are more likely to have illegal items than White individuals (Fallik and Novak, 2012). Police officers are creating a self-fulfilling prophecy that further stigmatizes and marginalizes minorities in the legal system.

Stereotyping

Even when police officers do not outwardly show racial bias, this is evidence of a manifestation of unconscious stereotypes that are reinforced through interactions and social identity, making it harder to change and eliminate these stereotypes (Smith & Alpert, 2007). Humans naturally and unconsciously stereotype, and due to the theory of cognitive dissonance, humans also naturally expand an association with a small number of people from a specific group to the rest of the people in that group (Festinger, 1962; McLeod, 2008). For instance, if a police officer has had previous experiences where a Black driver pulled over for speeding was found to have drug paraphernalia in his or her car on repeated occasions, it becomes easier for the same officer to assume that other Black drivers would have drug paraphernalia in their cars.

A study by Carol and Gonzalez (2014) looked at the disparate treatment of Black and White drivers and whether the cause was unconscious biases. They looked at both the decision to frisk and the decision to search a driver when stopped. They based their theories off of the idea that the decision to frisk is made more quickly than the decision to search since it is a faster process. Based on this assumption, they also believed that implicit stereotypes would be more existent in frisks than searches since the officer would have less time to think about the decision. Because of these assumptions, they hypothesized that racial disparities would be higher in frisks than in searches. They found that Black individuals were both searched and frisked more than White individuals following a stop, and the difference was even greater when it came to frisks.

This follows their hypothesis and reasoning that disparities in treatment of Black individuals and White individuals at traffic stops is based on unconscious biases.

Additionally, this argument is furthered by the idea that these results align with social conditioning theory—the idea individuals in society generally adhere to thought and actions that are approved by society and expands to social norms, customs, and ideologies (Bandura, 1971). If society associates criminality more with Black individuals than White individuals (Dixon & Maddox, 2005), then it follows the idea of social conditioning theory for police officers to make this association as well. If an officer needs to make a quick decision about a search or a frisk, such as if he or she may feel that they are in danger, it seems that this may be influenced by implicit stereotypes. Conversely, if the officer takes more time to take in other information to make the decision, he or she has time to monitor their cognitions and thoughts and to then act in an unbiased manner (Carol & Gonzalez, 2014).

The Carol and Gonzalez study (2014) demonstrates the existence of racial profiling and unconscious biases in the area of searches after being stopped. This research extends into the courtroom as well. When convicted of a crime, minorities such as Black and Hispanic people are more likely to receive harsher sentences than their White counterparts—these minorities are perceived as being more dangerous and more like to recidivate, as well as less likely to be deterred or change their actions (Steffensmeier 1980). Higgins, Vito, and Grossi (2012) hypothesized that these concerns are driven by peoples place in society and the social structure of their community. Those who are of lower socioeconomic status are more likely to be viewed as dangerous and deviant because the high and middle socioeconomic classes have less contact with them, and thus do not know and understand that they are not inherently dangerous. Given

the costs associated with attending a police academy, officers are not typically from an environment of lower socioeconomic status.

Higgins, Vito, and Grossi (2012) claim that police officers base their decision to search—and this also applies to other actions, such as sentencing in the courtroom—into three categories: blameworthiness, protection of the community, and practical constraints and consequences. The researchers define blameworthiness as how likely it is that the potential offender has actually committed an offense, protection of the community as how likely it is that their decisions will keep the community safe, and practical constraints and consequences as limitations to their decisions and the potential outcomes. These categories are rooted in social perceptions and racial stereotypes. For instance, a police officer is more likely to blame someone who is part of a minority group for a crime due to the perception that minorities commit more crimes; he is more likely to believe that he is protecting the community by removing him from society; and he is more likely to succeed in this removal because the courts are biased in his favor, resulting in few—if any—consequences. Because the police officer is of a higher status in society and is thus protected by his or her status, arresting someone who is of lower status in society has a low risk level because they do not have the same protections as the police officer. At the same time, others of the same interest group as the police officer are likely to agree with his decisions and believe that he is protecting society (Higgins, Vito, & Grossi, 2012). Due to the aforementioned factors that go into the decision to search, officers may view their requests as reasonable and necessary, when in reality these requests are based on unconscious racial biases.

Opinions of the police

Most of these discrepancies in treatment of people of different races and perceptions of their behavior goes back to complex stereotyping, meaning that it is not White individuals

discriminating against minorities, but minorities discriminating against minorities as well, such that officers who are of a racial minority as well as officers who are White are likely to discriminate against minority individuals (Wu, 2014). While police have higher levels of racial discrimination and negative opinions about minorities, the reverse is true as well. Cochran and Warren (2012) found that Black and Latino people have lower levels of trust and confidence in police officers than White people and other minorities do. When asked to consent to a search, they are less likely to view the search as valid and important than White people are (Cochran & Warren, 2012). They also found that White people have the highest levels of satisfaction with police officers, followed by Hispanic people, and then Black people.

