

How to Tell the Truth Without Ending up in Court

Helen Sedwick and Linda Joy Myers

A transcript from an NAMW presentation

Linda Joy: I'm so glad you're with us today, Helen, and thank you. As you know, I wanted to invite you because so many people get worried about all the legal and ethical issues in their memoir. I know that you have a lot of answers to these questions, so thank you for being with us. We'll get started as soon as I do the introduction.

Helen Sedwick is an author and California attorney with thirty years of experience representing business and entrepreneurs. Publisher's Weekly lists her *Self-Publisher's Legal Handbook*, your book, as one of the top five resource books for independent authors. Hele has a website, helensedwick.com. It's on our website and there's some information there that I'm sure will be useful to all of you. Welcome, and I know people are going to have questions' later, but we're going to just proceed forward and cover some things and then get the questions answered, alright?

You get contacted by a lot of different people, I'm sure. Is it mostly by memoirists, or do fiction and memoir both have similar questions? Can you talk about that for a second?

Helen: Yes, I get a range of questions, often very surprising. Probably the most telling information is, one of the posts on my blog is "How to write about real people without ending up in court." That post is viewed fifteen times more often than the next post. So it will have 3,000 views, and the next post after that will have 250 views. It's that dramatic. I eventually had to close comments on it, because I could've spent half my day with the comments. When the comments got to about 250 comments I stopped, because I actually have to make a living. So the issues about writing about real people create a very uncomfortable conflict for writers. They're trying to explore the truth, explain the truth, the whole process of writing is about that. And yet, their worried about the consequences of telling the truth. So yes, what I try to do is say "there are some risks, like is not without risks."

I would never tell writers not to take risks. But you can learn to be much smarter about the risks that you take. Know what the legal issues are and take the ones that are important to your narrative arc or to your story and the ones that are just kind of digs at somebody because it feels good. Now, maybe you don't really need to take those.

Linda: Right, exactly. That is what we need to talk about. What I tell people is "Don't worry in your first draft about legal and ethical challenges you might run into. However, a lot of people, as you know, are writing about abuse. They're writing about real people who did things that effected their lives. Sometimes they say, "Well, but I am so tangled up in worry about this that I can't just write it. I can't put it aside because it's the core of my book." So let's dig in to what some of those issues are legally that I think are behind those concerns.

Helen: I'm going to focus on the legal issues, because there is a whole psychological inhibition about exploring these that's art of the component of abuse. But let's talk about the legal issue. The good news is that there are a lot of books published each year, both traditionally and independently, and very few lawsuits because the cost of litigation is prohibitive. Defamation cases are incredibly hard to win. The first amendment favors the writers. Many people who are the target of these books or the subject of these books don't want to call attention to the book. There are cases where if someone has written a memoir or kind of a cloaked memoir, and when the word gets out about who is the subject of the book, the book sells millions of copies.

There are various categories of risk, and I'll go through them and then leave lots of time for questions. Because it's the application of these rules that people need help with. There's defamation, there's disclosure of private information, there's the misappropriation of the right of publicity, and then there's copyright questions such as if you're using images or letters that other people wrote. Defamation's a big one. Somebody who is suing a writer for defamation had to prove all of the following:

1. That the writer made a false statement of fact. A fact is not an opinion or not a guess, but something that is an actual act the person did. Like abuse, the more specific you are the more it's a statement of a fact.
2. It has to be about an identifiable person who is alive. So you may speak ill of the dead. That's one thing. But most of us don't want to wait that long. Do we want to outlive our perpetrators? No. So it has to be about an identifiable person.
3. It has to be published. The writing a memoir is not the legal risk. It's publishing the memoir. That's why you should separate the two. And even if you share it with your writing group, that's pretty low risk because of the last component, which is:
4. The false statement of fact has to cause serious reputational harm to the subject, or I'll call the target. For instance, if you're writing about abuse for somebody who's already been convicted of abusing other victims, you don't have to worry about hurting their reputation because it's already trashed.

Linda: That's often not the case though. So many people are writing about something that no one's ever written or talked about before.

