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The Classification of Athletes and Entertainers as Plaintiffs in Defamation Suits

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I. INTRODUCTION

Libel cases are often won or lost by how the court classifies the defamed plaintiff. Since *New York Times Co. v. Sullivan*[1] and its progeny, courts require plaintiffs who are "public officials" or "public figures" to prove a higher standard of fault on the part of the defendant/media than "private individuals." Broadly stated, public officials and public figures must show that the media acted with "actual malice," while private individuals need only show that the media acted with some level of negligence, which is determined on a state by state basis.[2]

The significance of the different classifications should not be taken lightly. Although the possibility that a plaintiff will not be classified as a public figure is sufficient to ensure a steady supply of defamation plaintiffs, very few who are found to be public

1. 376 U.S. 254 (1964).
2. Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967).

figures ultimately prevail in suits for defamation.[3] Consequently, the "public figure" classification becomes particularly important to athletes and entertainers. As personalities in the public eye, athletes and entertainers are constantly exposed to public criticism and potentially defamatory media coverage. Since their livelihood and income largely depend upon their good reputations, any defamatory statements made about athletes or entertainers can be quite damaging. Given that they are in the public eye, should athletes and entertainers be required to meet the stringent actual malice test? Moreover, should all athletes and entertainers be treated the same—i.e., should Dan Andreescu[4] or Carol Vitale[5] be burdened by the same standard of fault as Johnny Carson[6] or Muhammed Ali?[7]

This article attempts to examine these questions. First, it breaks down the various categories of "public figures"—namely, pervasive public figures, vortex public figures and public personalities—which courts have applied to athletes and entertainers in the past. Second, it analyzes the criteria and definitions which those courts traditionally looked to for guidance. Third, the article offers clearer tests for categorizing athletes and entertainers as "public figures." In particular, it offers a unique and comprehensive six-factor test for determining if a plaintiff is a pervasive public figure and expands the traditional two-part test for determining if a plaintiff is a vortex public figure. Finally, it applies these tests to particular athletes and entertainers to see where courts have been correct in their classifications and where they have erred.

II. Historical Perspective

As noted above, the Supreme Court held in 1964 that a "public official" may recover damages for a defamatory falsehood relating to his official conduct *only* if he or she proves that the statement was made with "actual malice."[8] The Court defined actual malice as "knowledge that [the statement] was false or . . . reckless disregard of whether it was false or not."[9]

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3. Schauer, *Public Figures*, 25 William & Mary L. Rev. 905, 907-08 (1983). *See also* Franklin, *Winners and Losers and Why: A Study of Defamation Litigation*, 1980 Am. B. Found. Research J. 455.

4. Andreescu was a harness racer in the late 1970s.

5. Vitale was a Playboy "Playmate of the Month" in the mid 1970s.

6. Carson is a well-known entertainer and comedian.

7. Ali was three time heavyweight boxing Champion in the 1960s and 1970s.

8. *Sullivan*, 376 U.S. at 283-84.

9. *Id.* at 279-80.

The decision marked a significant change from the common law in that it afforded the media legal immunity even though the published statement may have been false. This immunity, derived from the first amendment guarantees of freedom of speech and press, is based on the recognition that individual interests must frequently yield to the greater constitutional right to disseminate news.

The Court in *Sullivan*, however, left several questions unanswered. First, it did not define with any specificity the term "reckless disregard" as used within the meaning of actual malice. Moreover, the Court did not delineate who fell within the definition of "public official," specifically leaving this issue for future consideration.[10]

In 1967 the Supreme Court extended the *Sullivan* actual malice standard to "public figures" as well as public officials.[11] In a concurring opinion, Justice Warren justified this extension by stating that public figures, like public officials, often "play an influential role in ordering society . . . . Our citizenry has a legitimate and substantial interest in the conduct of such persons . . . ."[12] The Court could not, however, get a majority of the Justices to agree on a precise meaning of the phrase "public figure." Justice Harlan's opinion did help to define more clearly the meaning of "reckless disregard." He interpreted it as conduct "constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers."[13]

The meaning of reckless disregard was further expanded in several later cases. In 1968, for example, the Court stated that there must be some reason for the reporter or publisher to doubt the validity of the defamatory statement and, if there is some

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10. *Id.* at 283 n.23. Athletes and entertainers, as such, cannot be classified as public officials in that they hold no public office, either elected or appointed. Athletes and entertainers turned politicians—such as Bill Bradley, Jack Kemp or Clint Eastwood—would be considered public officials and be forced to meet the actual malice standard. In defining who may be classified as a public official, courts have articulated some factors which are equally applicable to athletes and entertainers. *See infra* note 30 and accompanying text.

11. *Curtis Publishing Co*, 388 U.S. 130. Although the decision was highly fragmented, five justices (Warren, Black, Douglas, Brennan and White) agreed that the actual malice standard should apply to public figures. Justice Harlan, speaking for the remaining four justices, held that a public figure should not have to face as strict a test in bringing a libel suit as a public official should, but must only show "highly unreasonable conduct" on the part of the media defendant. *Id.* at 155.

12. *Id.* at 164.

13. *Id.* at 155. This definition does not necessarily correspond to the reckless disregard language of the actual malice test. For example, Justice Harlan rejected the actual malice standard as to public figures in favor of his "highly unreasonable conduct" standard. *Id.*

doubt, the reporter must use reasonable means to verify the statement.[14] The Circuit Court for the District of Columbia has further stated that objective evidence such as time constraints, reliability of sources, reasonableness of checking the veracity of the statement, and potential damage to the plaintiff[15] may be used to show reckless disregard.