Cochran and Warren hypothesized that by increasing minority police officers the positive relationships and associations between the public and the police would increase, specifically in terms of relationships with minorities. Although officers of different races may be perceived differently and there is therefore an assumption that there is unfairness due to some races of police officers treating civilians unfairly, little evidence has been found that police officers of different races actually behave differently (Cochran & Warren, 2012).

Opinions of the police tend to develop as a mirror to society—when a White police officer arrests a minority offender, this is perceived as unfair because White people mistreat minorities within society (Cochran & Warren, 2012). Additionally, this study found that minorities often behave more poorly when stopped because they feel that they stop is unfair, leading to a higher arrest rate than in White people (Sunshine & Tyler, 2003). Furthermore, regardless of race, citizens felt that the stop was more legitimate when conducted by a White police officer (Sunshine & Tyler, 2003). White people were stopped more frequently by White officers than minority officers, and minority officers stopped minorities more often than White

people (Sunshine & Tyler, 2003). The main implication of this finding is that minority officers are less racially biased towards White people due to the regard society holds them in, or they are less confident in their authority over White people. Additionally, this might make minorities more likely to feel like he or she would have to consent to a search when asked by a police officer who was White than the police officer were a minority since they are viewed as having more authority and more validity in their requests to search. This could be a potential contributing factor to their perception of coercion and voluntariness when they are the recipient of a request to search.

Consent to Search

Overall, coercion is present as a function of race in our justice system, especially in the area of interrogations (Chapman 2013). Nadjowski (2011) looked at the overrepresentation of Black people compared to White people in false confession rates. She proposes that this has to do with stereotype threat—the idea of being at risk of confirming a negative belief or stereotype about one’s in-group. When Black people are in an interrogation situation, the perception is that the police expect them to be guilty. Police officers will often use aggressive tactics in order to make them confess. This can make them act like they are guiltier by seeming more nervous and uncomfortable than their White counter parts, leading them to falsely confess due to the pressure put on them by the interrogation. Extending this theory to searches, minorities may act more nervous and uncomfortable when stopped since they may have negative views of the police or do not trust them due to negative stereotypes about police officers within their in-group, resulting in the police officer thinking that they have something to hide. In this situation, the police officer would ask to search them. It is possible that in order to compensate for seeming nervous or in attempt to prove innocence, they would then consent to the search, even if they have illicit

materials. This may come from the perception that only those who have something to hid would say no to a search. If this is the case, they have then unnecessarily incriminated themselves because simply looking nervous should not be enough of a probable cause to be searched. The idea that people would consent to a search because they are nervous or intimidated by the officer is important for courts to understand because it is yet one more reason why they would feel coerced into consenting to a search, taking away from the voluntariness of it.

It is also important to look at whether or not people understand that they are allowed to say no, rather than just assuming that they know they do not have to consent despite any external pressure to say yes. A study by Kagehiro & Taylor (1988) found that who a visitor was (police officer, friend, or commercial salesman) did not affect whether or not participants let them into their residence. While the researchers believed that this meant that participants theoretically understood that they had the option to say no and understood that the police did not have any more right to enter than anyone else without a warrant, another interpretation is that police were let into the residence just as often as those coming by for social visits, meaning that people did not understand the gravity of the situation and that they could be incriminating themselves or others that they lived with.

In order to combat the possibility that people did not know that they could say “no” to a search request, it was suggested that police officers give a verbal warning in the search request informing individuals that they had the right to say “no” to the search. When United States prosecutors presented the concern that requiring police officers to give verbal warnings to civilians before the conducted a voluntary search would negatively affect the search rate, as nearly everyone told that they could say “no” to a search would indeed say “no,” Lichtenberg (2004) looked at whether or not this was true. It was found that there was no significant

difference in those who consented to a search between the groups that were given a verbal warning that they could say no to the search and those who did not receive a verbal warning. Ultimately, there is no need for a warning as it did not affect search consent rates.

Although not directly the same, over 70% of police officers said that reading patrons their Miranda rights did not negatively affect the interrogation (Lichtenberg, 2004). It is thus possible that police officers would have this same opinion about verbal search consent warnings and would be willing to give them as the majority would feel like it does not negatively affect the search. Lichtenberg (2004) showed that either people are already aware of their right to say no, or that even though they are told that they do not have to consent to the search, they believe that they still need to or should for whatever reason. There could be a few possible explanations for patrons consenting to a search when they do not want to. One is that patrons believe that if they do not consent, the police will simply come back with a warrant for the search, which implies that greater legal steps are being taken. Another possible explanation is that they feel that only those who are guilty of having something to hide would not consent to a search, and that by consenting, they are showing their innocence.

