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Impeachment, Diverse Trial Teams, and Overcoming White Noise

Taking a closer look into the second impeachment trial of former President Donald Trump.

By Elijah Watkins and Emily Atmore | April 30, 2021



House managers Representative Ted Lieu, a Democrat from California, from left, Representative Stacey Plaskett, a Democrat from the U.S. Virgin Islands, and Representative Madeleine Dean, a Democrat from Pennsylvania, leave the Senate floor after delivering the article of impeachment against President Donald Trump to the Senate Chamber in Washington, D.C., U.S., on Monday, Jan. 25, 2021. Trump's trial in the Senate will kick off today after the impeachment managers deliver their single article accusing him of inciting the Jan. 6 Capitol that left five people including a police officer dead. Photo: Melina Mara/The Washington Post/Bloomberg

For a week in February, our productivity plummeted as we sat transfixed, listening to arguments during the second impeachment trial of President Donald Trump. As Americans, we were watching history. As trial attorneys, we were watching something else: a future law school advocacy course on what to do and what not to do.

While the impeachment managers were persuasive, conservative and liberal pundits alike excoriated Trump's team. Politics aside—and despite the outcome—the managers were just plain better. They convinced most of the Senate (including seven Republicans) to convict, making this the most bipartisan impeachment in history. According to a Feb. 15 ABC News/Ipsos Poll, nearly 60% of Americans believe Trump should have been impeached for inciting the Capitol attack, and three-quarters believed senators voted based on partisanship. Justsecurity.org tracked statements from senators who voted to acquit and found that over half believed the managers proved their case but based their vote on jurisdictional grounds (something the Senate had previously rejected by majority vote). If this were a high school debate competition, the managers won the persuasiveness ballot. But why?

The differences between the two sides are instructive. While much can be written about the managers' presentation style or defense counsel's level of preparedness, it's worth examining an additional data point: The managers were diverse. Of the nine managers, two were Black, one was Hispanic, and one was Asian. Three of the managers were women. Lead manager Jamie Raskin is Jewish, and manager David Cicilline is gay. There was a 27-year swing between the oldest and youngest manager.

Trump's team was less diverse. Of the three attorneys who took the podium, all were men. All were white. Only about five years separated them in age. One attorney was Jewish.

Did the managers' diversity make them more persuasive? While social scientists have concluded that diverse juries lead to better deliberation and less error, does the level of diversity among the lawyers make any difference? One idea is that diverse teams better connect with increasingly diverse juries. Under this theory, black jurors will only listen to black lawyers and women attorneys are only needed to connect with female jurors. But surely diverse trial teams bring more to the table than just optics.

Research shows that diverse trial teams improve the way a jury receives, processes and deliberates information. Professor Katherine Phillips in her *Scientific American* piece, "How Diversity Makes Us Smarter," found that "even simply being exposed to diversity can change the way you think." Anyone who has sat through a college course with a nonnative English speaking professor or a lecturer with an entirely different background than their own, can attest that students will naturally increase their focus. Juries are no different. They scrutinize a diverse lawyer's words and actions more than they would if the lawyer looked and talked like them. This keeps the juries' attention. They process information more carefully because they must work harder to categorize that information in their brains.

Diverse trial teams are also better at convincing jurors of universal truths. As detailed in "Why You Want a Diverse Trial Team," when diverse teams present cohesive cases it "indirectly suggest[s] that the principles upon which the case is based and the truth of the facts upon which it rests—have been fairly presented and are universal in their message." Information advocated by diverse teams seemingly represents societal wisdom, understood not as "one lawyer believes this," but "everyone believes this."



Defense attorneys for Donald Trump Bruce Castor, right, and Michael van der Veen,

Less diversity causes groupthink. As Phillips found, "Members of a homogeneous group rest somewhat assured that they will agree with one another; that they will understand one another's perspectives and beliefs; that they will be able to easily come to a consensus." As a result, homogeneous groups are often "more confident in their decisions, even though they [are] more often wrong in their conclusions."

Diverse trial teams are a balm against groupthink. As Justice Ruth Bader Ginsburg noted at the time of her appointment to the court, "women, like persons of different racial groups and ethnic origins, contribute ... a 'distinctive medley of

speaking during a press conference in the Senate Subway at the U.S. Capitol in Washington, D.C., U.S., on Saturday, Feb. 13, 2021. Donald Trump's second impeachment trial ended in a not guilty verdict on a vote of 57-43, short of the two-thirds majority required. Photo: Graeme Jennings/Bloomberg

views influenced by differences in biology, cultural impact, and life experience." The less diversity, the more groupthink. The greater the diversity, the greater the "medley of views" that Ginsburg champions.

Because the brains of jurors get less stimulation from homogenous trial teams, they are more likely to tune out what they view as repetitive in order to conserve energy. Instead of a diverse medley, the message can become white noise: The indistinguishable and uninteresting fuzz

on a TV with no reception. White noise is easily forgotten. A diverse trial team is the opposite of white noise.

Diverse teams are not there simply to create similarities with jurors. A diverse team is necessary because juries benefit from seeing and confronting the differences in the lawyers. Juries stop and pay attention to the message. Juries listen more, think harder and reach better conclusions when diversity is involved.

The managers were effective, in part, because of their diversity. The jurors would, for example, listen to a Hispanic manager, then a white male manager, then a Black female manager, then an Asian manager and so on. Each time a manager spoke, the jury—and millions watching at home—had to work to process the diversely packaged information in new ways.

Yet Trump was acquitted. Three defense attorneys—the same in race, gender, and age—addressing 43 senators who, for the most part, were the same in race, gender and age. With groupthink, those senators could mostly ignore the proceedings (some doodled, others read books) and conserve brain energy, knowing they would all vote the same in the end. The white noise helped them tune out.

To counteract white noise with juries, we need trial teams of all stripes. From 60-year-old white men to 49-year-old black women, to 34-year-old Hispanic men and everyone in between. It's not just the right thing to do: It ultimately results in more effective and persuasive advocacy.

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