SOCIAL PERCEPTIONS OF THIRD-PARTY
CONSENT AND THE REASONABLENESS
TEST OF ILLINOIS V. RODRIGUEZ

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United States Supreme Court rulings on the reasonableness of third-party consent to warrantless searches have focused on the consentor’s degree of possessory control over the place of search. The authors predicted that (1) laypersons perceive as reasonable third-party consentors only those individuals having high control over the place of search and a close social relationship with the target-person of the search (suspect); and (b) police detectives’ perceptions of reasonable third-party consentors would fall intermediately between lay and legal perceptions as expressed in the caselaw. Forty-eight undergraduates and 35 police detectives were randomly assigned to experimental conditions. Two levels of third party’s control over the place of search (low or high) were crossed with two levels of third party’s social relationship with the target person of search (low or high). As predicted, lay perceptions regarding reasonable third-party consentors involve a more restricted range of people than legal perceptions. Contrary to expectation, police detectives’ perceptions closely correspond with lay perceptions.

Social perceptions and attitudes have played a role in the caselaw on constitutional issues, and courts have considered empirical evidence in their determinations of what those social perceptions and attitudes are. The empirical evidence most commonly considered by the courts has been in the

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form of aggregate data or public opinion polls (e.g., *Furman v. Georgia* 1972). In these cases, however, courts have also noted the limitations of such data and the lack of experimental control. In other contexts, most notably that of jury decision making, the courts have considered experimental studies (*Ballew v. Georgia* 1978; *Lockhart v. McCree* 1986). In *Ballew*, for example, the United States Supreme Court relied on a series of experimental studies in order to provide a constitutional basis for smaller juries.

We argue that social perceptions, attitudes, and expectations of privacy can play a role in the development of caselaw on Fourth Amendment issues and that experimental studies can provide useful information in court determinations of social perceptions, attitudes, and expectations.

Previous research indicates that close personal relations and territorial functioning within shared residences do not correspond with legal assumptions about individuals' privacy expectations and behaviors (Kagehiro 1990). Because these assumptions form part of the legal justification for warrantless searches, the discrepancies have serious implications for police practices and the scope of protection afforded to individual privacy under the Fourth Amendment. Courts' consideration of individuals' privacy interests occur in the context of balancing tests involving other important societal interests (e.g., *Michigan Department of State Police v. Sitz* 1990). If social expectations of privacy play a role in determining legal perceptions of "reasonable expectations of privacy" (*Katz v. United States* 1967), but no empirical investigation is conducted concerning what those social expectations are, we argue that the courts are in effect using false weights and measures in any balancing test involving individuals' privacy interests.

In this study, we examine the psycholegal assumptions regarding the notion of common authority that supports the recent United States Supreme Court ruling in *Illinois v. Rodriguez* (1990). The Rodriguez Court considered whether a search is valid when police act under the objectively reasonable belief that a third-party consentor has authority over the premises. Specifically, we investigate two factors that weighed heavily in the Court's determinations as to whether a third party can give consent to a warrantless search — the third party's relation to the place of search, and the third party's relationship to the suspect. We also extend earlier research, by contrasting lay and police perceptions in order to approximate more closely the reasonableness test of *Rodriguez*. Here, we focus on the validity of legal assumptions concerning aspects of human territorial functioning and social relationships that give rise in law to an implied waiver of privacy expectations. Thus, more generally, we examine the correspondence between legal perceptions of and empirical data on lay perceptions.
**Legal Versus Empirical Views of Third-Party Consent**

The Fourth Amendment to the United States Constitution is intended to protect citizens from arbitrary governmental invasions of privacy through the requirement of a search warrant (Bivens *v.* Six Unknown Named Agents 1971; Camara *v.* Municipal Court 1967). In Katz *v.* United States (1967), the United States Supreme Court articulated a two-step “reasonable expectation of privacy” test to determine when an individual’s privacy would be protected by the Fourth Amendment. First, the person claiming Fourth Amendment protection must have demonstrated through conduct an actual expectation of privacy, and, second, the privacy expectation must be one which society is prepared to recognize as reasonable (Smith *v.* Maryland 1978; Wewing and Miles 1974, Note 23). One of a number of exceptions to the Fourth Amendment’s warrant requirement that developed after Katz *v.* United States (1967) is a search conducted by the police with the consent of the suspect (Florida *v.* Royer 1983; Schneckloth *v.* Bustamonte 1973), or with the consent of a third party, such as the suspect’s spouse or common-law partner (United States *v.* Matlock 1974).