Kagehiro and Taylor (1988) also found that residents were less likely to let police officers search their co-residents' possessions items when that co-resident was present than when they were absent. When their co-resident was not present, they were more likely to grant the police officer permission to access the co-residents' personal items. One possible cause of this is that there is the potential that people have higher standards of privacy for themselves than for others, so when the co-resident is present, they are forced to contemplate how they would feel more closely. When the co-resident is not around, they apply their lower standards of privacy for others, as well as not considering the other person's feelings as closely due to the "out of sight,

out of mind” phenomenon. This goes back to the actor-observer phenomenon—people are more likely to grant access for someone else’s items than their own because they attribute their own decisions to external factors and the decisions of others on internal factors (Pastorino & Doyle-Portino, 2013). In application to the legal system, this implies that judges and juries cannot fully appreciate what a defendant may or may not feel was reasonable.

Furthermore, Kaghiro and Taylor found that participants base their expectations of privacy on the object itself, rather than the location of the object. For instance, a diary would be rated as very private even in a shared living space, such as in a kitchen, while a broom would not be considered private, even if it were in a personal bedroom. This could be further extended to searches in public. Based on the knowledge that people base privacy off of the type of item rather than its exact location, it can be hypothesized that people view the inside of their car as a private space, even when the car is in a public space, such as the freeway or a grocery store parking lot. People will have higher expectations of privacy in situations such as these.

When someone is asked to consent to a search, the item to be searched is of importance. A bag that someone is carrying on a public bus would be considered private to the passenger, even though they are in a public space. This must be looked at as one of the external variables contributing to the decision of whether or not to consent to the search. In *Katz v. United States* (1967), it was decided that the Fourth Amendment protects people, rather than places. So, someone’s backpack should be considered just as private when they are wearing that backpack in public as when they are wearing it in private. This aligns with the finding that people relate their expectations of privacy to the object rather than the location of the object. Since the research shows that people relate privacy to the object rather than the location of the object, courts should apply this to reasonable expectations of privacy.

When drivers, or more generally people, voluntarily consent to a search, they eliminate the need for probable cause (Farrell et al., 2005). Furthermore, Totman and Steward (2006) argued that asking someone to consent to a search is the ultimate form of a discretionary police search because the officer is not required to perform this search or even ask to perform this search; rather, this is a subjective judgment call that he or she makes. When this subjectivity is based on racial biases that put certain minorities at a disadvantage since they are being asked to consent to searches disproportionately, it further contributes to minorities holding negative stereotypes in our society. In this case, what the police officer feels may be a voluntary consent may feel very different to the person being searched (Kagehiro, 1988). This is based on the idea of actor-observer effects—the thought that people can never really place themselves fully in the situation of another. Therefore, they perceive situations differently from an outside perspective as opposed to when it is happening to them. Additionally, people tend to attribute their own actions to external factors, while they attribute other peoples' actions to internal factors (Pastorino & Doyle-Portino, 2013).

Kagehiro (1988) looked at the differences between first person and third person perceptions of voluntariness. It was found that people tend attribute their own actions and decisions to the circumstances of the situation, while the observers of the event (third person) tend to attribute the behaviors, actions, and decisions to the actor's personal disposition. This research shows that while the police officer may believe that the person consented to a search by simply deciding to do so, the person who consented may have made the choice to consent due to influences such as racial biases, intimidation, fear. These influences may not be noticed by the police officer, resulting in one party feeling like the search was fully voluntary and another feeling like they had to say yes. Additionally, when participants were asked about the freedom of

those who consented to the search, third party observers significantly over estimated how much freedom the searchee felt they had (Kagehiro, 1988). This can extend into the courtroom as well. A judge and jury may feel that the defendant had the freedom to say no to a search, while the defendants themselves may not have felt that they had the freedom to not consent. This perception of involuntariness should be enough to make the search count as involuntary and not able to be used in court.

Present study

Based on previous research, is it evident that racial biases exist in the court system. Black individuals are both more likely to be pulled over, and once pulled over, are more likely to receive a request to search, even though illegal items are found equally between Black and White individuals (Fallik & Novak, 2012; Higgins, Vito, & Grossi, 2012). Additionally, Black individuals are also more likely to be perceived as dangerous (Steffensmeier, 1980). Due to this discrepancy in treatment between people of different races, Black individuals thus have lower levels of confidence and trust in the police (Cochran & Warren, 2012). Furthermore, based on the findings of Sunshine and Tyler (2003), there are also implications that regardless of race, people view White officers as the most legitimate and authoritative. This evidence helps to explain some of the racial and stereotype factors that go into the higher false confession rate for Black individuals than White individuals. Furthermore, these racial and stereotype factors may influence the perception an individual has of a situation when asked to consent to a search—factors which may not be perceived by the officer asking to conduct the search.

Is there a racial component to perceptions of consenting to a search in terms of voluntariness? The current research, while using concepts that can apply to this area, does not fully look at voluntariness as a function of race. Additionally, while the actor-observer effects

are known to exist, research has not yet looked at whether or not they exist—and if so how strongly—in this area. Furthermore, most research done on the presence and strength of racial biases in the legal system focuses on Black and White individuals while excluding other minorities. Looking at voluntariness of consenting to a search can help protect minorities in the legal system by setting standards for what is and is not voluntary when there is a racial component in a request to search, thus helping to break down the self-fulfilling prophecy of minorities in the legal system.