Helen: Right. And then if it's a famous person it has to be done with malice, which means you either knew it was false or had reason to believe it was false. That's not really relevant in memoir because most people are writing about their own memory. The next claim is called "invasion of privacy" claims. Similar that the target has to be recognizable to other people, the information has to be truly private. It means that it didn't happen in public. There's often a difference between what families don't talk about but everybody knows.

Linda: Then there's that.

Helen: You know, people don't talk about somebody's drinking, but they've been in court for several DUIs, so that's not private information anymore. The information has to be truly offensive and embarrassing and not of public interest, and this is the big loophole. Interestingly, cases of abuse, when they're written about by the victim, are considered issues of public concern

and interest. So if you're writing about this, you generally don't have to worry about privacy issues, particularly if it was an adult abusing a child. Child on child abuse may be a little bit more complicated. But an adult abusing a child, the court is not going to have any sympathy for the perpetrator saying that that behavior was private and should not have been disclosed. So that's not going to happen. Then the other one is, just quickly a right of publicity means don't use somebody's image or name for publicity purposes, and I'm not even going to spend some time there.

So some of the things to think about: Writers should acknowledge that their memory is imperfect. Nobody's going to remember things the same way you do. That's not a bad thing, that's just part of the package. In particular, people remember traumatic events in vastly different ways. It's their way of coping with things. Including complete denial. So it can't hurt you either legally or your work to explore your memories with other people who were involved, especially if they have different memories. Testing your own memory, exploring your own memory may help you, the writer, achieve a better story and more understanding. And you're also going to identify where the risks are legally, because of how people react. This is not always the case, but there may be some people that you can talk to.

Linda: You mean talking with family or letting them know what you're writing about or finding out what their memories are?

Helen: Yes, or they don't need to know you're writing a memoir. Just ask "Do you remember so and so? Do you remember that day at the beach in 1966?" You may discover other people within your family or community who are also grieving and processing this. Don't assume everyone's going to be against you. And if they are, the sooner you know that the better.

Linda: Right. This is why people go, "Oh I don't know if I can deal with that."

Helen: And then the next important thing is what you were just saying. Separate the writing process from the publishing process. If you worry about the legal issues, you're going to self-edit, which is going to interfere with the exploratory and the healing process of memoir writing. Write it as truthfully, as passionately, as angrily as you want. If you decide, after one draft, two drafts, three drafts, that you want to share this work with the world, then edit with the legal risks in mind. It's only then that you're going to be able to identify those risks. That information that you HAVE to keep in the boke cause that's what the book's about. And what information isn't really necessary or where you can change identifying characteristics about the person or the place or the situation to avoid the legal risks or perhaps to protect somebody who is a victim in a similar circumstance as you. If you can just put the legal issues aside, that's self-editing, and self-editing is a very self-defeating impulse we all have. And it's one to just constantly reassure yourself that you will do it, but not right now.

Linda: To all the people who are on the line who have heard me say this so many times, I'm just saying: An attorney is saying it now!

Helen: It's not the writing, it's the publishing that's the legal issue. And also remember that accuracy and truth are not the same things.

Linda: Let's talk about that.

Helen: In striving for the truth, you may not get all facts entirely correct. And you may change names and the sequence of things to protect privacy and to avoid legal headaches, but all that may help you achieve and reach the truth of your story. Striving for too much accuracy, whether something happened on a Tuesday or a Friday or what year, is another form of self-editing that's going to get in your way. If you look at a lot of memoirists' disclaimers, they put things like, Tobias Wolff has a great one, that says he had been corrected on chronology, and his mother claims that a dog that he described as ugly was actually quite handsome. But he says "I've allowed some of these points to stand because this is a book of memory, and memory has its own story to tell."

Linda: Very good, wonderful.

Helen: I'll get back to more legalistic things, but also try not to lose sleep about what other people think. This comes with the territory. You may find people are more upset if they're not in your book than if they are. Many people say once they've written a memoir and they've really explored something, family members or people they know that they don't expect come forward and say "thank you." On the legal side, some of the questions I get are, "Well, I just want to change one letter in this name, will that be enough?" No. If you're going to identify the person, then accept that legal risk. If there's somebody who you are going to mask the identity because it won't interfere with the truth of your story, then really mask their identity. Don't just change one letter.

