THE COMPLETE SERIES

What You Can and Can't Say: A Legal Guide for Writers and Publishers

Guy Muller, former General Counsel of Greenleaf Book Group

Muller Media Law, a DBA of Guy Muller Law Firm, PLLC. San Antonio, Texas.

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PART 1 OF 7

What You Can and Can't Say: A Legal Guide for Writers and Publishers

Quick answer. Legal risk in a book concentrates in five areas: defamation, invasion of privacy, right of publicity, copyright and permissions, and contract or confidentiality obligations. Publishers evaluate that risk as a business decision, weighing the probability of a claim against its cost. Most flagged passages can be revised to remove the exposure while keeping the point.

You spent years on this book. Somewhere in it is the thing you were afraid to write, and you wrote it anyway, because the book doesn't work without it. Now an editor, an agent, or a lawyer has told you that part of it is a problem. Nobody has explained which passages carry real danger, which flags are a nervous reader covering themselves, or what your options are besides cutting.

I spent years on the other side of that conversation. I was general counsel of a US book publishing company with global reach. I wrote the standards our editors flagged manuscripts against, and then I read the flags, week after week, and decided what went out into the world. I've seen sharp books survive review with everything that mattered intact, and I've seen books get sanded down to nothing for no legal reason at all. The difference was almost never the manuscript. The difference was whether anyone in the room understood how the decision actually gets made.

So that's what this guide is. Publishing risk, explained from the inside: the legal claims a book can draw, the business costs a publisher weighs, and the specific moves that let you keep the true thing you came to say. It's written for authors first, and for the editors, agents, and publishers who have to make these calls with them.

One note before we start. Defamation, privacy, and publicity law vary by state, and this page is general information, so treat it as a map rather than advice about your manuscript. Where the law splits, I'll say so. None of this is legal advice, and reading it is not a substitute for consulting your own attorney about your specific and unique situation.

THE DEEP DIVES

This page is Part 1. Each part that follows takes one question further than the section that raises it here.

How do publishers decide whether a book is safe to publish?

Publishers decide by pricing the risk. The price has two parts: how likely a claim is, and what the claim costs if it comes. Whether the publisher would eventually win in court is a minor input, because most of the cost arrives long before any verdict.

Authors walk into this conversation with the wrong model. The author is thinking about rights, truth, and courage. The acquiring editor is sitting in a margin business where one bad outcome can erase the profit on twenty good books. When a manuscript gets flagged, the questions moving through the publishing house look like this:

- What is the probability anyone complains at all?
- If someone complains, what does the response cost before a suit is even filed? Lawyers answer demand letters at hourly rates, and those bills arrive whether or not the complaint has merit.
- Can distribution be delayed, and what does a slipped publication date cost across retail commitments, review coverage, and the author's own publicity?
- If books are already printed, what do a recall, pulping, and reprint cost?
- What do the retailer and distributor relationships look like afterward?
- What does the exposure do to the imprint's reputation with agents and future authors?
- Does the author have assets behind the indemnity clause, or is that clause decorative?
- Is there insurance, what is the retention, and does a claim affect renewal?

Read that list again, because it explains almost every frustrating thing a publisher will ever say to you. A passage can be legally defensible and still commercially unpublishable, and a passage can carry real legal risk that a publisher happily accepts because the probability of a complaint is near zero and the book is worth it.

Once you understand that the decision is priced, you can argue price. An author who says "the First Amendment protects me" changes nothing, and I say that as someone who now litigates tort cases for plaintiffs. An author who says "this subject has no history of litigation, the passage is documented in these three sources, and I'll take a revision that keeps the substance" changes the calculation. The full framework, including how manuscript fixes and contract terms work together, is in How publishers decide whether your book is safe to publish, coming to this library.

The same logic answers the bravest sentence in publishing: "I don't care if I get sued." Your publisher does, because your publisher gets sued with you, on a thinner margin than yours. I wrote out those economics, from response costs to pulped inventory, in **"I don't care if I get sued." So why does your publisher?**

HOW A PUBLISHER PRICES A FLAGGED PASSAGE

01
Flag raised

02
How likely is a complaint? Subject's litigation history, visibility, relationship to author.

03
If a complaint comes, what does it cost? Response, delay, recall, insurance retention.

04
Can the passage be revised to cut the exposure and keep the point?

Exits: publish as is | publish revised | escalate

HOW A PUBLISHER READS THIS

When an editorial director forwards a flagged passage to counsel, the question on the email is some version of "how bad, and what would make it publishable." The useful author response addresses exactly those two things: evidence that lowers the probability of a claim, and revisions that lower the cost if one comes. Authors who arrive with documentation and flexibility get more of their book through review. Authors who arrive with a constitutional argument get a shorter meeting.

What are the five ways a book creates legal exposure?

Five doctrines produce nearly every legal problem a manuscript can have. Everything a lawyer flags in a book traces back to one of these, and each one has its own logic, its own defenses, and its own fix.

Category	What it protects	What triggers a claim	Does truth defeat it?	Where it shows up in books
Defamation	Reputation	A false factual statement about an identifiable living person	Yes. Falsity is required	Memoir, exposé, fiction with recognizable people
Privacy torts	Private life	Publicizing private facts, intruding to gather material, or portraying someone in a false light (where recognized)	No. Most privacy claims accept the statement is true	Memoir, family stories, true crime
Right of publicity	Commercial value of identity	Using a name, image, or persona to sell something	Not relevant. The issue is use, and it varies by state	Covers, ads, merchandise, celebrity-adjacent projects

Category	What it protects	What triggers a claim	Does truth defeat it?	Where it shows up in books
Copyright and permissions	Someone else's creative work	Reproducing protected text, lyrics, images, or letters beyond what fair use allows	Not relevant. The issue is copying	Epigraphs, quoted lyrics, photos, correspondence
Contract and confidentiality	Promises you made	NDAs, separation agreements, trade secrets, and your own publishing contract's warranties	No. Contracts can restrict true statements	Business books, corporate memoir, exposé

The elements above are the common formulation. Each state's defamation law sets its own precise wording and fault standard.

The next five sections walk through each category at the depth a working writer needs. The deep-dive pages linked throughout go further.

What is defamation, and where do book claims actually come from?

Every state defines defamation somewhat differently, but the common formulation is a false statement of fact about an identifiable living person, communicated to a third party, that damages the person's reputation, with the specific elements and fault standard set by the law of the state where the claim is brought. Every word of that sentence is doing work, and each one is a place where claims live or die.

False. A defamation claim needs falsity. Accurate statements defeat it, which is why documentation is the spine of every risky book. Keep your sources, your records, and your interview notes, because the practical question is rarely "is it true" and usually "can you show it."

Statement of fact. Opinions get protection, but the label does you less good than writers hope. The Supreme Court held in Milkovich v. Lorain Journal Co., 497 U.S. 1 (1990), that there is no blanket exemption for anything called opinion: a statement is actionable when it implies a provably false fact. "In my opinion, my business partner cooked the books" implies a provable fact. Writing "in my opinion" in front of an accusation changes almost nothing.

Identifiable. The person has to be recognizable, and recognizable means recognizable to people who know them. A changed name with a real job, a real city, a real timeline, and a real sequence of events does little to protect a subject, because identifiability turns on whether people who know the subject can recognize them from the surrounding details, not on the name itself. Identifiability is the real test, and it's the single most misunderstood concept in publishing risk. I wrote a full page on it: **Does changing the name actually protect you?**

Fault. How careless you were matters, and the standard depends on who you wrote about. These two rules come from the Supreme Court and apply nationwide:

Who you wrote about	What they must prove	Source
Public officials and public figures	Actual malice: you knew the statement was false or recklessly disregarded whether it was false	New York Times Co. v. Sullivan, 376 U.S. 254 (1964), and its extension to public figures
Private individuals	Each state sets its own standard, and every state must require at least some fault, commonly negligence	Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974)

Actual malice. Actual malice is a legal term of art, and it has nothing to do with hating anyone. It means publishing with knowledge that the statement was false, or with reckless disregard for whether it was false. The Supreme Court has described reckless disregard as entertaining serious doubts about the truth and publishing anyway. St. Amant v. Thompson, 390 U.S. 727 (1968).

The practical consequence runs in the author's favor more often than authors expect: sharp, documented criticism of public people on public conduct is among the best-protected speech in American law. The unglamorous claims are the dangerous ones. The brother-in-law in chapter four, private figure, lower fault standard, motivated for reasons that have nothing to do with your book. That asymmetry, and the other factors that decide who is safe to write about, get a full treatment in **Why you can write about some people and not others**.

One more thing writers ask constantly: calling it fiction does no work by itself. If readers who know your subject can recognize them in your character, a defamation claim survives the novel label. The fiction pages in this library cover it, and the short version is that the identifiability analysis above applies with the names changed.

How can a true story still be legally risky?

A true story can still be legally risky because privacy law punishes disclosure rather than falsehood. Defamation asks whether you lied. Privacy asks whether some truths were yours to publish, and it's the category that surprises memoirists most.

American courts commonly sort privacy into four separate torts, following the framework in the Restatement (Second) of Torts: public disclosure of private facts, intrusion upon seclusion, false light, and appropriation of name or likeness. Adoption varies state by state, and the variance is real rather than academic.

Public disclosure of private facts is the memoirist's tort. The claim runs against publicizing intimate, non-newsworthy facts about a private person: medical history, sexual life, financial details. The defense that matters is legitimate public concern, and courts give real weight to it, but its edges vary by state and the analysis is fact-specific.

Intrusion upon seclusion targets how you gathered material rather than what you published. Recording someone in their home, accessing accounts or files you had no right to open, going through papers that were locked away. An exposé built on well-sourced documents someone gave you sits differently from one built on documents you took, and the intrusion analysis can apply even when everything published is accurate.

False light, where it exists, covers technically-true-but-misleading portrayals that a defamation claim can't reach. Some states refuse to recognize it at all. Texas is one of them: the Texas Supreme Court rejected the tort in Cain v. Hearst Corp., 878 S.W.2d 577 (Tex. 1994), reasoning that it duplicates defamation while evading defamation's free-speech safeguards. Other states apply it regularly. A portrayal that is safe in Dallas can support a claim in another state, and books distribute nationally, which is exactly why a clearance read checks more than one state's law.

Appropriation overlaps with the right of publicity, covered next.

The pattern worth keeping: truth is the complete answer to defamation, and truth is barely a defense at all in privacy. A clearance review reads every passage twice for that reason, once asking "can this be proven" and once asking "should this be published about this person at all."

WHAT COURTS HAVE SAID

A short, neutral summary of the decisions carrying the load on this page. Legal background, and jurisdiction matters on every one of them.

- New York Times Co. v. Sullivan, 376 U.S. 254 (1964). Public officials cannot recover for defamation about their official conduct without proving actual malice: knowledge of falsity or reckless disregard of it. The constitutional floor for writing about public people.
- Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974). Private-figure plaintiffs are different. States define their own fault standard for private individuals, so long as they impose no liability without fault. Where you publish and where the subject lives start to matter.
- Milkovich v. Lorain Journal Co., 497 U.S. 1 (1990). There is no wholesale exemption for statements labeled opinion. The test is whether the statement implies a provably false fact. Rhetorical hyperbole and statements no reasonable reader takes as fact stay protected.
- Cain v. Hearst Corp., 878 S.W.2d 577 (Tex. 1994). Texas rejects false light invasion of privacy outright, while other states recognize it. The cleanest single example of why "it depends on the state" is a real answer and never a dodge.

When does the right of publicity touch a book?

The right of publicity protects the commercial value of a person's name, image, and identity, and it lives in a patchwork of state statutes and common law. Some states protect identity after death, some don't, and the terms vary enough that any concrete question needs a specific state's law in front of it.

For working writers the shape of it is simpler than the patchwork suggests. Books are expressive works, and courts have generally given expressive works breathing room that they refuse to give commercial products. Writing about a celebrity in a biography sits near the protected core. Putting that celebrity's face on the cover of a book that has nothing to do with them, using their name in advertising, or spinning off merchandise moves toward the danger zone. The publicity questions I saw as a publisher's GC came from covers, marketing, and title pages far more often than from the text itself.

What do you need permission to quote or reproduce?

Permission questions come down to three things: what you're copying, how much of it, and what your use does to the market for the original. Copyright is federal law, uniform across the country, which makes this the one category where the rules don't shift under you at the state line.

Fair use is the doctrine everyone has heard of and almost everyone overstates. The statute, **17 U.S.C. § 107**, sets out four factors courts weigh: the purpose and character of your use, the nature of the work you're quoting, the amount and substantiality of what you took, and the effect on the market for the original. Fair use is a case-by-case defense, decided on specific facts, and no honest lawyer will certify a use as fair in advance. Anyone who gives you a safe word count is making it up. The Copyright Office says the same thing in its **Fair Use Index**: there is no formula.

A few practical patterns from years of watching permissions fights:

- **Song lyrics and poetry are the expensive category.** The works are short, so a line or two is a meaningful fraction of the whole, and an active licensing market means your unpaid use has an obvious price tag. Publishers routinely require licenses for quoted lyrics, and the license can cost more than the epigraph is worth to you.
- **Prose quotation has more room,** at least in the sense that courts weighing the purpose-and-character factor give real weight to whether a quotation engages with, criticizes, or builds on the original, as opposed to using it as decoration. That factor is one of four, and no single factor decides the outcome.