The current study looked at whether or not race of the passenger and officers affects voluntariness of consenting to a search and explored perceptions of importance, validity, and coercion of the search as well as other subjective and objective expectations of privacy. The study also looked at actor-observer effects. The study used a 3 (police officer race: White, Black, or Latino) x 3 (searchee race: White, Black, or Latino) between groups design. Participants were asked to read a vignette describing an officer who asked a bus passenger to consent to a search at a routine drug checkpoint and then were asked questions about their opinions on it in terms of invasiveness, respect, privacy, as well as other similar factors. The hypotheses for this study were 1) People will be more likely to consent to a search when the officer is White than when the officer is of a minority race; 2) Minorities will be more likely to consent to searches than White individuals due to racial pressure and power dynamic; 3) Participants will feel more pressure to consent to the search when the officer is Black, although this will not necessarily lead to a higher rate of consenting to the search; 4) Participants will have higher ratings of privacy expectations for themselves than for others; 5) The search will be considered more valid and important when the police officer is White.

Method

Participants

Participants were 575 community members recruited through the Mechanical Turk website, an internet marketplace where individuals or businesses can recruit participants for studies or tasks. Of the participants who answered the demographic questions, 74.4% identified as White ($n=428$), 10.6% ($n=61$) as Black, 4.9% ($n=28$) as Latino/a, 4.0% ($n=23$) as Asian/Pacific Islander, 0.2% ($n=1$) as Middle Eastern, and 4.2% ($n=24$) as other. 1.7% chose not to answer. For those who gave their gender, 59.0% ($n=339$) identified as female, 38.8% ($n=223$) identified as male, and 0.2% ($n=1$) identified as other. 2% chose not to answer. Ages ranged from 18 to 82, with a mean age of 37.35 ($SD=12.637$).

Materials

This study used a modified version of the Expanded Multi-group Ethnic Identity Measure ($\alpha=.90$) to look at how closely participants identified with their race, such as “I have spent time trying to find out more about my race, such as its history, traditions, and customs” and “I have a clear sense of my race and what it means to me (Gaines, Marelich, Bunce, Robertson, & Wright, 2013). A warmth matrix ($\alpha=.80$) where participants rated their warmth towards the following groups on a likert-type scale from 1 to 7, where 1 was not at all warmly and 7 was very warmly, was used: Black people, White people, Latino people, police officers, lawyers, drug dealers, and bus ticket sellers. This was used to measure racial biases. Various questions regarding privacy expectations from an observer perspective as well as an actor perspective were asked, such as: “It was reasonable for Daniel Johnson to expect his bag to be private” and “I would have expected my bag to be private.”

A construct used to measure opinions of police ($\alpha=.43$) was created using the questions: If a police officer asked to search my property (house, car, bag, etc.) I would feel comfortable saying no. If a police officer asked to search my property (house, car, bag, etc.) and I said no, they would most likely conduct the search anyway. It is more important for police officers to investigate crimes quickly and efficiently than it is to protect the privacy of guilty criminals. An innocent person who has nothing to hide should let the police conduct a search of their property (house, bag, car, etc.) to prove that they have done nothing wrong. If a person refuses to let a police officer search their property (house, bag, car, etc.), that person is most likely guilty of a crime of in possession of illegal items.

A construct used to measure opinions of privacy and illegal behaviors ($\alpha=.73$) was created: It is wrong to use illegal drugs of any kind. It is wrong to buy or sell illegal drugs of any kind. If the police suspect that someone is doing illegal drugs, they can search that person. A person should expect information about their activities that are legal to be private. A person should expect information about their activities that are illegal to be private. A person should expect information about activities related to illegal drugs to be private.

A vignette about a man on a bus who was asked to be searched was used. This vignette was similar to the facts in *Florida v. Bostick* (1991). The race of the police officer was manipulated (White, Black, Latino) and the race of the bus passenger was manipulated (White, Black, Latino). The vignette is as follows:

Daniel Johnson, a 5' 11" 200lb white male, took a Greyhound from Boston to New York. Partway there, the bus made a scheduled rest stop, and the passengers were required to disembark so that the bus could be refueled and cleaned. When the passengers got back on the bus, the driver also allowed a police officer to board the bus. The police officer, a 6' 1" 215lb

white male, was not in uniform and had a visible weapon on his person. He explained that since they were traveling along a known drug route he would be conducting a random drug search. The officer walked down the aisle of the bus, stopping to talk to various passengers along the way. When he reached Daniel Johnson, he stopped just behind Johnson's seat and took out his badge for identification. In a calm voice, he introduced himself as Officer Merrick, and then asked what the purpose of Johnson's journey was. Johnson said that he was going to New York to visit a friend. The officer then asked Johnson if he had any luggage with him. Johnson indicated the small, green duffel bag on the luggage rack. The officer noticed that Johnson would not make eye contact and told Johnson that he looked nervous. He repeated that he was looking for drugs and illegal weapons, then asked if he could search Johnson's bag to make sure there was no contraband inside.