In *Gertz v. Robert Welch, Inc.*[16] the Supreme Court held that any plaintiff who is neither a "public official" nor a "public figure" must be considered a private individual and, as such, is exempted from the actual malice standard.[17] The Court held that as long as states do not impose liability without fault, they may "define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual."[18] Currently, thirty states and Puerto Rico require that a private individual show only negligence on the part of the defendant/media, New York requires a showing of gross irresponsibility, and four states[19] require a showing of actual malice.[20]

The *Gertz* Court also defined more clearly what was meant by "public figure." It held there are two types of public figures: "pervasive public figures" and "vortex public figures." A pervasive public figure is a person who has achieved such "pervasive fame or notoriety" or who occupies a position of such "pervasive power and influence" that he is deemed a public figure for all purposes and in all contexts.[21] The Court also stated that one should not be deemed a pervasive public figure absent "clear evidence of general fame or notoriety in the community and pervasive involvement in the affairs of society."[22] A vortex public figure is one who voluntarily thrusts himself into a particular public controversy, thereby becoming a public figure for a limited range of issues related to that controversy.[23] The Court extended public figure status to individuals who have not voluntarily entered a public controversy, but who are drawn into one. In short, a court must determine whether

14. St. Amant v. Thompson, 390 U.S. 727 (1968).
15. Tavoulareas v. Washington Post, 763 F.2d 1472 (D.C. Cir. 1985).
16. 418 U.S. 323 (1974).
17. *Id.* at 351-52.
18. *Id.* at 351.
19. Alaska, Colorado, Indiana and Michigan.
20. The remaining states have not yet rendered a decision on this issue. *Constitutional Privilege in Libel Law*, 1 Communications Law 1986 (Practicing Law Institute) at 145-50 (Nov. 1986).
21. *Gertz*, 418 U.S. at 351.
22. *Id.* at 352.
23. *Id.* at 351.

the plaintiff has thrust himself into the "vortex" of a public issue or has engaged the public's attention in an attempt to influence the outcome.

The Supreme Court also recognized the importance of plaintiffs involved in general public controversies as opposed to involvement in *particular* public debates. For example, in 1971, the Court extended the actual malice standard to private individuals involved in matters of public or general interest.[24] Although this decision was explicitly overruled by *Gertz*,[25] the existence of a public controversy continues to play an important role in determining the status of a libel plaintiff. The existence of a public controversy is also significant in assessing punitive damages. Although *Gertz* held that a private individual could not recover punitive damages absent a showing of actual malice, courts presently allow private plaintiffs to recover such damages absent actual malice *if* the statements "do not involve matters of public concern."[26]

III. Classifying Athletes And Entertainers

A. *Pervasive Public Figures*

As noted above, a pervasive public figure is one who has general fame or notoriety in the community and has pervasive involvement in the affairs of society so that he is deemed a public figure for all purposes and in all contexts.[27] In *Time, Inc. v. Firestone*, the Supreme Court stated that such a plaintiff must have assumed a "role of especial prominence in the affairs of society. . ."[28]

However, the Supreme Court has failed to delineate exactly what makes a person "of general fame or notoriety" or "of especial prominence in the affairs of society" so as to render them a pervasive public figure. Thus, the lower courts have had no clear guidelines to follow when classifying libel plaintiffs and have not been systematic in their analysis.

1. SIX FACTOR TEST

The following is a six-factor test which may be used to determine if a plaintiff is a pervasive public figure. While different

24. Rosenbloom v. Metromedia, Inc., 403 U.S. 29 (1971).

25. *Gertz*, 418 U.S. at 351.

26. Dun & Bradstreet v. Greenmoss Builders, Inc., 472 U.S. 749 (1985).

27. *Gertz*, 418 U.S. at 352. Courts also refer to such plaintiffs as "general public figures."

28. Time, Inc. v. Firestone, 424 U.S. 448, 453 (1976).

courts have looked at all of the factors individually, no court has engaged in a comprehensive examination of all the factors.[29]

a. Access to the Media

It is generally assumed that all pervasive public figures have access to the press. This was made clear by the Supreme Court in *Gertz*:

> The first remedy of any victim of defamation is self-help—using available opportunities to contradict the lie or correct the error and thereby to minimize its adverse impact on reputation. Public officials and public figures usually enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy.[30]

The Supreme Court also noted in *Gertz* that while the opportunity to rebut is not always effective in undoing the harm, the ability to do so is still relevant to the inquiry.[31]

The importance of access to the media was articulated in *Waldbaum v. Fairchild Publications Inc.*[32] The court held that a pervasive public figure must have access to the media if defamed. "The public's proven preoccupation with him indicates that the media would cover such an individual's response to statements he believes are inaccurate or unsupported."[33] It is significant that in every case where a court has classified an entertainer as a pervasive public figure, the plaintiff has had access to the media as de-

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29. The best analysis was conducted by the Court of Appeals for the District of Columbia in Waldbaum v. Fairchild Publications, Inc., 627 F.2d 1287 (D.C. Cir. 1980). Even this analysis, however, was not comprehensive.

30. *Gertz*, 418 U.S. at 344. As noted by the Court, the plaintiff's access to the media was also relevant in determining "*public official*" status. *Id.* at 344. The Court held in Hutchinson v. Proxmire, 443 U.S. 111 (1979) that "public official" was not synonymous with "public employee," when it decided that a research scientist who had received federal funding for his research was still a private individual. *Id.* at 119 n.8 (1979). It based the conclusion on several factors, the most prominent of which was that the plaintiff "did not have the regular and continuing access to the media" to warrant imposition of the actual malice standard. *Id.* at 119.

A Wisconsin circuit court held that the appointed members of a state technical college's board of directors were public officials. Bower v. Wisconsin Vocational Technical & Adult Education Board, 9 Media L. Rep. (BNA) 2372, (Dist Ct. Wis. 1983). The court relied on the finding that the directors exercised substantial authority over matters of public concern and they had "access to the media, through which they could respond to the published statements they found objectionable." *Id.* at 2379.

31. *Gertz*, 418 U.S. at 344.

32. 627 F.2d 1287 (D.C. Cir. 1980).

33. *Waldbaum*, 627 F.2d at 1294.

scribed above.

b. Assumption of risk

It is generally accepted that all pervasive public figures have assumed the risk of closer scrutiny by the media. "The communications media are entitled to act on the assumption that public officials and public figures have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them."[34] Unlike private individuals, public officials who accept public office and public figures have assumed an "influential role in ordering society."[35]

This factor was enunciated in *Waldbaum*. A famous person's "renouncement of anonymity or tolerance of publicity" amounts to an implied assumption of the possibility that the media will comment on his talents, character, or motives.[36] The court declared that the media's reporting and critiquing of famous persons is one of its fundamental roles. "The media serve as a check on the power of the famous, and that check must be strongest when the subject's influence is strongest."[37]

There is a strong suggestion that the plaintiff need not have voluntarily attained celebrity status to be a pervasive public figure.[38] "Hypothetically, it may be possible for someone to become a public figure through no purposeful action of his own. . ."[39] The *Waldbaum* court stated that when someone steps into the public spotlight, or when he is "cast into it," he must take the bad with the good.[40]

c. Fame or Notoriety

Courts should determine the familiarity of the plaintiff. The court in *Waldbaum* held that "a general public figure is a well-known 'celebrity,' his name a 'household word.' "[41] To ascertain

34. *Gertz*, 418 U.S. at 345.

