Loyola of Los Angeles Entertainment Law Review

Volume 22
Number 2 *Symposium: Tune in, Turn on, Cop Out? The Media and Social Responsibility*

Article 6

1-1-2002

A Pyrrhic Press Victory: Why Holding Richard Jewell Is a Public Figure Is Wrong and Harms Journalism

Clay Calvert

Robert D. Richards

ARTICLES

A PYRRHIC PRESS VICTORY: WHY HOLDING RICHARD JEWELL IS A PUBLIC FIGURE IS WRONG AND HARMS JOURNALISM

Clay Calvert[*] *and Robert D. Richards*[**]

I. INTRODUCTION

When a Georgia appellate court in October 2001 declared Richard Jewell, the private security guard first suspected[1] but later cleared of committing the bombing in Atlanta's Centennial Olympic Park in 1996,[2] to be a public figure in his libel[3] case against the *Atlanta Journal-*

* Associate Professor of Communications & Law and Co-Director of the Pennsylvania Center for the First Amendment at The Pennsylvania State University; B.A., 1987, Communication, Stanford University; J.D. (Order of the Coif), 1991, McGeorge School of Law, University of the Pacific; Ph.D., 1996, Communication, Stanford University; Member, State Bar of California.

** Professor of Journalism & Law and Founding Co-Director of the Pennsylvania Center for the First Amendment at The Pennsylvania State University; B.A., 1983, M.A. 1984, Communications, The Pennsylvania State University; J.D., 1987, The American University; Member, State Bar of Pennsylvania.

1. *See generally* Kevin Sack, *He Felt Much 'Like a Hunted Animal,'* N.Y. TIMES, Oct. 29, 1996, at A12 (describing "the most circumstantial of evidence" upon which the Federal Bureau of Investigation based its focus on Jewell as a suspect).

2. *See generally* Eric Harrison, *Security Guard Cleared in Olympic Bomb Case*, L.A. TIMES, Oct. 27, 1996, at A1, A20 (describing both the stakeout by the FBI of "Jewell's every move" after the bombing and the letter later issued by the Justice Department that cleared him as "a target of the federal criminal investigation into the bombing on July 27, 1996, at Centennial Olympic Park"). The current suspect in the bombing is Eric Rudolph, who was "last seen running into the hills of North Carolina." Clarence Page, *Rumsfeld Shows How Truth Is Our Most Potent Weapon*, NEWSDAY (N.Y.), Oct. 30, 2001, at A44; *see also* Sue Anne Pressley, *Carolinians Doubt Rudolph Is Hiding in Their Mountains*, WASH. POST, Mar. 31, 1999, at A3 (describing the search for Eric Robert Rudolph and observing that law enforcement authorities charged Rudolph with the bombing of Centennial Olympic Park "after dropping security guard Richard Jewell as a suspect").

3. Libel is defined generally under the applicable Georgia statute as "a false and malicious defamation of another, expressed in print, writing, pictures, or signs, tending to injure the reputation of the person and exposing him to public hatred, contempt, or ridicule." GA. CODE

Constitution,[4] media attorneys and journalists rejoiced.[5] *Editor & Publisher*, a leading journalism trade magazine that had previously mocked Jewell in an editorial as a "well-fed former security guard,"[6] lauded the decision because it "likely killed any chance that Jewell [would] prevail in his libel suit against the *Atlanta Journal-Constitution*."[7] This time, the magazine derided him for "drawling his tale like a backwoods version of Joe Friday,"[8] gloating that the opinion probably would end what it called "Jewell's lucrative sideline of shaking down news organizations."

This Article argues that such celebration is shortsighted. Indeed, the decision to hold Richard Jewell is a public figure[9] and thereby force him to prove actual malice[10]—a rigorous standard typically not faced by private figures[11]—may cause long-term harm to journalists seeking sources.

Webster's Ninth New Collegiate Dictionary defines a "Pyrrhic victory" as that which is "won at excessive cost."[12] While the *Atlanta Journal-Constitution* scored a victory in its battle with Richard Jewell, the decision may cost journalists future sources[13] of information. Why step

---

ANN. § 51-5-1 (a) (Harrison 1998). Libel in a newspaper, in turn, is defined as "[a]ny false and malicious defamation of another in any newspaper, magazine, or periodical, tending to injure the reputation of the person and expose him to public hatred, contempt, or ridicule . . . ." GA. CODE ANN. § 51-5-2 (a) (Harrison 1998).

4. Atlanta Journal-Constitution v. Jewell, 555 S.E.2d 175 (Ga. Ct. App. 2001), *cert. denied*, 2002 Ga. LEXIS 104 (2002). The case was consolidated with Jewell v. Cox Enters., No. A01A1565 (Ga. Ct. App. 2001), *cert. denied*, 2002 Ga. LEXIS 103 (2002). The appellate court found that the "evidence was sufficient to support the trial court's determination that Jewell was a voluntary limited-purpose public figure." *Atlanta Journal-Constitution*, 555 S.E.2d at 185.

5. *See* Richmond Eustis, *Atlanta Newspaper Wins Big in Jewell Libel Rulings*, LEGAL INTELLIGENCER (Phila.), Oct. 12, 2001, at 4 (stating David E. Hudson, general counsel for the Georgia Press Association, called the decision "a great victory" for the *Atlanta Journal-Constitution*).

6. *Public Rights on Trial*, EDITOR & PUBLISHER (N.Y.), May 22, 2000, at 18 [hereinafter *Public Rights on Trial*].

7. *Jewell Ruling Sparkles*, EDITOR & PUBLISHER (N.Y.), Oct. 15, 2001, at 11 [hereinafter *Jewell Ruling Sparkles*].

8. *Id.*

9. *See generally* Gertz v. Robert Welch, Inc., 418 U.S. 323, 345 (1974) (describing three classes of public figure plaintiffs in libel law, including involuntary public figures, all-purpose public figures, and voluntary limited-purpose public figures).

10. Actual malice is the publication of a statement "with knowledge that it was false or with reckless disregard of whether it was false or not." N.Y. Times Co. v. Sullivan, 376 U.S. 254, 279–280 (1964).

11. JOHN D. ZELEZNY, COMMUNICATIONS LAW: LIBERTIES, RESTRAINTS, AND THE MODERN MEDIA 128 (3d ed. 2001). A majority of states that have addressed the issue have held that private figure plaintiffs only need to prove negligence against the media, which is a lesser degree of fault. *Id.*

12. WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 961 (1983).

13. A source "in the journalistic and popular vernacular" may be defined as "a person who

forward, after all, to tell the press what you know or what you saw about an event of public concern? The very act of doing so could convert you from a private figure into a public figure, and thereby make it much more difficult to recover in a defamation case should the press turn on you and allegedly defame you.[14] Parsed differently, the decision could cause a chilling effect[15] on speech, making the select sources upon whom the press is dependent for information reluctant to come forward with that information. The public, in turn, pays the price and is harmed by the reduced flow of information.

If one believes Jewell's side of the story, he did not even seek out the media to tell his story;[16] the media sought him out.[17] In particular, Jewell claims that news organizations initially contacted AT&T—the entity that hired private security for Centennial Olympic Park—for interviews with the security guard who first spotted the unattended package that contained the bomb.[18] According to documents filed in the case by Jewell's attorney L. Lin Wood,[19] it was the media relations coordinator for AT&T who "arranged for Mr. Jewell to participate in a limited number of media interviews,"[20] and for whom Jewell agreed to participate "to accommodate the desires of AT&T."[21] This, of course, runs directly contrary to *Editor & Publisher's* dig that Jewell "appeared on any media outlet that would have

---

provides information for ultimate dissemination by the press to the public." C. THOMAS DIENES ET AL., NEWSGATHERING AND THE LAW §13-4 (2d ed. 1999).

14. *See generally Gertz*, 418 U.S. at 345.

15. *Cf.* Dombrowski v. Pfister, 380 U.S. 479, 487 (1965) (using the term "chilling effect" in the context of the exercise of First Amendment free expression rights).

16. *See generally* Brief for Appellant at 4, Jewell v. Cox Enters., 555 S.E.2d 175 (Ga. Ct. App. 2001) (No. A01A1565) [hereinafter Brief for Appellant].

17. *See* Felicity Barringer, *Once Accused, Now the Accuser*, N.Y. TIMES, Feb. 8, 1999, at C10.

18. *See* Kevin Sack, *Atlanta Papers Are Sued in Olympic Bombing Case*, N.Y. TIMES, Jan. 29, 1997, at A12.

