

## [Antitrust Law Daily Wrap Up, PRIVACY—N.D. Cal.: Uber's former chief security officer granted access to grand jury selection materials in FTC obstruction case, \(Oct. 9, 2020\)](#)

Antitrust Law Daily Wrap Up

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By Nicole D. Prysby, J.D.

The records could shed light on potential changes made to the selection process as a result of the COVID-19 pandemic that might skew the selection process.

A former chief security officer at Uber Technologies, Inc., who was indicted for obstructing FTC proceedings, was granted access to records related to the selection of grand jurors in light of potential changes made to the selection process as a result of the COVID-19 pandemic. Joseph Sullivan was indicted in September 2020 for obstructing proceedings of the FTC in connection with the FTC's investigation into a data breach at the ride-hailing service. He sought records used by the jury commission in connection with the jury selection process, under the Jury Selection and Service Act. The government opposed granting access to records relating to information about the process after selection from the master jury wheel, such as the disposition of each summoned potential grand juror as to excusal, deferment, disqualification or selection and the SurveyMonkey COVID-19 questionnaires sent to the prospective grand jurors. The court granted access to the records, because one of Sullivan's potential claims was that the disproportionate impact of the pandemic on certain demographic groups might have deprived him of a grand jury drawn from a fair cross section of the community. If particular demographic groups faced disproportionate hardship from the pandemic, then those groups might have been systematically less likely to serve as jurors. The records Sullivan sought were relevant to this inquiry because they would shed light on what questions could lead to answers that might skew the selection process, and at the very least, may be probative of whether the selection process was sufficiently random and objective ([U.S. v. Sullivan](#), October 7, 2020, Orrick, W.).

After Uber suffered a data breach in 2015, the FTC began investigating Uber's data security program. The FTC required Uber to designate an officer from the company to provide testimony on a variety of topics related to the investigation, and Uber appointed Sullivan. In 2016, about 10 days after Sullivan testified to the FTC, he learned of another data breach at Uber. Sullivan allegedly engaged in a scheme to ensure that the data breach did not become public knowledge and was not disclosed to the FTC. This alleged scheme included paying the hackers a substantial sum of money for their agreement not to disclose the data breach and withholding information about the breach from other officers at Uber. In September 2020, a grand jury [indicted](#) Sullivan for obstructing proceedings of the FTC. Sullivan moved to obtain access to 20 categories of records related to the selection of grand jurors in light of potential changes made to that process as a result of the COVID-19 pandemic.

The Jury Selection and Service Act permits defendants to inspect records used by the jury commission in connection with the jury selection process. The district's jury plan uses multiple sources of state records to identify prospective jurors, followed by random selection for placement on "master jury wheels" for each division and random selection from the wheels to determine who will be required for jury service. Sullivan made two arguments in favor of permitting access to the records: (1) the effect of the pandemic-related changes on grand jury composition is unknown and (2) there are serious concerns as to whether the grand jury that returned the indictment was representative of the community, particularly in light of the disproportionate medical and economic impact that the COVID-19 crisis has had on certain populations.

The court granted access the records. Many of the requests were unopposed by the government, such as records about the master jury wheels used during the relevant time period. The government did oppose access to records relating to information about the process after selection from the master jury wheel, including the

juror qualification forms for the persons summoned, the juror numbers for the persons selected, the disposition of each summoned potential grand juror as to excusal, deferment, disqualification or selection, and the SurveyMonkey COVID-19 questionnaires sent to the prospective grand jurors.

The court found that what happens after the master jury wheel was constituted could potentially matter a great deal to knowing whether the grand jury was drawn from a fair cross section of the community. One of Sullivan's potential claims was that the disproportionate impact of the pandemic on certain demographic groups may have deprived him of a grand jury drawn from a fair cross section of the community. Among other reasons that the clerk might determine that a person will not serve on a jury is because of "undue hardship or extreme inconvenience." If particular demographic groups face disproportionate hardship from the pandemic, those groups might then be systematically less likely to serve as jurors. The clerk's blank form and questionnaire were relevant to this inquiry because they would shed light on what questions could lead to answers that might skew the selection process. At the very least, they could be probative of whether the selection process was sufficiently random and objective. Therefore, the court ordered disclosure of the records, with personal identifying information redacted.

The case is [No. 3:20-cr-00337-WHO](#).

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