Linda: So how do you mask it? People ask me this all the time. Would you address that?

Helen: It's got to be more than one letter. It doesn't matter if the target recognizes itself. What matters is if a third person, who didn't know this information about the target, recognizes the target.

Linda: What about the people who do know the person? If you've written a person, there's twenty or thirty or fifty people who know what you're talking about.

Helen: You're right. The people who knew this was a bad person.

Linda: If they just knew them and the family and didn't know this information and then they go "Oh! Is that what he did?"

Helen: That is a risk. And you have to look at the other factors, like okay the family members find out about this, how much is this person going to be harmed. And even if he is harmed, he would have the burden of proving it was not true, and suing you. This doesn't talk about what you're going to do at family weddings, we're just talking about the lawsuit.

Linda: So the burden of proving that what you said, let's say you accuse somebody of setting fire to your garage. And they go "No I didn't, that wasn't me." Then they could sue you. How do they...?

Helen: They have to prove that list of things. It's a false statement of fact about an identifiable living person that causes reputational harm. And they have the burden of proving all of that. And it's published to the world, that was the other one that we talked about.

Linda: Yeah, proving the harm, like he has a car business and he had less business because of your book.

Helen: Correct.

Linda: To prove that . . . well, you could maybe. But who knows if that's really the cause.

Helen: Right. And then sometimes there are cases where there has been a false statement, and the person was identifiable, and then the court says yes, there was a defamation. You're awarded \$5,000. They give a token award. Courtney Love defamed her attorney on Twitter, saying her attorney had sold out. The attorney won the case with like a \$5,000 award, because this jury wasn't too sympathetic.

Linda: Right, so they get to decide how much and all that.

Helen: Yes. If you're writing about somebody in a positive light or a neutral light, you may do that without permission and without risk. I get questions from people saying, "Can I mention someone in the acknowledgments?" Yes, you may. Only when you're giving information or saying something private about somebody, and that information's potentially damaging to the person do you have a legal claim. So yes, you may talk about people in a positive or neutral light, like a factual light like who was your fifth grade each other, who was your landlord at a time, something like that. You may use historical figures or public figures for context, like if you're talking about the summer of 1969 you could talk about Neil Armstrong standing on the moon, you could talk about Grace Slick, Cat Stevens. Mentioning those people in kind of that neutral light, all that's fine. You may also expose bad information about people once they're dead. The claims of defamation and privacy do not survive a person's lifetime, because it's meant to protect their ability to make a living that might be damaged by these false statements. So that's a relief to many people. They think, "Okay, I can write this book now but if I really want to be safe and so-and-so's 98 years old, I can't publish it until he's gone.

Linda: But they can write it and get it all ready to go.

Helen: That's right.

Linda: Which is what I've told people. I said, "Write it now." And I know people who are waiting, it's too bad, but waiting for someone to die. Partly because of the person's feelings or partly the issues of legality.

Helen: Yes. Sometimes there's just . . . the world is full of enough pain, and maybe you don't want to cause more pain than necessary. And if waiting a couple years will reduce that, I think that's a very healthy thing. It's getting past vengeance and getting on to recovery.

Linda: Sometimes it isn't about vengeance per se, but really tough truths. And maybe it's taken the person a long time to get there, and finally they feel empowered. We know that there are

memoirists who have lost relationships with their family members in real life because of these things. Or are afraid they will. Lots of people say, “I’ve gone to conferences where a presenter said ‘Oh, don’t worry about it. Most people are glad that they’ve written their memoir and it’ll be fine.’” I’m a therapist, I deal with abuse all the time. And you hope that’ll be true, but in some families--people know their families. Some people are afraid because they’re just afraid. Some people are afraid because they know exactly what will happen.

Helen: Which is, again, if you need to write this memoir, write it. And then you will know your story and yourself much more at the end. And then you decide whether to publish it or not.