35. *Curtis Publishing Co.*, 388 U.S. at 164.

36. *Waldbaum*, 627 F.2d at 1294.

37. *Id.* This comment also relates to factor number four—the plaintiff's ability to influence others. *See infra* notes 48-51 and accompanying text.

38. Assumption of the risk as applied in this analysis does not necessarily mean voluntariness. Rather, it seems to mean that a person implicitly assumes the risk of heightened criticism when he or she becomes pervasively famous or notorious, whether voluntarily or not.

39. *Gertz*, 418 U.S. at 345.

40. *Waldbaum*, 627 F.2d at 1294-95.

41. *Id.* at 1295.

this, the court cited two factors which should be considered. The first is a statistical survey of how well the plaintiff's name is recognized.[42] "We conclude that 'general' fame means being known to a large percentage of the well-informed citizenry. . .a majority or more of the public must [not necessarily] know of the plaintiff." The second is the previous coverage of the plaintiff in the press.[43] Courts must examine these elements as they existed before the defamation was published. "Otherwise, the press could convert a private individual into a general public figure simply by publicizing the defamation itself and creating a controversy surrounding it. . . ."[44]

The Seventh Circuit, for example, found Johnny Carson to be an "all-purpose" public figure.[45] The court stated that Carson "enjoyed an excellent name and reputation both internationally and throughout the United States as being one of the more popular and outstanding practitioners of his profession."[46] Similarly, a Nevada District Court found Wayne Newton "to be a general purpose public figure."[47] The court, however, engaged in little analysis concerning the pervasiveness of Newton's fame in determining his status as a general public figure.

d. Ability to Influence the Public

Courts also look at the plaintiff's ability to influence the general public. The court in *Waldbaum* noted that judges should "check whether others in fact alter or reevaluate their conduct or ideas in light of the plaintiffs action."[48] The court also held that this standard is not subjective, but an objective one which asks whether a reasonable person would conclude that the public is in-

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42. *Id.* at 1295 n.20.

43. *Id.* at 1295.

44. *Id.* at 1295 n.19.

45. Carson v. Allied News Co., 529 F.2d 206 (7th Cir. 1976).

46. *Id.* at 209-10. The court also held Carson's wife to be a limited public figure: ". . . the wife of a public figure such as Carson more or less automatically becomes at least a part-time public figure herself." *Id.* at 210.

47. Newton v. NBC, 12 Media L. Rep. (BNA) 1252 (D. Nev. 1985).

48. *Waldbaum*, 627 F.2d at 1295. Similarly, a major factor that courts consider when determining whether a plaintiff is a "public official" is the plaintiff's policy-making authority. Rosenblatt v. Baer, 383 U.S. 75 (1986). While athletes and entertainers generally have no policy-making authority per se, they may have an indirect impact on policy because the public will listen and possibly act upon the athlete's or entertainer's opinion. The fact that most athletes and entertainers have no direct control over public policy has led some scholars to suggest that it may be undesirable to extend the actual malice standard to the group labelled "public figures". *See generally* Schauer, *supra* note 3.

fluenced by the plaintiff's actions.[49]

With specific reference to athletes and entertainers, the court stated

> . . .that many well-known athletes, entertainers, and other personages endorse commercial products, publicly support political candidates, or take open stands on public issues. This phenomenon, regardless of whether it is justified, indicates that famous persons may be able to transfer their recognition and influence from one field to another. . . . A person's power to capitalize on his general fame by lending his name to products, candidates, and causes indicates the broad influence he has.[50]

Furthermore, it is appropriate for the press to scrutinize a plaintiff more closely when he or she has the ability to affect a variety of areas. Such scrutiny will "educate the public on the famous person's actual expertise with reference to whom or what he is promoting."[51] Thus, the ability to influence the public is relevant in justifying the imposition of the stricter actual malice standard for all aspects of the plaintiff's life.

e. Pursuit of Media Attention

Courts should determine if the plaintiff has actively pursued media attention and publicity or if he or she has tried to shun public attention. As the New York Court of Appeals held in *Maule v. NYM Corp.*,[52] "the critical consideration in this case is whether the evidence demonstrates that plaintiff had taken affirmative steps to attract personal attention or had strived to achieve a measure of public acclaim."[53] In *Maule*, the plaintiff, a well-known sportswriter for *Sports Illustrated*, author of twenty-eight books, and a frequent public speaker, was found to be a public figure. The court held that ". . . plaintiff not only welcomed but actively sought publicity for his views and professional writing and by his own purposeful activities thrust himself into the public eye. He had become a public personality."[54]

Courts have also indicated that a plaintiff may continue to be

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49. *Waldbaum*, 627 F.2d at 1294 n.15.

50. *Id.*

51. *Id.* at 1294.

52. 54 N.Y.2d 880, 429 N.E.2d 416, 444 N.Y.S.2d 909 (1981).

53. *Id.* at 881-82, 429 N.E.2d 447, 444 N.Y.S.2d 910.

54. *Id.* at 883, 429 N.E.2d at 418, 444 N.Y.S.2d at 911. The language "public personality" is somewhat confusing here, because some persons classified as "public personalities" are not considered to be pervasive public figures. *See infra* notes 128-44 and accompanying text.

a pervasive public figure even though he no longer pursues publicity and seeks anonymity instead. A person who announces that he no longer desires press coverage and refuses to grant interviews "may be continuing in a career that captivates the public, be it in politics, business, the arts, sports or entertainment."[55] In short, ". . . because he has chosen to occupy a position that places him in the spotlight and thereby may make him influential, he retains his access to the media and has invited continued attention and comment."[56]

f. Existence of Public Issues

Courts should also determine if issues of public interest exist.[57] " 'Public figures' are those persons who, though not public officials, are 'involved in issues in which the public has a justified and important interest.' Such figures . . . include artists, athletes, business people, ..."[58] Thus, it is relevant to the analysis to ascertain whether a plaintiff is involved in issues of public interest, even if he or she is not specifically trying to influence the outcome of those issues, or even if he or she may be less of a celebrity than Johnny Carson or Wayne Newton.

In using this six-factor analysis, however, courts should remain aware that these factors are not absolute criteria for determining who is or is not a pervasive public figure. They are merely elements

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55. *Waldbaum*, 627 F.2d at 1295 n.21.