- **Letters, emails, and texts belong to their writer.** As a general rule, whoever wrote the words owns the copyright in them. Receiving a letter gives you the paper, and publishing its text is a separate question. Memoirists quoting a parent's letters are quoting someone else's copyrighted work, and the same logic reaches emails and text threads.
- **Photographs belong to the photographer.** Owning a print, appearing in the picture, or paying for the shoot doesn't by itself give you the right to reproduce it, absent an agreement that transferred rights.
- **Naming real brands is usually a different problem than writers think.** Mentioning a trademarked product in prose is not, by itself, trademark infringement, since trademark law targets confusion about source or sponsorship rather than the mere use of a name in a narrative. The trouble starts when the story's treatment of the brand reads as a false factual claim about it, which circles back to defamation and its cousins rather than trademark.

Deep dives on lyrics, quotation, letters, photographs, and ownership questions like ghostwriting and AI are all part of this library, each built around the specific permission fight it covers.

What did your contract already promise your publisher?

Your publishing contract almost certainly contains a warranty section and an indemnity clause, and together they move publishing risk from the publisher to you. Almost nobody explains those clauses to authors, and I've come to believe the silence is structural: the person who drafted them sits on the other side of the table.

The standard architecture works like this. You warrant that the book is original, that it doesn't infringe anyone's rights, that it isn't defamatory, and that its statements of fact are accurate. Then the indemnity clause says that if anyone brings a claim tied to a breach of those warranties, you cover the publisher's losses, and depending on the drafting, its defense costs. On a book that earns you a fifteen thousand dollar advance, you can be standing behind a company many times your size.

> **Indemnity.** Indemnity is a promise to cover someone else's losses. When an author indemnifies a publisher, claims about the book's content become the author's financial problem, including, under many contracts, the cost of defending claims that fail.

Three things follow, and they're worth more than any other contract advice you'll get this year:

- **Read the warranty clause before you deliver the manuscript,** and behave as if every warranty is a checklist. The warranties are promises about the words on the page, so the clearance work has to happen before delivery, when revision is still cheap.
- **Scope matters and is negotiable.** Whether the indemnity covers claims or only breaches, whether it reaches settlements made without your consent, whether there's a cap: these are drafting choices, and agents concede them more often than they should.
- **Insurance changes the picture.** Publishers carry media liability coverage, and authors can sometimes be added to it. Whether that protection actually reaches you depends on the policy and the endorsement, and it's a question to raise before signing rather than after a demand letter arrives.

Contracts also restrict speech from the other direction. An NDA, a separation agreement, or a fiduciary obligation can make a passage legally dangerous even though every word is true and no tort applies. Business memoirs live and die on this, and the business and confidentiality pages in this library treat it at length, including what your old employment paperwork actually covers and what it can't reach. Newer contracts add one more layer: AI clauses, with warranties about how the manuscript was made. Those clauses are evolving quickly enough that they get their own pages here, kept on a quarterly review cycle.

What does Texas law add to the picture?

For a book with Texas connections, four Texas rules change the practical math: a one-year clock, a correction-request statute with teeth, an early-dismissal law that shifts fees, and a publicity right that runs fifty years past death. I practice in Texas and this site is grounded here, and the state also makes a useful demonstration: when lawyers say defamation law varies by state, this is the kind of variance they mean.

The clock is short. Texas gives a defamation plaintiff one year to sue for libel or slander, measured from when the claim accrues. Tex. Civ. Prac. & Rem. Code § 16.002(a). When accrual happens has its own case law, so treat the precise start date as a lawyer's question, and treat the practical point as settled: the Texas window is short.

The retraction letter has statutory teeth. Under the Texas Defamation Mitigation Act, a plaintiff may maintain a defamation action only after making a timely and sufficient request for a correction, clarification, or retraction, or where the publisher has already made one. Tex. Civ. Prac. & Rem. Code § 73.055(a). A plaintiff who lets ninety days pass after learning of the publication without requesting one gives up exemplary damages. § 73.055(c). And a correction made in compliance with the statute takes exemplary damages off the table unless the publication was made with actual malice. § 73.059. In Texas, the letter demanding a retraction is a statutory event with deadlines and consequences running in both directions, and the response deserves counsel rather than instinct.

Weak claims can die early, at the claimant's expense. The Texas Citizens Participation Act, the state's anti-SLAPP statute, lets a defendant move for early dismissal of a legal action based on or responding to the exercise of the right of free speech, the right to petition, or the right of association. Tex. Civ. Prac. & Rem. Code § 27.003. If the court dismisses, it must award the moving party court costs and reasonable attorney's fees, and it may add sanctions calibrated to deter similar suits. § 27.009(a). The statute was amended effective September 1, 2019, so older commentary about its reach needs checking against the current text. For authors and publishers, the TCPA moves the probability side of the risk math on Texas-filed claims.

The dead have publicity rights here, for a while. Texas protects a deceased individual's name, voice, signature, photograph, and likeness, and the protection has an end date: the statute permits any use after the fiftieth anniversary of the individual's death. Tex. Prop. Code § 26.012(d).

And the Texas tort map from earlier on this page, gathered in one place: private figures suing media defendants must prove negligence, a standard the Texas Supreme Court has not extended to non-media defendants, Neely v. Wilson, 418 S.W.3d 52 (Tex. 2013); the private-facts tort runs on publicity given to private matters, offensiveness to a reasonable person, and the absence of legitimate public concern, Star-Telegram, Inc. v. Doe, 915 S.W.2d 471 (Tex. 1996); and false light claims fail outright under Cain v. Hearst Corp., 878 S.W.2d 577 (Tex. 1994).

Texas is one state. Every state has a stack like this, its own clock, its own procedural gates, its own tort map, and a book distributes into all of them at once. A clearance read checks the states that matter to your subject, and your home state is only the first of them.

Why is memoir the category publishers worry about most?

Memoir concentrates every category on one page: real people, identified or identifiable, in private moments, described by someone they know, sold as true. A novelist can argue invention and a journalist can point to institutional standards and editors. A memoirist is a single witness selling recollection, and publishers price that accordingly.

The publishing houses aren't wrong about the category, but the right response is engineering rather than retreat. A memoir becomes acquirable when the author does four things: gets a clearance review before delivery, obtains an attorney review letter the publisher can rely on, prices media perils insurance, and, where the deal allows, gets added as an additional insured on the publisher's policy. Each of those moves is explained in **Why memoir is the riskiest category in publishing, and how do you de-risk yours?**

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

Memoirists also collide with the two most maddening features of publishing risk. The first is that publishers seem inconsistent about who needs a release and whose name gets changed, and the apparent inconsistency is actually a set of factors nobody wrote down for you: public figure status, newsworthiness, provability, whether the person is dead, whether they're realistically litigious, and whether the portrayal is one no release would ever cover. I unpack that logic in **Why you can write about some**

people and not others. The second is the release that doesn't come. When the person says no, you still have options, and the practical playbook, with what changes in the manuscript when a release is off the table, is in **What to do when they refuse to sign a release**.

WHERE THE RISK CONCENTRATES

	Defamation	Privacy	Publicity	Copyright	Contract
Memoir	**High**	**High**	Low	Moderate	Moderate
Exposé and business book	Moderate	Moderate	Low	Low	**High**
Fiction	Moderate	Low	Low	Low	Low

Typical heat by category; any single manuscript can run hotter or colder than its shelf.

What does legal review actually do to your book?

A competent legal read inventories the manuscript's factual claims about real people and entities, flags the ones carrying exposure, and recommends a fix for each flag. A weak legal read does something simpler: it deletes whatever made the reader nervous. Authors need to know the difference, because the two look identical in a margin comment.

From the inside, I watched the same two failures repeat for years, and they're the reason this guide exists. Authors give up material they were entitled to keep, because nobody told them the flag was precautionary. And authors burn their credibility defending material that actually endangers them, because nobody separated the two categories of flag. Both failures come from the same gap: the publisher has counsel, a risk framework, and an indemnity clause pointing at the author, and the author has a manuscript and no vocabulary for the conversation.

The vocabulary is buildable. When a flag comes back, ask three questions. Which claim, exactly, and about whom? What's the theory: defamation, privacy, contract, permission? And what revision would clear it? A flag that can't survive those three questions was reflex. A flag that can survive them deserves your full attention, and usually has a fix short of amputation: attribute the claim to its source, narrow it to what your documentation supports, generalize the identifying detail that does no narrative work, or move the assertion from fact to clearly-signaled perception. The sharp thing in your book is almost always keepable. What has to change is the unsupported thing wearing the sharp thing's clothes.

"A good legal read protects the book without removing the reason it matters. I've watched both versions happen from the general counsel's chair, and the difference isn't caution. The difference is whether the reviewer knows the law well enough to fix a sentence instead of cutting it."

Guy Muller, former general counsel of a US publishing company with global reach

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

Book a free clearance consultation

Who wrote this?

I'm Guy Muller. Before I started my own firm, I was Associate General Counsel of a technology company and then General Counsel of a US book publishing company with global reach and roughly thirty years of operating history. I handled the publisher's contracts, intellectual property, licensing, work-for-hire agreements, board governance, and M&A, and I wrote the manuscript review standards our editorial team worked from. Editors flagged passages against those standards, and the flags came to me. I read them every week, at volume, and made the recommendations that decided what we published.

Today I'm a plaintiff trial lawyer in Texas, and the cases I litigate are personal injury cases. A personal injury is a tort: a civil wrong, one person's conduct injuring another, that the law remedies with money damages. Defamation, invasion of privacy, false light, and misappropriation are torts from that same family. Those are the injuries I work to prevent on the front end rather than litigate after the fact. The combination shapes everything on this page: I priced manuscript risk from inside a publishing house, I try tort cases, and I spend my working life thinking about how claims actually get brought.

Texas is strict about specialization claims, so I'll put it plainly instead: this is work I did, weekly, for years, from the chair where the decision gets made. More on the background is at **About**.

Where should you go deeper?

6 deep-dive pages are live now, built in the same spirit as this one: what's actually dangerous, what isn't, and what to do about it.

PART 2

Does changing the name actually protect you? Identifiability as the real test, and what genuine de-identification requires.

PART 3

"I don't care if I get sued." So why does your publisher? The economics that drive every publishing decision about risk.

PART 4

Why is memoir the riskiest category in publishing, and how do you de-risk yours? The four moves that make a memoir acquirable.

PART 5

Why can you write about some people and not others? The factors behind the apparent inconsistency.

PART 6

What to do when they refuse to sign a release Options and tradeoffs when the answer is no.

PART 7

Can you write about your ex, your parents, or your siblings? You can write about family without their permission. Relatives are private figures, they recognize themselves through renaming, and proof matters most.

The Manuscript Risk Checklist. Twelve questions to answer about your manuscript before you turn it in, drawn from the review standards I wrote for a publishing house. Direct, printable, and built to be worked through with your draft open.

Run the Risk Scorecard

Take the whole guide with you

Every part of this guide compiled into a single PDF. Any single part can also be downloaded from its own page.

Common questions

Can I be sued over something true?

Yes. Truth defeats defamation, and truth is not a defense to the privacy torts, which target the disclosure itself. A contract, like an NDA or a separation agreement, can also restrict true statements. And anyone can file a claim that fails, which is why publishers price defense costs rather than verdicts.

Will changing names protect me?

Changing a name is a courtesy, and by itself it is weak protection. The legal test is identifiability: whether people who know your subject can recognize them from the surrounding details. Job, city, timeline, and relationships identify a person to their own circle quickly, and the subject's own circle is where claims come from. The full analysis is in **Does changing the name actually protect you?**

Do I need permission to write about real people?

No. American law requires no one's consent to be written about, and public conduct by public people is among the best-protected subject matter there is. Risk comes from what you say: false factual claims, private facts without public concern, or material you gathered improperly. Releases are a risk-management tool for specific passages, and a publisher asking for one is pricing a specific exposure.

My publisher's contract makes me responsible for their legal costs. Is that normal?

Standard, and worth negotiating anyway. Author warranties backed by an indemnity clause appear in essentially every trade publishing agreement. Scope is where the negotiation lives: what triggers the indemnity, whether it covers claims or only proven breaches, whether it's capped, and whether you're added to the publisher's media liability coverage.

Does the First Amendment stop my publisher from cutting a chapter?

No. The First Amendment restrains the government, and a publisher is a private company making a business decision about what it will spend money to print and defend. Your publisher can decline any passage for any reason. The productive move is a risk argument rather than a rights argument, which is the subject of the first section of this guide.

When is the right time for a legal review?

Before you deliver the manuscript, because that's when your warranties attach and when revision costs nothing but effort. A pre-delivery clearance review lets you fix passages on your own terms, arrive at the publisher's legal read with answers instead of surprises, and in some deals, gets a nervous acquisition over the line.

This guide is legal information, not legal advice, and reading it does not create an attorney-client relationship. Defamation, privacy, and publicity law vary by state; nothing here is advice about any specific manuscript. Muller Media Law is a DBA of Guy Muller Law Firm, PLLC. Not certified by the Texas Board of Legal Specialization. Attorney advertising.

Does changing the name actually protect you?

Does changing the name actually protect you? Changing a name removes the label and leaves the person. Under most states' defamation and privacy law, a claim requires an identifiable subject, and identification usually turns on job, place, timeline, and relationships more than on the name. Real protection means changing that constellation until the subject's circle would not know them, and some portrayals cannot be de-identified that far.