Linda: Yes. You have to go with the impulse to write, express, create. I call the worries about all this stuff the outer critic. We all have an inner critic, but I think it’s helpful to realize that some of the voices and fear that come up so often in memoir writing are the outer critics, and we need to put them in a closet or say “I’ll deal with it later.” And truly do that. Or if they won’t leave you alone, I have people write out everything they think that people are going to say that’s bothering them, just to get this tape loop out of their head and on to a piece of paper.

Helen: Yes. I do think that worrying about the legal claims, you’re more worried about other people’s judgment. That’s an impulse I’m sure every memoir writer has to battle. It’s just a battle, and it’s one that when you get to the other side of it, must be a tremendous relief. I don’t have the nerve to write a memoir. I give everybody who writes memoir great credit. I’m going to touch on a few other “gotchas” so that people know about them.

If you’re writing about your divorce and you’ve signed a settlement agreement as part of your divorce, you need to take a look at that. Because that may have provisions in it about confidentiality and what’s called non-disparagement. Writing a memoir about an abusive marriage . . . your ex-husband or ex-spouse may have a claim other than defamation or privacy. It may be a breach of contract claim. It could unwind your divorce settlement or have some economic consequences. So if you signed any sort of confidentiality agreement as part of a lawsuit or settlement of a lawsuit, you need to take a look at that. If you are a professional and you’re using information you’ve learned as an attorney, a therapist, a member of the clergy, etc., you have a duty not to disclose that information without consent. It’s just a different set of duties for professionals.

And then there’s the issue of let’s say love letters, or hate letters. You have a love letter sent to you by your college fling. You want to include that in your book. This is such legal hairsplitting, but there is a difference between owning the physical letter and owning the right to reprint the words of that letter. These are the things that people don’t think about. So whenever you can, it would be legally favored to get consent from somebody to republish their work from a letter. If you can’t, you could rewrite it or paraphrase it. However it is also quite likely that if you’re using this letter as part of a much larger work, and it’s a letter, it’s more conversational, it’s not like a poem, but if it’s a letter then it’s considered sort of fair use and instrumental use and it’s not a problem. Every time you’re looking at a writing that’s written by somebody else, you need to give it some thought about whether it’s still covered by copyright or not.

Linda: Wait, a letter?

Helen: A letter somebody writes you or a poem someone has written to you, the writer owns the copyright, even if they gave you the only copy of that poem or letter.

Linda: Oh my gosh, that's very interesting. Kind of nerve-wracking, isn't it?

Helen: Now it could be it's a very old letter.

Linda: Is there a year? I put clips of letters in my new memoir. They were positive letters, but it doesn't matter, you're saying.

Helen: That's a copyright claim.

Linda: Okay. And are there so many lines that are considered fair use?

Helen: Most likely you're using the whole letter.

Linda: No, like four lines?

Helen: Four lines of the letter, use only as much of the letter you need to as part of a much larger work in discussion, then it's most likely fair use. If you're going to make a book entirely, that's really going to be based up on the correspondence of two people, it's a matter of degree. The more that you are using work created by somebody else, the more you need to take some time and think. A lot of these are things to spot and consider. Is this letter such a key component, or this correspondence such a large portion of my book that I ought to get permission to use it.

Linda: What if you're not currently speaking to the person? What if it is an abusive relationship that perhaps existed a long time ago, but you couldn't get permission or can't interact with the person, not because they're dead but because it's dangerous to interact with them or you don't know where they are?

Helen: The analysis that I would do to that is: if these are letters that are threatening or support your claim of abuse, you are using these letters for a larger purpose, which is to discuss this abuse and your experience with it and your recovery from it and to help others deal with this kind of thing. That would be a very compelling fair use argument, because you're using work created by somebody else as part of a larger and important discussion.

Linda: That's a good principle to know.

Helen: So some of these things are, "Okay, these are issues I've spotted, now I need to learn more about these or get some help on it."

Linda: Wow, I'm learning a lot here.

Helen: Now there may be, as I said, there isn't a law where I could say something's absolutely safe and there are things that are absolutely not safe. But most of the law, and what I'm talking about now, is that there's a spectrum of risk. So I'm not saying "Don't take any risks," that's not better for the writer or the world. Writers should take risks. But it helps to understand what the risks are, that they can be managed. Take the ones that are important to take for your story, and the ones that really aren't important, you'll change the names, you'll change the setting or the

chronology enough that it's not recognizable to other people, but you'll still achieve the truth that you're reaching for in the book.