19. Wood has been hailed as "an expert in resurrecting tarnished clients in the court of public opinion." Stacy Finz et al., *Condit's Bid to Answer Critics Called 'Disaster,'* S.F. CHRON., Aug. 25, 2001, at A1. In addition to Jewell, Wood represents John and Patsy Ramsey, parents of the murdered JonBenét Ramsey. *Id.* Other counsel for Jewell in his case against the *Atlanta Journal-Constitution* are Brandon Hornsby, an attorney in Wood's firm (L. Lin Wood, P.C.), and G. Watson Bryant, a solo practitioner from Atlanta. *See* Richard Jewell's Petition for Cert. at 27, Jewell v. Cox Enters., 555 S.E.2d 175 (Ga. Ct. App. 2001) (No. S02C0194) [hereinafter Petition for Cert.] (listing Wood, Hornsby and Bryant as Jewell's counsel in the case). The Georgia Supreme Court recently declined to hear Jewell's latest appeal. *Ga. High Court Declines to Hear Appeal of Jewell Lawsuit*, ASSOCIATED PRESS (Feb. 12 2001), *at* http://www.msnbc.com/local/rtga/m147865.asp.

20. Brief for Appellant, *supra* note 16, at 4.

21. *Id.*

him . . . ."[22]

The decision of the Georgia Court of Appeals may chill speech by expanding the notion of the voluntary limited-purpose public figure to include good-Samaritan sources like Jewell who agree to speak with the media upon request. Moreover, the decision is dangerous because it breathes new life into an even more rare and heretofore moribund category of public figure—the involuntary public figure.[23] In 1974, the United States Supreme Court observed in *Gertz v. Robert Welch, Inc.*[24] that "[h]ypothetically, it may be possible for someone to become a public figure through no purposeful action of his own, but *the instances of truly involuntary public figures must be exceedingly rare*."[25] This limiting and cautionary admonition, however, did nothing to dissuade the Georgia appellate court.[26] It found "clear and convincing evidence"[27] that Jewell's case was, indeed, one of those exceedingly rare instances in which the plaintiff was, "at the very least,"[28] an *involuntary* limited-purpose public figure.[29] Earlier in the opinion, the court also held that there was sufficient evidence to find that Jewell also was a *voluntary* limited-purpose public figure.[30] Either way, Jewell was a public figure.

This Article examines the long, strange trip of Richard Jewell from private citizen and security guard to public figure and libel plaintiff. Part II provides a factual overview of the case,[31] drawing from primary sources including the appellate briefs filed by both Jewell and the *Atlanta Journal-Constitution*, as well as trial court[32] and appellate court decisions. Part III provides a brief primer about the importance of sources in journalism, especially as they relate to the free flow of information and the pressures that sources sometimes feel to remain silent when approached by reporters for comments.[33] Next, Part IV describes the public-figure doctrine in libel

22. *Jewell Ruling Sparkles*, *supra* note 7.

23. Aureliano Sanchez-Arango, *The Elusive "Involuntary Limited Purpose Public Figure:" Why the Fourth Circuit Got It Wrong in* Wells v. Liddy, 9 GEO. MASON L. REV. 211, 221 (2000) (stating that the involuntary public-figure category had been thought by some to be "a dead letter" notion).

24. 418 U.S. 323 (1974).

25. *Id.* at 345 (emphasis added).

26. *See Atlanta Journal-Constitution*, 555 S.E.2d at 186.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at 185.

31. *See* discussion *infra* Part II.

32. Order, Jewell v. Cox Enters., 555 S.E.2d 175 (1999) (No. 97 VS 0122804) [hereinafter Order] (on file with author).

33. *See* discussion *infra* Part III.

law, including the various classifications of public figures articulated by courts in the past and the criteria for determining whether a plaintiff fits into one of those classifications.[34] Part V then sets forth the parties' arguments regarding whether Jewell should be a public figure, and analyzes and critiques the appellate court's decision to affirm the trial court's ruling that Richard Jewell was a limited-purpose public figure.[35] Finally, Part VI concludes that journalistic jubilation over the decision to hold Jewell a public figure—be it voluntary or involuntary—is misguided.[36] In particular, the decision punishes good Samaritan sources and, in the process, threatens to stifle those sources and to chill the flow of information to the public on pressing issues and concerns. When public safety is an issue, as it was at the time of the bombing in Centennial Olympic Park in 1996[37] and as it is now after the terrorist attacks of September 11, 2001,[38] any chilling effect on speech that relates to safety and security must be carefully scrutinized. In the Conclusion, the authors will call for judicial adoption of a "Good Samaritan Source" rule that would allow individuals like Richard Jewell to remain private figures when they are interviewed by the media about events of public concern.

II. FROM OBSCURITY TO SCRUTINY TO INFAMY: THE TALE OF RICHARD JEWELL AND THE ANATOMY OF A DEFAMATION CASE

This much is undisputed: on July 27, 1996, a bomb exploded in the early morning hours at Centennial Olympic Park in downtown Atlanta, Georgia.[39] It is also clear that a previously obscure and relatively unknown man named Richard Jewell became the focus of media limelight when he went from hero to suspect in the bombing.[40] His personal nightmare and the "media frenzy"[41] surrounding it began when a 378-word story in the *Atlanta Journal-Constitution*—a story that failed to cite a single named source—ran on July 30, 1996 under the banner headline "FBI Suspects

34. *See* discussion *infra* Part IV.

35. *See* discussion *infra* Part V.

36. *See* discussion *infra* Part VI.

37. *See* Edith Stanley, *Atlanta Park Bomb's Blast Still Echoes*, L.A. TIMES, Sept. 28, 2000 at A5.

38. *See generally* Nancy Gibbs, *If You Want to Humble an Empire*, TIME, Sept. 11, 2001, at 32, 34 (describing the attacks involving hijacked planes on both the Twin Towers of the World Trade Center in Manhattan and the Pentagon in Washington, D.C., on September 11, 2001).

39. *See* Barringer, *supra* note 17 (stating that the "explosion in Centennial Olympic Park, at 1:20 A.M., Saturday, July 27, caused 2 deaths and injured 111 people").

40. *See* Kevin Sack, *Report of a Hero-Turned-Suspect Rivets Attention in Atlanta*, N.Y. TIMES, July 31, 1996, at B6.

41. Alicia Shepard, *Going to Extremes*, AM. JOURNALISM REV., Oct. 1996, at 38, 40.

'Hero' Guard May Have Planted Bomb."[42] Authored by the late Kathy Scruggs[43] and Ron Martz, the story identified Jewell as "the focus of the federal investigation" into the bombing and said that he "fits the profile of the lone bomber. This profile generally includes a frustrated white man who is a former police officer, member of the military, or police 'wannabe' who seeks to become a hero."[44]

After the publication of this article, Jewell—a white man who indeed had been a police officer before the Olympics, and would become one again afterwards[45]—became not just the focus of law enforcement, but the media and much of the American public.[46] In brief, "Jewell's private life was transformed into a public spectacle . . . ."[47] He was not happy, to say the least, with the resulting coverage, and Jewell filed several defamation suits in response.[48] This included a so-called "defamacast"[49] suit filed by Jewell against NBC, after Tom Brokaw remarked during a July 30, 1996 broadcast that law enforcement officials "probably have enough to arrest [Jewell] right now, probably enough to prosecute him"[50] and stated that

---

42. Kathy Scruggs & Ron Martz, *FBI Suspects 'Hero' Guard May Have Planted Bomb*, ATLANTA J. & CONST., July 30, 1996, at 1X.

43. Scruggs, who died in September 2001, was the focus of intense scrutiny by Richard Jewell and his attorney, L. Lin Wood, who sought her sources for the initial article that named Jewell as a focus of the FBI's investigation. Trisha Renaud, *Reporter Death Complicates Case*, FULTON COUNTY DAILY REP., Oct. 12, 2001, at 1.

44. Scruggs & Martz, *supra* note 42.

45. Prior to the 1996 Olympics in Atlanta, Jewell had worked for the Habersham County Sheriff's office in Georgia and as a campus security officer at Piedmont College in northern Georgia. Barringer, *supra* note 39; *see also* Kevin Johnson, *Jewell Still Setting Sights on Police Job*, USA TODAY, Oct. 28, 1996, at 3A. More than one year after the Olympics, Jewell was hired as a patrol officer in the small town of Luthersville, Georgia. Bill Montgomery, *Jewell Lands Job as Officer on Luthersville Police Force*, ATLANTA J. & CONST., Nov. 26, 1997, at 1B. Jewell quit that job reportedly "because he was weary of the commute from his home 40 miles away . . . ." *Nation in Brief*, WASH. POST, Dec. 3, 1998, at A5. In 2000, Jewell was back in law enforcement, working as a patrol officer in Jefferson, Georgia. Luke Cyphers, *Still Seeking Bomb Shelter*, DAILY NEWS (N.Y.), Oct. 1, 2000, at 94, LEXIS, News, News Group File, All. Jefferson is a town of 5,000 people located northeast of Atlanta. *Id.* Jewell was still employed in that job as an officer in February, 2001. *Olympics Bombing*, WASH. POST, Feb. 11, 2001, at W5.

46. *See, e.g.*, sources cited *supra* note 45.

47. ROBERT D. RICHARDS, FREEDOM'S VOICE: THE PERILOUS PRESENT AND UNCERTAIN FUTURE OF THE FIRST AMENDMENT 106 (1998).

48. *See generally* Atlanta Journal-Constitution v. Jewell, 555 S.E.2d 175 (Ga. Ct. App. 2001).