Procedure

Participants started by reading an informed consent form. If they agreed to the conditions of the study, the study began. The study used a 3 (police officer race: White, Black, or Latino) x 3 (searchee race: White, Black, or Latino) between groups design. Participants were asked to read a vignette describing a consent search request occurring on a bus, similar to the facts in *Florida v. Bostick* (1991). They were then asked about their general impressions of the situation presented in the vignette. Participants rated various statements about the privacy of the bus passenger in the vignette, the consent request, and the search that occurred (third-person perspective). These statements were rated again, but this time from the perspective of the participant (first-person perspective). Participants also answered questions about their personal experience with searches, their opinions of the legal system and consent generally, their racial

identity, and warmth toward others including people of various races. Manipulation checks, attitudes about personal privacy, and demographic information completed the survey.

Participants were then debriefed and [directed out of the survey](#).

Ethics

The main potential benefit of this study is to inform courts about how voluntariness of searches can be affected by race; specifically that consenting to some searches may not feel voluntary due to racial pressure and stereotypes. This study is below minimal risk, as it is anonymous and online, so participants are in no physical harm. Additionally, the study looks at participants' opinions on a vignette that does not contain sensitive information or information that could change a person's emotional state. The only part of this study that potentially could affect participants is the section asking about their experience with police searches. If someone previously had a particularly bad experience with a search, this could trigger potentially negative memories about the search or cause him or her embarrassment. This was dealt with by providing resources for counseling at the end of the study, as well as asking participants to give the information in an anonymous way (no names, dates, or locations) and in a general sense.

Furthermore, this study does not involve using a protected population or ask for sensitive information about participants. There is also no deception involved in this study and participation in this study is completely voluntary. Participants chose whether or not to participate and were not required to answer any of the questions. They could opt out of the study at any time. No personal information other than gender, ethnicity, and age was collected. Given that this could change the way voluntariness of searches is perceived by courts, the benefits significantly outweigh any potential risks. Current literature shows that a race component may

lead to false confessions or intimidation by police officers, but no research has been done on voluntariness of consenting to a search as a function of race. Ideally, this research could help set a standard for voluntariness when racial factors impact a decision to consent to a search, resulting in a more fair and just representation of minorities in the legal system.

Results

While the study yielded 575 participants with enough data to use for analysis, 38 of these cases were excluded. For the manipulation checks for passenger race and/or officer race, these participants either answered *Asian* (a race not used in the study), *Other*, or *I don't remember* instead of *White*, *Latino*, or *Black*. Those who answered *White*, *Latino*, or *Black*, even if it was incorrect, were left in the analysis. The choice was made to keep the data from participants who answered *White*, *Latino*, or *Black*, even if their answer was incorrect, because these participants most often just mixed up the race of the passenger and the officer, while with the other responses it was possible that participants were trying to compensate for potential racism by pretending to not remember what the race was. It is likely that participants who failed the manipulation check but did answer with a condition that was present in the study simply forgot the race of the officer and passenger by the end of the study due to its length. The dependent variable questions pertaining to race were placed directly after the vignette, so these data are still considered to be generalizable and indicative of the results.

Four ANCOVAs were run with different covariates to fully explore the role that different factors play when mediating the decision to consent to search and other perceptions that go along with it, such as reasonability and importance of the search, embarrassment, and privacy expectations. It was necessary to see what other factors can affect racial biases and stereotypes.

Importance of search

To analyze opinions of importance of the search, an Analysis of Covariance was used with the covariates warmth towards White people, warmth toward Latino people, warmth toward Black people, warmth towards police officers, ethnicity (white vs. other), and racial identity (how strongly the participant identified with their race). There was a significant interaction between officer race and passenger race on the importance of the search to protect the public from a 3rd person perspective, $F(4, 501)=2.78, p=.026$. There was a significant difference when the passenger was Latino between when the officer was White ($M=3.86, SD=1.96$) and when the officer was Latino ($M=3.25, SD=1.67$), such that the idea that the police needed to conduct the search to protect the public was rated as higher when the officer was White. There was also a significant difference when the passenger was White between when the officer was White ($M=3.53, SD=2.08$) and when the officer was Black ($M=3.10, SD=1.65$), such that the idea that the police needed to conduct the search to protect the public was rated higher when the officer was White.

A second ANCOVA using consent opinions and how private of a person the participant viewed themselves to be showed a significant interaction of passenger race and officer race on whether or not the officer had an important reason to search the bus passenger (different from the measure of how important the search was to protect the public) from a 3rd person perspective, $F(4, 524)=2.97, p=.019$. There was a significant difference when the officer was White between the Latino passenger ($M=4.02, SD=1.91$) and the Black passenger ($M=3.27, SD=1.83$) such that the reason to search was rated as more important when the passenger was Latino than when the passenger was Black. There was also a significant difference when the officer was Latino between Latino passengers ($M=3.17, SD=1.72$) and both White ($M=3.80, SD=2.05$) and Black

($M=3.99$, $SD=1.96$) passengers, such that the reason to search was considered more important when the passenger was White or Black than when the passenger was Latino.