Linda: You're achieving the emotional truth.

Helen: The emotional truth, yes.

Linda: We talk a lot about that. Do you have some real-life examples of situation that you've worked with that you can share?

Helen: Well, there was a book, *Girl Interrupted*, and she wrote about this boyfriend who was very physically aggressive and she was depressed, she did not want to have sex and he pushed and pushed and pushed and really pushed sex on her. It really was rape or borderline rape, and he sued her. He sued the writer, and he lost. He sued on privacy claims. He lost the case because the court said that there is a public interest in the exposure and the discussion of abuse.

Linda: So a lot of people are writing about abuse, and that's what they worry about. So it sounds as if it's a legitimate, it's personal, very very personal for each person, but there's a potential public danger. Is that kind of the principle upon which they look at that?

Helen: Well, for private information, if it is of public interest, and that does not have to be highbrow, it's a public interest (which is how gossip magazines make money). If it's public interest, then the first amendment permits you and protects you in writing about it, even if it exposes private information. The people who get in trouble on this are the revenge porn. There've been some of those cases. Or the recent Gawker lawsuit where there was a sex tape that was released. Usually it's a magazine or some publication, and it's just trash. They found some really interesting smut about somebody and they're just posting it purely for commercial purposes. Memoir writers are not doing that.

Linda: Usually not. They are extremely concerned about being both accurate and fair.

Helen: And the story isn't about the abuse. The abuse is something that's in the story. The story is usually about the experience and the recovery from it, and in a sense helping the writer and helping others. There's a larger purpose to it, rather than just exposing this bad act of somebody famous. On a practical level, lawsuits are really a multiple of money times emotion. If there's a lot of money involved . . . where you see losses about defamation is where usually somebody has a lot of money, either the person who said the allegedly defamatory statement, or the target of that statement, or the publication of that statement. So either there's a lot of money involved or somebody has a lot of money, or there's a lot of emotion involved because of the statement. And it's particularly dangerous if both are involved. So if you are writing about somebody, particularly if it happens to be a lawyer with a lot of money, or if you're going after big medicine, big banks, big agriculture, some organization or individuals within that power structure, then you have a higher risk book and you ought to consult with an attorney.

Linda: People have written and asked me questions like that, and I told them to come to our presentation, but also to consult a literary attorney. I certainly wouldn't even try to answer the

questions. Some people say “Well, I really want to expose a hospital or a big company” about unfair practices or about whatever they did.

Helen: Incompetent doctors who are still practicing. Absolutely. Those are the things where, among your team, with an editor and designer should be a literary attorney, for what I call a high risk book. Because I can give general advice now, but someone will need to look at sections of your book.

Linda: And be very specific about their advice to you as your attorney.

Helen: Right--who will apply these very general concepts to the specifics in your book. If you go with a big publisher, they may hire an attorney to do that manuscript review. A smaller publisher may say the writer has to hire the attorney.

Linda: Smaller publishers tend to put it back on you.

Helen: Yes. People should be aware that if you sign with any publisher, there's going to be a provision in your publishing contract that's called “an indemnification provision,” where you say to the publisher that if they are sued for defamation or infringement, that you the writer had to hire the attorneys and pay them.

Linda: Yes, I've seen that in contracts. It's very common.

Helen: There are some insurance policies also for high risk books. You can get liability insurance. So if you are writing a high risk book, it's part of the check list, something to look into. What's nice about insurance is when you have insurance and your claim is covered by insurance, they hire the attorneys, they deal with all the paper work.

Linda: Is that expensive insurance?

Helen: It can be a couple thousand dollars a year.

Linda: So it would save you a lot of money, but still. It's time for questions. I wonder if we should open it up now because I'm sure there'll be quite a few.

Helen: There probably will be.

Linda: Okay, so I just want to let everybody know, we can answer questions for almost 15 minutes. Any questions, comments, stories?