49. "Defamacast" refers to "[d]efamation via a radio or television broadcast . . . ." Jaillett v. Ga. Television Co., 520 S.E.2d 721, 724 (Ga. Ct. App. 1999); *see also* GA. CODE ANN. § 51-5-1 (Harrison 1998) (setting forth the Georgia statute governing civil liability for defamatory statements in visual or sound broadcasts).

50. L. Lin Wood, *The Case of David v. Goliath: Jewell v. NBC and the Basics of Defamacast in Georgia*, 7 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 673, 692 (1997).

those officials "are only using one name tonight, and that is Richard Jewell."[51] NBC quickly settled the case in December 1996 for an undisclosed amount of money.[52] One of Jewell's attorneys, L. Lin Wood, stated that "Richard and his attorneys [were] satisfied with the settlement . . . ."[53]

Unlike NBC, however, the *Atlanta Journal-Constitution* was not so quick to give into Jewell's demands.[54] It steadfastly refused to settle the defamation action he filed against it.[55] Part of that legal battle would turn out to be a numbers game—a numbers game not of money, but of interviews.[56]

In particular, between the time of the bombing and the time the initial Scruggs/Martz article appeared identifying Jewell as a suspect, Jewell "granted ten interviews and one photo shoot" to news media outlets.[57] In his appellate brief, Jewell elaborated, "Mr. Jewell's total media exposure between July 27 and July 30 included 3 newspaper interviews, 7 television interviews and 1 photo shoot."[58] These interviews and their corresponding numbers would play a pivotal role in Jewell's libel action against the newspaper.[59] The question remaining is why?

A central issue in Richard Jewell's fight with the *Atlanta Journal-Constitution* was whether Jewell would be treated by the courts as either a public or a private figure.[60] The resolution of this issue is critical in libel law because the status of the plaintiff affects the degree of fault that he or she must prove against the defendant.[61] While public figures in Georgia

---

51. *Id.* at 693.

52. Lawrie Mifflin, *NBC Pays to Avert a Suit By Ex-Bombing Suspect*, N.Y. TIMES, Dec. 10, 1996, at A16.

53. *Id.*

54. *See generally Atlanta Journal-Constitution*, 555 S.E.2d at 178.

55. *See id.*

56. *See id.* at 184.

57. *Id.*

58. Brief for Appellant, *supra* note 16, at 11. In several of these interviews, Jewell not only describes the events surrounding the bombing but also his aspirations for future employment in law enforcement. *See* Order, *supra* note 32, at 2 (describing Jewell's separate interviews with CNN reporters Jeanne Meserve and Art Harris in which he talked about his hopes for employment in law enforcement after the Olympics).

59. *See Atlanta Journal-Constitution*, 555 S.E.2d at 184.

60. *See id.* at 183 ("The central issue presented by this appeal is whether Jewell, as the plaintiff in this defamation action, is a public or private figure, as those terms are used in defamation cases.").

61. *See* Silvester v. ABC, Inc., 839 F.2d 1491, 1493 (11th Cir. 1988) (observing, in relevant part, that "[t]he test for determining liability in a defamation case turns on whether the libeled party is a public or private figure").

must prove actual malice to succeed in their defamation actions,[62] private figures need only prove that a defendant acted with negligence.[63] Put differently, a plaintiff would much rather be considered a private figure because it would make his or her case easier to prove.[64] The more interviews that Jewell gave, the greater the possibility that he would be held to be a public figure.[65] Before considering how Jewell—the source-turned-plaintiff as well as the hero-turned-villain-turned-hero—would be treated by the courts, it is important to understand the role that he and others like him serve as sources of information for journalists.

III. GETTING THE STORY: WHY SOURCES ARE VITAL FOR JOURNALISM

Richard Jewell was used by many prominent journalism organizations—the *Atlanta Journal-Constitution*,[66] the *Boston Globe*,[67] *USA Today*,[68] *CNN*,[69] and *NBC*[70]—as a source of information regarding the events surrounding the bombing in Centennial Olympic Park and the level of security in the Park.[71] Because of Richard Jewell, these organizations were able to convey information to the public about a newsworthy event: two deaths, 111 injuries, and then-President Bill Clinton's call for new anti-terrorism legislation.[72] For instance, two days after the bombing, *USA Today* ran a story replete with six paragraphs of unedited quotes from Jewell describing what happened after he noticed the knapsack that contained the bomb.[73] It is without doubt that such first-hand, eyewitness

62. *See* Finkelstein v. Albany Herald Publ'g Co., 392 S.E.2d 559, 561 (Ga. Ct. App. 1990) (observing that public figures must prove actual malice to recover damages for defamatory statements concerning their involvement in controversies).

63. *Atlanta Journal-Constitution*, 555 S.E.2d at 183 ("Plaintiffs who are 'private persons' must only prove that the defendant acted with ordinary negligence."); *see* Long v. Cooper, 848 F.2d 1202, 1204 (11th Cir. 1988) ("Because we conclude that appellants are private figures, they are not required to show actual malice to recover compensatory damages.").

64. *See generally Atlanta Journal-Constitution*, 555 S.E.2d at 183.

65. *See infra* Part IV.B (describing the appellate court's decision on whether Jewell is a public figure).

66. Atlanta Journal-Constitution v. Jewell, 555 S.E.2d 175, 182 (Ga. Ct. App. 2001).

67. *See* David M. Halbfinger, *Routine Find Turns to Horror for Guard*, BOSTON GLOBE, July 28, 1996, at A27 (containing direct quotes from Jewell recalling the early morning when the bomb exploded).

68. Mike Lopresti, *Guard's Alertness in Park Makes Him an Unexpected Hero*, U.S.A. TODAY, July 29, 1996, at A4.

69. *Atlanta Journal-Constitution*, 555 S.E.2d at 182.

70. *Id.*

71. *Id.*

72. *See* Kevin Johnson, *Police Eye Atlanta Suspect*, USA TODAY, July 29, 1996, at 1A.

73. Lopresti, *supra* note 68.

source accounts are vital for journalists to do their job of informing both the nation and the world about events of public concern.[74] Any change in the law of libel that would jeopardize such information flow, such as transforming private sources of information, like Richard Jewell, into public figures when they merely tell their stories to the media, must be seriously questioned.

Sources are the life-blood of reporting for journalists.[75] The authors of a leading textbook on journalism ethics wrote in 1999 that "[s]ources are the foundation of a journalist's success, developed and nurtured and often protected for the future. The reputation a reporter or newspaper or television station has for protecting sources who provide sensitive information is a part of the continuing dynamic of successful journalism."[76] This sentiment is also echoed by Louis Alvin Day, the author of another leading media ethics textbook.[77] He writes that "[n]ews sources are the cornerstone of good investigative journalism."[78]

This is true, in part, because journalists "are seldom in a position to witness events firsthand. They have to rely on the accounts of others."[79] Thus it is that "[t]he journalists monitoring the world on our behalf also most often depend on others for the details of their reporting."[80]

Journalists need sources not only to supply information, but also because the journalistic tenet of objectivity requires that reporters remove their own voice from stories while they let others—the sources—do the talking.[81] Indeed, it has been said by one prominent journalism scholar that under the rules of objectivity, "[k]eeping the reporter out of the news means relying on sources."[82]

But journalism scholars and academics are not alone in acknowledging the important relationship between sources and

74. *See generally* BILL KOVACH & TOM ROSENSTIEL, THE ELEMENTS OF JOURNALISM: WHAT NEWSPEOPLE SHOULD KNOW AND THE PUBLIC SHOULD EXPECT 90 (2001).

75. *See id.*

76. JAY BLACK ET AL., DOING ETHICS IN JOURNALISM: A HANDBOOK WITH CASE STUDIES 264 (3d ed. 1999).

77. LOUIS A. DAY, ETHICS IN MEDIA COMMUNICATIONS: CASES AND CONTROVERSIES 170 (3d ed. 2000).

78. *Id.* at 170.

79. Leon V. Sigal, *Sources Make the News*, *in* READING THE NEWS 9, 15 (Robert Karl Manoff & Michael Schudson eds., 1986).

80. KOVACH & ROSENSTIEL, *supra* note 74.

81. *See* Theodore L. Glasser, *Objectivity Precludes Responsibility*, QUILL, Feb. 1984, at 15 ("[T]he objective reporter tends to function as a translator—translating the specialized language of sources into a language intelligible to a lay audience.").

82. Sigal, *supra* note 79, at 16.

journalism.[83] The United States Supreme Court has recognized that sources are vital for good journalism.[84] As Justice Douglas wrote in dissent in *Branzburg v. Hayes*,[85] "[a] reporter is no better than [the] source of [his] information."[86] The Court has also expressed concern for changes in the law that would inhibit sources from talking to journalists and, in the process, have the effect of "diminishing [the] flow of potentially important information to the public."[87] As set forth in the Introduction, the impact of declaring Richard Jewell a public figure will potentially have such an effect. Therefore, when a private person voluntarily provides such "important information to the public,"[88] he or she should not be punished by being transformed into a public figure.

