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DEFAMATION LAW: ONCE A PUBLIC FIGURE ALWAYS A PUBLIC FIGURE?

A living person is not a means to an end. Events may be symbolic, but individuals are not mere symbols.¹

How should the passage of time affect public-figure status in defamation suits? In many cases the answer is clear. Plaintiffs such as world leaders² and renowned entertainers³ achieve such a level of celebrity that they must always be viewed as public figures. But for others, including a former child prodigy,⁴ an ex-girlfriend of Elvis Presley,⁵ and a former prosecutrix in a rape trial,⁶ the answer is not so obvious. Clearly a state’s interest in protecting the good name and reputation of its citizens in defamation actions is most significant when the citizen is a private individual.⁷ Conversely, the need to ex-

2. Jimmy Carter, as a former President, would undoubtedly have been considered a public figure had he decided to pursue a cause of action for libel against the Washington Post. Carter decided not to bring suit upon the Post’s retraction of its statement, which suggested that Carter had employed electronic listening devices in Blair House to eavesdrop on the Reagans during his last weeks in office. Celebrity Journalism: It Sells But.... U.S. News & World Rep., Jan. 18, 1982, at 55.
3. See, e.g., Carson v. Allied News Co., 529 F.2d 206, 209-10 (7th Cir. 1976) (entertainer Johnny Carson held to be “all-purpose” public figure); Cepeda v. Cowles Magazines & Broadcasting, Inc., 392 F.2d 417, 419 (9th Cir. 1968) (professional baseball player held to be public figure).
4. See Sidis v. F-R Pub. Corp., 113 F.2d 806 (2d Cir.), cert. denied, 311 U.S. 711 (1940). Sidis, at the age of eleven, was considered a distinguished mathematician, and graduated from Harvard University at the age of sixteen amid widespread public attention. Subsequently, however, he avoided all publicity. Id. at 807. Sidis, however, was not a defamation suit. See infra text accompanying notes 88-89.
5. See Brewer v. Memphis Publishing Co., 626 F.2d 1238 (5th Cir. 1980), cert. denied, 101 S. Ct. 3112 (1981). Anita Brewer (née Woods) gained media exposure through her relationship with pop singer Elvis Presley. In the roughly ten years since the end of their romance, Brewer had remained out of the limelight. Id. at 1248.
6. See Street v. N.B.C., 645 F.2d 1227 (6th Cir. 1981), appeal dismissed per stipulation, 50 U.S.L.W. 3477 (U.S. Dec. 15, 1981)(No. 80-6835). Mrs. Street was the prosecutrix in a highly publicized rape trial, which came to be known as the Scottsboro Boys Trial. In the forty years since the controversial trial, Mrs. Street sought to avoid all media attention. Id. at 1235.
tend first amendment protection to allegedly defamatory statements by press and media defendants is strongest when the plaintiff is a public figure.\(^8\)

The actual malice test, first developed in the landmark case of *New York Times Co. v. Sullivan*,\(^9\) was designed to strike a balance between these two competing interests\(^10\) by requiring a plaintiff who was a public official to establish that a media defendant published defamatory material in reckless or knowing disregard of the truth. This test has evolved to the point where all public figures are required to establish a reckless or knowing disregard of the truth by a media defendant to prevail in a defamation action.\(^11\)

Classification as a public figure is often the difference between victory and defeat for a defamed plaintiff\(^12\) because of the differences in burdens of proof required of the public figure and the private figure. In contrast to its holding that the highly defendant-protective actual malice requirement must be met by public figures, *Gertz v. Robert Welch, Inc.*\(^13\) held that private individuals need establish only the degree of fault mandated by state common law,\(^14\) which is often the mere showing of a defendant's negligence.\(^15\)

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8. Id. The Gertz Court realized that private individuals do not have the same media access to rebut defamatory statements as do public figures.


12. "Plainly many deserving plaintiffs...will be unable to surmount the barrier of the *New York Times* test." *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 342 (1974). But see Burnett v. National Enquirer, Inc., No. C-157213 (Cal. Super. Mar. 26, 1981) (public figure able to show actual malice); Bindrim v. Mitchell, 92 Cal. App. 3d 61, 155 Cal. Rptr. 29 (Cal. Ct. App. 1979) (public figure able to prove actual malice of defendant). Once actual malice is shown, the amount of the award for a public figure is usually substantial. In the *Burnett* case, for example, Carol Burnett was awarded $1.6 million, which was eventually reduced to $800,000. *Celebrity Journalism: It Sells But...*, supra note 2, at 55.


15. 418 U.S. at 346-47.
Accordingly, the determination that a plaintiff is a public figure is frequently a crucial blow, if not the death knell, to a defamation action. Although the criteria for determining who should be a public figure are the subject of much debate, the rationale for the classification is generally accepted: Public figures must expect to be subjected to more criticism than private citizens. The media, due to society's need for instantaneous coverage of important people or events, requires more protection when commenting upon a person who is in the public eye. Understandably, this type of reporting leaves little time for verification of sources or doublechecking of facts; because of the possibility of an occasional false report, the press needs protection. Yet, in unusual cases, individuals who achieve public-figure status because of their involvement in a specific event or controversy retreat from the public eye and are largely forgotten. Later historical analysis can portray these figures in a defamatory light. The issue of the media’s continuing need for the protection of the actual malice standard then becomes a far closer question.

Not surprisingly, given the changing contours of public-figure defamation law, this question has not yet been fully explored. This note analyzes the controversial and still unanswered issue of whether the passage of time can ever completely extinguish a person’s prior public-figure classification. The first section briefly summarizes developments in defamation law and the public-figure doctrine since the *New York Times* case. Section two analyzes the courts of appeals decisions that have addressed the issue of how the passage of time affects a person’s public-figure status, with particular focus on


17. See *Gertz*, 418 U.S. at 342-43. Conversely, this note advocates that historical analysis does not need as much protection as contemporaneous reporting. See *infra* notes 127-32 and accompanying text.


19. For a discussion of the differences in the interpretation of public-figure defamation law between the Supreme Court and the courts of appeals, see *infra* text accompanying notes 164-67.
the recent Sixth Circuit decision of *Street v. N.B.C.*\(^{20}\) The third section focuses on how the Supreme Court should eventually decide the issue, based on an analysis of its earlier defamation decisions. It also considers the ramifications of the settlement in *Street* on this still undecided issue. Section four proposes a standard that can be applied to future cases involving defamed public figures who have long since shed their public-figure status.

**HISTORICAL ANALYSIS OF THE PUBLIC FIGURE DOCTRINE**

An individual’s right to his or her good reputation and privacy and the first amendment’s guarantee of freedom of the press are two of our most basic liberties. Indeed, the Supreme Court has found balancing these interests to be a very delicate and somewhat elusive task.\(^{21}\)

In *New York Times Co. v. Sullivan*,\(^ {22}\) the Supreme Court delineated guidelines for reconciling these twin conflicting interests when it held that public officials could prevail in a defamation suit only by showing that a publication was made with actual malice or in reckless disregard of the truth.\(^ {23}\) There, the plaintiff was the Police Commissioner of Montgomery, Alabama. He was alleged to have been defamed by an advertisement in the New York Times that inaccurately, and less than favorably, described the police department, and by implication, the police commissioner’s handling of the civil rights protests and the arrest of Dr. Martin Luther King during the early 1960’s.\(^ {24}\) The Supreme Court’s reversal of the judgment for the plaintiff\(^ {25}\) was based on the trial court’s failure to require the plain-


\(^{21}\) Justice Powell acknowledged that there is a tension between the need for an uninhibited press and the interest in addressing wrongful injury. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974). The Supreme Court, since the introduction of the actual malice requirement in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), has frequently faced the difficult issue of its proper application. For an analysis of the relevant Supreme Court decisions, see infra text accompanying notes 30-78.

