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OPINION OF THE WEEK: When A TV Show Illuminates More Than Law School

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*There appears to be a trend of the rich becoming fodder for TV dramas, whether they are costume dramas such as *Downton Abbey* or the US series *Succession* (about which the editor [wrote here](#)). The German writer and entrepreneur, Rainer Zitelmann, in his book, *The Rich In Public Opinion* (2020) even analysed a total of 560 films made from 1990 to 2017, concluding that many of them have an anti-capitalism/wealth bias. Whatever one's view of the matter, TV dramas can offer ideas and "teachable moments" that can elude a classroom.*

What do lawyers make of this? Well, to answer the question is Tamasin Perkins, partner in the private wealth disputes team at UK law firm . The editors are pleased to give Perkins a chance to share these views and, of course, if readers want to respond, please email tom.burroughes@wealthbriefing.com. The usual editorial disclaimers apply to views of guest writers.

On my first day of practice as a private wealth disputes solicitor I was told that everyone has a secret life. No one is what they seem. If you want to learn what private-client litigation, particularly multi-party litigation (such as a dispute about a will, a trust or a family business) is actually like, you would learn more from *The Traitors* (a BBC series) than from law school. The shifting sands, the tension, the heated advocacy – it's all there.

If you haven't seen *The Traitors*, the format is that a group of people are randomly designated as either "Traitors" or "Faithful." The Traitors' role is then to "kill off" the Faithful (really just remove them from the game). The Faithful's role is to work out who the The Traitors are. Much intrigue ensues.

Forming alliances

The Traitors is all about alliances and litigation is the same. In trust litigation there can be numerous parties: the trustees, protectors, multiple generations of beneficiaries, their spouses, representatives for minor beneficiaries and for those beneficiaries-to-be who are not yet born. This gives rise to complex group dynamics and anyone advising those parties needs to be alert to those dynamics. The alliances seen on the show eerily reflect the allegiances that can and do form in heated litigation, from the flimsy to the (almost) unbreakable.

Holy alliances

The Faithful (i.e. anyone who isn't a Traitor)

In complex litigation, there are often co-parties (whether claimants or defendants) with genuinely shared interests. Typically, these might be co-beneficiaries of an earlier will challenging a later will in a legacy dispute or shareholders bringing claims against company directors. Like the Faithful, they can be a disparate group where the only thing they have in common is a shared interest in the same outcome. Group dynamics are unique and challenging, but there is strength in numbers in litigation as at the roundtable. This can be in terms of presenting a more compelling case to the court and by sharing in the stress and costs risk of litigation.

Acting for these individuals can be tricky. Generally, the same firm of solicitors can act, as the shared interest in the outcome means that there is technically no conflict, but things can change, and conflicts can spring up. A firm's letter of engagement should usually make it clear that there is no conflict at the date the letter is signed, but that if either the client or the solicitor were to feel there was a conflict then the retainer will end.

The Traitors demonstrates these potential rifts and the difficulties of group litigation well. How pressure can get to a client and can affect their decisions (Brian made some very odd choices and could have used some sensible legal advice), how some individuals' charisma and influence can affect the thinking of the group (so that people start to conflate likeability with trust), how herd mentality can take over and strongly held views abandoned quickly and often arbitrarily for the sake of an easy result. Parties often suffer from litigation fatigue, and this is visible in the flagging spirits of the remaining Faithful.

One way of managing this changing landscape from the outset, is to ensure that there is an agreement between the clients behind the scenes. This could address in what proportion damages will be divided up, how costs will be allocated and paid for etc. That way all co-parties are clear about where they stand, even if their emotions change. Another way is to nominate a lead client or spokesperson to co-ordinate the group (with general powers of attorney in place if helpful). Where this does happen or one party is more vocal than others, it is especially important to regularly check in with each individual to make sure that their views are known and understood.

Diane and Ross

Secret alliances can happen in litigation too. When emotional ties are (or at least appear to be) stronger than that person's own financial interests. Like Diane and Ross, this can often be parents and children with potentially competing interests, siblings, or close friends. In a will challenge, two siblings might have potentially competing claims under the Inheritance (Provision for Family and Dependents) Act 1975 for reasonable provision from the same estate. As both claims come from the same financial pot it is in each of their interests for their sibling's claim to be defeated, but behind the scenes their instructions might be different – "I'd rather you had it than them." "Anything either of us gets is a win for both of us." Here there is an actual conflict, and it is likely to be inappropriate for the same solicitors to act for both parties (even with information barriers in place). Those solicitors can still co-ordinate a litigation strategy, however, using common interest privilege. This is a type of litigation privilege that allows communications between parties to be protected from other parties in certain circumstances. Such a strategy means that litigation can be managed behind the scenes so that the timing and emphasis of each claim is engineered to increase the pressure on the other side. For example, the parties might decide which claim to lead with, co-ordinate disclosure requests or adopt a 'good-cop/bad-cop' approach.

Like Diane and Ross, however, who were never completely sure that the other wasn't a Traitor deep down, the closest of bonds should be approached with caution. To make sure that love and affection are not taken for granted, it can be sensible for the solicitors involved to manage the flow of information, to establish a term of reference for dealing with one another and to document the intentions of each party behind the scenes on the outcome of the litigation.

Unholy alliances

The most tenuous alliance is that between the Traitors, a group who backstab their so-called friends nightly and, when it suits them, turn on each other. In litigation, this situation can arise where there are parties with ultimately competing interests in a claim, but who might find it expedient to get along with one another on a particular issue. For example, a defendant and Part 20 defendant might work together to make a specific disclosure application against another party; or a group of warring beneficiaries may find it in themselves to co-operate to remove an unpopular protector.

These opportunities can be useful, but the solicitors involved (and the clients) should be wary. Just because another party's views might align with yours on a particular issue doesn't mean that they won't fight you twice as hard later. The best way to manage this dynamic is by revealing as little as possible about your case: keep discussions focused on the issue you agree on and document everything. There can be value in relationship-building while you are briefly united. This may help you in a trial preparation emergency if you know who to deal with and can pick up the phone to them. Information-gathering about the individuals involved is also time well spent learning how they operate, who really has the power in a particular team and what their client really cares about. You can try dropping breadcrumbs about your team's position to try to find out more about their case or their client, but remember they are probably doing the same to you.

Roundtable dynamics

The roundtable is the heart of The Traitors programme. It is pure advocacy and shows that telling the truth isn't always enough, it's about how you tell it. This season the showdown between Miles and Paul was better than anything the Royal Courts of Justice have to offer. As with the courtroom, the shrewdest operators aren't always the most outspoken. Sometimes it is better to let someone else fight your battle (and take the risk of being banished) than centre yourself and become vulnerable. In litigation, sometimes the better strategy (and reduced costs risk), can be to let another party take a point you might otherwise have taken. Where you must argue, make sure you are the predator, not the prey; if you don't fight your corner then you might be easy pickings. Also, choose how you advocate carefully, charisma can take you up to a certain point but if, like Paul, you veer into grandstanding then you lose the sympathy of the Faithful or, in court, of your judge.

Five takeaways for litigation (and for any application to the *BBC*)

- Trust no one;
- Don't be charmed – there is a difference between liking someone and trusting them;
- Litigation is a changing landscape – whoever might be your allies now may not be at the next phase;
- Have a healthy dose of cynicism; and
- Money really does bring the worst out in everyone and even the strongest ties may not be robust enough.