In 2001, the Court noted in *Bartnicki v. Vopper*[89] that "[t]he essential thrust of the First Amendment is to prohibit improper restraints on the *voluntary* public expression of ideas . . . ."[90] As a good Samaritan source, Richard Jewell agreed voluntarily to speak with the media. Holding that he is a public figure amounts to an improper restriction on such voluntary public expression of ideas and, in particular, on accounts of an event of public concern.

Most courts and many state legislatures recognize the importance of sources for journalism and, concomitantly, for public discourse when they create privileges—constitutional, common law, and statutory—that allow journalists to protect source identity in certain situations.[91] Journalists, of course, are the ones who argue strenuously for such reporter-source privileges in order to protect the flow of information that otherwise might be squelched by sources unwilling to talk to them unless given a promise of

---

83. *See* Branzburg v. Hayes, 408 U.S. 665, 679–80 (1972).

84. *See id.*

85. 408 U.S. 665.

86. *Id.* at 722 (Douglas, J., dissenting).

87. Zurcher v. Stanford Daily, 436 U.S. 547, 573 (1978) (Stewart, J., dissenting).

88. *Id.*

89. 121 S. Ct. 1753 (2001).

90. *Id.* at 1764 n.20 (quoting Estate of Hemingway v. Random House, Inc., 244 N.E.2d 250, 255 (N.Y. 1968)) (emphasis in original).

91. *See generally* ROBERT D. SACK, SACK ON DEFAMATION: LIBEL, SLANDER AND RELATED PROBLEMS § 14.3.2.2 (3d ed. 2001) ("[M]ost courts that have faced the question have concluded that there is a First Amendment-based or common-law qualified privilege for a journalist to protect the identity of a confidential source during the course of libel litigation."); *Confidential Sources: Introduction*, Reporters Committee for Freedom of the Press, *at* http://www.rcfp.org/csi/intro.html (last visited Nov. 28, 2001) (stating that "30 states and the District of Columbia have enacted statutes—shield laws—that give journalists some form of privilege against compelled production of confidential or unpublished information").

confidentiality.[92] Journalists argue that if they are forced "to reveal their confidential sources, people would be reluctant to speak to reporters,"[93] thereby hindering their ability to report the news.[94]

It is ironic that journalists would want a court to rule that an important source was a public figure. On the one hand, journalists may claim they need to protect and cultivate the confidentiality of sources in order to further information flow to the public.[95] At the same time, however, they may make the case that sources who voluntarily talk to the media about events of public concern should be transformed, via judicial sleight of hand, into public figures—a decision that could *markedly reduce* the flow of information to the public.[96] The contradiction is evident: protect a source here, burn a source there.

Indeed, the *Atlanta Journal-Constitution* "has consistently refused to provide Jewell with the names of confidential sources who allegedly provided its reporters with information concerning Jewell's status in the investigation of the Olympic Park bombing."[97] The reason? A ruling requiring the newspaper to disclose its sources would "undermine the freedom of the press to collect and disseminate news."[98] Of course, a ruling declaring sources like Richard Jewell public figures could have the same effect.[99]

Perhaps all is fair in love, war, and libel litigation—the latter two being the same sometimes—when it comes to media defendants seeking short-term rulings that good-faith sources whom they have used for information should be treated like public figures. But, as this Part has set forth, sources are vital for objective, quality journalism. Any ruling with the potential to deter sources from speaking with the media should be greeted with as much skepticism as celebration. With this in mind, the next Part of this Article explains the different categories of public figure plaintiffs that courts have recognized in libel law.

---

92. *See generally* KENT R. MIDDLETON ET AL., THE LAW OF PUBLIC COMMUNICATION 433 (4th ed. 1997).

93. *Id.* at 431.

94. *Id.*

95. *See id.* at 433.

96. *See* discussion *infra* Parts V.A.2. and VI.

97. *Atlanta Journal-Constitution*, 555 S.E.2d at 178.

98. *Id.* at 179.

99. *See* discussion *supra* Part I.

IV. PUBLIC FIGURES IN LIBEL LAW: POSSIBILITIES AND PRECEDENT FOR TREATMENT AS A PUBLIC FIGURE

The standard of fault[100]—and very often the result—in a defamation action hinges upon the status of the plaintiff as either a public or private figure.[101] As noted earlier in this Article, under Georgia law, private plaintiffs need only demonstrate ordinary negligence to recover damages, while public figures are held to the actual malice standard.[102] Plaintiffs would rather be classified as private figures because negligence is much easier to prove than actual malice as negligence requires substantially less degree of fault.[103] Determining the category into which a plaintiff like Richard Jewell falls is left to courts as a matter of law.[104] And although the United States Supreme Court has created several factors to guide lower courts in this determination,[105] the concept of public figure has eluded precise definition. As Robert D. Sack, an expert on communications law who now serves as a federal judge on the Second Circuit Court of Appeals,[106] wrote in his treatise on libel, "[t]he law pursuant to which courts determine who is and who is not a 'public figure,' however, is chaotic."[107]

The confusion over the precise defining features leaves wide latitude for courts to squeeze plaintiffs into categories that sometimes do not properly fit. Indeed, that may be one reason the appellate court in Georgia was able to classify Jewell as a public figure.[108] The following discussion examines the public-figure classification and, specifically, how three categories—all-purpose, limited-purpose, and involuntary public figures—have evolved over time.

---

100. In defamation law, the standard of fault is typically either negligence or actual malice. "[P]eople are considered negligent when they fail to exercise ordinary or reasonable care." ZELEZNY, *supra* note 11. In libel law, the issue is whether a writer exercised reasonable care in determining whether a story was true or false. *See id.* at 119–28. Actual malice is defined as the publication of a statement made "with knowledge that it was false or with reckless disregard of whether it was false or not." N.Y. Times Co. v. Sullivan, 376 U.S. 254, 280 (1964).

101. *See* Atlanta Journal-Constitution v. Jewell, 555 S.E.2d 175, 183 (Ga. Ct. App. 2001).

102. *See supra* notes 61–64 and accompanying text. Georgia is in accord with the vast majority of states on the issue of the fault standard that applies when the plaintiff in a libel action is a private figure. *See* Kyu Ho Youm, *Libel Law and the Press: U.S. and South Korea Compared*, 13 UCLA PAC. BASIN L.J. 231, 245 (1995) ("[T]hirty-four states seem to have applied a negligence standard.").

103. *See, e.g.*, Khawar v. Globe Int'l., Inc., 19 Cal. 4th 254, 274 (1998).

104. *See* Waldbaum v. Fairchild Publ'ns, Inc., 627 F.2d 1287, 1293 n.12 (D.C. Cir. 1980).

105. *See* Gertz v. Welch, Inc., 418 U.S. 323, 351–52 (1974).

106. *See generally* SACK, *supra* note 91.

107. SACK, *supra* note 91, § 5.3.1.

108. *See Atlanta Journal-Constitution*, 555 S.E.2d at 186.

A. All-Purpose Public Figures

Some individuals, by the very nature of their work, spend considerable time in the public eye. Certainly this holds true for public officials—"those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs."[109]

But what about non-governmental employees? Others outside government service may also occupy a position in the public spotlight. For instance, movie stars and nationally recognized television personalities, whose achievements spark interest and genuine curiosity among the general population, would be considered public figures.[110] The ubiquitous nature of their images warrants a special classification in the law. Additionally, in *Gertz v. Robert Welch, Inc.*,[111] the United States Supreme Court recognized that "[i]n some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts."[112] The *Gertz* Court held that these people "occupy positions of such persuasive power and influence that they are deemed public figures for all purposes."[113]

Three years after the Supreme Court ruled that public officials must prove actual malice to recover damages in a defamation lawsuit,[114] the Court faced the question of whether public figures—those who have achieved special prominence without an official government capacity—should also be subject to a heightened fault requirement.[115]

In 1962, Wally Butts was the athletic director at the University of Georgia when the *Saturday Evening Post* published an article accusing him

---

109. Rosenblatt v. Baer, 383 U.S. 75, 85 (1966) (defining who constitutes a "public official" in light of the Court's decision two years earlier in *N.Y. Times Co. v. Sullivan*, and holding that such plaintiffs are required to prove actual malice in defamation lawsuits).

110. *See* DONALD M. GILLMOR ET AL., FUNDAMENTALS OF MASS COMMUNICATION LAW 58 (1996) (describing that all-purpose public figures in libel law "include the stars of stage and screen, the great athletes of our time, the prize winners, the creators of our fads and fashions, the great corporations, and the movers and shakers"); *see, e.g.*, Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 57 n.5 (1988) (finding that the Rev. Jerry Falwell, former head of the Moral Majority and host of a national television show, was a public figure for purposes of the tort of intentional infliction of emotional distress).

111. 418 U.S. 323 (1974).

112. *Id.* at 351.