\(^{22}\) 376 U.S. 254 (1964).

\(^{23}\) *Id.* at 279-80. The actual malice requirement was subsequently clarified: It requires a plaintiff to show that a false publication was made with a “high degree of awareness of [the statement’s] probable falsity,” *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964).

\(^{24}\) 376 U.S. at 257-58.

\(^{25}\) *Id.* at 261, rev’g 273 Ala. 656, 144 So. 2d 25 (1962). At trial, the judge instructed the jury that if the statement was published by the defendant and referred to the plaintiff, it should award actual and compensatory damages, which it did. *See* 376 U.S. at 262.
tiff to show that the newspaper published the advertisement in reckless disregard of the truth. Thus, the actual malice test was born; for the first time, the Court recognized the constitutional dimension of the need to afford greater protection to the press in circumstances where the plaintiff is a public official. Acknowledging that occasional erroneous statements are inevitable, the Court concluded that protection for media defendants is necessary if freedom of expression is to survive. At common law, truth had been the only defense to an allegedly defamatory statement.

Although the New York Times decision has been heralded as "the greatest victory [for] defendants in the modern history of the law of tort," a workable balance between freedom of the press and the individual's right to privacy still had not been reached, as it became apparent that the public-official category was too narrow a classification to afford the press the protection it needed. Appropriately, the class of persons of whom a higher standard of proof was required was expanded in the case of Curtis Publishing Co. v. Butts. The plaintiffs, a well-known college football coach and a retired major general, were respectively accused of fixing a football game and participating in a campus riot. The Court held that the New York Times standard was equally applicable to all public figures, of which class the plaintiffs were members. The Court reasoned that speech should not be limited to commentary on politics and government, and broadened the class of public figures to encourage free discussion of issues of "science, morality, and [the] arts," as well as other areas of public interest.

The class of persons required to prove New York Times malice was further extended by a plurality of the Court in Rosenbloom v.

27. Id. at 264. The Supreme Court found that the law of Alabama was "constitutionally deficient" in not affording the press adequate protection in libel suits brought by public officials. Id. at 271-72.
28. Id. at 271-72.
30. W. PROSSER, supra note 29, § 118, at 819.
31. See infra note 36 and accompanying text.
32. 388 U.S. 130 (1967). Butts was a consolidated opinion in which Associated Press v. Walker was also decided.
33. Id. at 135.
34. Id. at 155. The majority held that the standard to be applied in these instances was "highly unreasonable conduct." Id.
35. Id. at 147 (citing Time, Inc., v. Hill, 385 U.S. 374, 378 (1967)).
36. Id.
There, the plaintiff was a magazine distributor who had been referred to by the defendant as a "girlie-book peddler." Although Rosenbloom was not a public figure, the plurality reasoned that he should be required to prove actual malice nonetheless. Whereas Butts extended the New York Times doctrine by removing the distinction between public officials and public figures, the Rosenbloom plurality determined that there was no conceptual basis for differentiating between matters of public concern where a plaintiff is a public figure and matters of public concern where the plaintiff is not a public figure. Justice Brennan spoke for the plurality: "[C]onstitutional protection [will be extended] to all . . . communication[s] involving matters of public or general concern, without regard to whether the persons involved are famous or anonymous."

Shortly thereafter, however, a majority of the Court stated that the Rosenbloom plurality's proposed balance had been struck too much in favor of press protection. In Gertz v. Robert Welch, Inc., the Court retreated. In light of the inequities caused by requiring a private citizen to prove actual malice, the Court redrew the line: private individuals, regardless of surrounding circumstances, would no longer be required to show New York Times malice. The Court

37. 403 U.S. 29 (1971). The plurality consisted of Justice Brennan, who wrote the opinion, Chief Justice Burger and Justice Blackmun. Id. at 30. Justices Black and White concurred. Id. at 57 (Black, J., concurring); id. (White, J., concurring). The dissent was by Justices Harlan, id. at 62 (Harlan, J., dissenting), Stewart, and Marshall. Id. at 78 (Marshall J., dissenting).

38. Id. at 34-35.
39. Id. at 43-44 (plurality); id. at 59-62 (White, J., concurring).
40. Id. at 44.
41. 388 U.S. at 162-65.
42. 403 U.S. at 42-48; id. at 59-62 (White, J., concurring). The Court went so far as to approve implicit of the court of appeals' statement that "the fact that the plaintiff was not a public figure cannot be accorded decisive importance." 415 F.2d 892, 896 (3rd Cir. 1969); see 403 U.S. at 45-46.
43. 403 U.S. at 44 (footnote omitted).
44. 418 U.S. 323 (1974). In civil litigation, Gertz represented the family of a convicted murderer who was shot and killed by a Chicago policeman. In an article dealing with the officer's criminal trial, defendant's publication falsely accused Gertz of belonging to a Communist organization which had allegedly devised an attack on the Chicago Police force. Id. at 325-26.
45. Id. at 339-48. The Court stated that a publisher or broadcaster of defamatory falsehoods about an individual who is neither a public official nor a public figure may not claim the New York Times actual malice protection. Id. at 352.
46. Id. at 345-46.
reasoned that public figures have greater access to the media, which adequately enables them to refute false statements, and that public figures, unlike most private individuals, have voluntarily subjected themselves to public scrutiny. The Court went on to acknowledge that private persons are more vulnerable to injury because they lack media access to refute defamatory remarks, and that the state interest in protecting them is thus correspondingly higher. It was then left to each state to establish its own standard (as long as it was not strict liability) to govern liability in cases where private individuals were defamed.

The *Gertz* criteria of access to the media and voluntarily seeking the spotlight have generally been accepted and followed. Yet now that the key element is once again public-figure status, *Gertz* has been criticized for failing to delineate reasoned criteria to determine who should be considered public figures. Subsequent decisions have acknowledged that the public-figure concept is difficult to quantify.

*Gertz* made a preliminary distinction between all-purpose public figures—those individuals who have achieved such fame that they should rightfully be considered public figures for all purposes—and limited public figures—those individuals who have subjected themselves to public scrutiny for only a limited range of issues. This limited-public-figure category has, in turn, also given rise to confusion.

