PART 4 OF 7

# Why is memoir the riskiest category in publishing, and how do you de-risk yours?

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# Why is memoir the riskiest category in publishing, and how do you de-risk yours?

**Why is memoir the riskiest category in publishing?** Memoir is high risk because it makes factual claims about identifiable real people, told by a single witness, sold as true. Publishers price that combination hard. Four moves lower the price: a clearance review before delivery, an attorney review letter the publisher can rely on, media perils insurance quoted early, and additional insured status where the deal allows.

Two agents told you the writing was the best thing they had read all year. Both passed. One said the word “exposure” on the way out the door without explaining it, and you have been reading about legal risk in memoir ever since, most of it written by people who want you frightened.

Here is what nobody put in front of you. When a house declines a memoir, what it is declining is usually a number it cannot estimate, and an unpriced number is the one thing a thin-margin business has no way to carry. **Give the house a number it can estimate and you are having a different conversation, about the same book.** I was general counsel of a US book publishing company with global reach, and in the manuscripts that reached my desk, memoir produced more flagged passages than any other category.

Memoir here means any book sold as a true first-person account of the author’s own experience. Family memoir, addiction and recovery, business memoir, the hybrid that runs half argument and half life story. Different shelves, one risk profile, because the exposure comes from the structure of the form rather than the subject matter.

The larger picture, including the other categories of exposure a manuscript can create, is mapped in **the guide this page belongs to**. Memoir is the form where several of those categories arrive at once.

Defamation and privacy law vary by state, and this page is general information rather than advice about your manuscript. Where the law splits, I will say so.

## Why do publishers treat memoir differently from fiction and reported nonfiction?

Publishers treat memoir differently because three features stack inside one manuscript, and each one raises the price of the same sentence.

**The people are real and identifiable.** A memoir's cast comes from the author's actual life, so the subjects are findable, reachable, and often still in the author's phone. Renaming them does less than authors hope, because identification turns on the surrounding details rather than the label. Full analysis: **Does changing the name actually protect you?**

**The proof is usually one person's memory.** A reporter arrives with a file: notes, recordings, documents, a second source, an editor who asked for both. A memoirist arrives with recollection, which is honest and is not the same thing as evidence. That gap is where legal review spends its time.

**The book is sold as true.** Genre framing is a promise to the reader, and the promise is the point of the form. A reader who opens a memoir takes the sentences as assertions about things that happened, which is the reading that makes a statement actionable when it turns out to be wrong.

Reported nonfiction carries the institution: the outlet, the process, the file, and an editor whose job was to ask where each fact came from. Memoir carries the author.

#### HOW A PUBLISHER READS THIS

The acquisition question is never whether the house would eventually win. The question is what the file looks like on the day a letter arrives. A memoir with a cast list, a documentation column, a lawyer's read, and an insurance quote is one the editor can defend to a board in four minutes. A memoir without those is a request for the room's trust, and trust is not a line item. Editors are rarely squeamish about sharp material. They are squeamish about material nobody has priced.

## What makes a memoirist’s claims harder to defend?

Documentation, and who has to produce it. Most authors believe truth ends the conversation. Truth does answer a defamation claim, since a false statement of fact is what the tort requires, though which side has to prove the point varies with the setting and the state.

The Supreme Court put the burden of proving falsity on the plaintiff where a newspaper publishes speech on a matter of public concern. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986). Read the boundaries, because a memoirist lives near them. The Court left the rule’s application to nonmedia defendants open, and noted that private-concern speech involving a private-figure plaintiff does not necessarily change the common-law rules.

Your chapter about your stepfather’s drinking is not obviously speech on a matter of public concern, and you are not obviously a newspaper. **So the comfortable assumption that your subject has to prove you wrong may not hold, and in some states the burden may sit with you.** Keep every source, calendar, message thread, and record you have. The question in the room is rarely whether it happened. The question is what you can show.

Memoir puts the author in an unusual position, and it is worth naming plainly. You are the witness and the defendant at the same time. A reporter's credibility question is whether the sources were reliable. A memoirist's credibility question is whether you were, which is why a memoir file that contains anything other than the author's own recollection carries weight out of proportion to its size. A dated photograph. A group text. A sibling who remembers it the same way and will say so.

Two craft conventions get memoirists in trouble, and neither is a mistake.