113. *Id.* at 345.

114. *N.Y. Times*, 376 U.S. at 279–80 (The "constitutional guarantees" of the First Amendment and Fourteenth Amendment require a "public official" to prove actual malice in defamation actions relating to official conduct.).

115. *See* Curtis Publ'g Co. v. Butts, 388 U.S. 130, 134 (1967).

of "conspiring to 'fix' a football game between the University of Georgia and the University of Alabama . . . ."[116] Prior to becoming athletic director, Butts had been a well-known head football coach at the University of Georgia and aspired to become a professional coach.[117] According to the story published in the *Saturday Evening Post* under the headline "The Story of a College Football Fix," Butts supplied legendary Alabama coach Paul Bryant with confidential tactics, plays and other key information used by Georgia's football team.[118] Butts sued the magazine's publisher for defamation.[119]

Although Butts was working at the University of Georgia, a state institution, he was actually employed by the Georgia Athletic Association, a private entity.[120] Accordingly, a strict reading of *New York Times Co. v. Sullivan*[121] would not apply without the official connection to government. Nonetheless, as the Court in *Curtis Publishing Co. v. Butts*[122] noted, it is appropriate in libel cases to investigate "the plaintiff's position to determine whether he has a legitimate call upon the court for protection in light of his prior activities and means of self-defense."[123] The Court further found that Butts was properly classified as a public figure and indeed "may have attained that status by position alone,"[124] and thus held that a heightened liability standard applied.[125]

The Court further molded the all-purpose public figure classification seven years later in *Gertz*, when it ruled that this status is conveyed on people in the public arena "by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention . . . ."[126] Drawing upon that definition, the United States Court of Appeals for the District of Columbia Circuit in *Waldbaum v. Fairchild Publications, Inc.*[127] clarified that an all-purpose public figure is "a well-known 'celebrity,' his name a 'household word.' The public recognizes him and follows his words and deeds, either because it regards his ideas, conduct, or judgment as worthy of its attention or because he actively

116. *Id.* at 135.
117. *Id.* at 135–36.
118. *See id.* at 136.
119. *See generally id.*
120. *Id.* at 135.
121. 376 U.S. 254 (1964).
122. 388 U.S. 130 (1967).
123. *Id.* at 154.
124. *Id.* at 155.
125. *See Curtis Publ'g Co.*, 388 U.S. at 155.
126. 418 U.S. 323, 342 (1974).
127. 627 F.2d 1287 (D.C. Cir. 1980).

pursues that consideration."[128]

The rationale for holding all-purpose public figures to a higher fault standard relates to their ability to draw upon their public influence to counter criticism once it spills over into the public arena.[129] As the appellate court in *Waldbaum* suggested, "[t]he public's proven preoccupation with [a public figure] indicates that the media would cover such an individual's response to statements he believes are inaccurate or unsupported."[130] The media have a right to publish stories—both favorable and unfavorable—about subjects their audiences would find appealing.[131] Fame has its consequences for public people, and the "renouncement of anonymity or tolerance of publicity unavoidably carries with it the possibility that the press, in fulfilling its role of reporting and critiquing matters of public concern, may investigate their talents, character, and motives."[132]

Having set forth its comprehensive analysis of the all-purpose public figure, the appellate court in *Waldbaum* conceded that few people ever reach the notoriety required to be classified general public figures.[133] Indeed, in the case of Richard Jewell, even the *Atlanta Journal-Constitution* did not contend that Jewell was an all-purpose public figure.[134] It is more often the case that an individual would come to occupy public-figure status in a more limited arena through some voluntary action designed to influence a particular public issue.[135]

B. Voluntary Limited-Purpose Public Figures

The United States Supreme Court has long recognized that the most common way for people to become public figures is to "thrust themselves to the forefront of particular public controversies in order to influence the

128. *Id.* at 1294. The court noted in an accompanying footnote that it is irrelevant whether the respect is merited; rather, "the proper question is whether a reasonable person would conclude that, in fact, the public pays him heed." *Id.* at 1294 n.15.

129. *Id.* at 1291 (citing *Gertz*, 418 U.S. at 344).

130. *Id.* at 1294 (citing Note, *An Analysis of the Distinction Between Public Figures and Private Defamation Plaintiffs Applied to Relatives of Public Persons*, 49 S. CAL L. REV. 1131, 1210 (1976).

131. *See id.* at 1291–92.

132. *Id.* at 1294.

133. *Waldbaum*, 627 F.2d at 1296.

134. *See* Brief of Appellees at 8–30, Jewell v. Atlanta Journal-Constitution, 555 S.E.2d. 175 (Ga. Ct. App. 2001) (No. A01A1565) [hereinafter Brief of Appellees] (arguing that Jewell was a voluntary limited-purpose public figure, an involuntary public figure, and a public official).

135. *See* discussion *infra* Part IV.B (describing this classification).

resolution of the issues involved."[136] In *Gertz*, Elmer Gertz, a lawyer who represented the family of a youth killed by a Chicago police officer, was inaccurately labeled, among other things, a "Leninist" and a "Communist-fronter" in *American Opinion*, a magazine published by the John Birch Society.[137] The publisher of the magazine argued that Gertz had propelled himself into public-figure status through his activities,[138] but the Court disagreed, writing that: "[h]e plainly did not thrust himself into the vortex of this public issue, nor did he engage the public's attention in an attempt to influence its outcome."[139]

This language from the Court's opinion in *Gertz* has been used to fashion the test for determining who is a "'vortex' public figure"[140] or a limited-purpose public figure.[141] The test focuses on three factors: (1) the plaintiff's voluntary thrust into (2) a public controversy in an attempt (3) to influence the outcome.[142] Courts interpreting the *Gertz* test have expanded upon the meaning of these three prongs.[143] In *Waldbaum*, the court concluded "that a person has become a public figure for limited purposes if he is attempting to have, or realistically can be expected to have, a major impact on the resolution of a specific public dispute that has foreseeable and substantial ramifications for persons beyond its immediate participants."[144]

The question of media access often plays a role in determining the plaintiff's status.[145] In *Hutchinson v. Proxmire*,[146] Hutchinson was the subject of Senator William Proxmire's "Golden Fleece of the Month Award"[147] for wasteful government spending.[148] Hutchinson used the media simply to respond to allegations Proxmire had put forth in his floor comments and press releases.[149] While Proxmire tried to use Hutchinson's remarks to newspapers and wire services as a controlling factor in

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

137. *Id.* at 325–26.

138. *Id.* at 351.

139. *Id.* at 352.

140. *See* SACK, *supra* note 91, § 1.5 n.196 (tracing the evolution of the term to *Rosenblatt*, 383 U.S. at 86 n.12 (defining "public official")); *Curtis Publ'g Co.*, 388 U.S. at 155.

141. SACK, *supra* note 91, § 1.5.

142. *Gertz*, 418 U.S. at 352.

143. *See, e.g.*, *Waldbaum*, 627 F.2d 1287.

144. *Id.* at 1292.

145. *See id.*

146. 443 U.S. 111 (1979).

147. *Id.* at 114.

148. *Id.*

149. *See id.* at 134.

determining whether the researcher was a limited-purpose public figure,[150] the Supreme Court reasoned that "Hutchinson's access was limited to responding to the announcement of the Golden Fleece Award. He did not have the regular and continuing access to the media that is one of the accouterments of having become a public figure."[151]

In similar fashion, the Fourth Circuit Court of Appeals more recently found that "context" was critical in looking at the media exposure of a given plaintiff.[152] If the plaintiff's use of the media was solely to respond to accusations "in a reasonable attempt to vindicate their reputations," the court would be "extremely reluctant to attribute public-figure status to otherwise private persons . . . ."[153]

Likewise, private individuals who invoke the court system to settle the ordinary vicissitudes of life will not be catapulted into public-figure status by that act alone.[154] When Mary Alice Firestone sought a divorce from her industrial-magnet husband, the United States Supreme Court found that the "[d]issolution of a marriage through judicial proceedings is not the sort of 'public controversy' referred to in *Gertz* . . . ."[155] Mrs. Firestone was "compelled" to use the court system to obtain a divorce, but "assumed no 'special prominence in the resolution of public questions.'"[156] The public's curiosity about "the marital difficulties of extremely wealthy individuals"[157] is not a sufficient justification for finding a public

---

150. *See id.*

151. *Id.* at 136. The Court rejected the notion that Hutchinson's research created the public controversy, suggesting that "[t]o the extent the subject of his published writings became a matter of controversy, it was a consequence of the Golden Fleece Award. Clearly, those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure." *Id.* at 135.