You called him Ray. In the manuscript he is Ray, he works somewhere else, and you moved the story one state over. Part of you thinks that settles it. The other part is why you are on this page, and the other part is right.

Renaming someone is a courtesy, and a signal to your publisher that you thought about the problem. I would rather you do it than not. As protection it does less than almost every author expects, because the name is not what the law is looking at. In my own review years it was the change authors were proudest of and the one that moved the analysis least.

Identifiability is the question underneath. In defamation it lives in the element courts call “of and concerning” the plaintiff, which asks whether readers understood the passage to be about this particular person. Privacy claims ask a version of the same thing before they ask anything else. Neither one asks what you called him. The full map of how the exposure categories fit together is on the main guide, **What You Can and Can’t Say**.

What does the law test when you change a name?

The law tests whether readers could tell the passage was about your subject. Every defamation claim has to clear an identification element, and the name is one input into that question rather than the question itself.

> **of and concerning.** The shorthand courts use for the identification element of a defamation claim: the plaintiff has to show readers would understand the publication to refer to them. A plaintiff can satisfy it without being named, and a named plaintiff can fail it.

The requirement is real, and plaintiffs lose on it. In New York Times Co. v. Sullivan, 376 U.S. 254 (1964), the Supreme Court refused to treat an impersonal attack on a police department as a libel of the commissioner who ran it, holding that an of-and-concerning showing resting on the bare fact of his office was constitutionally insufficient. Criticism of an institution is not automatically criticism of the person running it.

The element runs the other way too, and that half is the one authors miss. A plaintiff does not have to be named at all. The Second Circuit put it in a line worth keeping: "It is not necessary that all the world should understand the libel." Geisler v. Petrocelli, 616 F.2d 636, 639 (2d Cir. 1980). What matters is whether the people who knew the plaintiff could work out that she was the person meant, and extrinsic evidence is admissible to show it.

One feature of this element surprises working editors. Courts do not agree on who decides it. New York treats identification as a question for the court and threw out a novel case on the pleadings on that basis. Springer v. Viking Press, 60 N.Y.2d 916 (1983). Geisler said it generally goes to the trier of fact, and the Eighth Circuit called it a jury question read from the story as a whole. Ruzicka v. Conde Nast Publications, Inc., 999 F.2d 1319 (8th Cir. 1993). The consequence is money. Where identification reaches a jury, a weak claim lives longer and costs more to answer, which is the subject of **"I don't care if I get sued." Your publisher does**.

Which details actually identify a person?

Role, place, time, relationship, and the events themselves. The people most likely to complain already have all of them.

Ruzicka is the cleanest illustration I know. A magazine promised to conceal a source, then called her Jill Lundquist, described her as a Minneapolis attorney, and reported that she had served on the state task force behind a 1985 law on therapist-patient sex. She alleged she was the only woman lawyer on that task force. The name was invented. The description was a fingerprint. Deciding a broken promise of confidentiality, and borrowing the defamation identification standard to do it, the Eighth Circuit reversed summary judgment and sent identifiability to trial. The test is not the author's intent and not the subject's fear. It is the reasonable understanding of the reader.

Appearance and geography do the same work. In Elias v. Rolling Stone LLC, 872 F.3d 97 (2d Cir. 2017), two members of a fraternity chapter were held to have plausibly alleged that an article was of and concerning them individually, based on descriptions of how they looked and where their rooms were. No names appeared. Elias also carries a limit worth knowing: where a plaintiff relies on facts outside the publication to make the connection, those facts have to have been known to the people who read it. A detail only your subject could decode is not identification.

Volume counts as much as any single detail. In Smith v. Stewart, 291 Ga. App. 86 (Ga. Ct. App. 2008), a novelist built a character out of a friend's life, and the trial court counted at least twenty-six specific similarities: hair color, chronic lateness, chain-smoking and the cough that went with it, her parents' occupations, her childhood home, and facts about her life that were not public before the book. The defendants conceded the character was based on her and recognizable as her, and pointed to real differences, including the changed name, a sorority the plaintiff never joined, and a club she did not belong to. The Georgia court held those differences made a jury question rather than a defense.

Identification also fails, on facts that look uncomfortably close. Springer involved a minor character who shared the plaintiff's given name, height, weight, build, grooming habits, and recreational activities, and New York's high court held that combination insufficient as a matter of law. In Bates v. P.C. Cast, 316 P.3d 246 (Okla. Civ. App. 2013), a young-adult novel about a school for vampires gave a character a real woman's full name, and the author had publicly identified her as the real Erin Bates. The court found no identification anyway, because the character was a teenager, the plaintiff was in her mid-twenties, and the setting was invented. Readers can see the name and still not believe the character was meant to be her.

Read the four together and a working rule falls out. Identification tracks the density and specificity of what surrounds the name, not the name.

What each change actually removes

Identifier changed	What the subject's circle still recognizes	Residual risk
Name only	The job, the city, the years, the relationships, and the events themselves	Identification can still be built from the surrounding facts, as in Ruzicka, where a pseudonym sat next to a distinctive role.

Identifier changed	What the subject's circle still recognizes	Residual risk
Name and city	The role, the timeline, the relationships, the specific events	Relocation removes one coordinate. People who lived the events are working from the events.
Name, city, and occupation	The timeline, the relationships, and the shape of what happened	Three changes can carry a portrait past strangers. Family and colleagues are a different audience and often still get there.
Full constellation, including timeline and relationships	Little, where changes are consistent across the manuscript and the sequence no longer maps onto real events	Deep change can defeat identification. It also changes what the passage asserts, which is an accuracy question before it is a legal one.

Each row is a tendency, not a legal grade. Identification is decided case by case, on the work as a whole, under the law of the state where a claim is brought.

Does calling it fiction change the analysis?

No. Courts apply the same identification test to novels that they apply to journalism, and a disclaimer does not supply a defense the facts have not already earned.

Bindrim v. Mitchell, 92 Cal. App. 3d 61 (Cal. Ct. App. 1979), is the case to know before you start renaming. A novelist attended a psychologist's therapy sessions and wrote a novel about a version of them. In the book the therapist was heavy, bearded, and white-haired, under a different name. The real psychologist was clean-shaven with short hair. Identification was found anyway, on testimony from people who recognized his way of talking and his methods. The court asked whether a reasonable person reading the book would understand the character "was, in actual fact, the plaintiff acting as described." Changing how a character looks is the change that matters least to readers who know your subject.

One caveat on Bindrim belongs in the open. It is a 1979 decision from a California intermediate appellate court, and citator research flags it for caution, so treat it as illustration rather than as the rule in your state. The identification test it states appears in the same form in later decisions elsewhere, including Smith v. Stewart and Bates.

The Restatement (Second) of Torts states the rule at section 564, comment d, and it cuts both ways. A libel can be published of a real person through a work meant to deal only with invented characters, where the resemblance is close enough that readers reasonably understand a character is intended to portray that person. Similarity of name alone is not enough, and neither is recognizing a resemblance, unless readers also reasonably believe the character was meant to portray the person.

The copyright-page disclaimer does no work on its own. Geisler framed the question as whether a reasonable reader would rationally suspect the protagonist is the plaintiff, whatever the author and publisher say about the book being fiction. Smith v. Stewart made the point from the other side: where an author sets the action in real restaurants and hotels, researches details for accuracy, and builds a character out of a real person's biography, the label will not stop readers from taking the book as describing actual events. Keep the disclaimer. Do not mistake it for protection.

WHAT COURTS HAVE SAID

Identification standards are phrased differently across states, and the decision that governs your book is the one from the state where a claim gets filed.

New York Times Co. v. Sullivan, 376 U.S. 254 (1964). A defamation plaintiff must show the statement was of and concerning him, and a showing resting on the bare fact that he held office over a criticized department was constitutionally insufficient.

Geisler v. Petrocelli, 616 F.2d 636 (2d Cir. 1980). It is enough that those who knew the plaintiff could make out she was the person meant, and extrinsic evidence is admissible to show it.

Bindrim v. Mitchell, 92 Cal. App. 3d 61 (Cal. Ct. App. 1979). A fiction label does not bar a libel claim. The test is whether a reasonable person reading the book would understand the character to be the plaintiff acting as described. Citator caution noted.

Springer v. Viking Press, 60 N.Y.2d 916 (1983). A shared given name plus similar height, weight, build, grooming habits, and recreational activities was insufficient, as a matter of law, to make a minor fictional character of and concerning the plaintiff.

Bates v. P.C. Cast, 316 P.3d 246 (Okla. Civ. App. 2013). A character carrying a real woman's full name was still not of and concerning her, where the character's age and the wholly invented setting cut the other way.

Elias v. Rolling Stone LLC, 872 F.3d 97 (2d Cir. 2017). Unnamed people can be identifiable through description and circumstance, and a member of a small group can sue over a statement aimed at the group, weighing group size, whether the statement reaches all members or only some, and how prominent the group and its members are. A publication is read as a whole rather than line by line.

Can someone sue if only a few readers recognize them?

Yes, and the small readership is usually the dangerous one. The identification element asks whether people who knew the subject would recognize them, so a portrait that means nothing to a stranger and everything to a sister is exactly the shape that produces claims. Wide recognition is not the test, and it never has been.

The California court in Bindrim treated it as a publication question. Publication is satisfied when a statement reaches one person besides the subject, so whether most readers made the connection was beside the point. Formulations vary by state, and the lesson does not: your book has to be understood by the wrong reader, not a wide one.

Authors often pair a rename with a second move, folding a person into a group. That has its own doctrine, and it is narrower than it sounds.

small group defamation. A claim by an individual over a statement aimed at a group rather than at them by name. It works where the group is small enough that the statement can reasonably be understood to refer to each member, or where the circumstances point at a particular member.

Restatement (Second) of Torts § 564A states the rule, and Florida's court collected the numbers in Thomas v. Jacksonville Television, Inc., 699 So. 2d 800 (Fla. Dist. Ct. App. 1997): recovery has usually involved groups of twenty-five or fewer, and a class of 436 commercial fishermen was far too large. New York has gone further than the Restatement comment suggests. In Elias the Second Circuit allowed a small group claim by members of a fraternity chapter of roughly fifty-three, weighing size alongside whether the statement impugned all of them and how prominent the group and its members were locally.

The comment to § 564A carries the line memoirists should tape to the wall. Even where the group is large, circumstances known to readers can give the words such a personal application to one member that he is defamed as effectively as if he alone were named. In a town of four thousand people, a role can work as a name. So can a job title inside a company, a seat on a board, and the phrase "my first editor."

If you are looking at a renamed passage in your own manuscript and you cannot tell 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

Does renaming protect you from privacy claims?

Less than it protects you from a defamation claim, and for a different reason. Defamation asks whether you got the facts wrong. The privacy torts ask whether the disclosure was yours to make, so a passage about a renamed but recognizable subject can still draw a claim in the states that recognize public disclosure of private facts.

Identification is still an element. Where nothing in a publication points to the plaintiff, a privacy claim fails on that ground alone, as it did in Bayer v. Ralston Purina Co., 484 S.W.2d 473 (Mo. 1972), where the Missouri Supreme Court held that a plaintiff whose privacy remained inviolate had nothing to recover for. That case involved a photograph rather than a written portrait, and the principle carries: de-identification that actually works is a defense, and de-identification that only feels thorough is not.

The most useful decision I have read on renaming in memoir is Bonome v. Kaysen, 17 Mass. L. Rptr. 695 (Mass. Super. Ct. 2004), a trial court decision, persuasive rather than binding. Susanna Kaysen published a memoir about chronic pain that described her sexual relationship with a boyfriend she did not name. He sued for invasion of privacy. The court dismissed the claim: where an author's own story addresses a matter of legitimate public concern, disclosures about a third party are protected where a sufficient nexus links the private detail to that concern, because intimate experience often cannot be separated from the person it was shared with.

Then the court did something authors should notice. It treated the absence of his name as reducing the degree of interference, pointing out that the people who could identify him were the friends, family, and clients who already knew about the relationship. The rename did not defeat identification. It moved a weight on the scale the court was balancing.

The honest version is narrow. Renaming rarely defeats identification, and it can still matter to how a court weighs the intrusion and to how your publisher prices the passage. Legitimate public concern gets weighed differently from state to state, and a memoir distributes into all of them at once, which is why a clearance read looks at more than one state's law.

What does real de-identification take?

Changing every coordinate the subject's own circle uses, not just the label. Role, place, time, relationship, and often the events themselves.

Here is the exercise I ran on renamed portraits. It takes about twenty minutes a person.

1. Name the five people most likely to read the book who also know your subject. Be specific. Their sister. Their old boss. The two people who were in the room.
2. For each one, write what they would recognize in the passage as written. Not what identifies your subject in the abstract. What identifies them to that reader.
3. Change or generalize items on that list until it is empty, and keep every change consistent across the whole manuscript. One unchanged detail in chapter fourteen undoes eleven changes in chapter three.
4. If the list will not empty out, stop renaming and start planning. That passage needs documentation, narrowing, a release, or a priced decision, and renaming is not going to be the answer.

The other move is the composite.

composite character. A composite character combines two or more real people into one figure so that no single person maps onto the portrait. It is a craft technique rather than a legal doctrine, and it changes what the passage asserts, which is a conversation to have with your editor before you have it with a lawyer.