In Rodriguez, the Court extended Matlock by articulating an objective standard of reasonableness to measure the perceptions of third-party consentors. In the fact situation of Rodriguez, police had entered his apartment based on the consent of his former live-in girlfriend. According to the Rodriguez majority, the reasonableness of a third-party consent search did not require that a police judgment regarding the consentor be correct, but that it always be reasonable. A key factor in judging the reasonableness of such a belief is the officer’s perception regarding the third party’s relation to the place of search at the time of the consent (United States *v.* Matlock 1974). On one hand, courts in various jurisdictions have accepted as reasonable third-party consentors a babysitter (Butler *v.* Commonwealth 1976; People *v.* Misquez 1957), a property caretaker (Raine *v.* United States 1924; State *v.* Cook 1966), and a housesitter (State *v.* Sorenson 1979). On the other hand, courts in other jurisdictions have determined the following third parties to be unreasonable: estranged wife (Bettuo *v.* Pelion 1977), mother (People *v.* Nunn 1973), and babysitter (State *v.* Litwin 1974).

Although empirical research directly addressing this issue is lacking, what research that has been done suggests that the courts may acknowledge as objectively reasonable a wider range of third-party consentors than would laypersons. Interior residential dwelling spaces are locations where individuals expect to have the highest levels of control and privacy (Taylor 1988). Permission to access and use such personal and private areas is accorded only
to others of close social intimacy, and this permission is not typically regarded
as "transferable" to outsiders to the relationship; it is likely that permitted
access by a partner of an outsider to a secret or to the exclusive-use area of
an intimate would be regarded as a betrayal of trust (Bell 1981; Goffman
1959; Rempel, Holmes, and Zanna 1985; Vaughan 1987). Thus, the courts' 
range of reasonable third-party consentors may be inappropriately broad.

It is our hypothesis that laypersons perceive as appropriate third-party
consentors only those individuals who have both a high possessory and
controlling relation to the place of search and a close social relationship with
the target-person of the search. That is, lay perceptions of reasonable third-
party consentors may suggest a more restricted class than that recognized in
caselaw.

This hypothesis was tested in a laboratory situation involving possible
third-party consentors, all of whom would likely be regarded by courts as
reasonable consentors under the objective test of Rodriguez. The third parties
varied in degree of control over the place of search and in degree of intimacy
with the suspect. We expected that the lay subjects would perceive only an
individual having both high control over the place of search and close
intimacy with the suspect, as an appropriate third-party consentor. If subjects’
views agreed with our hypothesis, such views would correspond with social
psychological findings on intimacy and person-place bonds, but may be at
variance with existing caselaw.

We also examined the perceptions of police detectives. The degree of
correspondence between lay and police perceptions merits empirical study
because the standard in Rodriguez specifically concerns police perceptions
of reasonableness. Thus, even though the standard is an objective one, it is
given a specific law enforcement context (i.e., the facts available to the
officer). When engaging in residential searches, police act in accordance with
their perceptions of social relationships and privacy expectations. They might
therefore conduct warrantless searches based on consent by individuals that
they judge to be reasonable consentors, but that the suspects and other
laypersons would not.

The police participating in this study were detectives, the grade level most
likely to engage in consent searches. It was predicted that police detectives’
perceptions of reasonable third-party consentors would fall intermediatley
between lay and judicial perceptions. More specifically, it was predicted that
police detectives would perceive third parties having high control over the
place of search as reasonable consentors, regardless of their degree of social
relationship with the suspect. In other words, police detectives would be
sensitive to the spatial relationship, which is highlighted in caselaw, but demonstrate less sensitivity to differences in social intimacy.

METHOD

Design and Subjects

The experimental study was a $2 \times 2$ between-subjects, factorial design. Two levels of third-party’s possessory and decision-making control over the place of search (low or high) were crossed with two levels of third party’s social relationship with the suspect, that is, target-person of the search (low or high).

Two groups of volunteer subjects participated in the study. One subject group consisted of 48 students enrolled in introductory-level criminal justice courses at a large, urban university. Students were recruited early in the semester; they received extra credit in their courses for their research participation. The students ranged in age from 18 to 38 ($M = 21.3, SD = 3.4$). Over half (52%) of the students were criminal justice majors, 44% had other majors, and 2% had not yet declared a major. About 90% of the students reported personal experience in sharing a residence with a roommate, ranging from 1 to 43 months ($M = 10.8, SD = 9.4$).