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47. *Id.* at 343-45.
48. *Id.* at 345: "[T]hose classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved."
49. *Id.* at 344.
50. *Id.* at 347-50.
51. See, e.g., Wolston v. Reader's Digest Ass'n, 443 U.S. 157 (1979); Hutchinson v. Proxmire, 443 U.S. 111 (1979). It has also been expanded upon. See Time, Inc. v. Firestone, 424 U.S. 448 (1976)(plaintiff held not to be public figure where he did not seek to influence public opinion). For a discussion of the *Firestone* case, see *infra* notes 60-62 and accompanying text.
53. The Supreme Court's reversal of both Wolston v. Reader's Digest Ass'n, 443 U.S. 157 (1979), rev'd 578 F.2d 427 (D.C. Cir. 1978), and Hutchinson v. Proxmire, 443 U.S. 111 (1979), rev'd 579 F.2d 1027 (7th Cir. 1978), show that the *Gertz* criteria by themselves are a difficult guide to determining public-figure status. See *infra* text accompanying notes 58-78.
54. 418 U.S. at 351.
55. See *infra* notes 58-78 and accompanying text. The *Gertz* Court indicated that classification as a limited-purpose public figure would reflect the more common situation whereby an individual becomes involved in a particular controversy with a limited range of issues. 418 U.S. at 351.
The three most significant Supreme Court decisions refining the definition of a public figure have all been controversial. The first of these was *Time, Inc. v. Firestone,* where the plaintiff, the ex-wife of a prestigious businessman, alleged that *Time* magazine had defamed her by printing a short note intimating that her divorce was a result of adulterous activity. Applying the *Gertz* criteria—seeking attention voluntarily and having media access—it is conceivable that Mrs. Firestone could have been considered a public figure. The Supreme Court, however, over vigorous dissent, held that Mrs. Firestone did not merit public-figure status, based in part on the newly advanced justification that she was not in a position to influence government or public opinion. With the addition of this new criterion—being in a position to influence public opinion—the *Time* decision continued the trend initiated in *Gertz* of narrowing the class of people who could qualify as public figures. This trend continued in the second of the three cases, *Hutchinson v. Proxmire.*

In *Hutchinson*, the plaintiff was a scientist receiving government funds for research into certain areas of animal behavior. The defendant United States Senator "honored" him by bestowing upon Hutchinson's sponsors a "Golden Fleece of the Month Award" for wasteful government spending. The district court and the court of


57. Under a literal interpretation of the *Gertz* rationale, these three cases could have been decided differently by the Supreme Court. For a discussion of the view that these decisions reflect the Supreme Court's desire to narrow the public-figure classification, see infra text accompanying notes 63, 67, 73.


59. *Id.* at 452.

60. Mrs. Firestone sued her husband for separate maintenance. He, in turn, counter-claimed for divorce on grounds of cruelty and adultery. *Id.* at 450. Mrs. Firestone conducted press conferences during the proceedings, which attracted wide coverage. *Id.* at 485 (Marshall, J., dissenting). The *Time* article quoted the trial judge who stated that there had been enough extramarital activity to "make Dr. Freud's hair curl." *Id.* at 452. There can be little doubt that Mrs. Firestone had access to the media and voluntarily thrust herself into the public eye; accordingly, she would have been considered a public figure under *Gertz.*

61. *Id.* at 471 (Brennan, J., dissenting); *id.* at 484 (Marshall, J., dissenting).

62. *Id.* at 453. "Respondent did not assume any role of especial prominence in the affairs of society . . . and she did not [try to] influence the resolution of the issues involved." *Id.*

63. *Gertz* narrowed the class of those who must show actual malice from all those involved in matters of public concern to those individuals who could be considered public figures for defamation purposes. 418 U.S. at 345-46; *see supra* note 48 and accompanying text.

64. 443 U.S. 111 (1979).

65. *Id.* at 114-15. Hutchinson had received an estimated total of $500,000 to study why
appeals both found the plaintiff to be a public figure based upon his receipt of a government grant. The Supreme Court, in contrast, concluded that he was not a public figure because his activity, although of some public concern, was not enough of an issue to warrant public-figure status. The Court also noted that a private plaintiff cannot become a public figure merely because of publicity generated by a defendant’s publication. Again, the class of public figures was narrowed as the Gertz criteria were further qualified.

Soon after Hutchinson, the Court decided Wolston v. Reader’s Digest Ass’n. Wolston had been falsely accused of being a Russian spy in defendant’s article. The defense argued that Wolston had voluntarily thrust himself into the public eye by failing to appear as a witness in a spy trial, which had occurred more than ten years earlier. As in Hutchinson, the lower courts found that the plaintiff was a public figure, and so required him to show actual malice. The Supreme Court, however, once again narrowed the public-figure classification, holding that Wolston’s prior involvement in a criminal proceeding was not enough to make him a public figure. Justice Blackmun, joined by Justice Marshall in a concurring opinion, suggested that the lapse of time between the trial and the defendant’s publication had erased Wolston’s prior public-figure status.

These decisions demonstrate the Supreme Court’s continuing search for an appropriate constitutional balance. After an initial extension of the public-figure doctrine in the early cases of Butts and monkeys behave aggressively under various circumstances. Id. at 115.

66. 579 F.2d 1027, 1034-35 (7th Cir. 1978), aff’d 431 F. Supp. 1311, 1327 (W.D. Wis. 1977). In addition to Hutchinson’s receipt of government grants, both courts relied heavily on Hutchinson’s voluntary solicitation of funds and the local press coverage he received. They also considered his receipt of funds a matter of public interest. 579 F.2d at 1034-35; 431 F. Supp. at 1327.

67. 443 U.S. at 133-36.
68. Id. at 135 (citing Wolston v. Reader’s Digest Ass’n, 443 U.S. 157, 167-68 (1979)).
70. Id. at 159.
71. Id. at 162. Wolston had failed to respond to a grand jury subpoena and was held in contempt of court. Although the contempt proceeding generated much public attention, the publicity subsided following Wolston’s sentencing. Id. at 162-68.
72. 429 F. Supp. 167, 176 (D.D.C. 1977), aff’d, 578 F.2d 427 (D.C. Cir. 1978). “In choosing not to comply, Wolston knew, or reasonably should have known, that he would attract attention again, precisely the sort of attention that he challenged in this case.” Id. at 177.
73. 443 U.S. at 166.
74. Id. at 170 (Blackmun, J., concurring)(footnote omitted): “Because I believe that the lapse of the intervening 16 years renders consideration of this petitioner’s original public figure status unnecessary, I concur only in the [determination that the plaintiff is not currently a public figure].”
Rosenbloom, it reversed the trend. In sharp contrast to the courts of appeals, the Supreme Court has consistently narrowed the public-figure category by adding new criteria, which effectively limit the reach of Gertz. These decisions also raise the question of whether the passage of time should extinguish a person's public-figure status.

**TREATMENT OF THE ISSUE BY THE COURTS OF APPEALS**

The issue of whether a person can ever shed public-figure status, although of great significance, is a narrow question. The dearth of case law focusing on the issue is a result of the several preliminary factual determinations that must be made before the issue is even considered. These include both a finding that a plaintiff was at some time a public figure and that the publication in question is indeed defamatory. In addition, in many instances where it might be appropriate for a plaintiff to argue that he or she is no longer a public figure, a plaintiff will not raise the issue because of the unfavorable state of the law, claiming instead that he or she was never a public figure. In short, this can be regarded as a last-ditch argument by a plaintiff when all prior fact finding has been adverse. While these factors help to explain the lack of a definitive answer as to the affect of the passage of time on a person's public-figure status, the question remains potentially important. Should the issue eventually be decided so as to allow a return to private-citizen status, a new strategy would become available to plaintiffs, allowing circumvention of the actual malice requirement in appropriate defamation actions.