A hypothetical, and a composite rather than anyone's actual manuscript. An author writes about the stepfather she calls Ray. In the draft he manages a Ford dealership in the mid-size city where she grew up, the confrontation happens the week of her college graduation in 2011, and her mother and two brothers are in the room. The rename does nothing for her brothers, and very little for anyone who knew the family. Move the business to another industry, move the city, move the year, and cut the family to a smaller cast, and the portrait stops being a fingerprint for readers outside the household. That is the kind of change that moves a flag toward clearance. It clears nothing by itself, and the passage still has to be accurate and supportable.

WHAT THIS MEANS FOR YOUR MANUSCRIPT

Open your draft and list every person you renamed. Next to each one, write the job, the city, the years, and the relationship as they appear on the page. That list, not the list of names, is what a legal reader is going to work from, and building it yourself takes an afternoon. Where a row is still a fingerprint, you have two choices: change the constellation until it is not, or move the passage into the documentation track, where what protects you is evidence rather than concealment. Do it before delivery. Your warranties attach when you hand in the manuscript, and revisions are cheap right up until they are not.

HOW A PUBLISHER READS THIS

Legal review reads a renamed character with the name covered. Job, city, chronology, relationships, and what the passage says happened. When counsel can rebuild the identification from public facts in ten minutes, the rename gets no weight in the analysis and the conversation moves to releases, documentation, and what the house is willing to price. Editors know something else about that moment: an author who says "I changed the names" as though it closes the subject has not had this explained to them yet.

There is a second reason houses care, and it is the part of Smith v. Stewart that should interest every editorial director. The Georgia court let a negligence claim against the publisher reach a jury, and the supporting evidence included the house's lack of a manuscript libel-check policy and its failure to investigate after a warning that a real person was recognizable in the novel. The review process itself was on trial. A house with a documented workflow sits in a different position from one without, and an author who arrives with a finished identifier audit makes that workflow cheap to run.

"Authors change the name and feel safe. The subject's sister reads the job, the divorce, and the summer of 2019, and the name never mattered. I flagged renamed portraits for years, and the rename was almost never the question."

Guy Muller, former general counsel of a US publishing company with global reach

When can a portrait not be de-identified?

When the identifying fact is the story. Some portrayals cannot be separated from the details that make them worth publishing, and no amount of renaming reaches them.

In my own review practice, three shapes came back as effectively impossible. The person defined by a unique position: the only woman on a nine-person board, the holder of a named office in a given year, the one survivor of a documented event. The immediate family member, because “my father” is not a detail you can change without changing the book. And the portrait whose force is its specificity, where the passage matters precisely because of the identifying facts, and generalizing them leaves a paragraph that says nothing.

Naming those cases early changes what you spend your time on. When a portrait cannot be de-identified, the manuscript needs a plan built on evidence rather than concealment: documentation supporting every factual claim, narrowing to what the evidence shows, attribution of claims to their sources, a release, or a disclosed and priced decision with your publisher. Which plan fits depends on who the person is, and the factors that sort people into those categories are the subject of **Why you can write about some people and not others**. When you ask for a release and the answer comes back no, the options and what each one costs the manuscript are in **What to do when they refuse to sign a release**.

QUESTIONS TO ASK BEFORE YOU TURN IT IN

- For each renamed person: if their sister read this chapter, would she know? If the answer is yes, the rename is doing no work.
- Are the changes consistent across the whole manuscript, including the acknowledgments, the author's note, the jacket copy, and anything your publicist will say out loud?
- Does any renamed person hold a role only one human being has held? A title, a seat, a record, a date.
- Have you described a group small enough that every member is identifiable, and does the passage reach all of them or only some?
- For intimate details about a private person, can you write one sentence connecting them to what the book is actually about? Bonome turned on that nexus, and the sentence is worth writing whether or not anyone ever asks for it.
- Which passages are protected by evidence rather than by concealment, and is that evidence organized well enough to hand to someone else?

The Manuscript Risk Checklist. Twelve questions to answer about your manuscript before you turn it in, drawn from the review standards I wrote for a publishing house. The identifier audit above is one of them.

Run the Risk Scorecard

If you have renamed people in a manuscript and you want to know which of those renames is actually doing something, that is a large part of what a clearance review is for. I run flat-fee manuscript clearance reviews: a passage-level read of your draft, an identifier audit on every real person in it, the exposure each flag actually carries, and the smallest fix that keeps your point intact. Quoted up front, based on length, no hourly meter.

See Manuscript Clearance pricing

Common questions

Is changing names enough to avoid a lawsuit?

No. Defamation and privacy claims require an identifiable subject, and identification usually rests on job, place, timeline, relationships, and the events described rather than on the name. Courts have found the element satisfied where the name was changed and the surrounding details stayed specific. Changing the name is a reasonable step. Standing alone, it is not protection.

What details actually identify a person?

Role and workplace, city, timeline, relationships, physical description, and the events themselves. In Ruzicka v. Conde Nast Publications, Inc., 999 F.2d 1319 (8th Cir. 1993), a pseudonym paired with a profession, a city, and service on one state task force was enough to send identifiability to a jury. In Elias v. Rolling Stone LLC, 872 F.3d 97 (2d Cir. 2017), descriptions of appearance and the location of a person's room were enough, with no name at all.

Can someone sue if only a few people recognize them?

Yes. The identification element asks whether people who knew the subject would understand the passage to refer to them, and the Second Circuit put it in Geisler v. Petrocelli that not all the world needs to understand a libel. A portrait that reads as anonymous to strangers and obvious to a family is the common shape of a claim, not an unusual one.

Does a disclaimer help?

Not by itself. A statement that characters are fictional does not defeat identification where a reasonable reader would understand a character to portray a real person, and courts have said so in fiction cases including Bindrim v. Mitchell and Smith v. Stewart. Publishers still print the disclaimer, and you should keep it. Treat it as hygiene rather than as a defense.

When is de-identification impossible?

When the identifying facts are the point of the passage. A unique role, an immediate family relationship, or a portrait whose meaning depends on specific documented facts generally cannot be generalized without destroying what the passage says. Those passages need documentation, narrowing, a release, or a disclosed decision with your publisher, and it is better to identify them early than to discover them in legal review.

By Guy Muller, former General Counsel of Greenleaf Book Group

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Related guides

PART 5

Why can you write about some people and not others?

Publishers clear the senator and flag the neighbor because the law sorts people first. Six factors decide how freely you can write about a person.

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.

This guide is legal information, not legal advice, and reading it does not create an attorney-client relationship. Defamation, privacy, and publicity law vary by state; nothing here is advice about any specific manuscript. Muller Media Law is a DBA of Guy Muller Law Firm, PLLC. Not certified by the Texas Board of Legal Specialization. Attorney advertising.

"I don't care if I get sued." So why does your publisher?

What does it cost a publisher when a book draws a claim? A lawsuit is expensive for your publisher long before any verdict. Demand letters cost money to answer, publication dates slip, printed stock can be recalled and pulped, retailers get nervous, and insurance carries a retention and a renewal. Publishers price those costs, which is why an author's personal willingness to be sued changes almost nothing in the decision.

You said it in an email, or out loud in a meeting, and you meant every word. You don't care if you get sued. The chapter is true, you can document it, and if the person in it wants to spend two years of their life saying otherwise, that's their time to spend.

Then nobody said anything, and your editor moved on to the schedule.

I've been on the other side of that meeting. I was general counsel of a US book publishing company with global reach, and every week I read the passages our editors flagged and decided what went out. The sentence lands badly for a reason unrelated to your nerve. You offered to absorb a risk that was never only yours, and your publisher has been holding it since the day it acquired the book.

Legal risk, to a publishing house, means a stack of costs, and most of them land before any judge reads a word: hours spent answering a letter, money already committed to a publication date, books sitting in a warehouse, and an insurance program with a deductible and a renewal date. Add them and you get the figure discussed in the meeting you weren't in. **Once you can name the items on that list, you can argue about them, and arguing about them is the only argument that works.**

One note before we start. Defamation and privacy law vary by state, and so do the procedural rules that decide how fast and how expensively a claim moves. This page is general information about the costs, not advice about your manuscript.

What does a claim about your book actually cost your publisher?

A claim costs money the day the letter arrives, and it keeps costing at every stage after that, in amounts unrelated to whether the claim has merit.

Start with the letter, because that is how almost all of it begins. Somebody's lawyer writes to the publisher, names a passage, and demands something: a correction, a withdrawal of the book, a payment, an apology, or all four. Outside counsel now has to read the passage, read the chapter around it, ask you for your sources, evaluate what the claim is actually worth, and write back carefully, because the first reply sets the tone for everything after it. Those hours are billed hourly. The bill does not wait for anyone to decide who was right.

The internal cost starts in the same week, and authors never see it. Your editor stops working on other books. Managing editorial, production, publicity, and the legal function all put time into a manuscript that was supposed to be finished. Somebody has to decide whether the printing schedule holds while the answer is still unknown. Every one of those hours belongs to a business running on thin margins, where one bad outcome can absorb the profit on a shelf of good books.

Then the physical facts. If the book has not printed, the fix is cheap and everyone's mood improves, which is the single strongest argument for doing this work early. If it has printed, the options get expensive fast: hold the shipment, recall stock that already went out, pulp what comes back, and manufacture the whole thing again with corrected text.

pulping. Pulping is the destruction of printed inventory. Held or returned stock is shredded and recycled rather than sold, which turns finished books into a write-off and forces a reprint if the title stays on the list.

The table below is that conversation, as it happens without you in the room.

Cost item	When it lands	Who pays it
Outside counsel's response to a demand letter	Days to weeks after the letter arrives, before any suit is filed	The publisher, at hourly rates, immediately
Internal time: editorial, production, publicity, legal	The same weeks, and again at every decision point	The publisher, as staff hours pulled off other titles
Publication date slip	When the house decides it cannot ship on schedule	The publisher, through committed retail and publicity spend
Recall, pulping, and reprint	Only if books have already printed or shipped	The publisher, as a write-off plus a second print run
Retailer and distributor relationship damage	Slowly, and it shows up on the next book	The publisher, and the author's next advance
Insurance retention	On any claim the house notices to its carrier	The publisher, in full, before the carrier pays anything
Effect on the insurance renewal	At the next policy year	The publisher, across its entire list

Every line above is a practice observation from running this function rather than a legal rule, and the amounts vary enormously by house, by format, and by print run. What does not vary is the order. The cheap fixes are available early and the expensive ones arrive late, which is why a publisher's willingness to keep a passage drops steadily as the calendar moves.

Why does the bill arrive whether or not the claim is any good?

The bill arrives because the American legal system makes each side pay its own lawyers by default. Winning costs money too. A publisher that beats a meritless claim has still bought the win.

The Supreme Court calls that default a "bedrock principle": in American litigation each party pays its own attorney's fees, win or lose, unless a statute or a contract provides otherwise. *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121 (2015). Some statutes and contract clauses change that result, and the Texas note below describes one of them. Absent something like it, the strength of the publisher's position decides the outcome, not the invoice.

Sit with what that means for a risky chapter. Your publisher can be right about the law, right about the facts, and still spend real money establishing both. So when an editorial director asks counsel how bad this is, the useful answer is rarely a prediction about who would win. It is an estimate of what the next eight months cost if somebody decides to make an issue of page 214.

Most complaints never become filed lawsuits. In my own time reading flagged passages and the correspondence that followed them, the ordinary shape of trouble was a letter, then a reply, then either silence or a negotiated fix. The letter still cost money. A house that receives four of those in a year has spent real budget on books that were never in any legal danger, and that spending is part of what it remembers the next time an acquiring editor brings in something sharp.

WHAT COURTS HAVE SAID

Neutral background on the one legal rule doing work in this section.

- ***Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121 (2015).** The Supreme Court restated the American Rule: each litigant pays its own attorney's fees, win or lose, unless a statute or contract provides otherwise, and courts do not depart from that default absent explicit statutory authority. The case itself concerns bankruptcy fee applications under 11 U.S.C. § 330(a)(1), where the American Rule operates as the background principle the Court applies. It is cited here for the fee-allocation default alone, and it says nothing about publishing, defamation, or any of the costs described on this page.

What does a slipped publication date break?

A slipped date breaks commitments the publisher already paid for, and most of them cannot be rescheduled by moving a number in a spreadsheet.

Retail placement is bought in advance, by season, against a specific on-sale date. Trade reviews are scheduled to that date months out, and a review that runs for a book nobody can buy is money the house spent for nothing. The tour, the podcast bookings, the excerpt placed with a magazine, the co-op display at the front of the store: all of it is calendared against a single day. Move the day and some of it moves, some of it evaporates, and some of it costs money twice. Foreign editions and subrights deals carry their own dates, set against yours. Awards submissions have windows. A book that moves from a spring list to a fall list is not the same book commercially, and everyone in publishing knows it.

Underneath all of that sits the cost publishing professionals actually flinch at. The buyer at the chain who took a position on your title now has a hole in a month, and the house has to go back to that buyer with the next book and the one after that. Agents notice which imprints have trouble shipping on time. That is how a legal problem on one manuscript becomes an imprint's reputation, which is the quietest and most durable line on the whole list.

> **"Authors hear 'we have concerns' and imagine a courtroom. I sat in the meetings, and the number on the whiteboard was never a verdict. It was the cost of a slipped season and a nervous retailer, and it arrived whether or not anyone ever filed."**
>
> Guy Muller, former general counsel of a US publishing company with global reach

How does insurance change the math?

Insurance moves the ceiling and leaves the floor exactly where it was. A media liability policy can protect a publisher against a catastrophic outcome, and it does almost nothing about the ordinary costs that decide whether your chapter survives.