The other subject group consisted of 35 detectives of the Philadelphia Police Department, recruited through an internal departmental flyer distributed by a police detective colleague who acted as our research assistant. They received no remuneration for their research participation. The police detective subjects reported years in police work ranging from 4 to 26 ($M = 16.5, SD = 5.5$). They reported years at detective grade ranging from 1 to 18 ($M = 7.6, SD = 5.2$).

Procedure

The subjects were randomly assigned to experimental conditions in a fully between-subjects design. The experimental questionnaires were group-administered to the student subjects during class sessions. Questionnaires were individually distributed to the police detective subjects during their duty periods, to be filled out during off-duty hours, and then returned to the police detective/research assistant, who in turn transmitted the completed questionnaires to the investigators.
All subjects were asked to respond to a questionnaire concerning the operating assumptions and expectations when people share a residence. Subjects in all experimental conditions read a description of the shared living arrangements of the coreidents. Depending on the experimental condition, subjects read a description of the third party’s relation to the place of search and relationship to the target-person of the search. As an example, the description form the “low place control/low relationship” condition is presented.

Both you and R selected Housepainter HP from the yellow-pages section of the telephone book to paint the interior of the shared residence. After letting Housepainter HP in and getting HP started, both you and R leave for work.

The final paragraph of the vignette was similar for all experimental conditions: “Later that same morning, the front doorbell rings. [Third party] opens the front door. Police Office PO asks to come in and look around.”

After reading vignettes from the perspective of the suspect-roommate, subjects responded to three main dependent measures assessing the concept of reasonableness, in the form of Likert-type items: (a) [third party] has the right to permit Police Officer PO to enter the residence; (b) [third party] has the right to permit Police Office PO to look around in the living/dining area (a common-authority area); and (c) [third party] has the right to permit Police Officer PO to look around in your bedroom (the suspect’s exclusive-use area).

Reasonableness as a legal term (i.e., a normative judgment of what a person of reasonable prudence would do in like circumstances) may not have the same connotation as reasonableness as a lay term (i.e., a logical possibility). Thus, as a proxy for the normative (legal) concept of reasonableness, we assessed social obligations and consentors’ rights, derived from the social relationship, to permit entry and search. “Rights” were represented to the subjects not in its legal sense, but in terms of social expectations or obligations.

Subjects then responded to six 11-point interval scale items (0 to 10, with endpoints labeled appropriately) concerning the experimental manipulations (results of these subsidiary analyses are available on request). Student subjects were then asked for background information (sex, age, academic major, and number of years/months sharing a residence with a roommate). In order to ensure confidentiality of participation and responses within their detective units, the police detective subjects were asked to provide only two items of background information: year in which they began police work, and year in which they achieved detective grade. Thus, other demographic and personal information on these subjects is lacking.
RESULTS

Reasonableness of Third-Party Consent

Because of markedly nonnormal distributions of scores, the main dependent measures were analyzed after rank-ordering scores using Kruskal-Wallis ANOVAs (Kirk 1968). We analyzed student subjects and police detective subjects separately. To facilitate interpretation of results, findings are reported in terms of both mean and median scores on the original Likert-type scales.

For comparison purposes only, ANOVAs were performed, reflecting a 2 (Place Control) × 2 (Social Relationship) × 2 (Subject Group) design, for the main dependent measures concerning third-party consent to enter the residence, search the common-authority area, and search the suspect’s exclusive-use area. There were no significant main effects of Subject Group for any of the three dependent measures, Fs (1, 75) ranged from <1 to 1.98, n.s. None of the two-way interactions involving subject group were significant, all Fs (1, 75) < 1, n.s. Finally, none of the three-way interactions were significant, Fs (1, 75) ranged from <1 to 1.18, n.s. Results involving the main effects and interaction of place control and social relationship correspond to the results of the Kruskal-Wallis ANOVAs discussed in the remainder of the text.