152. *See* Foretich v. Capital Cities/ABC, Inc., 37 F.3d 1541, 1558 (4th Cir. 1994). This court's analysis of the limited-purpose public figure doctrine begins with "the initial presumption that the defamation plaintiff is a private individual" and requires the defendant to prove otherwise. *Id.* at 1553. To assist in the determination of voluntary limited-purpose public figure status, the Fourth Circuit Court of Appeals developed a five-part test that requires the defendant to prove that:

> (1) the plaintiff had access to channels of effective communication; (2) the plaintiff voluntarily assumed a role of special prominence in the public controversy; (3) the plaintiff sought to influence the resolution or outcome of the controversy; (4) the controversy existed prior to the publication of the defamatory statement; and (5) the plaintiff retained public-figure status at the time of the alleged defamation.

Id. (citing Reuber v. Food Chem. News, Inc., 925 F.2d 703, 708-11 (8th Cir. 1991) and Fitzgerald v. Penthouse Int'l, Ltd., 691 F.2d 666, 668 (4th Cir. 1982)).

153. *Foretich*, 37 F.3d at 1558.

154. *See, e.g., id.*

155. Time, Inc. v. Firestone, 424 U.S. 448, 454 (1976).

156. *Id.* at 454–55 (quoting *Gertz*, 418 U.S. at 351).

157. *Id.* at 454.

controversy.[158] Viewed slightly differently, Mrs. Firestone did not voluntarily invite public attention.[159]

The Court has been consistent with this notion 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."[160] Nonetheless, the *Atlanta Journal-Constitution* argued that Richard Jewell was a voluntary limited-purpose public figure.[161]

C. Involuntary Public Figures

The *Atlanta Journal-Constitution* also contended that Jewell fit into another category of public figure—that of the involuntary public figure.[162] In *Gertz*, the Court suggested that "it may be possible for someone to become a public figure through no purposeful action of his own, but the instances of truly involuntary public figures must be exceedingly rare."[163] Clearly, while the Court did not wish to slam the door completely on the involuntary public figure category, it intended the public figure classification to cover other people.[164] Specifically, those individuals whose "persuasive power and influence" raise them to the level of an all-purpose public figure[165] or, at the very least, those who voluntarily inject themselves into a controversy to affect the outcome.[166] As the Court pointed out, "they invite attention and comment."[167]

The involuntary category continues to be a source of strain among legal scholars and courts alike. As Judge Robert D. Sack wrote in his treatise on defamation law, under the Supreme Court's definition, involuntary public figures are not rare, but are "a contradiction in terms."[168] He also praised the trial court's decision in *Schultz v. Reader's Digest Ass'n*[169] for finding there is "no such thing as an involuntary public figure."[170]

---

158. *Id.*
159. *See id.*
160. Wolston v. Reader's Digest Ass'n, 443 U.S. 157, 167 (1979).
161. *See* Brief of Appellees, *supra* note 134, at 16–21.
162. *Id.* at 22–24.
163. *Gertz*, 418 U.S. at 345.
164. *See id.*
165. *Id.*
166. *Id.*
167. *Id.*
168. *See* SACK, *supra* note 91, § 5.3.11.3.
169. 468 F. Supp. 551 (E.D. Mich. 1979).
170. *See* SACK, *supra* note 91, § 5.3.11.3.

However not all federal judges subscribe to Judge Sack's philosophy.[171] In *Carson v. Allied News Co.*,[172] the Seventh Circuit Court of Appeals concluded entertainer Johnny Carson's wife became a public figure in a defamation action because "one can assume that the wife of a public figure such as Carson more or less automatically becomes at least a part-time public figure herself."[173]

An even more disturbing inconsistency with the *Gertz* rationale[174] is the federal appellate court ruling in *Dameron v. Washington Magazine, Inc.*[175] *Dameron* involved the defamation suit by an air traffic controller who was the sole person on duty the day in 1974 when TWA Flight 727 crashed into Mt. Weather.[176] A sidebar story on air safety appearing eight years later in *The Washingtonian* magazine reported that while errors by air traffic controllers were not the sole cause of any major crashes, "[t]hey have been assigned partial blame in a few accidents, including the 1974 crash of a TWA 727 into Mt. Weather in Virginia upon approach to Dulles (92 fatalities) . . . ."[177]

When Merle Dameron sued the magazine, the question of his status became a key issue.[178] The appellate court found that although Dameron did not inject himself into the controversy, "[p]ersons can become involved in public controversies and affairs without their consent or will."[179] The court ultimately concluded that because of Dameron's position in the control tower that day, he became "an *in* voluntary [sic] public figure for the limited purpose of discussions of the Mt. Weather crash."[180]

Compare the decision in *Dameron* from the District of Columbia Circuit Court of Appeals, with the Fourth Circuit Court of Appeals' decision in *Wells v. Liddy*.[181] In *Wells*, Ida Maxwell Wells, a secretary at the Democratic National Committee at the time of the Watergate break-in, sued Watergate operative G. Gordon Liddy,[182] claiming he publicly stated "that she acted as a procurer of prostitutes for men who visited the

171. *See, e.g.*, Carson v. Allied News Co., 529 F.2d 206, 210 (7th Cir. 1976).
172. 529 F.2d 206 (7th Cir. 1976).
173. *Id.* at 210.
174. *Gertz*, 418 U.S. at 345.
175. Dameron v. Wash. Magazine, Inc., 779 F.2d 736 (D.C. Cir. 1985).
176. *Id.* at 738.
177. *Id.*
178. *Id.*
179. *Id.* at 741.
180. *Id.*
181. Wells v. Liddy, 186 F.3d 505 (4th Cir. 1999).
182. *Id.* at 512.

DNC."[183]

Liddy argued that Wells was an involuntary public figure.[184] The appellate court refused to qualify her as such.[185] Instead, it pointed out that "[s]o rarely have courts determined that an individual was an involuntary public figure that commentators have questioned the continuing existence of that category."[186] Nonetheless, the court set out a test that would capture "that 'exceedingly rare' individual" who became "a principal in an important public matter."[187] First, "an involuntary public figure has pursued a course of conduct from which it was reasonably foreseeable, at the time of the conduct, that public interest would arise. A public controversy must have actually arisen that is related to, although not necessarily causally linked, to the action."[188] Second, the individual "must be recognized as a central figure during debate over that matter."[189]

These cases illustrate the difficulty courts have when they grapple with the public figure question. It is unsettled whether the *Gertz* Court ever intended for plaintiffs to be sucked unwittingly into the vortex of a controversy when it left open the possibility of an involuntary public figure,[190] but one fact is certain: courts have been inconsistent in the application of this undefined concept.[191]

From a libel plaintiff's perspective, the involuntary public figure category is particularly troubling because it allows news media organizations to turn that individual into a public figure through their own coverage of an individual.[192] This transformation can only help the media should that individual sue them for libel. No person, once they become the source of news, public or private, can control the news media's decision whether to cover him or her as part of its reporting.[193] The courts have made it clear that editing is for editors, not for courts.[194]

---

183. *Id.* at 518.

184. *Id.* at 531. Liddy argued, alternatively, that "Wells's participation in Watergate-related dialogue is sufficient to qualify her as a voluntary limited-purpose public figure." *Id.*

185. *See id.* at 542.

186. *Id.* at 538 (citing RODNEY A. SMOLLA, LAW OF DEFAMATION § 2.14 (1998)).

187. *Wells*, 186 F.3d at 540.

188. *Id.*

189. *Id.* The court also retained the fourth and fifth part of the *Foretich* test articulated by the Fourth Circuit Court of Appeals. *See supra* text accompanying note 142 (setting forth the first three factors).

190. *See Gertz*, 418 U.S. 323.

191. *Compare Dameron*, 779 F.2d 736, *with Wells*, 186 F.3d 505.

192. *See, e.g., Dameron*, 779 F.2d 736.

193. Miami Herald Publ'g Co. v. Tornillo, 418 U.S. 241, 258 (1974).

194. *Id.*

For instance, in *Miami Herald v. Tornillo*,[195] the United States Supreme Court wrote that "[t]he choice of material to go into a newspaper" falls within the province of an editor's control and judgment, not the government.[196] In the broadcasting context, the Court previously remarked in *Columbia Broadcasting System, Inc. v. Democratic National Committee*[197] that "[f]or better or worse, editing is what editors are for; and editing is selection and choice of material."[198] More recently, the California Supreme Court wrote that "[i]n general, it is not for a court or jury to say how a particular story is best covered."[199]

Due to judicial deference to journalistic judgment, editors and reporters hold complete power and control to dictate public figure status under the involuntary public figure doctrine.[200] The involuntary public figure doctrine thus allows the press to control an area of libel law that it can use to its advantage in defending defamation actions.

With the three categories of public figures in mind, the next Part of this Article turns to the issue of whether Richard Jewell, for purposes of his defamation action against the *Atlanta Journal-Constitution*, fits into any of these groups.

V. RICHARD JEWELL AS A PUBLIC FIGURE: CRITIQUING THE APPELLATE COURT'S DECISION

A. The Arguments

1. Richard Jewell's Argument

A key part of Richard Jewell's argument that he was not a voluntary limited-purpose public figure was that he did not thrust himself into a public controversy.[201] As his attorneys explained in their appellate brief, "[b]etween July 27 and July 30, Mr. Jewell never undertook any purposeful action to arrange or obtain any television, newspaper or wire service interview to attract public attention to himself."[202] They added that "Mr.