> **retention.** A retention is the amount the insured absorbs on a claim before the carrier's money starts. It works like a deductible, and on media liability programs it is often large enough that a claim resolving inside it is paid entirely by the publisher, with the carrier contributing nothing at all.

Three consequences follow, and they are the reason this section exists. An ordinary demand letter and its response frequently cost less than the retention, so the publisher pays the whole thing and the policy never engages. Noticing a claim to a carrier puts that claim into the house's loss history, and the loss history is what the broker takes to market at renewal; in the renewals I sat through, the market's first question was always about claims, and the answer priced the following year across the publisher's entire list rather than just your book. And most of these policies carry notice obligations with real teeth, so a house that sits on a demand letter while it decides what to do can create a coverage problem on top of the underlying problem. That is a large part of why legal gets looped in on day one rather than day thirty.

Authors can sometimes be added to a publisher's media liability coverage as an additional insured. Whether that protection actually reaches you turns on the policy language and the endorsement rather than on the sentence in your contract that promised it, so it is a question to settle before signing rather than after a demand letter arrives. The insurance page of this library treats it in depth and publishes in a later phase.

Doesn't your indemnity clause make this your problem?

On paper, a great deal of it is your problem. In practice, the clause moves money only if there is money to move, and only after the publisher has already spent it.

indemnity. Indemnity is a promise to cover someone else's losses. In a publishing contract, the author's indemnity makes claims arising from the book's content the

> author's financial responsibility, including, under many contracts, the cost of defending claims that go nowhere.

Four things about that clause are worth understanding before you lean on it in an argument.

The publisher pays first. Defense costs are incurred as the matter unfolds, and indemnity is a reimbursement mechanism, so the house's money goes out the door in real time and comes back, if it comes back, later. Cash flow and legal responsibility are two different things, and the clause only addresses the second one.

Collectability decides everything. An author with an advance in the low five figures cannot fund a defense that runs into six. With no assets behind the promise, the clause allocates responsibility without transferring risk, which is why the publisher's risk conversation about your book is really a conversation about its own balance sheet. Authors sometimes read this backwards and conclude the clause is meaningless. It is not meaningless to an author who owns a house.

Scope is a drafting choice. Whether the indemnity is triggered by any claim or only by a proven breach of your warranties, whether it reaches settlements made without your consent, whether it survives termination, and whether it is capped are all negotiable terms, and all easy to give away without noticing. Your warranty and indemnity clause deserves a slow read before delivery, and it gets its own page in this library in a later phase.

Enforcing it against you is its own decision. A house that pursues its own author over a content claim buys a second problem with agents and future authors. In my experience the clause worked far more often as a standard-setting device, a way of telling authors what the house expects the manuscript to be, than as a collection tool.

HOW A PUBLISHER READS THIS

When an author says "I'll take the risk," the acquiring editor hears an offer the house cannot accept, because the house is a named defendant on the same complaint and writes the checks first regardless of what the contract says about reimbursement later. The estimate that moves an acquisition meeting is rarely verdict exposure. It is the fully loaded cost of eight months of friction: outside counsel's response, a slipped season, a nervous chain buyer, and a retention check written before insurance pays a dollar. An author who can speak to those line items is treated as a participant in the risk conversation. An author who offers courage has answered a question nobody asked.

Does it matter which state the claim gets filed in?

The filing state matters a great deal, because state procedure sets how early a weak claim can be killed and who pays for the killing.

Some states have statutes, commonly called anti-SLAPP statutes, that let a defendant move to dismiss a claim aimed at protected expression early, before the expensive part of litigation, with a fee-shifting rule attached. Others have none. Where they exist, the scope, the deadlines, the evidentiary standard, and the fee provisions come from that state's own text, so the shared label hides real differences in what the statute is worth to a defendant. Publishers and their counsel know which states are which, and it surfaces in the risk conversation as a sense that some claims are cheaper to survive than others.

anti-SLAPP statute. An anti-SLAPP statute lets a defendant ask a court to dismiss a claim targeting protected expression at an early stage, on a schedule the statute sets. Scope, procedure, and whether attorney's fees shift are each set by the individual state, so the term describes a family of laws rather than one national rule.

THE TEXAS NOTE

Texas is where I practice, and it shows cleanly what state procedure does to the cost curve.

The Texas Citizens Participation Act lets a party move to dismiss a legal action based on or in response to that party's exercise of the right of free speech, the right to petition, or the right of association. The motion is due no later than the 60th day after service of the legal action, and on filing, all discovery in the action is suspended until the court rules, subject to a limited exception. Tex. Civ. Prac. & Rem. Code § 27.003(a) to (c). The court must rule within 30 days after the hearing closes, and where the movant makes its showing it must dismiss unless the claimant establishes by clear and specific evidence a prima facie case for each essential element. § 27.005(a) to (c). On dismissal, an award of court costs and reasonable attorney's fees to the moving party is mandatory, and sanctions are discretionary. § 27.009(a).

Read the discovery sentence again, because that is where the money is. Discovery is the expensive part of a lawsuit, and a statute that suspends it while the court decides whether the case should exist at all changes the cost of the whole matter rather than just the ending.

Two more details matter to a publisher and are easy to get wrong. Chapter 27 does not apply to certain legal actions against a person primarily engaged in the business of selling or leasing goods or services where the statement or conduct arises out of that commercial activity, § 27.010(a)(2), and a company that sells books resembles that description closely enough to worry an editor who has heard about the exemption. The statute then puts literary work back in on its own terms: notwithstanding that exemption, the chapter applies to a legal action arising from acts related to gathering, receiving, posting, or processing information for communication to the public, for the creation, dissemination, exhibition, or promotion of a dramatic, literary, musical, political, journalistic, or otherwise artistic work. § 27.010(b)(1). And the calendar cuts both ways. An order denying a Chapter 27 motion is immediately appealable, and that interlocutory appeal stays the commencement of trial and all other proceedings in the trial court. § 51.014(a)(12), (b). A granted motion ends the case early at the claimant's expense. A denied one can freeze the case while the appeal runs.

Texas is one state. Your book distributes into all of them at once, the states that matter are the ones where your subjects live and sue, and everything above is Texas law rather than a national rule.

What should you say instead?

Argue price. The publisher is running a probability-and-cost calculation, so the arguments that move it are the ones that lower probability or lower cost.

Lower the probability, on paper. Hand over the documentation in organized form rather than offering to produce it: the sources, the dates, the corroborating account, the contemporaneous record. A passage a lawyer can verify in twenty minutes is cheaper than one resting on a week of your recollection. Organized documentation also does something subtler, which is to tell the house that you are a person who keeps records, and that changes how the rest of the manuscript gets read.

Lower the response cost. Offer the revision before it is demanded. Attribute a contested assertion to the source who made it, narrow a claim to what your records actually support, or move a characterization from stated fact to clearly signaled perception. Each of those tends to reduce what a response costs without removing the substance of what you came to say. The sharp thing in your chapter is usually keepable. What has to change is the unsupported thing wearing the sharp thing's clothes.

Ask which passage and whose claim. A flag with a name, a theory, and a specific sentence behind it is a real flag. One that dissolves under those three questions was somebody covering themselves, and it is worth knowing which one you have before you spend your credibility. How the flags get generated is the subject of How publishers decide whether your book is safe to publish.

Ask what would change the answer. Sometimes it is a release. Sometimes it is a review letter the house can rely on, an insurance endorsement, or a single line of attribution. Ask the question directly, because the person across the table usually knows, and because it converts an argument into a task list.

The constitutional argument, whatever its merits, answers a question nobody in that meeting is asking.

WHAT THIS MEANS FOR YOUR MANUSCRIPT

Go to the three or four passages you already know are the risky ones. For each, write down two things on one page: what you can prove, and with what. Source, date, form, and where the record lives. Then write the smallest revision you would accept that removes the disputed factual assertion and keeps your point. Bring both to your editor before the legal read rather than after it. Arriving with documentation and one pre-drafted fix per passage tends to move the meeting off your character and onto a manageable cost, which is the only ground where you can win it.

QUESTIONS TO ASK BEFORE YOU TURN IT IN

- For each risky passage, can I name the specific factual assertion a claimant would attack, and separate it from the opinion around it?
- Do I have the underlying record, and can I put my hands on it this week without asking anyone for a favor?
- Which of my subjects has a lawyer already, a history of litigating, or a reason to want a public fight?
- Would this passage draw a complaint before or after the book prints, and do I know my publisher's schedule well enough to answer that?

- Have I read my own warranty and indemnity clause, and can I state in one sentence what it obligates me to pay?
- Does my contract say anything about insurance, and have I asked whether I can be added as an additional insured?
- What is the smallest revision I would accept on each passage, and have I written it down before anyone asks me for it?

The Manuscript Risk Checklist. Twelve questions to answer about your manuscript before you turn it in, drawn from the review standards I wrote for a publishing house. Direct, printable, and built to be worked through with your draft open.

Run the Risk Scorecard

Memoir concentrates every cost on this page onto one manuscript, because the subjects are real, identified, and close enough to the author to be motivated. The moves that make one acquirable anyway are in **Why memoir is the riskiest category in publishing, and how to de-risk yours**. The wider map of how legal risk shows up in a book is on the hub, **What You Can and Can't Say**.

If the flags are already on your manuscript, or you'd rather find them before your publisher does. I run flat-fee manuscript clearance reviews: a passage-level read of your draft, the exposure each flag actually carries, and the smallest fix that keeps your point intact. Quoted up front, based on length, no hourly meter.

See Manuscript Clearance pricing

Common questions

What does it cost a publisher when a book draws a claim?

More than authors expect and earlier than authors expect. The first costs are outside counsel's hours answering a demand letter and internal staff time pulled off other books, both of which land before any lawsuit exists. If the publication date slips, committed retail and publicity spend goes with it. If books are already printed, recall, pulping, and a reprint follow. Amounts vary enormously by house, format, and print run, and the order never varies: cheap fixes early, expensive ones late.

Why does my publisher care if I'm the one being sued?

Because your publisher gets named too, and it pays first. A claim about a book's content typically reaches the publisher as well as the author, and the publisher's money funds the response in real time. Your indemnity is a promise to reimburse, which is a different thing from a promise that the publisher never spends anything.

What is an insurance retention?

The amount a publisher absorbs on a claim before its carrier pays anything, comparable to a deductible. On media liability programs the retention is frequently large enough that an ordinary claim resolves entirely inside it, meaning the publisher pays in full and the policy never contributes. Noticing the claim can still affect the renewal.

Do most claims ever reach a courtroom?

Most do not, in the pattern I saw from the general counsel's chair: a letter, a response, then either silence or a negotiated fix. The letter and the response still cost money, which is why publishers price response cost rather than trial outcomes.

Does my indemnity actually protect the publisher?

Partly, and less than the clause suggests. It allocates responsibility, and it transfers risk only to the extent you have assets to satisfy it. An author with a modest advance cannot fund a defense running into six figures, so the publisher is deciding about its own exposure while reading a clause that points at you.

By Guy Muller, former General Counsel of Greenleaf Book Group

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Related guides

PART 4

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

Memoir concentrates legal risk: factual claims about identifiable people, told by one witness, sold as true. Four moves make a memoir acquirable.

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.

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.

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.

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.

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

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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?

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

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

Published August 11, 2026

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.

Why can you write about some people and not others?

Why can you write about some people and not others? Publishers treat people differently because the law does. The working factors: public figure status, the passage's newsworthiness, how well you can prove your claims, whether the person is living, how realistically litigious they are, and whether the portrayal is one nobody would ever release. The same sentence can be safe about one person and dangerous about another.

Your publisher cleared the senator chapter without a comment. The chapter about your old business partner came back covered in flags, and he's never held office in his life. From where you sit, it looks backwards, or political, or personal.

The review followed a list. Six questions, run on every name in your manuscript. I know the list because I ran it. I was general counsel of a US book publishing company with global reach and read the flagged passages every week.

The law does the first sorting, on purpose. American defamation law gives writing about public people more room than writing about private ones, wide enough that one sentence can be fine in chapter four and expensive in chapter five. The publisher owns the rest of the list. The full map of publishing exposure is in **What You Can and Can't Say**. Defamation and privacy law vary by state, so this page is general information rather than advice about your manuscript. Where the law splits, I'll say so.

Why does the law protect writing about public people more?

The Supreme Court built room for error into debate about public life by raising the bar public plaintiffs must clear. A public official suing over your account of his official conduct must prove actual malice. Your neighbor, in most states, proves something closer to carelessness.

New York Times Co. v. Sullivan, 376 U.S. 254 (1964), held that a public official cannot recover for a defamatory falsehood about his official conduct unless he proves the statement was made with actual malice: knowledge that it was false, or reckless disregard of whether it was false.

> **actual malice.** A term of art for the fault standard public officials and public figures must prove: the writer published knowing the statement was false, or while entertaining serious doubts about whether it was true. Set out in New York Times Co. v. Sullivan and sharpened in St. Amant v. Thompson.

The word malice misleads almost everyone who meets it. The test asks about your knowledge, and the Supreme Court made it subjective in St. Amant v. Thompson, 390 U.S. 727 (1968): reckless disregard requires evidence the publisher "in fact entertained serious doubts as to the truth of his publication." The same opinion holds that failure to investigate does not by itself establish bad faith. The half I rarely heard quoted back: the standard protects a careless writer more than a worried one, because the careless writer never formed the doubt.