STUDENTS

There was a significant main effect of the third party’s control over place of search for reasonableness of consent to enter the residence and to search the common-authority area of the living/dining room. The students perceived the third party to be an unreasonable consentor for entry purposes when he or she had low place control, but perceived the third party to be a reasonable consentor for entry purposes, when he or she had high place control, $\chi^2 = 17.24, p < .001$. The students also perceived the third party to be an unreasonable consentor to a search of the common-authority area when he or she had low place control, but perceived the third party to be a reasonable consentor to a search for the common-authority area when he or she had high place control, $\chi^2 = 14.10, p < .001$. The main effect of place control was not significant for reasonableness of third-party consent to search the suspect’s exclusive-use area (the bedroom), due to a “basement effect,” $\chi^2 = 1.11, n.s.$

The significant interactions of place control and social relationship for entry, $\chi^2 = 24.19, p < .001$, and for common-authority search, $\chi^2 = 22.36, p <$
TABLE 1: Scores of Student Subjects on Main Dependent Measures by Third Party’s Control Over Place of Search and Third Party’s Social Relationship With Target-Person of Search

<table>
<thead>
<tr>
<th>Place Control/Social Relationship (Cell n)</th>
<th>Reasonableness of Consent to Enter Residence</th>
<th>Reasonableness of Consent to Search Common-Authority Area</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mean</td>
<td>Median</td>
</tr>
<tr>
<td>Low/Low (12)</td>
<td>-2.8</td>
<td>-4.0</td>
</tr>
<tr>
<td>Low/High (12)</td>
<td>-3.4</td>
<td>-4.0</td>
</tr>
<tr>
<td>High/Low (12)</td>
<td>-1.3</td>
<td>-1.0</td>
</tr>
<tr>
<td>High/High (12)</td>
<td>2.3</td>
<td>3.0</td>
</tr>
</tbody>
</table>

NOTE: Possible range of Likert-type scale items is -4 to +4.

.001, qualified significant main effects for place control. The students viewed as reasonable third-party consent to permit police entry to the residence and to permit police search of the common-authority area when the third party had both high place control and a close relationship with the suspect. In all other conditions, they did not view the third party as a reasonable consentor (see Table 1).

There was no significant main effect of third party’s social relationship with the target person of search, $\chi^2$’s ranged from < 1 to 2.13, n.s.

Thus, as predicted, laypersons consider a third party’s relation to the place of search and relationship to the target person of the search, when determining the reasonableness of their consent to warrantless entry or search by police. By contrast, most state and federal courts following Matlock have tended to consider only the third party’s common-authority relation to the place of search.

POLICE DETECTIVES

There was a significant main effect of the third party’s control over place of search, for reasonableness of consent to enter the residence, $\chi^2 = 7.33, p < .01$, and to search the common-authority area, $\chi^2 = 4.50, p < .05$. The pattern of the police detective subjects’ ratings was consistent with that of the school subjects. The police detectives perceived third-party consent to entry as unreasonable when the third party had low place control, but they perceived third-party consent to entry to be reasonable when the third party had high place control. They also perceived as unreasonable third-party consent to a
TABLE 2: Scores of Police Detective Subjects on Main Dependent Measures by Third Party’s Control Over Place of Search and Third Party’s Social Relationship With Target-Person of Search

<table>
<thead>
<tr>
<th>Place Control/Social Relationship (Cell n)</th>
<th>Reasonableness of Consent to Enter Residence</th>
<th>Reasonableness of Consent to Search Common-Authority Area</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mean</td>
<td>Median</td>
</tr>
<tr>
<td>Low/Low (8)</td>
<td>-2.5</td>
<td>-4.0</td>
</tr>
<tr>
<td>Low/High (10)</td>
<td>-1.6</td>
<td>-3.0</td>
</tr>
<tr>
<td>High/Low (8)</td>
<td>-0.3</td>
<td>-1.0</td>
</tr>
<tr>
<td>High/High (9)</td>
<td>2.4</td>
<td>4.0</td>
</tr>
</tbody>
</table>

NOTE: Possible range of Likert-type scale items is -4 to +4.

search of the common-authority area when the third party had low place control, but perceived as reasonable third-party consent to a search of the common-authority area when the third party had high place control. The main effect of place control was not significant for reasonableness of third-party consent to search the suspect’s exclusive-use area, $\chi^2 < 1$, n.s., also as expected.

Contrary to expectation, the police detective subjects were influenced by the third party’s relationship to the suspect. There was a significant main effect of the third party’s social relationship with the target person of search for reasonableness of consent to search the common-authority area, $\chi^2 = 6.27$, $p < .05$. The police detectives perceived third-party consent as unreasonable when the social relationship with the suspect was low, but perceived third-party consent to be reasonable when the degree of social relationship was high. The main effect was not significant for reasonableness of third-party consent to enter the residence, $\chi^2 = 2.67$, n.s., or for reasonableness of third-party consent to search the suspect’s exclusive-use area, $\chi^2 = < 1$, n.s.