Caller: My question has to do with taking quotes from another book. There was a book written in which my father, who has passed away, gave the whole details of his story and the invasion of Korea as an interview to the author. And it was then printed in the book. As long as I give the reference to the book when I quote the story, is that considered plagiarism or would that be a legal issue?

Helen: It's going to depend on what your father's agreement was with that author. If your father said that he gave that other writer complete rights to his story, then you would need his permission. If your father just said no it's my story but you have permission to use it, and that's the more likely scenario, then you may still use your father's words. Your father's words, if they

weren't exclusively given to the other person, you could reuse your father's words because you probably inherited the rights to those words.

Caller: So if there was any documentation, both the authors and my father are dead. So is there any concern then?

Helen: If you are using your father's words, I would have very little concern. If you're using the other author's words, like how he summarized and analyzed it, then you need to use as little as you need to just to make your point. Because you're using it as part of a larger discussion, so that makes it more like fair use. But generally if you're using work by somebody else, you should always get permission. Giving credit is not enough, unless there's an exception such as fair use.

Caller: Who do you get permission from if the author's dead?

Helen: It would probably be the publisher.

Linda: The publisher.

Caller: Oh, the publisher. Okay. That's very helpful.

Helen: I would say most likely if you're using some of your father's words in a much larger book it's a low legal risk.

Caller: If you had a supervisor 50 years ago who isn't doing that kind of work anymore, and he comes off looking really incompetent, should I change the name? Can I just change . . . what if I just used a different last name? How do you do that?

Helen: If he's still working . . .

Caller: No, not in this particular area.

Linda: He's recognizable though, right?

Caller: Well, he's recognizable to the other people that he supervised.

Helen: Again, you'd have to decide whether he'd be recognized in a way that's going to cause him reputational harm and really affect his ability to make a living and be a member of society today. So if he's 79 years old and has Alzheimer's and is in a home, you're not going to harm his reputation and his economic living because he's not capable of making a living anymore.

Caller: I don't know, I haven't kept track of a lot of these people.

Helen: If you don't have a problem changing his name, then just change his name. But the more you change it, the better. The more villainous he is, the more you should change.

Linda: Including descriptions, right? Should she describe him a different way and all that?

Helen: Interestingly, if he's thin and you describe him as fat, he's more likely to be bent out of shape than if he's fat and you describe him as thin.

Linda: That's true. Yep.

Helen: One way to really kind of confuse people is to make them look much better than they really did.

Linda: How handsome and tall. Anyway, we're having fun with that.

Caller: Because they haven't read the chapter about them, but they're saying, "No no, don't change my name." Is there a danger, should I get written consent?

Helen: Consents always nice to get, and an email would be fine. If you didn't write anything negative about them then I would worry about it, but it's always nice to have those things tucked in your virtual pocket because sometimes people change their mind when they see their name and their words in print.

Linda: People ask that a lot, so thank you.

Caller: If I'm going to mask someone in my memoir, do I need to ask their permission? If I'm going to be writing about them, do I need to get their permission to write about them? I'm writing about them in not a completely negative way. I'm an adoptee, I'm writing about finding my birth mother, and she doesn't know I'm writing a memoir. I'm so secret. So I have concerns about this.

Helen: In most cases, you do not need to get permission to write about somebody, unless you were the therapist, I mean there are circumstances. But in this case you do not need her consent to write about her. If you're going to interview her, you might get a written consent so that you can use her exact words and more of that, and she's part of that discussion.

Caller: Okay, and that goes for other people in my memoir that I'm not writing so nice about? I don't need their permission to write about how they were, right?

Helen: You do not need permission to write about someone in a positive light, in a neutral light, or even in a negative light as long as it's not seriously negative. I'm not talking about describing your mother-in-law as bossy, I'm talking about describing your mother-in-law as a drug dealer. So if you're describing people as being obnoxious or overbearing or unreliable, but it's not criminal or perverted or corrupt, they may not like it, but it doesn't rise to the level of defamation. It has to be seriously damaging to somebody.

Diane: Okay, that helps me a lot. Thank you.

Caller: I'm working on a memoir about my years working with veterans facilitating expressive writing and poetry. Many of the veterans have passed away, and many I am not in touch with. I am changing the names to protect the privacy. I'd like to know how I can include some of their poetry and prose and/or sections without having to seek out permission.