Three years after Sullivan, Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967), carried constitutional limits past government officials to public figures. The Justices divided on the formulation, and a majority favored the same actual-malice standard, which is the version that governs now. Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974), then set the floor for everyone else: states may define their own standard of liability for defamatory falsehoods that injure a private individual, so long as they do not impose liability without fault. States answered, negligence being the common choice.

Gertz explained the line: public people usually have better access to the channels that answer a false statement, and they accepted scrutiny when they stepped forward. A private person did neither. **The gap between actual malice and negligence is the gap between the senator's chapter and your neighbor's.**

What makes someone a public figure?

Two routes, and Gertz named both. Fame so pervasive the person is a public figure for all purposes. Or, in the Court's words, having "thrust themselves to the forefront of particular public controversies" to influence the outcome, public for a limited range of issues only. Gertz calls the second route the more common one.

> **limited-purpose public figure.** A person treated as a public figure only inside one public controversy they stepped into to influence, and treated as a private figure everywhere else. Most classification disputes over the people in a book are about this category.

The cleanest articulation comes from Waldbaum v. Fairchild Publications, Inc., 627 F.2d 1287 (D.C. Cir. 1980), which asks three things in order. Was there a genuine public controversy, a real dispute whose outcome affects people beyond the participants? Did this person play a prominent role, seeking to influence the outcome? And was the statement germane to that role? Formulations differ by state, and classification is decided by the court hearing the claim, but those three questions run underneath most versions.

Waldbaum ran a large supermarket cooperative and lost on classification: he had publicly championed policies reshaping his industry, so the court held him a limited-purpose public figure for that fight. The same opinion carries the warning for business memoirs: an executive title at a prominent company does not, by itself, make someone a public figure. Your former CEO can be famous inside the industry and private in the eyes of the law.

Can a private person become fair game by entering a controversy?

Rarely, and almost never by accident. The Supreme Court spent the late 1970s refusing the conversion, three times, in ways that map onto your manuscript.

In Wolston v. Reader's Digest Association, Inc., 443 U.S. 157 (1979), a man who ignored a grand jury subpoena and drew press coverage for it was still a private figure: involvement in a newsworthy matter does not automatically transform anyone, and a defendant must show "more than mere newsworthiness" before the actual-malice burden applies. In Time, Inc. v. Firestone, 424 U.S. 448 (1976), a heavily covered society divorce was not a public controversy, going to court was compelled rather than voluntary, and a few press conferences changed nothing.

Hutchinson v. Proxmire, 443 U.S. 111 (1979), answers the move authors reach for first. A senator ridiculed a scientist's federally funded work, then argued the resulting attention made the scientist a public figure. The Court refused: those charged with defamation "cannot, by their own conduct, create their own defense," and media access that exists only to answer the attack does not count. Applied to your manuscript: **your book cannot promote its own subject into a public figure. The status has to exist before you publish.**

WHAT COURTS HAVE SAID

Classification is decided by the court hearing the claim, under that state's formulation. The constitutional floor below is national; its application varies.

New York Times Co. v. Sullivan, 376 U.S. 254 (1964). A public official cannot recover for a defamatory falsehood about official conduct without proving actual malice: knowledge of falsity or reckless disregard.

Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967). Constitutional limits reach public figures outside government. The Justices split on the standard; a majority favored the actual-malice test later cases apply.

Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974). Public figure status arises through pervasive fame or voluntary injection into a particular public controversy. States set private-figure fault standards, short of liability without fault, and presumed and punitive damages are restricted absent actual malice.

Time, Inc. v. Firestone, 424 U.S. 448 (1976). A heavily publicized divorce was not a public controversy; resort to the courts is not voluntary injection.

Hutchinson v. Proxmire, 443 U.S. 111 (1979). A defendant cannot create its own defense by making the claimant a public figure; access limited to answering the attack is not public-figure access.

Wolston v. Reader's Digest Association, Inc., 443 U.S. 157 (1979). Involvement in a newsworthy matter does not automatically make a private person public.

Waldbaum v. Fairchild Publications, Inc., 627 F.2d 1287 (D.C. Cir. 1980). The limited-purpose inquiry: genuine public controversy, prominent role, germane statement. An executive title alone does not confer the status.

Why do publishers ask questions the law never asks?

A publisher is pricing a claim rather than predicting a verdict, so the review runs on four more factors no fault standard mentions.

Newsworthiness of the passage. Defamation needs falsity; the privacy claims mostly run on truth. In the states that recognize a claim for public disclosure of private facts, the question is whether a truthful intimate disclosure served a legitimate public concern, and states weigh that concern differently. In my own review practice, the tether decided it: a disclosure tied to the book's public point survived far more often than one that read as score-settling.

Provability. Courts test fault after a claim arrives. A publisher tests evidence before the book ships, because the house may one day need to stand behind every word of the passage, on a schedule it does not control. In my review years, the file decided more flags than the passage: contemporaneous documents, corroborating witnesses, your own records.

Living or dead. Defamation generally requires a living subject, and in most states a claim over statements about the dead fails. One exposure shrinks. Others stand. Living relatives can be identifiable in the same passage, some states protect a deceased person's name and likeness by statute, and a false claim about the dead still costs the book its credibility.

Litigiousness. Publishers ask whether your subject is the suing kind. The question embarrasses people, and it belongs in the analysis: a weak claim from a litigious subject costs real money before any court reads a word, and a strong claim from someone who will never sue may cost nothing. Prior lawsuits, wealth, counsel on retainer, public threats: counsel weighs all four, and the cost math is the subject of **"I don't care if I get sued." Your publisher does**.

The sixth factor explains the strangest pattern in review. Some portrayals end the release conversation before it starts, because nobody signs a release for the chapter that calls them a thief. When no release would ever cover the portrayal, the publisher moves from permission to proof, which is why two authors can get opposite instructions about the same kind of person. What to do when the answer is no is in **What to do when they refuse to sign a release**.

How do the five kinds of subjects compare?

Fault standards are the law; the practice column is what I watched houses do with them.

Subject type	Fault standard the law applies	What changes in practice
Public official	Actual malice, for statements about official conduct (New York Times Co. v. Sullivan)	Review asks whether the passage concerns the office or the private life, and what your sourcing shows about belief
All-purpose public figure	Actual malice (Curtis Publishing Co. v. Butts; Gertz v. Robert Welch, Inc.)	A narrow category: pervasive fame, household names. Counsel spends little time here when sourcing is documented
Limited-purpose public figure	Actual malice, within the controversy that made them public (Gertz; the Waldbaum framework)	The fight is over classification and germaneness: does your passage sit inside their controversy or outside it
Private figure	Whatever standard their state sets, at least fault, commonly negligence (Gertz)	Flags concentrate here. Evidence does the work, and privacy claims stay available in the states that recognize them, even where every word is true

Subject type	Fault standard the law applies	What changes in practice
Deceased subject	In most states, no defamation claim for statements about the dead	Review shifts to living people identifiable in the passage, statutory postmortem rights where a state grants them, and accuracy for the book's own sake

Each row states a tendency. Classification and fault are decided case by case, under the law of the state where a claim is brought.

One habit to break: renaming a person does not move them between rows. A renamed neighbor is still a private figure when her circle can recognize her, because identification runs on job, place, timeline, and relationships rather than the name. **Does changing the name actually protect you?** walks that test in full.

How does a publisher's counsel sort your cast?

In about an hour, into four rough bins, and the last bin drives the flags.

HOW A PUBLISHER READS THIS

When I ran manuscript review, a first sort of every named person in a book took about an hour: public and provable, private and documented, private and undocumented, and undocumented and litigious. The last bin generated most of the flags. The coordinates are status, proof, and who picks up the phone angry. A senator criticized on documented facts barely slows the read. A private business partner accused from memory, with a history of suing people, is the flag that reaches the editorial meeting. Authors who arrive with the cast already sorted, and the evidence mapped to each claim, walk into review with most of the argument made. The sort is one pass inside the larger framework, which How publishers decide whether your book is safe to publish walks end to end.

If one person in your manuscript is the reason you're on this page, and you can't tell which bin they land in, that is the conversation I have most often. Happy to have it with you.

Book a free clearance consultation

What should you build before you turn it in?

A cast list, in five columns: the person, public or private, what the manuscript claims about them, what evidence supports each claim, and their realistic response. Build it in an afternoon, attach it at delivery, and you have answered the six questions before anyone asks them.

The middle columns do the real work. Writing the claims out makes you read your chapter the way a legal reader will, one assertion at a time. The evidence column shows you, before anyone else, which passages rest on documents and which on memory. The last column is the underwriting question, and you know the answer better than any lawyer: what will this person actually do?

WHAT THIS MEANS FOR YOUR MANUSCRIPT

List every living person in your draft this week, named or recognizable. Mark each one public or private, using the tests above and honest judgment. For every private person, write what you claim about them and what you could hand a stranger to support it. Where a claim rests on memory alone, that passage is where review will land, so decide now: document it, narrow it, seek a release, or accept the flag with your eyes open. Delivery is the deadline, because your contract warranties attach when you hand the book in.

"Every author thinks the review is inconsistent, and from outside it looks that way. Inside, the same six questions ran on every name in the manuscript. Answer them yourself, in advance, and the review stops feeling like weather."

Guy Muller, former general counsel of a US publishing company with global reach

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QUESTIONS TO ASK BEFORE YOU TURN IT IN

- For each person you criticize: did a genuine public dispute exist before your book, or does your book create the attention? Hutchinson answers the second case, against you.
- For each public figure: is the passage about the fight that made them public, or their private life? Germaneness is a real limit.
- For each private person: what could you hand a stranger tomorrow to support the claim? A document, a witness, a record.
- Which subjects are dead, and which living people are identifiable in those passages?
- Which one person is most likely to sue, whatever the merits, and does their chapter rest on evidence or memory?
- Would the portrayal survive the subject reading it aloud in front of people you both know? If that changes your breathing, move the chapter to the top of your documentation list.

The Manuscript Risk Checklist. Twelve questions to answer before you turn in a manuscript, drawn from the review standards I wrote for a publishing house. The cast list above feeds three of them.

Run the Risk Scorecard

If you want the sorting done properly on your own cast, that is what a clearance review is for. I run flat-fee manuscript clearance reviews: a passage-level read of your draft, every named person sorted and scored, the exposure each flag carries, and the smallest fix that keeps your point intact. Quoted up front, based on length, no hourly meter.

See Manuscript Clearance pricing

Common questions

Why can I criticize a politician more freely than my neighbor?

Because the Supreme Court set different fault standards. A public official suing over coverage of official conduct must prove actual malice, knowledge of falsity or reckless disregard of the truth, under New York Times Co. v. Sullivan. A private person proves whatever their state requires, commonly negligence, a lower bar. The protection follows the public role, and your neighbor does not have one.

What makes someone a public figure?

Pervasive fame that makes them public for all purposes, or a voluntary step into a particular public controversy to influence its outcome, public for that controversy only. Gertz v. Robert Welch, Inc. names both routes, and the widely cited Waldbaum v. Fairchild Publications framework asks three questions: was there a real public controversy, did the person play a prominent role in it, and is the statement germane to that role.

Does writing about a dead person remove the risk?

It removes one risk and leaves others. In most states, no defamation claim exists for statements about the dead. Living relatives identifiable in the same passage can still sue, some states protect a deceased person's name and likeness by statute, and false statements about the dead still damage the book's credibility.

Why does my publisher ask about some people's tempers?

Because a claim costs money before any court weighs its merits. Demand letters, delayed publication dates, and early motions cost real money even when the claim is weak, so counsel treats litigiousness as an underwriting fact. A litigious subject with a weak claim can cost more than a calm subject with a stronger one.

Can a private person become fair game by entering a controversy?

Only by genuinely thrusting themselves into a public dispute to influence its outcome, and courts read that narrowly. Newsworthy involvement was not enough in Wolston v. Reader's Digest, a famous divorce was not a public controversy in Time, Inc. v. Firestone, and a defendant's own attention could not create the status in Hutchinson v. Proxmire.

By Guy Muller, former General Counsel of Greenleaf Book Group
Published August 11, 2026

Related guides

PART 2

Does changing the name actually protect you?

Changing a name removes the label and leaves the person. Identifiability is the legal test, and this is what real de-identification takes.

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.

What to do when they refuse to sign a release

What should you do when someone refuses to sign a release? A refused release closes a shortcut without closing the book. The remaining options: narrow the passage to what your documentation supports, attribute claims to their sources, reduce identifiability, strengthen the evidence file, or proceed with a priced, disclosed risk your publisher accepts. What changes is the margin for error, so the surviving passage has to stand on evidence.

The email came back, and the answer is no. Maybe it was one polite line. Maybe it arrived through a lawyer with adjectives attached. Either way, the chapter is load-bearing, the delivery date has not moved, and your publisher is waiting to hear your plan.

Before you touch the manuscript, get the size of the event right. A release was a shortcut: one signature swapping a stack of legal questions for a piece of paper. The signature is not coming. The questions are still answerable. What shrank is your margin for error, and this page is about spending the margin you still have.

release. A release is a contract. The subject consents to being portrayed, gives up the legal claims the document lists, and receives something in exchange. It covers only what it names, so the scope language is the whole document.

A release, in other words, was insurance on top of a legal position, and the position exists whether or not anyone signs. The full map of that position is on the main guide, **What You Can and Can't Say**. What follows is the release-shaped corner of it.