A third ANCOVA using consent opinions, how private of a person the participant rated themselves to be, and ethnicity (White vs. other) yielded the same pattern as the second ANCOVA, $F(4, 522)=2.93$, $p=.020$.

A fourth ANCOVA was run using age, gender, ethnicity (White vs. other), search experience, consent opinions, and how private a participant felt they were as a person as covariates. The findings for this analysis did not contradict any of the previous analyses, although they were slightly different. There was a significant interaction of officer race and passenger race on how important the search was considered to be from a 3rd person perspective, $F(4, 517)=3.18$, $p=.014$. There was a significant difference when the officer was White between the Latino passenger ($M=4.04$, $SD=1.92$) and the Black passenger ($M=3.26$, $SD=1.85$) such that the reason to search was rated as more important when the passenger was Latino than when the passenger was Black. There was also a significant difference when the officer was Latino between Latino passengers ($M=3.17$, $SD=1.72$) and both White ($M=3.80$, $SD=1.05$) and Black ($M=3.99$, $SD=1.96$) passengers, such that the reason to search was considered more important when the passenger was White or Black than when the passenger was Latino. This follows the pattern seen in the second and third ANCOVAs.

There was also a significant interaction of officer race and passenger race on whether or not it was important to conduct the search to protect the public from a 3rd person perspective, $F(4, 517)=2.64$, $p=.033$, such that when the officer was White, the search was rated as being more important for public safety when the passenger was Latino ($M=3.84$, $SD=1.93$) than when the passenger was Black ($M=3.09$, $SD=1.93$).

Overall, these results show that levels of importance of the search and then importance of the search to protect the public are not simply different based on the race of the officer or the race of the passenger, but on both. This speaks to the complexities of the racial biases at play in these situations.

Pressure to consent to search

In the second round of ANCOVA analysis—using consent opinions and how private of a person the participant viewed themselves to be—there was significant main effect was found for officer race on the variable of how much a participant would feel pressured to consent to the search from a first person perspective, $F(2, 524)=3.50, p=.031$, such that participants would have felt significantly less pressured to say yes to the search when the officer was Latino ($M=5.12, SD=1.93$) than when the officer was Black ($M=5.65, SD=1.61$).

A third ANCOVA using consent opinions, how private of a person the participant viewed themselves to be, and ethnicity (White vs. other) showed there were still a significant main effect of officer race, $F(2, 524)=3.49, p=.031$, on pressure to say yes to the search from a first person perspective.

A fourth and final ANCOVA used age, gender, ethnicity (White vs. other), search experience, consent opinions, and how private a participant felt they were as a person as covariates. There was a significant effect of officer race on whether or not participants would have felt pressured to say yes to the search (first person perspective), $F(2, 517)=3.50, p=.031$, such that participants would feel significantly less pressure to consent to the search when the officer was Latino ($M=5.12, SD=1.93$) than if the officer was Black ($M=5.64, SD=1.63$). This also follows the same trend as in the second and third ANCOVAs.

The clear trend here is the pressure to say yes to a search when the officer was Black as opposed to when the officer was Latino. There was no significant difference on pressure to consent to the search between White officers and any other race. There was also no significant effect of passenger race on this pressure.

Likelihood of consent

The hypotheses for this study predicted that regardless of race, passengers would be more likely to consent to a search if the officer was White than if the officer was Black or Latino, and that regardless of officer race, minorities would be more likely to consent to a search than White passengers. However, neither one of these effects were seen in any of the four ANCOVAs that were run.

Embarrassment of passenger

In the first ANCOVA that was run with covariates warmth towards White people, warmth toward Latino people, warmth toward Black people, warmth towards police officers, ethnicity (white vs. other), and racial identity (how strongly the participant identified with their race), there was a significant effect of passenger race on embarrassment of being asked to consent to a search for 3rd person, $F(2,498)=3.15, p=.044$, such that participants rated Latino passengers ($M=5.06, SD=1.45$) as less likely to embarrassed than Black passengers ($M=5.39, SD=1.46$).

A second ANCOVA was run using just consent opinions and how private of a person the participant viewed themselves to be as covariates. As in the first ANCOVA, there was a significant effect of passenger race on embarrassment of being asked to consent to a search from

the 3rd person perspective, $F(2, 522)=1.39, p=.037$, such that Latino passengers ($M=5.09, SD=1.43$) and White passengers ($M=5.14, SD=1.68$) were less likely to be embarrassed than Black passengers ($M=5.41, SD=1.41$).