At present, however, the defamed plaintiff must contend with uniformly unfavorable law in the federal appellate courts. The courts

75. See supra notes 32-44 and accompanying text.
76. See supra notes 56-74 and accompanying text.
77. The appellate courts, in contrast to the Supreme Court, had found that Hutchinson and Wolston were public figures, based on the Gertz criteria.
78. See supra note 63 and accompanying text.
79. This particular argument was appropriate but was not raised by the plaintiff on appeal in Wolston v. Reader's Digest Ass'n, 443 U.S. 157 (1979). See id. at 166 n.7. The strategy of Wolston's counsel, it appears, was to argue that Wolston never had attained public-figure status at any time during his life, rather than to rely on the argument that the passage of time had removed that status. See id. But see id. at 170-71 (Blackmun, J., concurring)(16 year lapse between possible public status and publication returns plaintiff to private-figure status).
80. Since only current public figures must establish actual malice, former public figures would have to establish only the degree of fault mandated by state law, an analytical distinction which flows from Gertz. 418 U.S. at 347-50 (private individuals need only establish degree of fault required by state law to prevail in defamation action).
of appeals' view in determining public-figure status is in accord with their treatment of the issue of whether a public figure can eventually return to private-individual status: The class is kept as broad as possible in both situations. The Second, Fourth, Fifth, Sixth, and District of Columbia Circuits have all addressed the issue, and, not surprisingly, have kept the class of public figures broad. The circuits have been virtually unanimous in their declaration that public-figure status, once achieved, remains with an individual, at least to some extent, for the rest of his or her life. Although the results in the various courts of appeals cases have been the same, the rationale has differed significantly. It thus becomes important to analyze both the facts of each case and the rationale underlying each particular court's decision.

Sidis v. F-R Publishing Co.

In a case that predates both New York Times and Gertz, the question of retaining public-figure status over time was addressed by the Second Circuit in Sidis v. F-R Publishing Corp. William Sidis had been a child prodigy, the focus of intense media attention for almost six years. For the next twenty years, however, he returned to a life of privacy and was largely unheard of until the defendant magazine published a column entitled "Where Are They Now," disclosing information about Sidis that he would have preferred kept from public knowledge. The court held that the issue of Sidis' intellectual promise was still a matter of public concern, reasoning that "at some point the public interest in obtaining information becomes dominant over the individual's desire for privacy." The court ac-

81. Indeed, at least one circuit court has declared that once a person qualifies as a public figure, he remains one for life. Brewer v. Memphis Publishing Co., 626 F.2d 1238 (5th Cir. 1980), cert. denied, 101 S. Ct. 3112 (1981).
87. See infra notes 101, 112, 120, 150 and accompanying text.
88. 113 F.2d 806 (2d Cir.), cert. denied, 311 U.S. 711 (1940).
89. Id. at 807. The entire article traced Sidis' early prominence as a mathematician and then recounted his breakdown and the resentment Sidis harbored for his earlier fame. Id.
90. Id. at 809.
knowledged that Sidis' fame was reason to allow the press to reveal more information about Sidis' private life than would have been permissible had he been a private figure. Nonetheless, the court went on to note that if the revelations had been "so unwarranted as to outrage community notions of decency," Sidis would have prevailed in his privacy suit, notwithstanding his public-figure status.\(^9\)

It must be noted that Sidis' primary cause of action was for invasion of his right to privacy, specifically, public disclosure by the defendant of private facts concerning him.\(^1\) Although public-figure status affects a plaintiff's chance of success in both the privacy and defamation contexts, it has an even more devasting impact on privacy plaintiffs. In a privacy case, the press will be protected not only for publication without malice of false information, but also for publication of true statements, however intimate, so long as the revelations are not unwarranted.\(^4\)

Of great importance in the Sidis case was the plaintiff's concession that all the material published by the defendant was true.\(^3\) The case therefore raises several important questions. It is debatable whether the result would have been the same had the remarks made by the defendant been highly defamatory. It is also arguable that the Sidis result would have been different had the case been decided after New York Times and Gertz. Although the courts relied on Sidis' prior public-figure status in reaching its decision,\(^6\) if the revelations made by the defendant had been false and the actual malice standard used, Sidis might have been decided in the plaintiff's favor.\(^7\)

\(^{91}\) Id.

\(^{92}\) Id. The major issue in the case was not defamation, since the revelations made by the defendant were truthful. Id. at 807. A privacy cause of action can arise in one of several ways. It can be based on unwarranted appropriation of the plaintiff's likeness, see, e.g., N.Y. CIV. RIGHTS LAW §§ 50-51 (McKinney 1976), or it can be based on the public disclosure of private facts, which formed the bases of Sidis' suit, and which is a more controversial cause of action. W. PROSSER, supra note 29, § 117, at 809-12.

\(^{93}\) 113 F.2d at 807.

\(^{94}\) W. PROSSER, supra note 29, § 117, at 812. Prosser suggests that Sidis stands for the proposition that there will be liability only for truthful revelations where community mores would regard the revelations as highly objectionable. Id.

\(^{95}\) The court reasoned that truthful comments on a person's public characteristics such as "dress, speech, habits, and the ordinary aspects of personality" do not cross the line into unwarranted intrusions. 113 F.2d at 809.

\(^{96}\) Id.

\(^{97}\) As the actual malice test had not yet been developed at this time, such a result is, of course, speculative.
The Second Circuit again confronted the issue over thirty years later in *Meeropol v. Nizer*. The plaintiffs were the children of Julius and Ethel Rosenberg, controversial figures who were convicted and executed for conspiring to transmit to the Soviet Union information deemed vital to national security. The Rosenberg trial, and incidentally the Rosenberg children, were the subject of national attention. After the trial, the plaintiffs lived a private life with adoptive parents for twenty years. Very few people knew their identity until the defendant published an allegedly defamatory book based on the trial. In plaintiffs’ suit for invasion of privacy and defamation, the court held that they were public figures and therefore required them to show defendants’ reckless disregard of the truth.

While *Meeropol* is often cited as authority for the proposition that public figures retain their status over time, upon closer analysis, it appears that the court never addressed the issue. The court reasoned that “if we assumed *arguendo* that [the plaintiffs] were not ‘public figures’ at the time this book was published, the book could not have defamed them . . . since the book never referred to them by the Meeropol name or in any way linked the Rosenbergs to the Meeropols.” This passage of the court’s opinion acknowledges the problem of identification inherent in the case. Whatever the public-figure status of the Rosenberg children, the plaintiffs were known as Meeropol (their adoptive parents’ name) rather than Rosenberg (their natural parents’ name). Thus, it is arguable that the Meeropol status of the plaintiffs was not necessarily transferred to the Meeropol children.

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98. 560 F.2d 1061 (2d Cir. 1977), cert. denied, 434 U.S. 1013 (1978). The defamation aspect of the case was secondary. The primary issue concerned copyright infringement. *Id.* at 1063.
99. *Id.*
100. *Id.* at 1067-68.
101. *Id.* at 1066. The court reasoned that “an individual may achieve such pervasive fame and notoriety that he becomes a public figure for all purposes and in all contexts” and “such persons assume special prominence in the resolution of public questions.” *Id.* (quoting *Gertz*, 418 U.S. at 351).
103. 560 F.2d at 1068. The plaintiffs’ identity was not known until they exposed it themselves. *Id.*
104. A plaintiff is not defamed unless the defamatory publication can be understood to refer specifically to the plaintiff. W. PROSSER, supra note 29, § 111, at 749.
105. 560 F.2d at 1067-68.
pol children, who were relatively anonymous individuals, were not public figures at the time of the suit. Inasmuch as the allegedly defamatory material never revealed their identity to the public, the plaintiffs as Meeropols had not suffered the individualized personal injury which the defamation cause of action requires.\(^\text{106}\) As the Rosenberg children, the plaintiffs had satisfied the identification element, but were held to the higher standard of actual malice.\(^\text{107}\) The result, therefore, ultimately turned on the issue of the plaintiffs' identity in that there was no injury, rather than on their public-figure status, which required them to make the more difficult showing of the defendant's actual malice in publishing the book.\(^\text{108}\) The court's opinion never, even by implication, addressed the issue of losing public-figure status over time. Yet curiously, Meeropol is often cited for that proposition.\(^\text{109}\)