56. *Id.* This may apply to persons such as baseball player Steve Carlton. Although he has attempted to avoid the press, the media continues to follow his career because of his previous fame and because he probably retains his pervasive public figure status.

57. Although the *Rosenbloom* extension of the actual malice standard to private individuals involved in matters of public interest was explicitly overruled by the Supreme Court in *Gertz*, courts have considered, and should continue to consider the existence of public interest as a factor when determining pervasive public figure status. Rosenbloom v. Metromedia, Inc., 403 U.S. 29 (1971).

58. Montandon v. Triangle Publications, Inc., 45 Cal. App. 3d 938, 946, 120 Cal. Rptr. 186, 191 (1975). This definition was taken from Cepeda v. Cowles Magazines and Broadcasting, Inc., 392 F.2d 417 (9th Cir.), *cert. denied*, 393 U.S. 840 (1968), a case which involved a famous baseball player. In this case, there was a strong indication that Cepeda was not declared a pervasive or all-purpose public figure and that the alleged libel concerned his competence as a baseball player. There was a suggestion that Cepeda was classified as a "public personality," a status which is analogous to a pervasive public figure", but which is confined to the plaintiff's limited realm, which was baseball. *See infra* notes 132-33 and accompanying text.

There is good reason to believe that Montandon, an author and television personality, was classified as a pervasive public figure even though the *Cepeda* test of public personality was used. This is because the alleged libel did not concern her role as an author, but dealt with her private life as the story intimated that plaintiff was a "call-girl." *Montandon*, 45 Cal. App. 3d at 941, 120 Cal. Rptr. at 188.

to be weighed and balanced against each other. As the *Waldbaum* Court stated in reference to its own more limited list of factors: "No one parameter is dispositive; the decision still involves an element of judgment. Nevertheless, the weighing of these and other relevant factors can lead to a more accurate—and more predictable—assessment of a person's overall fame and notoriety. . . ."[59]

2. APPLICATION TO ATHLETES AND ENTERTAINERS

It is clear that several generalizations can be made in applying this analysis to entertainers and athletes. First, courts assign pervasive public figure status to entertainers too freely today. As noted above, pervasive public figure status was applied to Johnny Carson,[60] Wayne Newton,[61] Pat Montandon,[62] and Hamilton "Tex" Maule.[63] The latter two applications were inappropriate under the above six-factor test.

The Court in *Gertz* made clear that only a minority of public figures were to be designated as pervasive public figures.[64] While some plaintiffs may "occupy positions of such pervasive power and influence that they are deemed public figures for all purposes . . . . *More commonly*, those classed as public figures will be vortex public figures"—i.e., they have thrust themselves into the vortex of a public controversy in order to influence the resolution of the issues involved.[65]

In addition, the result of being declared a pervasive public figure necessarily connotes a significant burden on a plaintiff in a defamation action.[66] If such a person is considered a public figure "for all purposes," regardless of the personal or private nature of the issue, the pervasive public figure status should not be imposed liberally.

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59. *Waldbaum*, 627 F.2d at 1295.

60. Carson v. Allied News Co., 529 F.2d 206 (7th Cir. 1976).

61. Newton v. NBC, 12 Media L. Rep. 1252 (Dist. Ct. Nev. 1985).

62. *Montandon*, 45 Cal. App. 3d 938, 120 Cal. Rptr. 1986.

63. Maule v. NYM Corp., 54 N.Y.2d 880, 429 N.E.2d 416, 444 N.Y.S.2d 909 (1981).

64. Gertz v. Robert Welch, Inc., 418 U.S. 323, 351 (1974).

65. *Id.* (emphasis added) For further discussion on "vortex public figures," *see infra* notes 85-126 and accompanying text.

66. *See generally* Franklin, *supra* note 3. Franklin suggested that very few plaintiffs who are declared pervasive public figures are likely to prevail at trial. *Id.* at 908.

The most prominent exception is Burnett v. National Enquirer, 7 Media L. Rep. (BNA) 1321 (Cal. Super. Ct. 1981), *modified*, 144 Cal. App. 3d 991, 193 Cal. Rptr. 206 (1983), *appeal dismissed*, 465 U.S. 1014 (1984). This case, however, should not be viewed as denying the difficulty of prevailing in the face of the actual malice standard. *See* Schauer, *supra* note 3, at 908 n.23.

A careful analysis of the six factors to the following cases reveals the courts have overly applied the pervasive public figure status to entertainers.

In *Maule v. NYM Corp.*,[67] plaintiff Hamilton "Tex" Maule was a writer for *Sports Illustrated*, author of many books on football and baseball, and a frequent public speaker concerning sports. The court said the "critical question" in determining Maule's status as a pervasive public figure was his "affirmative steps to attract personal attention to achieve a measure of public acclaim."[68] The court, however, ignored other critical factors.

The court glossed over the third factor of how well-known the plaintiff is. While Maule was certainly a well-known sportswriter, it is doubtful that he was a "celebrity" or "household word" within the meaning of *Waldbaum*. Maule was probably not known to a large percentage of the well-informed citizenry, whether sports fans or not, and was not the subject of much previous coverage, other than articles bearing his byline.[69]

More importantly, there is no evidence that Maule had any influence over public opinion or conduct, the fourth factor. While Maule may have been authoritative in his field, he made no attempt to transfer that recognition and influence from one field to another. He endorsed no products, supported no political candidates and took no stands on public issues.[70] Although it is true that Maule sought publicity to help further his career, he did not use his recognition in any meaningful way to influence others.[71]

In *Montandon v. Triangle Publications, Inc.*,[72] Pat Montandon was a minor television personality and the author of the book "How to Be a Party Girl." The court avoided any real analysis on the issue of whether Montandon was a pervasive public figure by stating that "it is unnecessary to detail the evidence showing that Miss Montandon is a public figure and a person of general newsworthiness."[73] Rather, it relied on the more expansive *Cepeda* definition of public figure which is akin to a "public personality."[74]

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67. 54 N.Y.2d 880, 429 N.E.2d 416, 444 N.Y.S.2d 909 (1981).

68. *Id.* at 881-82, 429 N.E.2d at 417, 444 N.Y.S.2d at 910.

69. *See supra* notes 41-47 and accompanying text.

70. *See supra* notes 48-51 and accompanying text.