The first is "this is my truth." Labeling a factual accusation as perception does less than it sounds like it should. The Supreme Court declined to create a wholesale defamation exemption for anything called opinion, holding that liability turns on whether a statement implies a provably false factual assertion, and that saying "in my opinion" before an accusation does not dispel the implication. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990). Hyperbole and imaginative expression that no reasonable reader takes as literal fact stay protected.

The second is reconstructed dialogue, the quotation marks memoirists put around lines nobody recorded, because the scene needs them and the convention is older than any of us. On altered quotations the Supreme Court held that a deliberate alteration of a speaker's words does not equate with knowledge of falsity unless the alteration results in a material change in the meaning conveyed. *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496 (1991). The Court also refused to treat a fabricated quotation as a rational interpretation of what a source said, reasoning that quotation marks tell a reasonable reader the words were actually spoken. **What gets weighed is whether the change altered the meaning, not whether your memory was stenographic.**

**substantial truth.** Substantial truth is the principle that minor inaccuracies do not make a statement false so long as the gist of the charge is justified, the test being whether the statement would have a different effect on the reader's mind than the literal truth would have produced. *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496 (1991). Formulations vary by state.

Who your subject is changes the bar. A public official suing over a passage about official conduct must prove actual malice, meaning knowledge of falsity or reckless disregard of it. *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). Most memoir casts are nothing of the kind, and private-figure subjects are governed by whatever fault standard their own state has set, since states may set their own so long as they impose no liability without fault. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). The sorting logic is in **Why you can write about some people and not others**.

## Can a memoir be completely true and still draw a claim?

Yes, and this is the part that surprises memoirists most. Privacy law reaches disclosure rather than falsehood, so a chapter can be accurate in every particular and still support a claim in states that recognize the tort.

The branch that reaches memoir is public disclosure of private facts, which requires both that the publicized facts would deeply offend a reasonable person and that the public has no legitimate interest in them. *Haynes v. Alfred A. Knopf, Inc.*, 8 F.3d 1222 (7th Cir. 1993). Adoption and phrasing vary by state, and the newsworthiness element is worded differently across jurisdictions.

*Haynes* is worth knowing in detail, because it is a book case with a publisher as a defendant. A work of narrative social history named a real couple and described their poverty, drinking, and the collapse of their marriage. The court affirmed summary judgment for the author and the publisher, holding the details germane to a story of legitimate and transcendent public interest, and reasoning that people who never sought attention have no right to extinguish it when the experiences that befell them are newsworthy. **Then it said the thing that should stop every memoirist mid-sentence: pseudonyms would not have saved the defendants, because the surrounding details identified the plaintiffs regardless of the names.** The court also flagged that intimate physical details sit differently, and left that question open.

Two lessons come out of the case, and neither is a promise about your manuscript. Germaneness carries weight, so a private detail doing load-bearing work in your argument is in a better position than one there for texture. And a rename is not a plan.

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## WHAT COURTS HAVE SAID

A neutral summary of the decisions carrying this page. Legal background, and jurisdiction matters on all of it.

- ***Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986).** Where a newspaper publishes speech on a matter of public concern, a private-figure plaintiff must show the statements are false, and the common-law presumption of falsity does not stand. The Court reserved the question for nonmedia defendants, and for private-concern speech involving a private figure.
- ***Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990).** No separate constitutional privilege exists for statements labeled opinion. Liability turns on whether a statement implies a provably false factual assertion. Hyperbole and statements no reasonable reader takes as fact remain protected.
- ***Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496 (1991).** Altering a speaker's words does not equate with knowledge of falsity unless the alteration materially changes the meaning conveyed. The Court declined to protect fabricated quotations as a rational interpretation of a source, reasoning that quotation marks signal a verbatim account.
- ***New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), with *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).** A public official suing over official conduct must prove actual malice.

For private individuals, states set their own fault standard so long as they impose no liability without fault, and presumed and punitive damages require that same showing.

- ***Haynes v. Alfred A. Knopf, Inc.*, 8 F.3d 1222 (7th Cir. 1993).** The private-facts branch requires facts that would deeply offend a reasonable person and in which the public has no legitimate interest. The court affirmed judgment for an author and publisher on a narrative social history, held the details germane to a story of legitimate and transcendent public interest, and observed that pseudonyms would not have concealed the plaintiffs. It left the treatment of intimate physical details open, and other courts word the newsworthiness element differently.