A third ANCOVA was run using consent opinions, how private of a person the participant rated themselves to be, and ethnicity (White vs. other). Similar to the previous ANCOVAs, there was a significant effect of passenger race on embarrassment of being asked to consent to a search from a 3rd person perspective, $F(2, 520)=3.32, p=.037$, such that participants thought that White passengers ($M=5.14, SD=1.68$) and Latino passengers ($M=5.09, SD=1.44$) were likely to be less embarrassed than Black passengers ($M=5.41, SD=1.41$), which was the same pattern as seen in the second ANCOVA and not contradictory to the first ANCOVA.

Overall, Black passengers were the most likely to be embarrassed, while White and Latino passengers were less likely to be embarrassed.

Actor-observer effects

Using Paired T tests, the differences between the 3rd party perspective and the first party perspective were analyzed across various dependent variables, (See *Table 1*). In general, participants expected higher levels of privacy for themselves, were more sensitive to negative feels associated with the request to search (such as embarrassment or pressure), and were more likely to feel like the search was unwarranted than from the third person perspective.

Discussion

When an individual consents to a search, any evidence found can be used against them in court because they have willingly let a police officer search their belongings. However, a verbal

“yes” to a search request may not be as simple as it seems. There can be many factors that influence an individual’s consent to be searched. Many of these factors are based in perceptions—what the individual being asked to consent to the search feels. This may mean that they felt significant pressure to consent to the search, despite the actual ability to decline the request. Depending on the level of pressure they felt, this may be considered coercion. One of the areas coercion can come from is pre-existing racial biases and stereotypes. If an individual felt coerced or pressured to consent to a search due to their race or the race of the police officer, the consent would be involuntary and therefore invalid in court if any incriminating evidence was found. This research aims to bring greater awareness of the racial pressures to consent to a search to the court in order to have a more fair and just system.

The results of the study showed that overall Black passengers were much more likely to be embarrassed when being asked to consent to a search than Latino passengers, regardless of the race of the police officer. When embarrassed, people would be more likely to consent to a search, perhaps in an attempt to end the interaction more quickly. Alternatively, this result could be interpreted as participants believing that Black passengers should feel more embarrassed when asked to consent to a search. This could relate back to pre-existing biases leading to the belief that Black passengers would be more embarrassed because they are more likely to be guilty of having illicit materials in their bag.

There was a general trend of participants feeling less pressured to say yes to the search if they had been asked when the officer was Latino rather than when the officer was Black. This could mean that participants viewed Black police officers as the more intimidating than Latino officers, or it could mean that participants felt the consequences for saying no to the search would be the greater than when the officer was Latino. Additionally, it could mean that people

do not take Latino police officers very seriously and question their authority as well as their reasoning for requesting a search.

Consistent with the research hypothesis, actor-observer effects show that people are more sensitive when they think about themselves in a situation versus when they think about someone else in a situation. Participants felt that their own bag should be more private than someone else's, that it was more of an invasion of privacy for their bag to be searched than for someone else's to be searched, that officers had more of an important reason to search their bag than someone else's bag, that they were being accused of a crime by being asked if their bag could be searched more so than when someone else was asked if their bag could be searched, that police officers were less respectful when asking them than when asking others, that the request to search was more coercive when they were being asked than when others were being asked, that the request was more intrusive to them than others, that they were more easily able to be identified by others when they were asked than if someone else had been asked, that there was greater pressure for them to say yes to the search than for someone else to say yes, and that they had less freedom to say no to the search than someone else would have. This points to the argument that courts should identify the fact that even though they may feel like the defendant had the ability to say no to the search legally speaking, they most likely did not perceive themselves to have the same level of freedom to make that decision as one may think. Furthermore, people have higher expectations of privacy as to what is reasonable than is originally thought.

The circumstances of the situations that individuals are asked to consent in should be taken into account when searches are reviewed by courts with a higher level of sensitivity in regards to implicit pressure due to racial biases. While there may be many factors at play, such

as location, language used, and aggression level of the officer, factors that may not have effects presented as outwardly should be taken into account as well, such as stereotypes and racial biases. If a defendant claims that they felt pressured to consent to the search due to any racial underpinnings, the court should accept that as a form of coercion and deem the search invalid, and therefore inadmissible in court. This would help to tighten the standards regarding consent searches in terms of what is defined as voluntariness, leading to stops by police officers and lower levels of racial profiling.

One significant limitation of this study was the use of a vignette rather than a simulation. While the use of the vignette was good for preliminary data, more accurate data could have been acquired using a simulation because it mirrors real life situations more accurately. Additionally, the manipulation of race in the various conditions was subtle—it was mentioned briefly in the description of each of the main characters. Many participants either did not notice the race of the individual or did not remember it due to the fact that a visual aid was not included in the survey. Some of the scales used in the study could have had better levels of reliability achieved through gathering pilot data and adjusting the scales to more accurately measure the intended target.