71. Additionally, the alleged libel concerned plaintiff's professional abilities rather than a private aspect of his life. This suggests that the court mistakenly applied pervasive public figure status, but should have applied vortex public figure or public personality status.

72. 45 Cal. App. 3d 938, 120 Cal. Rptr. 186 (1975).

73. *Id.* at 941, 120 Cal. Rptr. at 188.

74. *See supra* note 58. Because it was clear that the alleged defamation here relates to

Even a cursory analysis under the six-factor test shows that Montandon is not a pervasive public figure. She was neither a "celebrity" as defined in the test, nor did she have any meaningful influence over the public beyond the scope of her book. She did not use her limited recognition to advance other ideas or beliefs. She only wrote a book and appeared on television talk shows in an attempt to publicize it.

Second, and contrary to the first generalization, courts today are unwilling to apply pervasive public figure status to athletes. The greatest support for this assertion is that there are no cases on record where an athlete has explicitly been deemed a pervasive public figure. While this result may once have been justifiable because athletes tended not to use their recognition to influence the public and had less access to the press concerning non-sports issues, this is no longer true. Today's big-name athletes are much more willing to transfer their influence and recognition from the sports world to political, social, and economic forums.[75]

Of particular importance to classifying athletes is the concept of "limited pervasive public figures."[76] Some courts have indicated that a plaintiff need not satisfy the requirements to be a pervasive public figure across the country, but may be a pervasive public figure only in some limited local community.[77]

This concept originates from the language of *Gertz*. The Court noted that Gertz had "no general fame and notoriety *in the community*" and that he was not generally known to "*the local population.*"[78] Although it is clear from this language that the plaintiff need not possess national fame, it is unclear what the relevant "community" or "local population" must be.

On one hand, it has been suggested that the relevant community refers to the area to which the defamatory statement was disseminated. "We . . . conclude that nationwide fame is not required. Rather, the question is whether the individual had achieved the necessary degree of notoriety where he was de-

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private facts, as opposed to facts related to plaintiff's occupation, the court is purposely imposing pervasive public figure status on Montandon. Thus, the court simply used the wrong definition and did not engage in any pervasive public figure analysis.

75. Jack Kemp and Bill Bradley are both former professional athletes who have moved into the political arena.

76. This is because most athletes who are not prominent national stars are still well-known in their local community (a limited geographical area round where they play their home games) but are not as famous elsewhere.

77. *E.g.*, From v. Tallahassee Democrat, Inc., 400 So. 2d 52, 55 (Fla. Dist. Ct. App. 1981).

78. *Gertz*, 418 U.S. at 351-52.

famed—i.e., where the defamation was published."[79] The rationale behind this view is not only that a plaintiff may be well-known in a limited community, but also that he may have access to the media and/or influence on the public only in that limited community. Problems arise here when the area of publication is larger than the area of plaintiff's fame.[80]

On the other hand, it has also been suggested that the relevant "community" refers to some distinct geographical area. In *Williams v. Pasma*,[81] for example, the Montana Supreme Court held that the plaintiff, an unsuccessful candidate for the United States Senate and a former chairman of the Montana Republican Party, was a pervasive public figure in Montana.

> Some courts have hinted that national notoriety is necessary to attain general public figure status . . . . However, we cannot find any authority from the United States Supreme Court nor State Supreme Court cases that expressly sets such a requirement. In fact, the language 'in the community' appears to require only local notoriety. We find . . . [plaintiff's] activities do establish clear evidence that Williams had *general fame or notoriety in the community (Montana)* and exhibited pervasive involvement in the affairs of society and thus was a public figure as a matter of law.[82] (emphasis added).

However, this concept also has the inherent problem of defining the appropriate geographical boundaries. It has been suggested that the geographical area could be determined by such factors as how far television and radio broadcasts of the plaintiff's team's games are transmitted[83] or by the area which receives newspaper coverage of the team.[84]

B. *Vortex Public Figures*

"Vortex public figures" are those persons who are not pervasive public figures, but who have voluntarily injected themselves,

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79. Waldbaum v. Fairchild Publications Inc., 627 F.2d 1287, 1295-96 n.22 (D.C. Cir. 1980).

80. The court in *Waldbaum* suggested that "it might be appropriate to treat the plaintiff as a public figure for the segment of the audience to which he or she is well-known and as a private individual for the rest." *Id.* This would have an effect on assessing damages.

81. 202 Mont. 66, 656 P.2d 212 (1982).

82. *Id.*

83. A problem with this is the existence of cable TV and "national" channels such as Ted Turner's WTBS, which broadcasts Atlanta Braves and Atlanta Hawks games nationwide, and WGN, which broadcasts Chicago Cubs games nationwide.

84. *Waldbaum*, 627 F.2d 1287, 1295-96 & n.22.

or have been involuntarily injected by events, into the vortex of a particular controversy of public interest. As such, they are treated as public figures within the meaning of *Butts* and *Gertz*.[85] The Supreme Court in *Gertz* stated that such public figures are those that have "thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved."[86] The *Gertz* Court also said that a vortex public figure is "an individual [who] voluntarily injects himself or is drawn into a particular controversy and thereby becomes a public figure for a limited range of issues."[87]

In *Wolston v. Reader's Digest Ass'n*,[88] the Supreme Court explained that the "actual malice" constitutional privilege, as applied to vortex public figures, rests upon two considerations.[89] First, a vortex public figure is less vulnerable to a defamatory statement because he has access to the press and the ability to set the record straight.[90] This access is based on the presumption that the public wishes to hear, and the media is willing to publish, the plaintiff's views on important public issues in which the plaintiff is involved. Second, a vortex public figure has assumed the risk of damaging statements by voluntarily entering the public arena.[91] This reflects the *Gertz* requirement that the plaintiff must have thrust himself into the public controversy in order to influence the resolution of the issues involved.

When determining who is a vortex public figure, courts need not undergo the six-factor test recommended for pervasive public figures. Rather, there is a two-pronged analysis: "First, a 'public controversy' must exist. . . . Second, the nature and extent of the individual's participation in the particular controversy must be as-

85. Thus, the plaintiff must show that defendant knew the statement was false or exhibited reckless disregard as to whether or not it was false. New York Times Co. v. Sullivan, 376 U.S. 254, 280 (1964).

86. Gertz v. Robert Welch, Inc., 418 U.S. 323, 345 (1974).

87. *Id.* at 351.

88. 443 U.S. 157 (1979).