Helen: It would be better to get permission.

Linda: Yeah, you covered that earlier.

Helen: If you're using their work as part of the discussion about the process, your program and the process of helping these people and how people express things they had trouble expressing

before, I think you have a strong fair use claim. But I think in what you're describing, before you publish your book you should probably consult an attorney. Even if they're dead. Because a person's copyright lasts for 70 years after they die. We're talking not about the privacy issues, we're talking about using writing created by somebody else, and the copyright interests last for a long time.

Caller: They were never published, this is student work.

Linda: Doesn't matter.

Helen: The copyright attaches to your work as soon as you put it down on paper or in a computer.

Caller: Okay. So I couldn't maybe copy some of their work, but I could discuss conversations as you indicated earlier.

Helen: I would say, do your work. You have one of these situations where somebody, an attorney needs to spend an hour or so looking at it and talking about the issues. You have one of those cases.

Caller: Okay, thank you.

Caller: I am a paramedic, I live on a small island, and I'm writing about the community. Basically, I have lots of stories that are about my patients. Some I can change the descriptions enough that people wouldn't know who they were, but some would be closely identifiable no matter how I change the descriptions. How do I navigate that?

Helen: In your state, it depends whether you are included in HEPPA and all the privacy issues about medical claims. I don't know whether paramedics are covered by that.

Caller: They are for sure. Definitely the patient has a right to expect that I'm not going to violate their privacy.

Helen: And there have been lawsuits about emergency rooms. So you have to, if the person is going to be identifiable, I would be very nervous about using their information. Sorry to say.

Linda: Since you know a lot of people personally, maybe you should start thinking about doing that and then it might make it easier for you to go forward.

Caller: Yes. Thank you.

Helen: And you may get their side of the story and add a whole other aspect to your book. Before people disappear I want to give you all my email address in case you think of questions that may come up later. It's Helen@helensedwick.com.

Linda: Thank you for that. We have time for another question or two.

Caller: If I were to write about my experiences in a hospital during 8-10 years ago, I'm wondering how to do that. Is it a state law, or statute of limitations to speak about improper care without naming any doctors or anything in that way?

Helen: And you're trying to expose improper care?

Caller: Yeah. I understand there have been some changes in patient navigation now, they have that department, but it was a train wreck for me.

Helen: And were you a patient or a provider?

Caller: Patient.

Helen: You may tell your story. As you get through your story and you get done with it, if there are particular identifiable people that you're describing facts that reveal corruption, incompetence, malpractice, etc., I would have those sections of your book looked at, at the time.

Caller: Could I just change the name of my local hospital a little bit so they don't recognize it?

Helen: Yeah, change what you can so it's not identifiable to other people.

Caller: Oh good. So if I ever show up there again they won't kick me out.

Linda: Well, it needs to be identifiable to people who already know where it is and if you were there, that they recognize it. Isn't that an issue?

Helen: If you're going to change it, change it so it's really not recognizable, either to people that would know that hospital or not. A particular event might be recognizable to somebody who was there.

Caller: I mean, I'd love to call them out on the incompetence to make it better.

Helen: And that can be done. It can and should be done. All I'm saying is that I can't give you a blessing right now for it to be safe. You'd have to write it, and then I or somebody would have to sit with you and look through it. But that's what it comes down to. If you're going to write it, and maybe it should be written, then one of your team members is going to be a lawyer when you get to the publishing part.

Caller: Excellent, that's what I need to know.

Linda: Good. Helen, thank you, I think it's such a relief for several people that have called in to realize that they actually do need some legal advice about these things, and they may not have known about it, or realized it, or it stopped them from writing in a way already and now they know what they need to do.

Helen: Yes, but they also should still write it. If I send any message out there at all, write it. Then when you're going to publish it, then have a more serious discussion with yourself and perhaps a professional.

Linda: I agree, that's great advice. Thank you so much, this is really fantastic, I took a lot of notes. Thank you again for being with us and giving such really careful answers. Helen is available if you all need her, and you got her email address.