

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on
Regulations Relating to Passenger Carriers,
Ridesharing and New Online-Enabled
Transportation Services.

R.12-12-011
(Filed December 20, 2012)

**THE RAPE, ABUSE & INCEST NATIONAL NETWORK'S (RAINN) APPEAL OF
PRESIDING OFFICER'S DECISION IMPOSING PENALTIES AGAINST UBER
TECHNOLOGIES, INC. FOR VIOLATING THE ASSIGNED ADMINISTRATIVE LAW
JUDGE'S DECEMBER 19, 2019 AND JANUARY 27, 2020 RULINGS REQUIRING
INFORMATION REGARDING SEXUAL ASSAULT AND SEXUAL HARASSMENT
CLAIMS**

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I. INTRODUCTION

The Rape, Abuse & Incest National Network (“RAINN”) submits this appeal of the Presiding Officer’s Decision Imposing Penalties Against Uber Technologies, Inc., for Violating the Assigned Administrative Law Judge’s December 19, 2019 and January 27, 2020 Rulings Requiring Information Regarding Sexual Assault and Sexual Harassment Claims (“Presiding Officer’s Decision” or “POD”). As RAINN first shared with this Commission in its Motion for Party Status, we are exceedingly concerned with the Commission’s December 19 ruling, and the resulting Order to Show Cause, ordering Uber Technologies, Inc., (“Uber”) to provide individualized information from Uber’s U.S. Safety Report¹ about each and every incident of sexual misconduct and sexual assault that occurred “on app” from 2017 through 2019, all

¹ Uber, *US Safety Report* (Dec. 5, 2019).

without the consent of the survivors impacted.² RAINN, along with other survivor advocacy organizations, opposed this data request even after it was amended to permit Uber to submit incident-level information “under seal” because that does not obviate the need to honor survivors’ informed consent when reporting sexual assault to a government agency.

These concerns went unanswered for many months, during which time Uber had to administratively litigate the ALJ’s ruling in order to re-assert survivors’ rights and advocacy groups’ concerns. Indeed, it was only while issuing a \$59 million penalty on Uber that the ALJ took into account our recommendations and permitted Uber to submit anonymized incident data. And it is still unclear whether we have persuaded the Commission to never ask for individual survivor information in the future without the consent of the survivor. Thus, notwithstanding the fact that the ALJ ultimately agreed with Uber’s and RAINN’s position that survivors must control when and to whom they share their experiences, the judge effectively fined the company for every day that it stood up for survivors and protected their privacy rights and autonomy.

There can be no doubt that the ALJ’s response to Uber’s attempts to protect survivors’ personal information will send a chilling message to similar entities considering whether to come forward about their safety records, not to mention survivors weighing the extremely difficult decision to come forward to report their experiences in the first place. RAINN files this appeal because such an egregious response to defending survivors’ privacy rights will send a chilling message to other organizations considering whether to come forward about their own safety records and will set back sexual violence prevention efforts. Companies should be commended, not penalized, for their transparency and commitment to protecting survivors.

² See Motion for Party Status of the Rape, Abuse & Incest National Network, August 12, 2020. Motion granted by email ruling on August 28, 2020.

The Commission should reject the Presiding Officer's Decision and stand for survivors.

II. BACKGROUND ON RAINN

RAINN is the nation's largest anti-sexual violence organization. In the past 26 years, we have helped more than 3.5 million people affected by sexual violence through our diverse programs, including the National Sexual Assault Hotline, which RAINN created and operates in partnership with more than 1,000 local sexual assault service providers across the United States. In addition to our direct survivor service work, RAINN works with a broad spectrum of client organizations – including government agencies, companies (like Uber) across multiple industries, educational institutions, and other non-profit organizations – to strengthen and deepen their sexual misconduct awareness, prevention and response programming. Our goal in these partnerships is to create safer communities and ensure that survivors are treated appropriately and with respect.

III. ARGUMENTS

a. The Presiding Officer's Decision Imposing a \$59 Million Penalty Will Have a Chilling Effect on Companies Considering Transparency Efforts

Despite the risks of negative headlines and public criticism, Uber voluntarily released its U.S. Safety Report with the hope of exposing and preventing incidents of sexual violence. Throughout the process, and since 2017, Uber included and followed the recommendations of sexual assault prevention experts and survivor advocates to ensure that its Safety Report was created with a survivor-centric approach. At the forefront, this meant protecting the identities of survivors of the reported incidents. Those who work with survivors understand that the most important element in the healing process is control over disclosing their own experiences. It is critically important that a survivor chooses when, where, and *to whom* their information and experience is shared.