**Time, Inc. v. Johnston**

In *Time, Inc. v. Johnston*,\(^\text{110}\) the plaintiff, a retired basketball player currently employed as an assistant basketball coach, sued a sports magazine for publishing an interview critical of the plaintiff's playing abilities.\(^\text{111}\) The Fourth Circuit found that the plaintiff was still a public figure regardless of his retirement from professional basketball.\(^\text{112}\) Thus, his failure to establish actual malice resulted in the defendant's victory.\(^\text{113}\) Yet this case is demonstrably different from the more troublesome situation of an acknowledged public figure who has made a deliberate effort to return to private life and relinquish his or her public-figure status. The *Johnston* court recognized that the plaintiff was still involved in basketball, and that he had relied heavily on his reputation as a professional athlete to fur-

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106. *Id.* at 1068. The court reasoned that the plaintiffs failed to show even a single instance where the defendant had published defamatory statements about them in reckless disregard of the truth. *Id.* at 1066.

107. As sons of Julius and Ethel Rosenberg, the Rosenberg children were required to show actual malice. As the Meeropol children, they were required merely to establish negligence. The critical aspect of the case, however, is that the defendant's book never defamed the plaintiffs as the Meeropols. *Id.* at 1068.

108. *Id.* at 1066.


110. 448 F.2d 378 (4th Cir. 1971).

111. *Id.* at 379. The interview claimed that Johnston was so intimidated by another player that his own abilities were greatly diminished.

112. *Id.* at 383.

113. *Id.* at 385.
ther his new career as a coach.\textsuperscript{114} The court decided that he had never left the profession that initially propelled him to public-figure status: Until the time of defendant's publication, he was drawing attention to himself in sports.\textsuperscript{116}

\textit{Brewer v. Memphis Publishing Co.}

\textit{Brewer v. Memphis Publishing Co.},\textsuperscript{116} one of the more recent cases to address the issue, is the best reasoned authority for denying a public figure the right to return to private-citizen status. The plaintiff's romance with Elvis Presley had been the focus of much media attention.\textsuperscript{117} Ten years after the plaintiff had last been in the limelight, the defendant published a short article falsely accusing the plaintiff of meeting secretly with Presley to "re-unite" with him.\textsuperscript{118} As the publication was libelous per se,\textsuperscript{119} the case turned on whether the plaintiff should be considered a public figure. The court found Brewer to be a public figure at the height of her relationship with Presley and concluded that she could not completely shed her public-figure status in connection with the very issue that had initially brought her into the public eye.\textsuperscript{120} The court also noted that it was reported that Brewer had used her relationship with the popular singer to further her own career as an entertainer.\textsuperscript{121}

\textsuperscript{114} \textit{Id.} at 381. Interestingly, the district court concluded that the plaintiff had indeed shed public-figure status since his retirement as a player. 321 F. Supp. 837, 851 (M.D.N.C. 1970).

\textsuperscript{115} \textit{Johnston} cannot be fairly compared with other factual situations where a plaintiff completely severs himself or herself from the events that made him or her a public figure. It would be appropriate to conclude that Johnston never ceased being a public figure. The \textit{Johnston} court noted, however, that it might favor a holding that public figures should not be allowed to return to private-citizen status. 448 F.2d at 381-82. In so doing, the court relied heavily on \textit{Sidis}. \textit{Id.} at 382.

\textsuperscript{116} 626 F.2d 1238 (5th Cir. 1980), \textit{cert. denied}, 101 S. Ct. 3112 (1981).

\textsuperscript{117} \textit{Id.} at 1248.

\textsuperscript{118} \textit{Id.} at 1240.

\textsuperscript{119} \textit{Id.} at 1245. Since both she and Presley were married, the defendant's publication was determined to be libel per se because it implicitly accused them of participation in an adulterous affair. The article also incorrectly reported that the plaintiff had recently been divorced. \textit{Id.} at 1244-45. The plaintiff's husband also filed suit for defamation.


\textsuperscript{120} 626 F.2d at 1257. The court noted: "\textit{D}uring the 'active' public figure period a wider range of articles . . . are protected by the malice standard and . . . the passage of time or intentional retreat narrows the range of articles so protected to those directly related to the basis for fame." \textit{Id.}

\textsuperscript{121} \textit{Id.} at 1248. Brewer's career consisted of promotional appearances after she had won several beauty contests. Many press reports at the time attributed her individual success

\textsuperscript{1982} [Kaminsky: Defamation Law: Once a Public Figure Always a Public Figure? 1982]
Several important factors differentiate Brewer from other cases focusing on the issue. Unlike the professional athlete in Johnston, the plaintiff here had totally disassociated herself from the events that led to her public-figure status; unlike Sidis, the main cause of action here was defamation; and unlike the plaintiffs in Meeropol, the allegedly defamatory statements here clearly expose the plaintiff's identity. In addition, nine years had elapsed between the height of the plaintiff's celebrity status and the defamation. Also noteworthy is that this case was decided after Sidis, Johnson, and Meeropol; perhaps the Brewer court was constrained by unanimous, although not completely reasoned authority.

Yet, persuasive as this decision may be for requiring permanent public-figure status, it remains questionable. Ironically, a careful reading of this opinion reveals that this decision, of all the relevant court of appeals decisions, came the closest to permitting declassification of a once public figure. The Brewer majority was very receptive to the arguments of Justices Blackmun and Marshall in their concurrence in Wolston v. Reader's Digest Ass'n, that historical analysis of an event is not worthy of the same actual malice protection given to contemporary reporting. The Brewer court went so far as to note that Justice Blackmun's approach would be inapplicable here because it applies only to public figures whose fame is tied to specific events or occurrences, whereas Brewer's public-figure status was not the result of a particular controversy. Whether the

to her relationship with Presley. Id.

122. Mrs. Brewer asserted that since her romance with Presley ended, she had disassociated herself from the famous singer, and had retired from entertainment. Id.

123. Although there are aspects of invasion of privacy in the case, Brewer contended that the contents of the defendant's article were undoubtedly defamatory. In addition, since the article was libel per se, Brewer was not required to prove actual damages. Id. at 1246.

124. Id. at 1240. The article clearly indicated that Anita Wood, now Anita Brewer, was re-uniting with Presley.

125. Id. at 1248.

126. Id. at 1256-57.

127. 443 U.S. 157, 169 (1979) (Blackman, J., concurring); see 626 F.2d at 1256-57.

128. 626 F.2d at 1257. The Brewer court seemed particularly influenced in its rejection of Justice Blackmun's analysis by the fact that the defamatory remarks by the defendant were not an historical recollection of a past event, but rather the contemporaneous reporting of a news event (e.g., the apparent renewal of the Presley/Brewer relationship). In this regard, the court was able to distinguish Wolston, and thus specifically rejected the approach taken in that case by Justices Blackmun and Marshall. Id. at 1256-57.

