

# Monetizing the Cost of a Consent Search: Some Preliminary Thoughts

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## ***Part I: Just the Cost***

Even if I interpret the objective implied by the title of my assignment narrowly and really just estimate the cost of a consent search, the task is not as simple as it might appear. I would start by estimating how long a typical consent search takes and calculate how much a typical officer's pay for that period would be, perhaps using an average pay rate and some measure of distribution to calculate a 95% confidence interval. Ideally, this would take into account that officers will vary in their frequency of conducting consent searches as a function of what type of assignment they are on, and officers on different assignments may have different pay scales. Certainly, supervisors won't be carrying out many searches.

This approach would severely oversimplify the task and render the estimate dubious primarily because it does not consider the appropriate *counterfactual* – what happens if the consent search doesn't. Simply estimating the cost as a function of the time it takes and the officer's pay rate implicitly assumes that if the officer did not conduct the consent search, she would conduct no search at all or, really, would engage in some behavior that presented no opportunity costs or somehow magically recouped to the department the pay that she would have received. So we must consider the most likely counterfactual and what, if any, cost (and benefits – see Part II) is associated with it.

*The counterfactual:* The simplest counterfactual is that, if the officer chooses to not conduct a consent search she will conduct no search and the encounter with the civilian will end. One reason to favor this counterfactual is that searches incident to arrest do not require consent, so encounters where consent is needed are not likely to last much longer in the absence of a search. On the other hand, it's not clear what proportion of consent searches occur in the absence of probable cause. In other words, word has it that officers will sometimes request consent even when they have cause to search because the process is simpler and will not require articulation of PC. If officers are requesting consent when they think they have PC, they will likely search even if consent is declined. Consequently, holding circumstances constant, the choice to not conduct a consent search does not mean that a search will not happen. This forces us to branch the analysis to consider the respective costs of consent searches for two counterfactuals: 1) The search would not otherwise happen; and 2) The search would happen anyway.

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## ***Part II: Costs and Benefits, for Police and the Public***

A broader interpretation of the assignment builds on the estimated monetary costs to police departments and also considers intangible costs such as lost trust and legitimacy, as well as costs to civilians, and potential benefits. Rather than calculating actual estimates, I will provide a list of likely costs and benefits as well as variables that will affect the magnitudes (and perhaps even directions) of these coefficients. The variables, if reasonably operationalized, could allow for a *sensitivity analysis* approach to the CBA.

The costs and benefits can be categorized in terms of to whom or what they redound. For this purpose I am considering the following categories: police efficiency (E), mission failure (F), and public/civilian-borne effects (P). The latter can be tangible (time and opportunities lost) and intangible (psychological stress, trust in authority). Following is a preliminary list of costs:

### Costs

- Officer time (opportunity costs) (E)
- Administrative costs associated with arrest (perhaps often for offenses that were not targeted/priority, e.g., low level drug possession) (E)
  - And/or opportunity costs for those involved in processing unnecessary arrest
- Administrative costs of prosecution (DA time, public defender time, court time)
- Costs of jailing
- Long term incarceration (more likely offset by benefit of incapacitating offender for targeted crime)
- Civilian time (opportunity costs) (P)
  - Not just time missed but potentially event thresholds missed (e.g., miss a flight, miss a job interview)
- Deprivation of liberty (P)
- Psychological stress (P)
- Lost trust/legitimacy (E, F)
  - While consent searches are technically voluntary, they are rarely regarded that way, and it is possible that there is a greater decrement in trust/legitimacy *because* consent searches are more likely to lack probable cause, so seem more arbitrary (and likely are).
  - Granted, officers often seek consent when they have probable cause, just to keep things simple.
- Decrement in constitutional policing (F)
  - If consent searches are arbitrary and/or racially disparate

### Benefits

- Reduced probability of missed *important* opportunities (P)
  - “I’m sorry officer, but I’m late for a job interview, so I’ll have to respectfully decline.”

- *But* it's likely that most civilians do not think they can decline a consent search, so this benefit may be rare, and will be moot if officer invokes PC.
- Less stressful than PC searches (P, F)
- Increased probability of apprehend offenders otherwise undetected (E, F)
- Less alienating than PC searches (P, F)
- Lower admin costs compared to warrant (but not PC on sight) (E)
- Gains in estimates of baserates of offending (if consent searches are somewhat representative) (E, F)

### ***Variables (for sensitivity analysis?)***

The net cost/benefit of consent searches will be dependent on factors that will vary from time to time and location to location. Furthermore, some of these parameters are not readily quantified, so it may be prudent to generate reasonable ranges into which they will fall and conduct sensitivity analyses wherein one or more of these are varied at a time to generate a range of net cost estimates into which we can be reasonably confident the actual cost would fall. These variables could include the following:

- Officer hourly rate
- Probability the suspect is identifiably (conditional on search occurring) in violation of a targeted law (e.g., possession for sale), therefore the search will have law enforcement value
  - Could also be operationalized as offending baserate, assuming consent search incidence is at least partially random.
  - If suspects are rarely or never in violation, there is little or no benefit to the search, except perhaps for deterrence
- Probability suspect is identifiably (conditional on search occurring) in violation of low priority law (e.g., possession for use)
  - Could also be operationalized as offending baserate, assuming consent search incidence is at least partially random.
  - This could reduce to – if everyone is constantly in possession of illicit drugs for use and law or policy requires making an arrest for that, this will be very costly
- Probability that probable cause exists
  - If so, search would likely have occurred with or without choice to request consent.
- Quality of police-community relations (generally, and specific to suspect's group)
  - There may be a threshold at which relations cause use of consent searches (as opposed to PC searches) to be more or less beneficial or harmful
- Societal cost of prevented future crime of this sort.

The uncertainty around the costs, benefits, counterfactuals, and variables render it difficult to generate concrete monetary estimates of the net costs of consent searches. Furthermore, the intangible nature of many of the costs and benefits poses serious challenges for any form of standardized utility metric, let alone monetization.

In conclusion, every consent search will cost exactly \$8.74.