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## What four moves make a memoir acquirable?

Four artifacts do most of the work, because each converts something the house takes on faith into something it can file.

**clearance review.** A clearance review is a passage-level legal read of a manuscript before publication. It inventories every factual claim about identifiable people and entities, assesses the exposure each one carries, and recommends the smallest change that removes the risk while keeping the substance. Publishers run their own through counsel. Authors can commission theirs first.

**media perils insurance.** Media perils insurance, also called media liability coverage, is a policy written to respond to claims arising from published content: defamation, the privacy torts, and infringement among them. Coverage, exclusions, and the retention the insured pays before the carrier does all vary by policy.

**additional insured.** An additional insured is a person or entity added to someone else's policy by endorsement, so the policy responds on their behalf within its terms. Whether an author can be added to a publisher's media policy turns on the policy, the carrier, and what the publishing contract says.

| De-risking move | What it costs | What it changes for the publisher | When to do it |
|---|---|---|---|
| Clearance review | A legal fee, quoted per manuscript. I quote mine flat, based on length | Replaces “trust the author” with an inventory of what the book claims and what supports each claim | Before delivery, and before submission if the book is still on the market |
| Attorney review letter | Usually built on the clearance review, so the added cost is the letter itself | Gives the editor a document to hand to counsel and carry into an acquisition meeting | After the review, written off the revised draft |
| Media perils insurance | A premium, underwritten against the manuscript and the author’s history with the material | Puts a carrier behind part of the defense cost, subject to the policy’s terms and retention | Priced early, while there is time to answer underwriting questions |
| Additional insured status | A negotiation rather than a purchase, turning on the publisher’s policy and its carrier | Brings the author inside coverage the house already buys, where the endorsement allows | At contract negotiation, not after delivery |

The letter deserves a definition, since authors keep asking what is in one. An attorney review letter is a written assessment from counsel describing the manuscript’s risk areas and what was done about them, prepared so a publisher can rely on it and file it. Houses and their insurers differ on what they want it to say, so ask before it gets written rather than after.

What a review actually finds is worth saying too, because authors picture a hunt for the shocking chapter. In my own review practice the flags cluster somewhere duller. A claim about someone's finances or health, stated as fact, with nothing behind it. A scene reconstructed to include a person who was not in the room. An accusation carried by an implication the author never meant to make. A passage that reads fine about a living person and turns into a problem when it names their employer. **The shocking chapter is often the best documented thing in the book, because the author knew it mattered and kept the receipts.**

If you are looking at a passage in your own manuscript and you are not sure which side of the line it falls on, that is the conversation I have most often. Happy to have it with you.

**Book a free clearance consultation**

## In what order do you make those moves, and by when?

In the order above, and all of it before you deliver. Sequence matters for a reason most authors never hear: your contract's warranties attach to the manuscript you hand in, which makes delivery the moment your promises about the book go live. Revision before that date costs effort. Revision after it costs leverage. How warranty and indemnity architecture works alongside manuscript-level fixes is the subject of How publishers decide whether your book is safe to publish.

The sequence:

1. **Commission the clearance review before delivery.** Give the lawyer the full draft, not the chapters you are worried about, because the passages authors flag and the passages counsel flags overlap less than you would guess.

2. **Have the review letter written off the cleared draft.** A letter written against a draft you have since revised is worth very little to the house.

3. **Price media perils insurance while the contract is still open.** Underwriting asks questions, and the answers take time to assemble.

4. **Request additional insured status in the same negotiation.** Coverage questions are cheap before signature and expensive after a letter arrives.

5. **Deliver with the artifacts attached.** Bring the file itself, not a description of it.

If the manuscript is already delivered, none of this is wasted, and the sequence simply costs more. The review still lowers the exposure, the letter still gives the house something to file, and the insurance conversation still matters. What you no longer have is the quiet version, where a passage gets fixed before anyone at the publisher has read it and formed a view about you.

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### WHAT THIS MEANS FOR YOUR MANUSCRIPT

This week, build the inventory the review will need. One row per identifiable person, one row per claim you make about them, and a column for what supports each claim: a document, a message, a witness, or nothing but your memory. The rows with nothing in that column are your real manuscript. Bring that document to whoever reads the book for exposure and you cut the review time, the fee, and the number of surprises.