89. *Id.* at 164.

90. *Id.* at 162.

91. *Id.* at 164. The court in *Wolston* substantially limited the scope of those plaintiffs who may be cast into the *Gertz* category of involuntary vortex public figures. The court held that: "a private individual is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention." *Id.* at 167.

There is still some indication that involuntary public figures are possible. "*Hypothetically*, it may be possible for someone to become a public figure through no purposeful action of is own, but the instances of truly involuntary public figures must be *exceedingly rare*." *Gertz*, 418 U.S. at 345 (emphasis added).

certained."[92] This analysis is further underscored by the *Wolston* requirements that the plaintiff have access to the press and to some degree, assume the risk of close media scrutiny.

1. PUBLIC CONTROVERSY

The Supreme Court has not clearly defined the elements of a public controversy.[93] However, lower courts have offered some general guidance in the area. The Sixth Circuit, for example, noted that a public controversy "is not simply any controversy of general or public interest."[94] The Third Circuit stated that a public controversy must be a dispute which will, when resolved, affect some segment of the general public other than its immediate participants.[95] Finally, the District Court for the District of Columbia held that a public controversy "is not merely something that the press deems newsworthy. . . ."[96] To hold otherwise would allow the media to create the standard of fault which the plaintiff must prove simply by deeming the relevant issue newsworthy and thereby converting it into a public controversy. Several generalizations can be made by looking at how "public controversies" relate to athletes and entertainers.

a. Direct Performance Issues

First, it is fairly clear that issues *directly* related to an athlete's or entertainer's performance will be deemed "public controversies." Such issues would include the on-field performance of a player[97] or coach[98] or the performance of a model in posing for photographs.[99]

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92. Clark v. ABC, 684 F.2d 1208, 1218 (6th Cir. 1982), *cert. denied*, 460 U.S. 1040 (1983).

93. *Id.* at 1218.

94. Street v. NBC, 645 F.2d 1227, 1234 (6th Cir.), *cert. granted*, 454 U.S. 815, *cert. dismissed*, 454 U.S. 1095 (1981).

95. Marcone v. Penthouse Int'l Magazine for Men, 754 F.2d 1072, 1083 (3d Cir.), *cert. denied*, 106 S. Ct. 182 (1985). The Court held that drug trafficking of "mammoth proportions" falls within the meaning of public controversy. 754 F.2d at 1083. This could be significant to athletes because the use of drugs is currently an important issue in the world of sports.

96. Joseph v. Xerox Corp., 594 F. Supp. 330, 333 (D.D.C. 1984).

97. Holt v. Cox Enterprises, 590 F. Supp. 408 (N.D. Ga. 1984) (plaintiff struck an opposing player in the face with his forearm during the course of a college football game but did not receive a penalty).

98. Winter v. Northern Tier Publishing, 4 Media L. Rep. (BNA) 1348 (N.Y. Sup. Ct. 1978) (plaintiff engaged in arguments with and criticized high school football officials during the course of a game).

99. Vitale v. National Lampoon, Inc., 449 F. Supp. 442 (E.D. Pa. 1978) (plaintiff was a

This result is supported by the two rationales most often put forward by courts when justifying the vortex public figure classification. Athletes and entertainers assume the risk of media comment by voluntarily performing before the public. An athlete "voluntarily play[s] that sport before thousands of persons—spectators and sportswriters alike—and he necessarily assumed the risk that these persons would comment on the manner in which he performed."[100] Similarly, an entertainer who voluntarily poses for nude photographs published by a national magazine and who received payment for their publication, "voluntarily placed herself in the public domain in the role of a model inviting attention and comment. . . ."[101]

It is also generally assumed that athletes and entertainers have access to the press concerning their particular performances. It was said that the plaintiff in *Vitale* was "extensively interviewed" in an article accompanying the photographs[102] and that the plaintiff in *Holt* "continued to enjoy such access to the press" long after the incident enabling him to rebut any media criticisms.[103] Furthermore, it is immaterial that at first [plaintiff] chose for personal reasons not to avail himself of the opportunity to defend his character."[104]

b. Indirect Performance Issues

Second, issues *indirectly* related to an athlete's or entertainer's performances may also be "public controversies," but courts have engaged in stricter analysis in this area. Courts require that the controversy be "truly public."[105] "Only a controversy which attracts the public's interest because it affects persons other than the direct participants is a public controversy" within the public figure determination.[106] The court in *Waldbaum* offered the

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singer who posed for some photographs for Playboy magazine).

100. *Holt*, 590 F. Supp. at 412.

101. *Vitale*, 449 F. Supp. at 445. The court's reliance upon plaintiff having received payment for her performance is probably irrelevant. The *Holt* Court specifically held that the on-field activities of a football player were "public controversies" even though the player was an amateur. *Holt*, 590 F. Supp. at 412.

102. *Vitale*, 449 F. Supp. at 445.

103. *Holt*, 590 F. Supp. at 412. The article in this case was published 18 years after the incident occurred, yet the court found plaintiff to have access to the media "at the time and in the years that followed." *Id.*

104. *Id.*

105. Barry v. Time, Inc., 584 F. Supp. 1110, 1116 (N.D. Cal. 1984).

106. *Id.* at 1116. The court held that the public controversy requirement was met for two reasons: first, investigations concerning recruiting violations of the athletic department

following definition:

> A general concern or interest will not suffice. . . [The court] should ask whether a reasonable person would have expected persons beyond the immediate participants in the dispute to feel the impact of its resolution. If the issue was being debated publicly and if it had foreseeable and substantial ramifications for nonparticipants, it was a public controversy.[107]

Courts also require that there be a real controversy.[108] The Supreme Court in *Wolston*, for example, held that a public controversy did not exist with regard to plaintiff's failure to appear before a grand jury investigating Communism and "there was no public controversy or debate in 1958 about the desirability of permitting Soviet espionage in the United States . . . ."[109]

Finally, some courts place emphasis on the plaintiff's efforts to engage the media in order to resolve the controversy.[110] The Court in *Woy*, for example, considered the following three prong test: (a) did the plaintiff voluntarily thrust himself into the vortex of this particular controversy, (b) what was the nature and extent of his participation and (c) did the plaintiff encourage the public's attention in an attempt to influence the outcome of a particular controversy?[111]

c. Issues Unrelated to Performance

Issues *unrelated* to an athlete's or entertainer's performance

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at a state university were ongoing; and second, intimately related nationwide controversy had developed over the proper role of athletics at institutions of higher learning. *Id.* at 1116-17. This suggests a somewhat stricter standard than was applied to the on-field performance of athletes.