129. Id. Brewer's relationship with Presley continued for several years. Although it was of some public concern, it could not be associated with a specific controversial event, such as the espionage or rape trials that were background controversies in Wolston and Street v. N.B.C., 645 F.2d 1227 (6th Cir. 1981), appeal dismissed per stipulation, 50 U.S.L.W. (U.S.
court would have adopted Blackmun’s analysis had Brewer’s public-figure status resulted from a specific incident is, of course, speculative. Whether Brewer is authority for denying a return to private-figure status for plaintiffs who have once achieved public-figure classification from a specific event is likewise debatable.130

Further indication that the Fifth Circuit might have departed from the virtual unanimity of precedent in the other circuits is evidenced by the court’s holding that for limited-purpose public figures, the passage of time narrows the range of issues for which actual malice protection will be afforded to the press.131 This new position appears to take Justice Blackmun’s view into account, although it does not find it controlling.132

**Wolston in the Court of Appeals**

The Circuit Court of Appeals for the District of Columbia addressed the issue two years before the Brewer decision in Wolston v. Reader’s Digest Ass’n.133 Of all the circuit court decisions discussed, this was the only one in which the Supreme Court granted certiorari and in which it was faced with the issue.134

**Wolston** concerned a widely publicized trial in which the plaintiff’s uncle was prosecuted for espionage. The plaintiff was held in contempt when he failed to respond to a subpoena to appear as a witness.135 The defendant published a book about the trial, which the plaintiff claimed defamed him.136 Interestingly, the court, applying the *Gertz* criteria,137 found that Wolston had voluntarily subjected himself to public attention by failing to respond to the subpoena during the original trial. Since Russian espionage was still a matter of

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130. The Brewer court conceded that this particular case was not of the type envisioned by Justices Blackmun and Marshall in *Wolston*, in that Mrs. Brewer’s fame could not be tied to any particular event or controversy. *Id.* at 1256-57.
131. *Id.* at 1257. It is unclear whether this implies that a lengthier passage of time will narrow the range of issues even further—conceivably even to the point where time obliterates the need for any proof of actual malice.
132. Had the publication been a defamatory recollection of Brewer’s prior relationship with Presley, rather than a false contemporaneous account of their supposed reunion, the court would arguably have given more weight to the proposed analysis.
134. 439 U.S. 1066 (1979), granting cert. to 578 F.2d 427 (D.C. Cir. 1978). Several of the other cases discussed, notably Hutchinson v. Proxmire, 443 U.S. 111 (1979), have also been heard by the Supreme Court, but did not touch on this issue.
136. *Id.* at 168.
137. *Id.* at 172-73.
public concern, the court held that the plaintiff remained a public figure, notwithstanding the passage of sixteen years. The court of appeals then affirmed the district court, which had granted summary judgment for the defendant. The court reasoned that "historical comment on . . . espionage-related activities . . . requires just as much protection as did media coverage of the events as they occurred." This specific line of reasoning was not reached by the majority in the Supreme Court, although Justice Blackmun, joined by Justice Marshall in concurrence, considered it an important factor requiring reversal.

Street in the Court of Appeals

More recently, the Fourth Circuit considered this issue in Street v. N.B.C. Even more than in Sidis, the facts in Street represent the most appealing case for allowing a former public figure to resume private-citizen status. The plaintiff in Street had been the central figure in a rape trial forty years before. At that time, she achieved public-figure status, as the trial received extensive media attention and had racial overtones. Since the trial, however, the plaintiff had avoided public attention and succeeded in returning to a relatively private life. The defendant television network then broadcast a movie based on the trial, depicting the plaintiff in a very unfavorable light. The critical element in this defamation suit was whether the plaintiff was still a public figure, notwithstanding the forty-year period between the trial and the defamation. On the authority of Brewer and Meeropol, the court declared that once

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138. Id. at 176, 178.
140. Id. at 431 (quoting 429 F. Supp. 167, 178 (D.D.C. 1977)).
144. 645 F.2d at 1229-30.
145. Id. at 1234-35. The case generated several appeals and increasing public attention. Mrs. Street, a white woman, accused several black men of raping her. The case became known as "The Scottsboro Boys Trial."
146. Id. at 1230-32. Among other things, the movie depicted the plaintiff as being unchaste; it also erroneously stated that she was dead.
147. Id. at 1233-36.
a person is classified as a public figure, the classification continues for as long as the controversy lasts, so as to allow later commentary on the event that made him or her a public figure. The court contended that "the press [needs] sufficient breathing room to compose the first rough draft of history [and] the historian [needs the same protection] when he writes the second or the third draft."  

This rationale contradicts the analysis proposed by Justices Blackmun and Marshall. The Street court must be questioned for relying so heavily on Brewer when the facts of Street are much closer to Wolston. The Brewer court implied that had the plaintiff in that case been tied to a particular controversy, succeeded more completely in returning to private life, and been defamed by an historical work rather than by a report of an allegedly contemporary event, it might have been inclined to adopt Justice Blackmun's rationale in Wolston. In Street, the plaintiff undoubtedly attained public-figure status via involvement in a particular controversy. She also undeniably returned to private life, and suffered injury to her reputation by an historical dramatization. Street is therefore distinguishable from Brewer. While the Street court also relied heavily on Meeropol, this authority is similarly questionable.


150. 645 F.2d at 1236. To support its decision, the court contended that prior public figures do not lose access to channels of communications to rebut false statements. Id. This argument, however, directly contradicts Justice Blackmun's concurrence in Wolston v. Reader's Digest Ass'n, 443 U.S. 157, 170 (1979) (Blackmun, J., concurring), which posits that prior public figures do indeed lose access to the media. According to Justice Blackmun, as public interest in a person or event dies down, it becomes less credible to suggest that a person maintains the media access he or she may once have had. Id. at 171 (Blackmun, J., concurring).

151. 645 F.2d at 1236.

152. Wolston, 443 U.S. at 171 (Blackmun, J., concurring); see supra note 74 and accompanying text.

153. The plaintiff in Street, much as the plaintiff in Wolston, assumed public-figure status due to involvement in a controversial trial which aroused great public interest. Brewer, on the other hand, became a public figure due to an ongoing relationship with a famous pop singer. While the Brewer court could have distinguished Wolston, Street cannot be so distinguished, in that the plaintiff's public-figure classification is indeed tied to a particular controversy, as was the case in Wolston.

154. See Brewer, 626 F.2d at 1257.

155. Meeropol stands at best only indirectly for the proposition that a former public figure must retain that status over time. See supra text accompanying notes 100-111. The Street court itself noted that Meeropol only accepts that position sub silentio. Street, 645 F.2d at 1235.
street is also subject to attack because it resurrects, in a slightly different form, the newsworthiness test of the rosenbloom plural-ity. The street court held that "once a person becomes a public figure in connection with a particular controversy, that person remains a public figure thereafter for purposes of later commentary or treatment of that controversy." As the dissent in street pointed out, "Mrs. Street is a public figure today because the majority thinks the Scottsboro affair merits public attention." This is nothing less than the newsworthiness standard that was specifically overruled by Gertz.