Future studies should be conducted using real person simulations, or even by watching a video. This would help with the race manipulation aspect of it as well since participants would see what the race of the officer and passenger are rather than simply reading it. Additionally, this study could be repeated where pictures of the officer and the passenger are presented so that the race manipulation is stronger. Further research should also be done on where the biases against various races in search consent cases come from, as well as what the discrepancy is between what the jury may think is reasonable in terms of voluntariness and what an individual may think is reasonable. A future study could be done using the same materials with the

addition of open ended questions that ask participants why they would have felt pressured to consent to the study and why they did or did not ultimately consent. Additionally, a variable of whether or not the participant knew they could say no to the search could be added to the study.

Additional studies could look at if other factors affect the way race plays a part in consenting to a search, such as geographic location or the socioeconomic status of the area—these variables may prime either the officers or the recipients of the search requests to behave a certain manner. Furthermore, a study on whether education systems for police officers that teach them about racial biases and stereotypes have any affect on the discrepant rate of searches between individuals of various races would be integral in looking at whether or not this is a problem that could be solved, or if more research needs to be done to really nail down the underlying causes. This research could help reshape the way courts look at cases where an individual consented a search because they felt like they could not say no and then the officer found some incriminating evidence.

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Table 1.
Actor-Observer Effects

Variable	Observer (third person)	Actor (first person)	<i>t</i>	Std. error	<i>df</i>	<i>p</i>
Should be private	5.98 (1.25)	6.22 (1.13)	-7.10	.79	533	.000*
Expect to be private	6.21 (1.00)	6.17 (1.25)	.83	.99	534	.406
Invasion of privacy	5.09 (1.85)	5.48 (1.74)	-6.99	1.30	530	.000*
Embarrassment	5.23 (1.53)	5.37 (1.87)	-1.81	1.97	533	.072
Wrong-doing	5.80 (1.22)	5.83 (1.31)	.60	1.15	532	.548
Reasonable privacy	6.03 (1.34)	6.09 (1.24)	-1.13	1.23	529	.258
Importance of search	3.61 (1.92)	3.88 (2.09)	-2.38	1.86	530	.018*
Public safety	3.46 (1.95)	3.42 (2.08)	.73	1.36	536	.466
Accusation	3.81 (1.85)	4.28 (1.97)	-8.46	1.27	535	.000*
Respectful request	4.79 (1.51)	4.59 (1.62)	3.37	1.34	528	.001*
Coercive request	4.08 (1.73)	4.52 (1.70)	-8.19	1.25	530	.000*
Intrusive request	5.06 (1.66)	5.40 (1.59)	-6.45	1.22	532	.000*
Able to be identified	5.69 (1.22)	5.86 (1.21)	-3.90	1.02	532	.000*
Need a warrant	5.18 (1.81)	5.19 (1.89)	-.25	1.21	532	.802

Should consent	4.09 (2.14)	4.11 (2.27)	-.43	1.22	533	.673
Likely to consent	4.76 (1.39)	4.71 (2.22)	.484	2.15	529	.628
Voluntariness	4.99 (1.68)	4.93 (1.94)	.37	1.53	528	.711
Searched regardless	4.89 (1.75)	4.82 (1.88)	1.26	1.20	533	.207
Pressure to consent	5.74 (1.28)	5.31 (1.85)	6.04	1.67	535	.000*
Freedom to say "no"	5.82 (1.26)	5.55 (1.70)	3.93	1.58	530	.001*

Table 1.

**indicates significance at the $p=.05$ level.*

Value in parentheses indicate standard deviation from the mean.

Expanded Multigroup Ethnic Identity Measure Scale Items

1. I have spent time trying to find out more about my race, such as its history, traditions, and customs.
2. I am active in organizations or social groups that include mostly members of my own race.
3. I have a clear sense of my race and what it means to me.
4. I think a lot about how my life will be affected by my race.
5. I am happy that I am a member of the race I belong to.
6. I have a strong sense of belonging to my own race.
7. I understand pretty well what my race means to me.
8. In order to learn more about my race, I have often talked to other people about my race.
9. I have a lot of pride in my race.
10. I participate in cultural practices of my own race, such as special food, music, or customs.
11. I feel a strong attachment towards my own race.
12. I feel good about my own race.

Consent Opinion Scale Items

1. If a police officer asked to search my property (house, car, bag, etc.) I would feel comfortable saying no.
2. If a police officer asked to search my property (house, car, bag, etc.) and I said no, they would most likely conduct the search anyway.
3. It is more important for police officers to investigate crimes quickly and efficiently than it is to protect the privacy of guilty criminals.
4. An innocent person who has nothing to hide should let the police conduct a search of their property (house, bag, car, etc.) to prove that they have done nothing wrong.
5. If a person refuses to let a police officer search their property (house, bag, car, etc.), that person is most likely guilty of a crime of in possession of illegal items.

Drug Attitude Scale Items

1. It is wrong to use illegal drugs of any kind.
2. It is wrong to buy or sell illegal drugs of any kind.
3. If the police suspect that someone is doing illegal drugs, they can search that person.
4. A person should expect information about their activities that are legal to be private.
5. A person should expect information about their activities that are illegal to be private.
6. A person should expect information about activities related to illegal drugs to be private.