Do you legally need a release to write about someone?

No. American law does not condition writing about a real person on that person's consent. The risk lives in what you publish: a false factual claim about an identifiable living person, a private fact publicized without legitimate public concern in states that recognize that tort, or material gathered in ways the law treats as intrusion.

So why did anyone ask for a signature? Because publishers buy certainty wherever it is for sale, and I did the buying for years as a publishing company's general counsel. A signed release converts a legal analysis, strong but still expensive to defend, into a filed document that rarely needs defending. The request that read as bureaucracy was the house pricing one specific person's likelihood of complaining.

Who gets asked, and why one manuscript can need three releases and zero name changes, follows a factor list I unpacked in **Why you can write about some people and not others**.

What did the refusal actually change?

Two things changed, and the legal standard on your passage is neither of them. The shortcut closed, and the subject started paying attention.

Every rule that governed the passage before you asked still governs it: the fault standards, the privacy analysis, the identification question. What the refusal removed is slack. A released passage can afford a loose edge; its claims were signed away in advance. An unreleased passage is carried by evidence, and **evidence has no patience for a sentence that says even a little more than the file supports.**

HOW A PUBLISHER READS THIS

A refusal recorded in the file is information, and houses treat it that way: the subject is watching, so the passage has to be documented, proportionate, and clean. What a house cannot underwrite is a surprise. An author who reports the refusal with a revision plan keeps the house's trust and usually keeps the passage's substance. An author whose refusal surfaces later, in a demand letter the house never saw coming, has converted a manageable risk into a credibility problem. The pricing machinery the refusal feeds is the subject of How publishers decide whether your book is safe to publish.

What are your options when the answer is no?

Five options, and they are not priced alike. Ranked by how much of the passage survives: narrow and attribute, de-identify, strengthen the file and proceed, cut, or escalate for a priced decision your publisher accepts in writing.

Option after refusal	What survives in the text	Residual risk	What the publisher needs from you
Narrow and attribute	The documented core, with contested claims tied to named sources and records	Lower, where every surviving claim matches the file; repeating a source's false accusation can still carry its own liability	The revised passage and the evidence list, side by side
De-identify	The scene and its meaning, with the	Turns on whether the subject's own circle would still recognize them	The identifier audit: what changed, and what a

Option after refusal	What survives in the text	Residual risk	What the publisher needs from you
	identifying constellation changed		knowing reader could still see
Strengthen the file and proceed	Everything, as written	The claim risk the passage already carried, now with an alerted subject	The documentation, organized, plus your written account of the request and the refusal
Cut the passage	Nothing on this subject	The lowest on this page	A note confirming the cut and where the material touched other chapters
Escalate for a priced decision	Whatever counsel and the house agree to carry	Known, disclosed, and accepted in writing	Time for a clearance read, and candor about the refusal

Each cell states a tendency rather than a promise, and the rows combine: most passages that survived a refusal in my review years used the first two rows together. Which mix fits turns on who the person is, what the passage claims, and the law of the states in play.

Renaming, the option authors reach for first and trust most, is the weakest form of de-identification: the subject's own circle, where claims actually come from, reads straight past a new name. What identifiability turns on, and when it cannot be reduced at all, is the subject of **Does changing the name actually protect you?**

How do you make the passage stand on evidence?

Match every factual claim to its proof, and change every sentence that claims more than the proof shows.

The reason evidence carries unreleased passages sits in the fault rules. Under *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), a public official suing over a defamatory falsehood about official conduct must prove actual malice, knowledge of falsity or reckless disregard of the truth, a standard later extended to public figures. For private individuals, *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), lets each state define its own fault standard so long as it does not impose liability without fault, and negligence is the common choice. Read both as a working writer and they converge on one sentence: **how carefully you worked is legally relevant, and the file is what careful looks like from the outside.**

So build the match. List every factual claim the passage makes about the person, one line each, and beside it the proof: source, date, form, where it lives. Each claim lands in one of three bins. Proven as written. Provable if narrowed. Not provable by you. The first stands, the second gets rewritten down to its record, and the third gets attributed to a source who can carry it, or it goes.

attribution. Attribution presents a claim as sourced rather than as your own assertion: the audit report concluded, three employees told me, she testified. It narrows what your sentence asserts to something your records can prove, that this source said this thing, on this date.

Use attribution as a precision tool rather than a shield. The Texas Supreme Court has described it as well settled that one is liable for republishing the defamatory statement of another, softened by the constitutional fault requirements and a family of privileges and defenses. *Neely v. Wilson*, 418 S.W.3d 52 (Tex. 2013). A sourced accusation still needs a source worth standing on. What attribution buys is exactness: the sentence now asserts that the report said the thing, rather than the thing.

WHAT THIS MEANS FOR YOUR MANUSCRIPT

Open the refused chapter this week and underline every factual claim about the subject. Build the two-column match, claim and proof, before you revise a word; the match tells you which sentences stand, which narrow, and which get handed to a source. Then revise against the file rather than against your fear. Doing it before delivery is the difference between presenting a plan and presenting a problem, because your warranties attach when you hand the manuscript in. The cheap window is now.

"A release is a shortcut, and shortcuts close. The passages that survived refusals in my review years were the ones that stopped arguing and started citing: what the documents show, said plainly, at the length the evidence could carry."

Guy Muller, former general counsel of a US publishing company with global reach

WHAT COURTS HAVE SAID

Neutral background on the decisions doing work on this page.

New York Times Co. v. Sullivan, 376 U.S. 254 (1964). A public official suing over a defamatory falsehood about official conduct must prove actual malice: knowledge that the statement was false, or reckless disregard of whether it was false. The constitutional floor, national.

Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974). States define their own fault standard for private-figure plaintiffs so long as they do not impose liability without fault, and public officials and public figures recover only on clear and convincing proof of actual malice. Where your subject lives starts to matter.

Neely v. Wilson, 418 S.W.3d 52 (Tex. 2013). Texas's formulation for media defendants: private figures prove negligence, public officials and public figures prove actual malice, and republishing another's defamatory statement is itself actionable, subject to those fault rules and to privileges.

Near v. Minnesota, 283 U.S. 697 (1931). Striking down a state statute that let officials suppress a newspaper as a nuisance, the Supreme Court described preventing previous restraints as the chief purpose of the press guaranty, with exceptions confined to exceptional cases. Publication can still be answered for afterward.

Does asking and being refused make things worse?

No. A release request is not an admission that the passage needed one, and in my own review years no flag ever turned on the fact that an author had asked and been told no. The passage is judged on what it says and what supports it, as if the email had never been sent.

Where authors hurt themselves is after the no. Three habits, starting today. Keep your account of the exchange factual, written, and dated. Stop re-approaching; a second plea reads as pressure and adds nothing your file can use. And write nothing to the subject you would mind hearing read back later: no apologies, no promises about revisions, no previews. Further contact goes through counsel.

> If you're holding a refusal and a load-bearing chapter and you can't tell which of the five options fits, that's the conversation I have most often. Happy to have it with you.
>
> **Book a free clearance consultation**

What should you do in the week after the refusal?

Five steps, in order. The first four are yours alone, and the fifth protects the passage.

1. **Log the exchange.** The same day. What you asked, what they answered, dates, channel, exact words, stored with the manuscript. No commentary, because the log may one day be read by people you have not met.
2. **Re-scope the passage to documented claims.** The claim-and-proof match above, applied line by line, every unsupported sentence narrowed, attributed, or cut.
3. **Run the circle test on identifiers.** List what the subject's five closest readers would still recognize, then change or generalize until the list empties, or accept on paper that it will not, and plan on evidence instead.
4. **Assemble the evidence file as a handable object.** One folder, one index: each claim, its source, its date, where it lives. Built to hand to an editor or a lawyer without a walkthrough.
5. **Tell your publisher, with the plan attached.** The revised passage, the evidence index, and a one-paragraph factual account of the request and the refusal. The report converts the refusal from a landmine into a line item.

In a memoir project, this file joins the review letter and the insurance conversation in the package that makes the book acquirable; that machinery is in **Why memoir is the riskiest category in publishing, and how to de-risk yours**.

Can they actually stop the book?

A threat can raise the price of your passage. What it cannot easily buy is a court order stopping the presses, and the distance between those two is where most pre-publication panic lives.

American courts start from a heavy tilt against suppressing publication in advance. Striking down a state statute that let officials shut a newspaper as a public nuisance, the Supreme Court in *Near v. Minnesota*, 283 U.S. 697 (1931), described preventing previous restraints as the chief purpose of the constitutional press guaranty and confined the exceptions to exceptional cases, wartime military information among them. The same opinion left the second door open: publish, and you can be made to answer afterward. In my experience, the subject who threatens before publication is bargaining about that second door, loudly.

A pre-publication demand letter mostly moves work to the publisher's side: counsel answers it, the passage gets re-read against its file, and the schedule holds or slips on the probability-and-cost math in **"I don't care if I get sued." Your publisher does**. Your job the day it arrives is speed. Your publisher hears it from you, immediately, with the evidence file attached.

THE TEXAS NOTE

A refusal is rarely the last legal event, and Texas shows what the aftermath looks like where a statute gives it structure. A subject who later claims the passage defamed them faces a short clock: suit within one year of accrual. Tex. Civ. Prac. & Rem. Code § 16.002(a). Before maintaining the action at all, the Defamation Mitigation Act requires a timely and sufficient request for a correction, clarification, or retraction: served on the publisher, written and signed, identifying the challenged statement with particularity and alleging its defamatory meaning. § 73.055(a), (d). Letting ninety days pass after learning of the publication without requesting one forfeits exemplary damages. § 73.055(c). And a compliant correction takes exemplary damages off the table unless the publication was made with actual malice, whether or not anyone requested it. § 73.059. So in Texas the angry letter after publication is a statutory event with deadlines running in both directions, and answering it is a lawyer's move on a clock. Texas is one state. Your book distributes into every state at once, the states that matter are where your subjects would sue, and everything above is Texas law rather than a national rule.

QUESTIONS TO ASK BEFORE YOU TURN IT IN

- Is the request-and-refusal log written, dated, and stored with the manuscript?
- For each factual claim, can you point to its proof in one motion: source, date, form, location?
- Which sentences say more than the file supports, and has each one been narrowed, attributed, or cut?
- If you de-identified, would the subject's five closest readers still recognize them?
- Does your publisher know about the refusal from you, with a plan attached, rather than from a letter that arrives later?
- If the person who refused threatened to sue tomorrow, is there anything in your own emails to them you would regret?

The Manuscript Risk Checklist. Twelve questions to answer about your manuscript before you turn it in, drawn from the review standards I wrote for a publishing house. Direct, printable, and built to be worked through with your draft open.

Run the Risk Scorecard

If the refusal has already happened, or you'd rather know before you ask. I run flat-fee manuscript clearance reviews: a passage-level read of your draft, the exposure each flag actually carries, and the smallest fix that keeps your point intact, including a plan for every passage where a release isn't coming. Quoted up front, based on length, no hourly meter.

See Manuscript Clearance pricing

Common questions

Do I legally need a release to write about someone?

No. A release has never been the legal precondition for writing about a real person. Claims turn on what you publish: false factual statements about an identifiable living person, private facts publicized without legitimate public concern in states that recognize that tort, or material gathered improperly. A release is risk transfer. It settles in advance the claims it names, which is why publishers like them and why losing one is a setback rather than a verdict.

Does asking and being refused make things worse?

Legally, no. The claims a subject could bring are judged on what you published and the care behind it; asking first appears nowhere in those elements. Practically, the subject is now alert, so get the documentation in order, make sure your publisher hears about the refusal from you, and route further contact through counsel.

What should a release cover when someone will sign?

Scope is the document: which claims are released, defamation, the privacy torts, publicity where relevant; which material it covers, the manuscript, later editions, promotion; and what the subject receives in exchange. Read for approval rights, because trading a signature for content approval can cost more than it buys. And match the paper to the book's actual life: a release drafted for one use can leave later uses uncovered.

Can my publisher require releases I can't get?

Yes. A publishing agreement can condition acceptance on deliverables, and some houses ask for releases on specific passages. When the release is unobtainable, the working response is the one this page describes: bring the house the narrowed passage, the evidence file, and the refusal log, and ask what residual risk it can carry. In my experience, a demand for a release is often a demand for comfort, and comfort has more than one source.

What happens if the person threatens to sue before publication?

The threat gets priced rather than obeyed. Courts start from a strong constitutional tradition against restraining publication in advance, so the action moves to the publisher's side: counsel answers the letter, the passage gets re-checked against its documentation, and the schedule holds or slips on cost. Send the threat to your publisher, and to your lawyer if you have one, the day it arrives. A threat you sat on is the surprise houses handle worst.

By Guy Muller, former General Counsel of Greenleaf Book Group

Published August 11, 2026

Related guides

PART 5

Why can you write about some people and not others?

Publishers clear the senator and flag the neighbor because the law sorts people first. Six factors decide how freely you can write about a person.

PART 2

Does changing the name actually protect you?

Changing a name removes the label and leaves the person. Identifiability is the legal test, and this is what real de-identification takes.

This guide is legal information, not legal advice, and reading it does not create an attorney-client relationship. Defamation, privacy, and publicity law vary by state; nothing here is advice about any specific manuscript. Muller Media Law is a DBA of Guy Muller Law Firm, PLLC. Not certified by the Texas Board of Legal Specialization. Attorney advertising.

Can you write about your ex, your parents, or your siblings?

