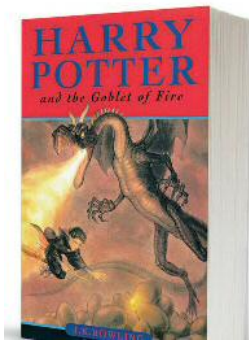


Harry Potter and the Wagga Lawyer

A country solicitor in NSW claims J.K. Rowling copied his client's ideas for her global bestsellers. So is it fact or fantasy, asks *Susan Chenery*



SALMAN RUSHDIE DISCOVERED THE DANGERS OF BEING a seer when he opened *Midnight's Children* with the words: "I had been mysteriously handcuffed to history." But that first fabulist novel was only warming up. *The Satanic Verses* was a more terrible premonition; it earned him a fatwa and years of living in hiding from death squads. "It is terrifying, even for its author, to find out how much that book knew," he once told me. "It is one thing to sit in a room and dream up what religious fanaticism might be like; it is quite another to discover how accurate the book was."

So when J.K. Rowling invented a Wagga Wagga Werewolf in *Harry Potter and the Chamber of Secrets*, she probably didn't expect that a nemesis with fangs bared and sharpened claws would arise from the actual town of Wagga Wagga and attempt to bite her. The mythological werewolf is a human who turns into a fearsome wolf on the full moon. Rowling's Wagga Wagga Werewolf was believed to have been vanquished by Professor Gilderoy Lockhart by means of a Homorphus Charm; but as it turns out, it wasn't.

Fortunately there was no full moon when *The Weekend Australian Magazine* visited Wagga Wagga to discuss Hogwarts trains, wizard chess, memory charms, wizard schools, wizard prison and other minutiae of wizardology with Kevin Foley. Seventy-year-old Foley – the Wagga Wagga Werewolf incarnate – is the country solicitor who has accused Rowling of plagiarism and is suing her publishers, Bloomsbury. The case, currently before London's High Court, alleges that Rowling lifted ideas from *The Adventures of Willy the Wizard*, a small book written by the late English author Adrian Jacobs. Foley is reported to be seeking £500 million (\$874

million) for the Jacobs estate, although the solicitor refuses to confirm this, insisting "that figure has never come from me".

Foley says the British establishment is bristling at the impertinence of this colonial upstart, and incredulous that he and "a man from the Midlands" could have the temerity to take on the Harry Potter juggernaut. "This is David without a slingshot facing Goliath," says Foley, not without relish. The man from the Midlands is David Markson – brother of Sydney public relations man Max Markson – who is acting as agent of the Jacobs estate.

The existence of *Willy the Wizard* first came to the attention of Bloomsbury in 2004, when Markson engaged a firm of solicitors in London. "Suffice to say that after being in their hands for some considerable time," says Foley, "proceedings were still not commenced." Lawyers are expensive, and the Jacobs estate was bankrupt. It wasn't until Markson was in Australia visiting his brother that he found a lawyer who was willing to take on the case on a shoestring. If Foley wins, however, it will be a very big pay day indeed.

Depending on your point of view, Foley is either a maverick, a hero – or completely mad. "I am just interested in the case," he retorts. "David said it was going to be a tough case and you are taking on the big end of town. 'We need someone who is going to have the intestinal fortitude to take it on.' I don't scare easily. I don't back off."

Adrian Jacobs was an English chartered accountant, solicitor, company director and art collector who made up stories for the children of visiting friends. These friends persuaded him to write down one of the stories, which became *Willy the Wizard*. It was rejected by a number of publishers, before finally making it into print in 1987, a decade before the first *Harry Potter* book.

Foley alleges that Jacobs, intending to write further books in a *Willy the Wizard* series, "then took it along to the literary agent Christopher Little, which is denied by Little. Our instructions are that Christopher Little was dismissive of it and said it needed a lot of work, a lot of editing. Our allegation is that he left a number of copies of these books

and nothing happened for quite a long time. Subsequently Christopher Little became the agent of J.K. Rowling”.

Jacobs suffered a massive stroke in late 1987 which left him unable to manage his finances, and he was bankrupted in 1991. He died in a charity hospital in 1997. His only son, Jonathan, left Britain years ago and now lives in Hollywood.

When *The Weekend Australian Magazine* contacted the office of Christopher Little, the following email was received from Mark Hutchinson, director of culture, Colman Getty Consultancy: “J.K. Rowling is not a defendant, and in any event never knew Adrian Jacobs, having only recently heard of him in the context of this misguided litigation against Bloomsbury.”

For its part, Bloomsbury has stated that the accusations are “unfounded, unsubstantiated and untrue. This case is without merit and will be vigorously defended”.

In the *Harry Potter* books a “memory charm” is used to erase the memory of any “muggle” – human – who sees an act of wizardry. Foley is alleging that maybe Rowling is the victim of a memory charm herself. He says: “We have to prove access [that Rowling had access to Jacobs’ work], that is vital, but we believe we can. We have got a lot more firepower than they realise. There will be some surprises coming out of this case. We have also got someone who has done the forensic science of feeding all this into computers, and phrases and terminology, and I have all those reports. I have those files locked away”

The statement of claim against Bloomsbury names the Jacobs estate’s trustee as Paul Allen, and says that Rowling has copied “substantial parts” of *Willy the Wizard*.

Still, *Willy the Wizard* is a 36-page book, and so badly written as to be almost unreadable. (“We don’t say it is a literary masterpiece,” acknowledges Foley, “it doesn’t have to be.”) And Rowling has written seven hefty *Harry Potter* books, selling 400 million copies worldwide.