Had the case been heard by the Supreme Court, Mrs. Street would not have been able to argue that she was never a public figure. Rather, she would have been forced to rely on her last-ditch argument—that the lapse of time had erased her public-figure classification. Yet the settlement of the case has postponed the resolution of a confused area of law. Accordingly, the need for Supreme Court guidance on this issue remains.

street v. n.b.c. and the supreme court's treatment of losing public-figure status over time

In the past, the Supreme Court has developed a narrow view of public-figure status. The Court has restricted the class of public figures by supplementing the Gertz criteria with additional elements to be met by a plaintiff, such as being in a position to influence public opinion. Yet the Supreme Court decisions do not articulate spe-

157. 645 F.2d at 1235 (emphasis in original).
158. Id. at 1247 (Peck, J., dissenting). Judge Peck saw no merit in the majority's analysis of the case. "The better approach is to take the distinction between public and private figures back to its roots, and examine the present status of the plaintiff in light of the reasons behind the distinction . . . ." Id. at 1248 (Peck, J., dissenting).
160. There is little doubt that under the Gertz criteria, Street's role in such a highly publicized trial propelled her into the public-figure classification. Both the district court, 512 F. Supp. 398, 409 (E.D. Tenn. 1977), and the court of appeals so held. 645 F.2d at 1235.
161. See supra note 79 and accompanying text.
162. The exact terms of the settlement were not disclosed. A Legacy from the Scottsboro Case, Bergen Rec., Jan. 4, 1982, at A-1.
163. Public-figure defamation law has always been a troublesome area for the Supreme Court, as its goal to strike a perfect balance between freedom of the press and the right to a good reputation has proved elusive on several occasions. This has, in turn, made it difficult for the courts of appeals to apply the Supreme Court's precedent consistently.
cific guidelines for the lower courts to follow. The lower courts therefore adhere to the simpler Gertz opinion, which allows for wide discretion in determining who should and should not be a public figure. Gertz limits the class only insofar as a person either “achieve[s] . . . pervasive fame or notoriety” or voluntarily seeks public attention. The Court reasoned that these individuals have reasonable media access, and are less vulnerable to injury. These criteria leave gray areas, which the circuit courts have resolved by keeping the public-figure classification as broad as possible.

Similarly, in dealing with the question of whether the passage of time should ever erase a person’s public-figure status, the appellate courts have adopted a broad view of the issue, holding for the most part that a person who attains public-figure status during his or her lifetime remains a public figure forever. The Supreme Court has not yet addressed the issue. Allowing a person to cease being a public figure would serve to narrow further the class of public-figure plaintiffs, a position consistent with the development of defamation law by the Supreme Court.

Wolston v. Reader’s Digest Ass’n was a case in which sixteen years had elapsed between the event purporting to create public-figure status in the plaintiff and the publication of allegedly defamatory remarks by the defendant. In the lower courts, the plaintiff had fought the defendant’s contention that he should be considered a public figure on two grounds. First, he claimed that he never had been a public figure, and second, that even if he had once been a public figure, the passage of time had restored him to private-individual status for purposes of defamation law. The lower courts rejected both contentions, declaring that the plaintiff had been, and still was to be considered, a public figure.

On appeal, the Supreme Court reversed the court of appeals de-

166. Id. at 351.
167. See supra notes 82-87 and accompanying text.
168. “Because petitioner does not press the issue [of ceasing to be a public figure] we need not and do not decide whether or when an individual who was once a public figure may lose that status by the passage of time.” Wolston v. Reader’s Digest Ass’n, 443 U.S. 157, 166 n.7 (1979).
172. 578 F.2d at 431; 429 F. Supp. at 176, 178.
cision on the first ground, so that the lower courts' second holding was never discussed. As a result, the question of whether the passage of time could restore a person to private-individual status was left unresolved.

The Wolston majority provided no indication of how it might have addressed the issue had the need to do so persisted. Yet in their concurring opinion, Justices Blackmun and Marshall qualify the majority view of a public figure. They expressly state that even if the plaintiff were originally a public figure, the lapse of sixteen years would have erased any possibility that the plaintiff was a public figure at the time of the alleged defamation. This is a clear indication that at least two Supreme Court Justices favor a holding that the passage of time erases public-figure status under those circumstances.

Street v. N.B.C.

Street v. N.B.C. was the perfect opportunity for the Supreme Court to answer the question it left unresolved in Wolston. As in that case, the plaintiff in Street allegedly obtained public-figure status due to prior involvement in criminal proceedings. Unlike Wolston, whose role was too minimal to warrant public-figure classification, there can be little argument that Mrs. Street was indeed a public figure at the time of the trial proceedings. This determination, coupled with the fact that for forty years the plaintiff returned to private life, presented the issue in pristine form.

The grant of certiorari by the Supreme Court to the petitioner in Street suggested that at least four of the Justices were not persuaded by the respondent's argument that the apparent unanimity of the courts of appeals had already resolved the issue. Rather, unique factors in each of those cases suggest that the issue was ripe for Supreme Court resolution in favor of the plaintiff.

173. 443 U.S. at 169.
174. "Assuming, arguendo, that petitioner gained public-figure status [during his involvement in] the espionage controversy in 1958, he clearly had lost that distinction by the time respondents published KGB in 1974." Id. at 170 (Blackmun, J., concurring)(emphasis omitted).
176. Id. at 1234-35.
177. See supra note 174.
179. Brief of Respondent in Opposition to Petition for Writ of Certiorari at 24.
The Supreme Court would not have been troubled by the reasoning in other appellate court cases when deciding *Street*. The Second Circuit decisions in *Sidis*[^180] (a privacy cause of action) and *Meeropol*[^181] (lack of identification of plaintiffs) are distinguishable because *Street* is clearly a defamation action involving a publication undeniably referring to the plaintiff. The Fourth Circuit case of *Time, Inc. v. Johnston*[^182] was not even remotely comparable to *Street* because of the petitioner's complete retreat from the events that made her a public figure. Likewise, the District of Columbia and Fifth Circuit decisions of *Wolston*[^183] and *Brewer*[^184] are also not persuasive authority because of the forty-year separation between the plaintiff's prior public-figure status and the defendant's defamatory publication in *Street*[^185].

A finding that *Street* did indeed shed her public-figure status would have narrowed the class of people who could qualify as a public figure, thus continuing the trend begun by the Supreme Court in *Gertz*.[^186] Such a holding would necessarily have accepted the argument that historical analysis does not need as much first amendment protection as does contemporary reporting of an event. It would also have afforded limited public figures the opportunity to escape eventually the threat of defamatory publications.

From the perspective that it left a highly controversial area of law unresolved, the *Street* settlement is most unfortunate. All indications—particularly N.B.C.'s agreement to settle a case it had won at both the district and court of appeals levels[^187] as well as the Supreme Court's treatment of public-figure law—suggest that the Court was ready to reverse the lower courts and declare that Mrs. Street at one time had, but no longer retained, public-figure status. N.B.C.'s settlement with Mrs. Street preserves the malice requirement for past public figures, allowing future defendants unwarranted protection in defamation actions.

[^182]: 448 F.2d 378 (4th Cir. 1971).
[^183]: 578 F.2d 427 (D.C. Cir. 1978).
[^185]: *Brewer* involved an eight-year lapse of time, *see* 626 F.2d at 1240, and *Wolston* involved 16 years. 578 F.2d at 431.
[^187]: N.B.C. had won at the district court level because Mrs. Street was unable to establish the negligence of the defendant. 512 F. Supp. 398, 411 (E.D. Tenn. 1977).
A New Standard

In keeping with the theory that loss of public-figure status is indeed a last-ditch effort by public figures to avoid the actual malice requirement, a finding that prior public-figure status has been erased should be reserved only for truly exceptional circumstances. Accordingly, any test designed to resolve the issue must ferret out situations where the Supreme Court has previously indicated that it would be inappropriate to remove the press' actual malice protection. This proposed test presents four tiers of criteria—drawn from several of the cases already discussed—that a plaintiff must successfully overcome to shed public-figure status.

Initially, there is a class of public figures who rightfully deserve to be treated as public figures for all time. This class would consist of all-purpose public figures as developed by Gertz and its progeny. A finding that a particular plaintiff qualifies as an all-purpose public figure would remove any possibility that he or she could ever return to private-citizen status.