It is precisely this principle that drove Uber’s objections to the POD and its decision not to provide the Commission with survivors’ personally identifying information. Penalizing Uber’s choice to protect survivors with a seven-figure or greater fine will send exactly the wrong message to companies and, undoubtedly, will discourage other companies from shining a spotlight on the issue of sexual violence, which is so prevalent in our society.

Sexual violence is a difficult topic that is too often kept in the shadows. By sending a message to the TNC industry that defending survivor rights will be met with negative consequences, the POD will chill reporting of sexual assault incidents in a climate where companies are already hesitant to adopt transparency around these issues. The POD, if adopted, thus threatens to dismantle the efforts taken by good faith actors and risks undoing years’ worth of hard-won survivor rights and protections.

b. Survivors of Sexual Assault Should Not Be Retraumatized

Survivors of sexual assault have a reasonable and legally cognizable expectation that the personal information they report to Uber will not be disclosed to third parties, including government agencies such as the CPUC, without their consent. As RAINN and others have sought to explain to the Commission, survivor consent is of utmost importance in responding to sexual violence and assisting survivors, as perpetrators have already stripped survivors of this right to consent. The POD fails to appreciate this point.

Survivor reports and disclosures of sexual assault should only be utilized for the purpose for which they were collected. In this case, survivors made the decision to share their experiences with Uber, and Uber alone. It is hard to imagine that survivors reporting incidents to Uber envisioned that the State’s utilities regulator would require the disclosure of their personal information, particularly when some may have explicitly decided *not* to share with the State and

law enforcement authorities. Even harder to imagine is that survivors had any belief that they might be contacted by employees of that regulatory agency to discuss one of the most horrific experiences of their lives. These actions carry a high risk of retraumatizing survivors and must be avoided. Trauma is not a one-time reaction to a single event. It is an individual and life-changing response that can include feelings of powerlessness, terror, and shame.

c. The Commission Should Consult Survivor Advocates and Sexual Assault Prevention Experts When Considering Regulations (and Penalties) Related to Sexual Assault

Finally, the POD reflects an egregious refusal by the ALJ to consult sexual violence prevention experts and survivor advocacy organizations, notwithstanding that the decision will have rippling and widespread policy impacts on sexual assault prevention and survivors. For nearly a year, RAINN and numerous other national and California-based advocacy groups sought to inform the Commission of the unique harms that would arise from the ALJ's order for survivors' personal information. Given the highly sensitive nature of this information and survivors' rights to control if, when, and to whom their information is shared, RAINN consistently urged the ALJ and the Commission to reconsider the ruling and protect survivors' rights. There were many opportunities for the Commission to collaboratively work with stakeholders to find alternative ways to obtain data that would still enable the Commission to achieve its regulatory purposes.

In addition to submitting a letter shortly after the ALJ's December 19 ruling, RAINN formally filed a motion for party status to participate in this rulemaking proceeding and the Order to Show Cause evidentiary hearing. These steps were taken in the hopes that the Commission would welcome guidance from experts who could advise on how to adopt a survivor-centered, trauma-informed approach when collecting information and creating

regulations relating to sexual assault prevention and response. Despite these efforts, the concerns and recommendations raised by RAINN and other advocacy organizations were ignored during the proceeding. Instead of working with Uber and advocacy groups to address their concerns while still achieving the Commission’s regulatory objectives, the ALJ opted to ignore us, undermine our work, and penalize Uber more than \$59 million for protecting survivor rights. And it is still unclear whether we have persuaded the ALJ (or the Commission) of the need to protect this sensitive survivor information from future requests or disclosure.

RAINN urges the Commission to decline to adopt the POD, which will wreak havoc on advocacy groups’ efforts to protect survivors’ rights by protecting their confidentiality and also will undermine our efforts to promote transparency within the TNC industry and beyond. There were many opportunities for the ALJ to collaboratively work with stakeholders to find alternative ways to obtain data that would still enable the Commission to achieve its regulatory purposes. Going forward, RAINN urges the Commission to work closely with advocacy groups and experts on issues related to sexual assault prevention to ensure a survivor-centric approach.

IV. CONCLUSION

RAINN respects the Commission’s efforts to ensure safety for the people of California, and we are grateful for your work and want to be a part of it. But we urge the Commission not to adopt the Presiding Officer’s Decision, which will have a devastating effect on survivors and companies’ willingness to undertake the important work to prevent sexual violence and protect the confidentiality of survivors’ identities. We also ask that the Commission stand for survivors and ensure that no one at the Commission will ever ask in the future for individual, identifying survivor information without the informed consent of the survivor.

Respectfully submitted on this 11th day of January, 2021 in Washington, D.C.

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