195. 418 U.S. 241 (1974).
196. *Id.* at 258.
197. 412 U.S. 94 (1973).
198. *Id.* at 124.
199. Shulman v. Group W Prods., Inc., 955 P.2d 469, 485 (Cal. 1998).
200. *See id.*
201. *See* Brief for Appellant, *supra* note 16, at 16.
202. *Id.* at 5.

Jewell did not initiate or seek any of the interviews that he participated in between July 27 and July 30,"[203] and that in all but one case, it was "the media [who] approached AT&T to obtain Mr. Jewell's eyewitness accounts."[204]

As Part IV of this Article explained,[205] these facts are critical because the United States Supreme Court defined voluntary limited-purpose public figures in terms of individuals who "thrust themselves" into a public controversy.[206] There was not, as Jewell's counsel argued on appeal, any "voluntary thrusting"[207] by their client.[208]

On top of this, Jewell's attorneys adroitly framed the limited number of interviews that Jewell gave to the media before July 30, 1996 within "the context of the total number of media covering the Olympics and the massive media coverage of the Olympic Park bombing."[209] In particular, Jewell's counsel pointed out that there were 116 articles covering the Olympic Park bombing that the *Atlanta Journal-Constitution* published between July 27 and July 30.[210] These articles, in turn, mentioned 351 individuals by name.[211] Yet "[o]ut of the 351 names and 116 articles, Mr. Jewell's name is associated with only three (3) articles," and in two of those cases, his name was used "only as a byline to a photograph of him."[212] Of course, the point of this argument is that Jewell was not "an especially prominent person at the forefront of a public controversy."[213]

On the related point of whether Jewell intended to influence the outcome of a public controversy, counsel for Jewell argued that his comments to the media before July 30 rarely touched on the controversy of safety at Centennial Olympic Park.[214] As his attorneys contended, "Mr. Jewell's failure in 5 of 8 documented interviews to even mention the topic of Olympic Park safety is compelling, if not decisive, evidence of Mr. Jewell's lack of intent to influence or impact the trial court-defined

203. *Id.* at 16.

204. *Id.*

205. *See* discussion *supra* Part IV.B.

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

207. Reply Brief of Appellant at 7, Jewell v. Cox Enters., Inc., 555 S.E.2d 175 (Ga. Ct. App., June 4, 2001) (No. A01A1565) [hereinafter Reply Brief of Appellant].

208. *See id.*

209. *Id.* at 4.

210. *Id.*

211. *Id.*

212. *Id.*

213. Reply Brief of Appellant, *supra* note 207, at 4–5.

214. *See* Brief for Appellant, *supra* note 16, at 20.

controversy."[215]

On the issue of whether Jewell was an involuntary public figure, his attorneys argued that "the category of involuntary limited-purpose public figures has never been recognized except as a hypothetical status under modern U.S. Supreme Court precedent."[216]

2. The *Atlanta Journal-Constitution's* Argument

In their brief to the appellate court, counsel for the *Atlanta Journal-Constitution* argued that Richard Jewell was a voluntary limited-purpose public figure both because he was under "no obligation to speak with the press,"[217] and because he "engaged in a vigorous schedule of appearances in the local and national media."[218] In reference to the former, the *Atlanta Journal-Constitution* emphasized that Jewell "was never told that AT&T required him to do the interviews,"[219] but instead "made a voluntary, considered decision to make all of his media appearances."[220]

Moreover, the brief alternatively referred to Jewell's schedule of appearances as a "busy media schedule"[221] and a "hectic schedule."[222] The *Atlanta Journal-Constitution* brief also referred to the AT&T media relations coordinator as Jewell's "media handler,"[223] implicitly suggesting that he actively sought out the media, rather than waiting for the media to approach him.[224] In addition, to show that Jewell was a prominent figure, the brief did not focus on the small number of media interviews that Jewell actually granted between July 27 and July 30. Instead, it focused on the fact that "millions of American's [sic] heard and read appellant's comments . . . ."[225] In other words, it was not the number of interviews alone but the size of the audience that was important.[226]

---

215. *Id.*

216. *Id.* at 27–28. This hypothetical status is drawn from *Gertz*, 418 U.S. at 323; *see also* discussion *supra* Part IV.C.

217. Brief of Appellees, *supra* note 134, at 4.

218. *Id.*

219. *Id.* at 20.

220. *Id.*

221. *Id.* at 6.

222. *Id.*

223. Brief of Appellees, *supra* note 134, at 15.

224. *See* Atlanta Journal-Constitution v. Jewell, 555 S.E.2d 175, 184–85 (Ga. Ct. App. 2001).

225. Brief of Appellees, *supra* note 134, at 7.

226. *See Atlanta Journal-Constitution*, 555 S.E.2d at 185.

To buttress this argument, the *Atlanta Journal-Constitution* repeatedly emphasized that the news organizations that interviewed Jewell were "some of the most prominent members of the national media."[227] For instance, it stressed that Jewell "met with reporters from the nation's largest circulation newspaper, *USA Today*."[228] He also spoke with a reporter from "one of the nation's largest newspapers, the *Washington Post*,"[229] appeared on "the nation's preeminent news network, CNN,"[230] and was a guest "on *Today*, the nation's most watched morning news program."[231] The *Atlanta Journal-Constitution* emphasized that these various news organizations were "prominent national media outlets."[232] The logic of the *Atlanta Journal-Constitution* seems clear—if Jewell spoke to "prominent" news media organizations, then he must have been a prominent figure, and by extension, a voluntary limited-purpose public figure.[233] In other words, in determining one's status as a public or private figure, it is not only *how many* interviews one gives, but with whom one interviews that determines one's status as a private or public figure.[234]

On the question of whether Jewell was an *involuntary* public figure, the *Atlanta Journal-Constitution* argued that he became such a person "by virtue of his unique and central role in the Olympic Park controversy."[235] In its appellate brief, the *Atlanta Journal-Constitution* contended that this rare category of public figure was not dead letter, but a viable classification for a man who "repeatedly addressed various aspects of a controversy in the national media,"[236] and who "engaged in a hectic schedule of press interviews to comment on the bombing and safety-related issues."[237]

B. The Decision

The Georgia Court of Appeals issued its decision in October 2001.[238] Causing severe setback for Richard Jewell, the appellate court ruled that he

227. Brief of Appellees, *supra* note 134, at 14.
228. *Id.* at 6.
229. *Id.* at 5.
230. *Id.* at 4.
231. *Id.* at 7.
232. *Id.* at 2.
233. *See Atlanta Journal-Constitution*, 555 S.E.2d at 184–85.
234. *See id.* at 184.
235. Brief of Appellees, *supra* note 134, at 2–3.
236. *Id.* at 23.
237. *Id.* at 24.
238. *Atlanta Journal-Constitution*, 555 S.E.2d at 175.

was *both* a voluntary limited-purpose public figure[239] and an involuntary public figure.[240] The court went further in what might be considered a hypothetical approach of alternative rationales for its holding, perhaps in anticipation of an appeal to either the Georgia Supreme Court or the United States Supreme Court.[241]

1. Jewell is a Voluntary Limited-Purpose Public Figure

On the question of whether Jewell was a voluntary limited-purpose public figure, the appellate court applied a three-part test like that described earlier.[242] First, it considered whether there was an existing public controversy and, in particular, what the nature of the public controversy was.[243] As Jewell's attorney's had argued, the appellate court accepted the trial court's finding that the public controversy was not the issue of who bombed Centennial Olympic Park, but rather the larger and more general issue of safety in the Park and at other Olympic venues.[244] Thus, the court determined that the issue of Olympic Park safety was a public controversy.[245]

Discussing the second-prong, the court considered the nature and extent of Jewell's involvement in the controversy surrounding safety in Centennial Olympic Park.[246] The appellate court paid particular attention to the number of media interviews Jewell gave before he became a suspect.[247] The court wrote:

> [W]e agree with the trial court that Jewell's actions show that he voluntarily assumed a position of influence in the controversy. Jewell granted ten interviews and one photo shoot in the three days between the bombing and the reopening of the park, mostly to prominent members of the national press. While no magical number of media appearances is required to render a citizen a public figure, Jewell's participation in the public discussion of

239. *Id.* at 185 (concluding that the "evidence was sufficient to support the trial court's determination that Jewell was a voluntary limited-purpose public figure").

240. *Id.* at 186 (concluding that "the record contains clear and convincing evidence that, at the very least, Jewell was an involuntary limited-purpose public figure").

241. *See id.*

242. *See* discussion *supra* Part IV.B.

243. *See Atlanta Journal-Constitution*, 555 S.E.2d at 183–84.

244. Judge Mather found there was a public controversy "[a]t least as to the issue of Olympic Park safety . . . ." Order, *supra* note 32, at 9.

245. *Atlanta Journal-Constitution*, 555 S.E.2d at 183.

246. *Id.* at 184.