107. Waldbaum v. Fairchild Publications Inc., 627 F.2d 1287, 1296-97 (D.C. Cir. 1980).

108. *Barry*, 584 F. Supp. at 1113.

109. Wolston v. Reader's Digest Ass'n, 443 U.S. 157, 166 n.8 (1979). A strict reading of this case could have major ramifications in determining whether a "public controversy" exists. For example, it is conceivable by analogy that a story on drug use in sports may not be a public controversy because everyone agrees drug use is undesirable. *See also* Pring v. Penthouse, 7 Media L. Rep. (BNA) 1101 (D. Wyo. 1981), where the court held that plaintiff, a former Miss Wyoming, was not a vortex public figure because there was no particular public controversy into which she had thrust herself. The alleged defamation consisted of a "fictionalized" piece on beauty contests published in Penthouse magazine.

110. Woy v. Turner, 573 F. Supp. 35 (N.D. Ga. 1983).

111. *Id.* at 38. The *Woy* Court determined that plaintiff, a well-known sports agent, was a vortex public figure because he voluntarily thrust himself into the forefront of a public controversy—the contractual dispute between his client and the Atlanta Braves baseball team. *Id.* Specifically, plaintiff was extended this status because he "was in contact with the press, television stations and sports magazines regarding the contractual dispute several times upon his own initiative." *Id.*

may still be deemed "public controversies" under certain limited circumstances. One such circumstance would be charges of criminal misconduct.[112]

The plaintiff in *Bell v. Associated Press*[113] conceded that he was a public figure for purposes of stories concerning his role as an athlete, but claimed he was not a public figure when the defamatory story "bore no relationship to his career as a professional football player."[114] The court disagreed, stating that there is "considerable public interest, concern, and controversy with respect to off-the-field misconduct of professional athletes."[115]

> Professional athletes can hardly be permitted to hold themselves out as public figures, seeking a maximum amount of publicity for themselves and their teams with respect to their athletic achievements, while successfully claiming strictly private status when misconduct is charged or proved. Their professional careers and those of other entertainers who seek the public spotlight are so intimately tied to their personal conduct that such a distinction would be entirely unrealistic.[116]

The *Bell* court further suggested that any personal conduct which adversely affects an athlete's position as a "role model in this community" may constitute a public controversy in determining if the plaintiff is a vortex public figure.[117]

2. NATURE AND EXTENT OF PLAINTIFF'S PARTICIPATION

Once the requisite "public controversy" has been established, the next step is to ascertain the nature and extent of plaintiff's participation in that controversy.

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112. Bell v. Associated Press, 584 F. Supp. 128 (D.D.C. 1984) (the media reported that the plaintiff was reported by the media to have been arrested for lewdness. Actually, an imposter was posing as plaintiff).

113. 584 F. Supp. 128 (D.D.C. 1984).

114. *Id.* at 131.

115. *Id.*

116. *Id.* at 131-32. This language was written broadly so as to include *non-criminal misconduct* as well as criminal misconduct. However, the court relied in part upon the limiting fact that the plaintiff signed a contract with his team with provisions that stated a player is to "cooperate with the media" and that if a "player has engaged in personal conduct reasonably judged by [the] club to adversely affect or reflect" upon it, the club may terminate his contract. *Id.* at 131.

117. *Id.* at 132.

a. The *Clark-Fitzgerald* Factors

In *Clark v. ABC*,[118] the Court of Appeals stated that the "nature and extent of an individual's participation is determined by considering three factors: the extent to which participation in the controversy is *voluntary*; the extent to which there is access to channels of effective communication in order to counteract false statements; and the prominence of the role played in the public controversy."[119]

In *Fitzgerald v. Penthouse International*,[120] the District Court of Maryland suggested three additional factors: "whether the plaintiff sought to *influence* the resolution or outcome of the controversy; whether the controversy existed prior to the publication of the defamatory statements; and whether the plaintiff retained public figure status at the time of the alleged defamation."[121]

b. Application To Athletes and Entertainers

Applying the two-pronged analysis to two cases, one previously discussed, it becomes clearer how the "nature and extent of an individual's participation" is important.

In *Woy v. Turner*,[122] the court classified Woy as a vortex public figure. It noted that Woy "voluntarily" thrust himself into the forefront of a public controversy, that he "readily made himself available for interviews and media attention, and that he was a "major participant" in the controversy (the *Clark* factors). The facts also show that Woy did all this to "influence the outcome of the controversy, that the controversy existed prior to the publication of the defamatory statement and that Woy retained his public figure status (the *Fitzgerald* factors).[123] Thus, it is clear under each factor of the two-pronged analysis that Woy was a vortex public figure.

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118. 684 F.2d 1208 (6th Cir. 1982), *cert. denied*, 460 U.S. 1040 (1983).

119. *Id.* at 1218.

120. 525 F. Supp. 585 (D. Md. 1981), *aff'd in part and rev'd in part*, 691 F.2d 666 (4th Cir. 1982), *cert. denied*, 460 U.S. 1024 (1983).

121. *Id.* at 592. The final factor focuses on the importance of the *passage of time* in determining if a plaintiff is a vortex public figure. *See* Street v. NBC, 645 F.2d 1227 (6th Cir.), *cert. granted*, 454 U.S. 815, *cert. dismissed*, 454 U.S. 1095 (1981). The 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." *Id.* at 1235. *See also* Holt v. Cox Enterprises, 590 F. Supp. 408 (N.D. Ga. 1984) held that the plaintiff, a football player, was still a vortex public figure 18 years after he struck an opposing player during a game).

122. 573 F. Supp. 35 (N.D. Ga. 1983).

123. *Id.* at 38.

In *Andreescu v. Lane*,[124] on the other hand, a Colorado District Court found that plaintiff, a harness racer, was not a vortex public figure because of a report that certain races were "fixed."[125] While the court conceded that the plaintiff was "involved in an issue of concern to the general public," it was not willing to declare him a "limited" vortex public figure.[126]

> If all individuals who participated in the production of events open to the public were to be considered as . . . 'limited public figures,' . . . the media could publish potentially libelous comments about the track gatekeeper, popcorn vendor or program hawker. In other words, the Court must draw the line somewhere, and here it is drawn short of Dan Andreescu.[127]

This was probably a correct result under the *Clark-Fitzgerald* analysis outlined above. First, plaintiff did not voluntarily thrust himself into the controversy, but rather was brought into it by the nature of his profession. Second, he probably did not have any real access to the media in that he was not very well-known and was not specifically accused of fixing races himself. Third, plaintiff did not play a prominent role in the controversy—no more prominent in the court's eyes than the roles of the track gatekeeper, popcorn vendor or program hawker.