Finally, there was a significant interaction of the third party’s place control and social relationship with the target person of search, for reasonableness of consent to enter the residence, $\chi^2 = 10.29$, $p < .05$, and for reasonableness of consent to search the common-authority area, $\chi^2 = 11.59$, $p < .01$. The police detectives perceived as reasonable third-party consent to enter and to search only when the third party had both high place control and high social relationship with the suspect. The third party was not perceived as reasonable for purposes of consent to search the suspect’s exclusive-use area, $\chi^2 = 1.38$, n.s. (see Table 2).
DISCUSSION

The Supreme Court in *Rodriguez* reiterated a time-honored proposition—that the Fourth Amendment does not ensure that no government search of a home will occur without consent, but rather that no search will occur that is "unreasonable." The extent to which a search is reasonable will turn on an objective assessment of perceptions. Thus, perceptions regarding the reasonableness of the third-party consentor form the basis of Fourth Amendment protection. We have found that perceptions of the reasonableness of third-party consentors involve a more restricted range of people than does existing caselaw.

If students were sensitive to the social ties between consentor and suspect, as well as the control of the consentor over the place of search, they would view consent as reasonable only when the third party’s relationship to the suspect and control over place of search were both high. By contrast, following the decision in *Matlock*, courts have emphasized the third party’s control over the place of search. For example, in *Rodriguez*, Justice Scalia focused on factors relating to the joint control of and access to the residence, for example, whether the third-party consentor’s clothes and furniture were there. The significant interaction terms obtained dramatically confirmed our expectation.

In addition, we expected that police detectives’ perceptions would fall between lay and legal perceptions of reasonableness. That is, we expected that police detectives would perceive as reasonable third-party consentors individuals having a high controlling relation to the place of search, regardless of their degree of social relationship with the suspect. They were, in essence, expected to be less sensitive to variations in social ties than laypersons.

Contrary to expectation, the reasonableness perceptions of police detectives were very similar to the reasonableness perceptions of student subjects. The police detectives, like laypersons, perceived an individual with high place control and close social ties to the suspect to be the most reasonable third-party consentor. In fact, detectives were more influenced than the students by the consentor’s social relationship with the suspect. These findings suggest two important points: First, in the absence of a strong motivation to conduct the warrantless search (e.g., during an investigation of a misdemeanor), police detectives’ perceptions of a reasonable third-party consentor might correspond closely with lay perceptions. Second, police detectives’ view that third parties who have possessory control, but who are not socially linked to the suspect, are unreasonable consentors is noteworthy insofar as it differs from judicially crafted standards of reasonableness (cf. *Illinois v.*
Rodriguez 1990). Both police detectives and college students agreed that the only person who could admit a police officer to search a common-use area of a suspect’s residence is a third party who not only had possessory control over the suspect’s residence, but also had a close social relationship with the suspect.

To the best of our knowledge, this study constitutes the first exploration using a between-subjects, factorial design of both lay and police perceptions of consent to warrantless searches of residences. It is our hope that it will encourage further empirical investigation of Fourth Amendment issues, resulting in a body of research that eventually might be considered by the Supreme Court, in the same way that empirical research has been considered for Sixth and Eighth Amendment issues.

Of course, as with any single laboratory simulation study, the generalizability of our results must be viewed with caution (cf. Diamond 1979). Previously, in Kagehiro and Taylor (1988), we discussed the limits of such studies as they applied to research issues concerning third-party consent searches: (a) the nonsystematic sampling method; (b) the low degree of mundane realism (Crano and Brewer 1973); and (c) the exclusion of other influencing factors in the design. These same caveats apply here.

If police-citizen—and later, citizen-judge—interactions in search situations can be viewed as special types of social interactions, we can bring to bear a large body of psychological research to examine the legal assumptions involved in these constitutionally bound procedures. Psycholegal research can also serve as a means of refining psychological theories by revealing gaps in our conceptual analyses or by pinpointing overlooked factors deserving attention. Legal assumptions surrounding third-party consent searches demonstrate the interconnectedness of psychological research on interpersonal relations and on human territorial functioning. The search situation provides a context within which to study shared territorial functioning and corresidents’ expectations of their own and their partner’s privacy.

REFERENCES


Raine v. United States, 299 F. 407 (9th. Cir. 1924).