More often, however, plaintiffs fall into the limited public-figure category. These plaintiffs would still need to satisfy three additional elements before shedding their public-figure classification. There must be a determination of whether a plaintiff played a major role in a controversy of significant public interest in which he or she tried to influence public opinion. In Time, Inc. v. Firestone, the decision from which this particular criterion is drawn, the Supreme Court stated that it is a mistake to "equate 'public controversy' with all controversies of interest to the public." Accordingly, mere involvement in a public controversy would not automatically deny a plaintiff the chance to extinguish public-figure status. Rather, he or she would have to have played a major role in attempting to influence the resolution of a particular controversy before being declared a public figure for all time based on that criterion.

The third determination is whether or not the plaintiff made a deliberate and successful attempt to return to a life of obscurity fol-

188. See supra note 79 and accompanying text.
193. Id. at 454.
lowing the event that originally brought him or her into the spot-
light. Such an attempt would occur where a plaintiff completely dis-
associated himself or herself from the event which made him or her a public figure, and subsequently refrained from focusing public at-
tention on his or her prior public-figure status until the defendant's defamatory publication.

The final obstacle involves the length of time between the plain-
tiff's prior public-figure status and the defamatory publication. Al-
though it would be impossible to establish an exact figure in terms of years, naturally, the longer the period, the stronger the plaintiff's argument. Fifteen to twenty years, however, seems like a reasonable lapse of time, allowing for discretion depending on the nature of the case.\(^{194}\)

The length-of-time criterion is somewhat analogous to the gen-
eral statute of limitations concept that is applied in virtually all civil and criminal actions.\(^{195}\) Much as it becomes beneficial, in time, to negate the threat of litigation, it would be similarly beneficial to al-
low appropriate plaintiffs an eventual return to private-citizen status. After fifteen or twenty years, in the absence of exceptional circum-
stances,\(^{198}\) the value of repose should become paramount. If a plain-
tiff has met all four of the above qualifications, it would be appropri-
tate to declare that person no longer to be a public figure.

Application of this test to the courts of appeals decisions previ-
ously discussed yields interesting results: All of the plaintiffs — Si-
dis, Meeropol, Johnston, Brewer, Wolston, and Street—would suc-
cessfully clear the first requirement of being a limited-purpose public figure. None of them achieved such a state of fame as would warrant all-purpose classification.

The second obstacle would also be cleared by all of the plain-
tiffs. Even though Brewer and Street were central to their particular controverses, they did not attempt to influence public opinion be-
ond their immediate situations. Johnston, Wolston, Meeropol, and Sidis, although involved in matters of public concern, either were not central to the issues involved, or simply were not involved in contro-
versial public issues. Johnston would be trapped by the third requirement. His pursuance of a coaching career in the years since his retirement as a player\textsuperscript{197} negates any claim he might otherwise have had of an attempted return to private life. The Meerops would be entangled in this requirement as well. By revealing their identities,\textsuperscript{198} the Meeropol children voluntarily revealed that they were the Rosenberg children. If the defendants had revealed their identity, they would then have met this third requirement. Conversely, the four other plaintiffs under discussion would qualify as having successfully disassociated themselves from the events that made them public figures.

The length-of-time criterion would certainly entrap Brewer. The eight year lapse in \textit{Brewer}\textsuperscript{199} would be inadequate to rid the plaintiff of her public-figure status, particularly in light of the continuing public focus upon Elvis Presley. Although \textit{Sidis}\textsuperscript{200} presents a hard case if the time requirement is viewed in isolation, in Sidis' particular circumstances, including a complete absence of a pressing public controversy, the sixteen-year period should be sufficient to push him across this final barrier to shedding public-figure status. The same sixteen-year lapse occurred in \textit{Wolston}.\textsuperscript{201} There, Justices Blackmun and Marshall in concurrence were ready to accept this period as a reasonable length of time for allowing Wolston private-plaintiff status.\textsuperscript{202}

Under the proposed test, only three of the six plaintiffs considered would succeed in completely extinguishing their public-figure status—Sidis, Wolston, and Street.\textsuperscript{203} Of course, a return to private-citizen status is not a guarantee that a plaintiff will prevail in a defamation suit, as he or she would still have to establish that a publication was indeed defamatory, as the \textit{Sidis} and \textit{Meeropol} cases\textsuperscript{204}

\begin{itemize}
  \item \textsuperscript{197} Time, Inc. v. Johnston, 448 F.2d 378, 381 (4th Cir. 1971).
  \item \textsuperscript{199} Brewer v. Memphis Pub. Co., 626 F.2d 1238, 1240 (5th Cir. 1980).
  \item \textsuperscript{200} Sidis v. F-R Pub. Corp., 113 F.2d 806 (2d Cir.), \textit{cert. denied}, 311 U.S. 711 (1940).
  \item \textsuperscript{201} Wolston v. Reader's Digest Ass'n, 443 U.S. 157 (1979).
  \item \textsuperscript{202} \textit{Id.} at 169 (Blackmun, J., concurring); \textit{see supra} note 74.
  \item \textsuperscript{203} Sidis, Wolston, and Street meet all the requirements of the proposed test for relinquishing public-figure status, and made determined efforts to disassociate themselves from the events that made them public figures. As required by the third tier, none of these plaintiffs played a central role in attempting to influence the resolution of a public controversy. Also, there were lengthy intervals between the fame of these public figures and the subsequent defamatory publications.
  \item \textsuperscript{204} Sidis, even though he would have successfully shed his public-figure classification,
demonstrate. Also necessary is the requisite showing of fault under the applicable state law.

Should the Supreme Court eventually conclude that the passage of time does not erase public-figure status, then all plaintiffs who have appeared in the public eye, for however short a period and for whatever reason, will be required to establish actual malice of any media defendant who may make a defamatory publication on issues that relate to his or her public-figure status. Alternatively, should the Supreme Court conclude that a public figure, under appropriate circumstances, can indeed shed public-figure status, a new strategy for circumventing the actual malice requirement in defamation suits will become available to former public figures.

CONCLUSION

The Supreme Court has consistently narrowed the class of plaintiffs who must establish a defendant’s actual malice in making a defamatory publication. It first limited the class to public figures as defined by Gertz, and subsequently refined the Gertz criteria. This trend indicates that save for an out-of-court settlement, the Court would once again have narrowed the class of public figures by eliminating those individuals who have returned to private lives following an earlier limited stay in the limelight.

Although subsequently dismissed by the Supreme Court, Street remains important for two reasons. First, the granting of certiorari suggests that at least four Justices were not receptive to the argument that the unanimity of result in the courts of appeals had properly resolved the issue. Second, N.B.C.’s settlement of a case it had won in the lower courts suggests that N.B.C. strongly envisioned a reversal by the Supreme Court.

Since Street was never argued before the Supreme Court, extinguishing public-figure status remains only a possibility. Yet the grant of certiorari in the case may give hope to future defamation plaintiffs. Certainly those in Mrs. Street’s position, who lack media access to rebut unfavorable commentary, should not be deemed to “assume the risk that the most personal aspects of their lives will be presented to the nation as dramatic entertainments.”205 The analytical struc-

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would have lost his libel suit because the defendant's publication was not defamatory. 113 F.2d at 807. The same holds true for the Meeropols. 560 F.2d at 1065.

205. Street, 645 F.2d at 1248 (Peck, J., dissenting).
ture that this note proposes is responsive to the concerns of both the injured plaintiff and the media defendant.

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