C. *Public Personalities*

Another category of public figures which is particularly relevant to athletes and entertainers is that of "public personalities." A public personality cannot be truly classified as a pervasive public figure except within his or her limited professional realm; nor can he or she be classified as a vortex public figure since the necessary element of public controversy is usually not required.[128] However, no separate status has generally been recognized by the courts for

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124. 5 Media L. Rep. (BNA) 1290 (D. Colo. 1979).

125. *Id.*

126. *Id.* at 1293.

127. *Id.*

128. *Constitutional Privilege in Libel Law*, *supra* note 20, at 129. The distinction between public personalities and vortex public figures concerning issues directly related to their profession is small, if present at all. In all the cases dealing with such vortex public figures, however, there did exist some "controversy" beyond the plaintiff's ability to perform. *See* Winter v. Northern Tier Publishing, 4 Media L. Rep. (BNA) 1348 (N.Y. Sup. Ct. 1978) (the plaintiff verbally threatened a football referee); Holt v. Cox Enterprises, 590 F. Supp. 408 (N.D. Ga. 1984) (the plaintiff struck an opposing player during the course of the game).

this category of public figure.[129]

The dynamics of the public personality category were first recognized by the New York Court of Appeals in a professional baseball player's invasion of privacy case.[130] The court held that it was "appropriate to say that the plaintiff here, Warren Spahn, is a public personality and that insofar as his professional career is involved, he is substantially without a right to privacy."[131] The court held that Spahn must show that the defendant acted with actual malice, thus implying public figure status.[132]

The Ninth Circuit later applied similar language with regard to another baseball player in *Cepeda v. Cowles Magazine*.[133] It held that public figures are "those persons who, though not public officials, are 'involved in issues in which the public has a justified and important interest.' Such figures are . . . numerous and include artists, athletes, business people, dilettantes, anyone who is famous or infamous because of who he is or what he has done."[134]

The basic justification for imposing an almost pervasive public figure status on "public personalities," at least within his or her professional realm, is that person's unavoidable attempt to seek publicity. Public performers and entertainers necessarily seek publicity in order to keep their name and their professional talents constantly in the public eye. Such publicity enhances their fame and, in turn, their ability to earn money.[135] Consequently, it is held that by seeking publicity, the public personality assumes the risk of negative as well as positive publicity concerning his or her performance.[136]

Two cases clarify the application of public personality status to athletes and entertainers. In *Chuy v. Philadelphia Eagles Football Club*,[137] the Third Circuit held that professional athletes, "at least as to their playing careers, generally assume a position of

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129. *But see* Brewer v. Memphis Publishing Co., 626 F.2d 1238 (5th Cir. 1980) (this case provides one exception to the general rule). *See also infra* notes 128-31 and accompanying text.

130. Spahn v. Julian Messner, Inc., 18 N.Y.2d 324, 221 N.E.2d 543, 274 N.Y.S.2d 877 (1966), *vacated and remanded*, 387 U.S. 239, *aff'd on rehearing*, 21 N.Y.2d 124, 233 N.E.2d 840, 286 N.Y.S.2d 832 (1967).

131. *Id.* at 328, 221 N.E.2d at 545, 274 N.Y.S.2d at 879.

132. 21 N.Y.2d at 127, 233 N.E.2d at 842, 286 N.Y.S.2d at 834.

133. 392 F.2d 417 (9th Cir.), *cert. denied*, 393 U.S. 840 (1968) (Orlando Cepeda was a well-known batter and first baseman for the San Francisco Giants and St. Louis Cardinals).

134. *Id.* at 419.

135. *Constitutional Privilege in Libel Law*, *supra* note 20, at 129.

136. Waldbaum v. Fairchild Publications Inc., 627 F.2d 1287, 1295 (D.C. Cir. 1980).

137. 595 F.2d 1265 (3rd Cir. 1979).

public prominence."[138] The court specifically declared that an athlete's accomplishments and his or her contractual disputes command the attention of the public, thereby rendering him or her a public figure for those limited purposes. Thus, unlike a pervasive public figure, Chuy was not a public figure for all purposes, but one only "with respect to his ability to play football."[139] On the other hand, there need be no public controversy which is required with vortex public figures.

In *Brewer v. Memphis Publishing Co.*,[140] the Fifth Circuit held both football player John Brewer and his wife Anita to be public figures and that they would have to prove actual malice.[141] Most importantly, the court determined that the Supreme Court in *Gertz* "did not define all subcategories of the public figure classification," thus suggesting a separate category of public figure apart from pervasive or vortex public figures.[142] The court further suggested that such public figure status is limited to those aspects of the plaintiff's life that he or she attempts to publicize, either directly or indirectly.[143] The first amendment requires that the press be afforded the protection of the actual malice test "vis-a-vis those who have sought its coverage, either through direct invitation or by participating in activities whose success depends in large part on publicity."[144]

IV. Conclusion

The classification of athletes and entertainers as plaintiffs in defamation suits is a complex and unsettled area of the law. The courts have distinguished three types of public figures—the pervasive public figure, the vortex public figure and the public personality—each of which must prove actual malice on the part of the defendant/media in some form or under certain circumstances. The courts have not, however, provided athletes and entertainers with any clear guidelines as to how they will be classified.

This article offered comprehensive tests for determining when a defamation plaintiff should be classified as a pervasive public fig-

138. *Id.* at 1280. (Chuy was a football player who had been traded from the Los Angeles Rams to the Philadelphia Eagles and was involved in a contract dispute with the Eagles).

139. *Id.*

140. 626 F.2d 1238 (5th Cir.).

141. *Id.* at 1257 (John Brewer was a successful professional football player and restauranteur and Anita Brewer was a singer and former wife of Elvis Presley).

142. *Id.* at 1254.

143. *Id.* at 1249-58.

144. *Id.* at 1255.

ure, vortex public figure or public personality. Furthermore, it has attempted to explain what effect these tests would specifically have on athletes and entertainers.

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