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## What if a subject won't sign, or a chapter can't be documented?

A refusal is a data point rather than a verdict, and the manuscript has more moves left than authors assume: attribute the claim to its source, narrow it to what your documentation supports, generalize an identifying detail that does no narrative work, or move an assertion from stated fact to clearly signaled perception. Each one trades something. The full playbook is in **What to do when they refuse to sign a release**.

Attribution is the move authors resist hardest, because it reads to them like hedging. It does the opposite. “My sister told me he had been fired twice” is a different claim from “he was fired twice,” and the first one you can support by producing your sister. Narrowing works the same way. A sentence that says exactly what your documentation supports, and stops, held up better in my own review practice than the sentence that says everything the author believes.

Undocumented material is a different problem with the same discipline. A claim you believe and cannot support is the passage most likely to cost you the argument you care about, because it hands the house a reason to distrust the rest of the file. Fix the weak claim and the sharp one usually survives.

> **"The memoirs that scared us were never the sharpest ones. They were the undocumented ones. A manuscript that arrived with a review letter and a release file read as a professional project, and the meeting about it took half as long."**
>
> Guy Muller, former general counsel of a US publishing company with global reach

## Questions to ask before you turn it in

### QUESTIONS TO ASK BEFORE YOU TURN IT IN

Answer these against your own draft, in writing, before anyone else reads it for exposure.

- Which people here are identifiable to their own circle, whatever name I gave them?
- For every factual claim about a living person, what would I hand a lawyer as support?
- Which quoted lines did I reconstruct, and does any reconstruction change what the speaker meant?
- Which private details are germane to the argument, and which are there for texture?
- Has anyone in this manuscript already objected, threatened, or hired a lawyer?
- What does my warranty clause require me to promise about what I deliver?
- Could I justify the three riskiest pages from documents tomorrow?

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**The Manuscript Risk Checklist.** Those seven questions are the memoir-specific version. The general set runs to twelve, drawn from the review standards I wrote for a publishing house. Direct, printable, built to be worked through with your draft open.

**Run the Risk Scorecard**

**If your memoir is going out on submission, or your delivery date is on the calendar.** I run flat-fee manuscript clearance reviews: a passage-level read of your draft, the exposure each flag carries, and the smallest fix that keeps your point intact. Quoted up front, based on length.

**See Manuscript Clearance pricing**

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## Common questions

### Why do publishers treat memoir differently from fiction?

Memoir names real people and asserts that what it says about them happened. Fiction can argue invention, though the novel label does not defeat a claim where readers recognize a real person in a character. Memoir also rests on one person's recollection rather than an institution's reporting file, so the proof problem lands on the author.

### What is a clearance review and what does it cost?

A clearance review is a passage-level legal read of a manuscript before publication. It inventories every factual claim about identifiable people, assesses the exposure each one carries, and recommends the smallest change that removes the risk while keeping the substance. Fees differ by lawyer. I quote mine flat, based on length.

### What is an attorney review letter?

An attorney review letter is a written assessment from counsel describing a manuscript's risk areas and the steps taken to address them, prepared so a publisher can rely on it and put it in the acquisition file. It is normally written after a clearance review and off the revised draft. Publishers and their insurers differ on the form they want, so ask before it is written.

### Can a first-time memoirist get media perils insurance?

Availability depends on the carrier, the manuscript, and the author's own history with the material, so the answer comes from a broker rather than a rule. What underwriters ask about has been consistent in my experience: who you name, what documents back your claims, whether releases exist, and whether anyone has already threatened a claim. Price it while the contract is still open, because the answer changes what you can negotiate.

### Will these steps guarantee acquisition?

No. Nothing guarantees an acquisition, and no lawyer can promise an outcome. What the four moves change is the shape of the decision, because the house is then choosing between a documented risk it can estimate and a different book. In my experience on the publisher side, an editor holding a file can make the argument in a meeting, and an editor holding only a manuscript is asking the room for trust.

**By Guy Muller, former General Counsel of Greenleaf Book Group**
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## Related guides

**PART 6**

## What to do when they refuse to sign a release

A refused release closes a shortcut without closing the book. What remains: narrow to what you can prove, attribute, de-identify, or price the risk.

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