Can you write about your ex, your parents, or your siblings? You can write about family, and nobody's permission is required. Relatives are usually private figures, so most states apply a lower fault standard than for public figures. They recognize themselves through any name change, and they can contradict you from memory. Documentation and proportion do more for a family chapter than a changed name.

Your mother has already said you wouldn't dare. Your sister remembers that summer differently and has told three people so. The manuscript is due in ninety days, and the chapters you can't cut are about people who share your last name.

I read a lot of those chapters. Family material produced more flagged passages than any other category I saw as a publisher's general counsel, and the fear in the room almost never matched the exposure on the page. Authors braced for a lawsuit that rarely came and gave away paragraphs that would have survived review intact.

Writing about relatives runs on the ordinary claims: defamation, which needs a false statement of fact, and the privacy torts, which mostly don't. What changes is the setting. Your subject knows you, was there, and can be found in an afternoon. That law varies by state, so check where your subjects live.

Do you need your family's permission?

No. American law requires nobody's consent to be written about, including the people who raised you. A release is a risk-management tool, and a publisher asking for one is pricing an exposure it has already spotted.

private figure. Someone who has not achieved general fame or notoriety in the community and has not thrust themselves into a particular public controversy. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). Most relatives are private figures, though one who is independently a public figure gets analyzed as one.

Consent does real work when you can get it, because someone who agreed to a disclosure has trouble complaining later. What it can't do is make an inaccurate passage safe, and it doesn't bind the relatives who never signed. Your family can't stop you from writing the book. They can bring a claim after it publishes, and that claim will look like any other claim.

Why does family raise the legal exposure?

Four reasons. The fault standard is usually lower for private figures. The identification happens whether or not you name anyone. Your brother was there, kept the emails, and remembers the year. And a relative who sues usually wants an apology, which is harder to settle than a number.

In *Gertz*, the Supreme Court held that states may define their own standard of liability for defamation of a private individual, so long as they don't impose liability without fault, and that presumed and punitive damages are unavailable to a private plaintiff who hasn't proven knowledge of falsity or reckless disregard. The standard your sister would have to meet comes from her state's law rather than any national rule, and it's generally easier than the one a senator would face. Check the state where a claim would actually be brought.

Identification is the part authors get wrong most. A plaintiff doesn't need to be named. In *Bierman v. Weier*, 826 N.W.2d 436 (Iowa 2013), a suit by an ex-wife and a daughter over a self-published family memoir, the Iowa Supreme Court restated the rule: the "of and concerning" element asks only whether a third-party recipient can understand who the intended subject is, and extrinsic facts may supply the link. Your family supplies those facts by existing. What actually identifies a person, and what genuine de-identification would require, is the subject of **Does changing the name actually protect you?**

Bierman carries a second holding that surprises most people in publishing. The court treated the self-publishing services company as a publisher and a media defendant under Iowa case law, so the plaintiffs had to prove negligence and demonstrable injury against it. The author was a nonmedia defendant, and in Iowa libel per se stays available against a nonmedia defendant for certain statements outside matters of public importance, with damages presumed. On those facts, the company that formatted and shipped the book had more protection than the man who wrote it. Some states keep that distinction and others have dropped it, so check the one that governs where your subjects live.

Can your family sue you over things that are true?

Yes, in most states, through the privacy torts. Defamation asks whether you got it wrong. The privacy torts ask whether the disclosure was yours to make, and truth doesn't answer them. Recognition and wording vary by state, and some states reject one or more of the four torts.

public disclosure of private facts. The privacy tort memoirists collide with. The common formulation asks whether the author publicized private information that would be highly offensive to a reasonable person and in which the public has no legitimate interest. Adoption and wording vary by state.

Courts looking at family material in books have given autobiography real room. In *Campbell v. Seabury Press*, 614 F.2d 395 (5th Cir. 1980), an author's sister-in-law sued over an autobiography describing her marriage and home life. The Fifth Circuit held that the privacy of people who haven't sought publicity is protected by requiring a logical nexus between the complaining individual and the matter of legitimate public interest, and found that accounts of the author's brother's marriage, as they affected the author, met the test. A Massachusetts trial court carried the same reasoning into memoir in *Bonome v. Kaysen*, 17 Mass. L. Rptr. 695 (Mass. Super. Ct. 2004), weighing an author's own right to disclose her intimate life against an ex-partner's privacy claim. Trial level, one state, persuasive only.

Nexus is the idea I'd want an author carrying into a legal review. The question is whether the passage connects to the story you're actually telling, and whether what you disclosed is proportionate to that connection. Your mother's drinking, in a book about growing up in her house, is the kind of detail the question was built for. The same detail in a chapter about your career has to answer it from scratch.

Haynes v. Alfred A. Knopf, Inc., 8 F.3d 1222 (7th Cir. 1993) draws the other edge. A couple sued over a nonfiction book describing the husband's heavy drinking, adultery, and neglect of his first family decades earlier. The Seventh Circuit affirmed judgment for the author and publisher, describing the core of the private-facts tort as intimate physical details whose publication would be deeply shocking, and putting past misconduct outside that core. The defamation claim failed on substantial truth, since a person has no "legally protected right to a reputation based on the concealment of the truth." Pseudonyms, the court added, would not have solved the problem.

One caution before reading any of that as a green light. In *Dresbach v. Doubleday & Co.*, 518 F. Supp. 1285 (D.D.C. 1981), a surviving brother sued over a book about the murder of their parents. The court rejected the privacy claim, holding that the public has a legitimate interest in past crimes and their investigation, that time had not made the subject private, and that material in a public trial record is absolutely privileged. Judgment went to the publisher. His libel and false light claims against the author were a separate question and were not resolved on that motion. **Truth as disclosure and truth as accuracy are different fights, and winning the first doesn't end the second.**

WHAT COURTS HAVE SAID

The decisions carrying this page. Jurisdiction matters on every one.

- ***Gertz*, 418 U.S. 323 (1974).** States set their own fault standard for defaming a private individual, with one floor: no liability without fault. Presumed and punitive damages require proof of knowledge of falsity or reckless disregard.
- ***Campbell*, 614 F.2d 395 (5th Cir. 1980).** Private facts about a family member are protected disclosure where a logical nexus connects that person to a matter of legitimate public interest.
- ***Haynes*, 8 F.3d 1222 (7th Cir. 1993).** The private-facts tort reaches facts that would deeply offend a reasonable person and in which the public has no legitimate interest. Pseudonyms would not have changed the result.
- ***Bierman*, 826 N.W.2d 436 (Iowa 2013).** A plaintiff need not be named for a statement to be "of and concerning" them. Iowa treated the self-publishing company as a media defendant and the author as a nonmedia defendant.
- ***Dresbach*, 518 F. Supp. 1285 (D.D.C. 1981).** A surviving brother's privacy claim over a book about his parents' murder failed: public interest in a past crime does not fade with

time, and a public trial record is absolutely privileged. His libel and false light claims against the author survived that motion.

Which family portrayals actually draw claims?

The portrayals that draw claims accuse someone of specific conduct, expose a body or a diagnosis, or rest on an account nobody living can corroborate. The second column is the theory a lawyer reaches for; the fourth is what to look at again before delivery.

Portrayal	Main exposure	What strengthens it	What to reconsider
Abuse or crime allegations	Defamation, since the passage accuses a living person of specific conduct	Police reports, court filings, medical notes, dated letters, a second witness	Any accusation resting only on your recollection
Medical and mental health details	Private facts where recognized, plus defamation if the condition is stated wrong	A connection to the story, and the subject's own public statements	A diagnosis you supply rather than report
Affairs and relationships	Private facts, plus defamation wherever the affair is asserted as fact	Your presence in the events, documents, the subject's own disclosures	Intimate physical detail about a third party, the core of the tort
Money and inheritance	Defamation. Theft, fraud, and hidden assets are provably true or false	Wills, probate filings, account records, public court files	Implication by arrangement, where every fact is accurate but the sequence says what you never wrote

Portrayal	Main exposure	What strengthens it	What to reconsider
Childhood events with no living witnesses	Defamation, a proof problem more than a truth problem	Anything written at the time, plus siblings who confirm it	A contested memory written as established fact

HOW A PUBLISHER READS THIS

Family memoirs get read with one question underneath every flag: what happens at the worst Thanksgiving. Counsel assumes the most motivated potential claimant shares a last name with the author, prices accordingly, and asks early whether anyone has threatened. Editors who raise that at acquisition instead of at copyedit spare the author a brutal round of cuts.

Can your mother stop the book?

Almost certainly not before publication. Courts treat an order barring a book from distribution as an extraordinary remedy, and privacy interests have not generally been enough to get one.

In *Doe v. Roe*, 638 So. 2d 826 (Ala. 1994), a trial court had permanently enjoined distribution of a novel based on a real family murder to protect the children's privacy. The Alabama Supreme Court reversed, holding that free speech under Article I, § 4 of the Alabama Constitution was not overcome by the privacy interests raised, and that events already covered in the media and detailed in a public trial transcript were matters of public interest. The ruling rests on one state's constitution, so treat it as an illustration and not a national rule.

What actually happens looks nothing like an injunction. A relative's lawyer sends a letter to the publisher, it costs the house money to answer, and it lands at the worst point in the production schedule. In my own review practice, that pressure moved more manuscripts than litigation ever did, because a demand letter is cheap and a lawsuit is not. The publisher deciding whether to hold your chapter is weighing that cost, the subject of **“I don’t care if I get sued.” Your publisher does.**

WHAT THIS MEANS FOR YOUR MANUSCRIPT

Mark every passage where a relative is portrayed unfavorably and write two lines in the margin: the factual claim a reader takes away, and the evidence you have beyond your own memory. Where the second line is empty, you have a choice to make before your publisher makes it for you. Convert the claim into your account of it, narrow it to what you can support, or find the document. Do it before delivery, when revision is still free.

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

Book a free clearance consultation

What to do before you turn in a family chapter

Build the inventory before you build the argument. Give every unfavorably portrayed relative a row: the claims the book makes about them, the evidence beyond your memory, and anything they’ve already said about it. That document turns a nervous legal read into a short one, and a clearance review gets built around it. It feeds the four moves in **Why memoir is the riskiest category in publishing, and how to de-risk yours** too.

QUESTIONS TO ASK BEFORE YOU TURN IT IN

- For each unfavorable portrayal, can I state the factual claim in one sentence and support it with something beyond my recollection?
- Which passages assert conduct that is provably true or false, and which are clearly framed as my perception?
- Have I disclosed intimate physical details, or a medical condition, about someone other than myself, and does it connect to the story?
- Would the subject's five closest people recognize them from job, city, timeline, and relationships, whatever name I used?
- Has any relative already objected, threatened, or hired a lawyer, and have I told my publisher?
- Where a sibling remembers events differently, does the manuscript say so, or does it flatten a contested memory into a fact?

> **"In the manuscript review I ran, the letters that arrived rarely came from the famous names in a book. They came from the kitchen-table chapters. Family knows what's true, knows what's private, and knows exactly when the book comes out."**
>
> Guy Muller, former general counsel of a US publishing company with global reach

Most of this has a fix short of cutting the chapter. Attribute the claim to its source. Narrow it to what your documents support. Move an assertion from stated fact to signaled memory. **The thing you were afraid to write is usually keepable. What has to change is the unsupported sentence next to it.** More of the framework is in **the main guide**.

If the family chapters are already flagged, or you'd rather find the problems before your publisher does. 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, no hourly meter.

See Manuscript Clearance pricing

Common questions

Can my mother sue me for my own memoir?

Yes. Anyone can file, and family relationships create no immunity. Defamation needs a false statement of fact about her that damaged her reputation, with fault set by her state's standard for private figures. A privacy claim targets a true disclosure instead, and courts have protected autobiography where the family material bears a logical nexus to the author's story.

Does my ex have any claim over shared history?

Shared history isn't jointly owned property, and a former partner has no general veto over your account of your own life. The exposure runs through the ordinary claims: false factual assertions, or intimate disclosures unconnected to your story. Separation agreements and divorce decrees are the wild card, since a non-disparagement or confidentiality clause can restrict statements no tort would reach. Read the paperwork before you write the chapter.

What if my sibling remembers events differently?

Competing memory is a proof problem more than a defense. A defamation plaintiff generally carries the burden of proving falsity, but a legal review asks whether you can support your account. The safest handling is the most honest one: present the event as your account of it, and say so on the page.

Should I show family the manuscript before publication?

It's a judgment call with a legal dimension worth knowing. Sending a chapter to one relative generally won't satisfy the publicity element of a private-facts claim, which asks for communication to the public or to so many people that the matter is substantially certain to become public knowledge. *Bierman*, 826 N.W.2d 436 (Iowa 2013). Defamation works differently. The common formulation treats publication as communication to one person other than the subject, so a circulated draft can supply that element. *Wallulis v. Dymowski*, 918 P.2d 755 (Or. 1996) (citing Restatement (Second) of Torts § 577(1)). Talk to a lawyer before you send it, and never send it to the person you're worried about without one.

Does a family member's death change what I can write?

It changes some of it. In most states, defamation claims belong to the living and don't survive the subject's death. Living relatives may still have claims where a passage defames them by implication, and publicity rights can outlive the person by decades under state statutes. The rest is in Can a dead person be defamed?

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

PART 2

Does changing the name actually protect you?

Changing a name removes the label and leaves the person. Identifiability is the legal test, and this is what real de-identification takes.