Where there is great wealth and success there will always be opportunists prepared to do anything to get a slice of it. Writers such as Rowling and the hugely successful Dan Brown – who has been forced to fight his own share of plagiarism accusations – present big targets. This is not the first time the reputation of Rowling has come under attack, nor the first time she has defended it. In the late ’90s author Nancy Stouffer began saying publicly the Rowling books were based on her books, *The Legend of Rah and the Muggles* and *Larry Potter and His Best Friend Lilly*. In 2001 Rowling, her US publisher and Warner Bros (producer of the film adaptations) sued Stouffer. Stouffer counter-sued, alleging infringement of copyright. In 2002 it was found that Stouffer had lied to the court and falsified and forged documents to sup-

port her case. The court found that her books had been written *after* Rowling’s. She was ordered to pay substantial costs.

Foley is undeterred. “If I thought this case was a try-on or a fraud or a con, I wouldn’t have had anything to do with it,” he says. “I look at the case on its merits. My job is to represent my client. I am acting legally, ethically, properly. There is no skulduggery, there is no misleading. I am doing it properly. *Willy the Wizard* was published 10 years before Rowling’s book.”

Foley outlines what he says are similarities between the authors’ creations: “The train that goes into a parallel universe; the year of a wizard contest; how they get prisoners out and what rewards they get for them; the fact that wizards live a parallel existence to ordinary people; the fact that a person is a wizard and doesn’t know he is a wizard for quite some period of time; the fact that they play wizard chess.”

But even by Foley’s own claim, there is little evidence to support the notion of copying in the first three Rowling books. “What we allege – and what we have got to prove – is that she then used our ideas on her fourth book, *Harry Potter and the Goblet of Fire*, which was her main book and a major breakthrough for her and her writing,” he says. “Even the lawyers for the other side ... say that this is a coincidence, which is an admission in itself. They say that Jacobs’ book is not a substantial part of their book and that it is fair usage. Most people when they first look at this case are fairly dismissive, but the deeper you go into it the more you can see the lifted ideas.”

Is it not inconceivable, though, that two people working on a similar theme could have similar ideas? There is, after all, a long tradition of enchanters, elves and magicians in English literature. Foley demurs. “You can have one coincidence. You can have two coincidences. But when you get to five you say, ‘Yeah.’ We are alleging numerous coincidences. Now what are the odds when you get to that stage?”

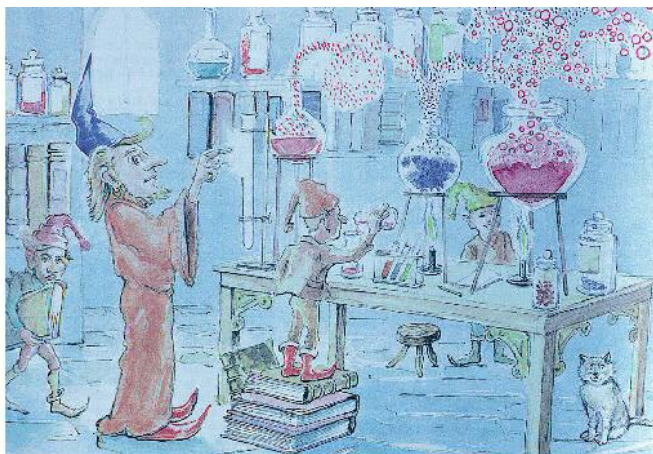
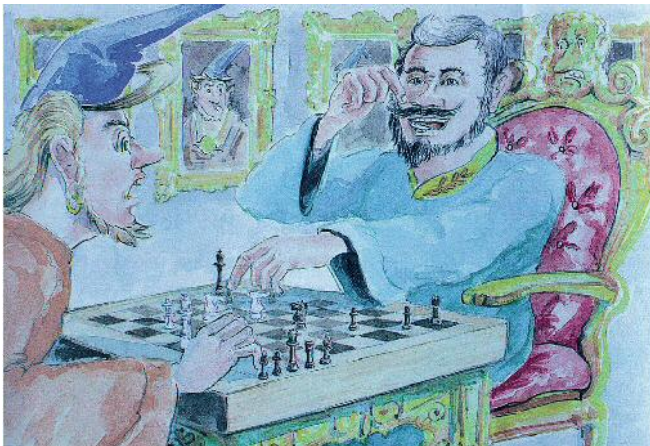
While Rowling lives between three palatial homes, and according to *The Sunday Times* rich list is worth £499 million (\$872 million) – which makes her richer even than the Queen – Foley lives in his office in the main street of Wagga Wagga. “I do quite a bit of pro bono work,” he says. The divorced father of four carries out his correspondence battle with London at night, working through debilitating doses of chemotherapy for bowel cancer.

When he is well he sings the lead in Gilbert and Sullivan productions and gives public recitals of English and bush poetry. He competes every year at the National Folk Festival as a stand-up poet. (“Last year I came second, though

some people thought I should have won.”)

There won't be many expecting Foley to win this latest challenge. He remains a lone werewolf, howling in the night at a quarry half the

world away. The werewolf, though, is always unpredictable – especially under a full moon in Wagga Wagga. 🐾



Contentious: Foley claims wizard chess and potion rituals, pictured in illustrations from *Willy the Wizard*, were copied by Rowling



Against the odds:
"This is David without
a slingshot facing
Goliath," says Foley

PHOTOGRAPHY ADAM KNOTT