247. *See id.*

> the bombing exceeds what has been deemed sufficient to render other citizens public figures. Even Jewell commented that the number of interviews he gave——up to two or three within a fifteen-minute period——was so great that he still cannot remember them all.[248]

It is worth noting that the appellate court literally took part of this language from a brief filed by attorneys for the *Atlanta Journal-Constitution* and used it almost verbatim in its opinion.[249]

Beyond the raw number of interviews that Jewell gave, the appellate court also considered the extent of press coverage given by the media to his comments.[250] In language that chastised Jewell——a man who had no prior media experience——for not realizing the impact of his comments, the court wrote that "Jewell should have known, and likely did know, that his comments would be broadcast and published to millions of American citizens searching for answers in the aftermath of the bombing."[251]

Finally, the appellate court turned to the third prong of its test for voluntary limited-purpose public figure status: "whether the allegedly defamatory statements were germane to Jewell's participation in the controversy."[252] The court quickly concluded that the statements were germane, writing:

> Certainly, the information reported regarding Jewell's character was germane to Jewell's participation in the controversy over the Olympic Park's safety. A public figure's talents, education, experience, and motives are relevant to the public's decision to listen to him. The articles and the challenged statements within them dealt with Jewell's status as a suspect in the bombing and his law enforcement background.[253]

With that statement, the appellate court concluded that Richard Jewell satisfied all three prongs of its test for a voluntary limited-purpose public

---

248. *Id.*

249. *See* Brief of Appellees, *supra* note 134, at 9 ("No magic number of media appearances is required to render a citizen a public figure. However, the record shows that appellant's participation in the public discussion of the bombing far exceed [sic] what has been deemed sufficient to render other citizens public figures.").

250. *Atlanta Journal-Constitution*, 555 S.E.2d at 184. The appellate court wrote that "[i]n examining the nature and extent of Jewell's participation in the issue of Olympic Park safety, the court can look to Jewell's past conduct, *the extent of press coverage*, and the public reaction to his . . . statements." *Id.* (emphasis added).

251. *Id.* at 185.

252. *Id.*

253. *Id.* at 185–86.

figure.[254] But the court did not stop there; it turned to the question of whether Jewell was also an involuntary public figure.[255] Its analysis of that issue is discussed below.

2. Jewell Is an Involuntary Limited-Purpose Public Figure

The appellate court concluded that Richard Jewell was an involuntary public figure "who had the misfortune to have a tragedy occur on his watch . . . ."[256] Relying heavily on the case of *Dameron v. Washington Magazine, Inc.*,[257] the court observed "that Jewell played a central, albeit possibly involuntary, role in the controversy over Olympic Park safety."[258] Further, "[w]hether he liked it or not, Jewell became a central figure in the specific public controversy with respect to which he was allegedly defamed: the controversy over park safety."[259]

In reaching this decision, the appellate court failed to cite the language from the United States Supreme Court's decision in *Gertz v. Robert Welch, Inc.*,[260] which states that the category of involuntary public figures "*must be exceedingly rare.*"[261] Indeed, the Georgia appellate court's only cite to language from *Gertz* regarding the categories of public figures was to use ellipses *to delete* these words.[262]

---

254. *See id.* at 183–86.

255. *See Atlanta Journal-Constitution*, 555 S.E.2d at 186.

256. *Id.*

257. 779 F.2d 736 (D.C. Cir. 1985); *see supra* notes 175–80 and accompanying text.

258. *Atlanta Journal-Constitution*, 555 S.E.2d at 186.

259. *Id.*

260. 418 U.S. 323 (1973).

261. *Id.* at 345 (emphasis added).

262. *Atlanta Journal Constitution*, 555 S.E.2d at 183. The United States Supreme Court wrote:

> Hypothetically, it may be possible for someone to become a public figure through no purposeful action of his own, but the instances of truly involuntary public figures must be exceedingly rare. For the most part those who attain this status have assumed roles of special prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment.

Gertz, 418 U.S. at 345. The Georgia appellate court, however, pulls one line from page 342 of the *Gertz* decision and collapses it with part of the quote above from page 345 of that opinion, cleverly using ellipses to avoid quoting the "exceedingly rare" language. *Compare Atlanta Journal Constitution*, 555 S.E.2d at 183, *with Gertz*, 418 U.S. at 342–45. The edited quote set out in the *Jewell* decision by the state appellate court reads as follows, with the ellipses supplied by the judges, *not* by the authors of this article:

> Those who, by reason of the notoriety of their achievements or the vigor and

C. The Critique

There is no denying that Richard Jewell was not forced, physically or otherwise, to give interviews to members of the media[263]—he did them out of his own free will.[264] Jewell also participated in interviews upon the media's request[265] and gave information that they used—both in print and on the air—to inform the public and to attract readers and viewers.[266]

Jewell was unfortunately punished and made into a public figure by the trial and appellate courts in Georgia simply because he had something important and interesting to say. He was punished for expressing what he believed to be the truth and was chastised for merely exercising his First Amendment right to free speech.[267]

The media approached Jewell for comments on an issue of public concern, resulting in Jewell voluntarily making less than a dozen media appearances. This alone should not have turned Jewell into a public figure for purposes of defamation law. If Richard Jewell hired a publicity firm that actively *sought* news media outlets for interviews, or if Jewell looked for media organizations with which to share his story, the situation would have been quite different. At that point, Jewell arguably would have willfully thrust himself into the media limelight. To the contrary, the facts show that the media approached Jewell, instead of the reverse.[268] He was not a "Rolodex pundit,"[269] despite the *Atlanta Journal-Constitution*'s

> success with which they seek the public's attention, are properly classified as public figures. . . . For the most part those who attain this status have assumed roles of special prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment.

Atlanta Journal-Constitution, 555 S.E.2d at 183 (citation omitted).

263. *See Atlanta Journal-Constitution*, 555 S.E.2d at 184.

264. *See id.*

265. *See id.*

266. *See id.* at 185.

267. The First Amendment to the United States Constitution provides in relevant part that "Congress shall make no law . . . abridging the freedom of speech, or of the press . . . ." U.S. CONST. amend. I. The Free Speech and Free Press rights have been incorporated through the Fourteenth Amendment Due Process Clause to apply to state and local government entities and officials. Gitlow v. N.Y., 268 U.S. 652, 666 (1925).

268. *See Atlanta Journal-Constitution*, 555 S.E.2d at 184 ("Jewell was prominent enough to require the assistance of a media handler to field press inquiries and coordinate his media appearances.").

269. *See generally* Alicia C. Shepard, *White Noise*, AM. JOURNALISM REV., Jan.–Feb. 1999, at 20 (describing the use and misuse of pundits in journalism).

argument that Jewell's media exposure "would inspire envy in the savviest pundits."[270]

Yet the appellate court gave short shrift to Jewell's contention that "he gave the interviews only to accommodate the desires of his employer . . . ."[271] The court dismissed this as his "subjective motives,"[272] and decided what was more important was "whether a reasonable person would have concluded that Jewell would play or was seeking to play a major role in determining the outcome of the controversy."[273]

It is important here to look back to *Gertz*.[274] It defined the category of voluntary limited-purpose public figures to include people who "*thrust themselves* to the forefront of particular public controversies in order to influence the resolution of the issues involved."[275] Jewell did not thrust himself into any controversy, and he did not thrust himself upon the media.[276] He merely accommodated the media.[277] The media wanted him as a source and he obliged. However, under the rulings of both Judge Mather at the trial court level and the unanimous opinion of Judge Johnson at the appellate level, it became apparent that Richard Jewell would lose in front of the media and the public.

The *Atlanta Journal-Constitution* paid close attention to Jewell's responses during the media interviews that highlighted his training as a security guard,[278] his actions at Centennial Olympic Park on the night of the bombing,[279] and his thanks to the public for continuing to support the Games.[280] These responses purportedly helped "many millions of Americans to formulate views on the bombing and the response."[281] This shortsighted focus on these off-the-cuff responses missed the point that Richard Jewell became a sought-after interviewee because he *witnessed* certain events on the night of the bombing, not for his influence on the American public. It is textbook journalism that eyewitnesses are important interview subjects because no one else can "describe what it was like to

270. Brief of Appellees, *supra* note 134, at 14.

271. *Atlanta Journal-Constitution*, 555 S.E.2d at 185.

272. *Id.*

273. *Id.* (discussing Waldbaum v. Fairchild Publ'ns, Inc., 627 F.2d 1287, 1298 (D.C. Cir. 1980)).

274. *See* discussion *supra* Part IV.B.

275. *Gertz*, 418 U.S. at 345 (emphasis added).

276. *See Atlanta Journal-Constitution*, 555 S.E.2d at 183 (referring to Jewell's arguments).

277. *See* Jewell v. Cox Enters., Inc., 555 S.E.2d 175 (Ga. Ct. App. 2001).

278. Brief of Appellees, *supra* note 134, at 11–12.

279. *Id.* at 12–13.

280. *Id.* at 13.

281. *Id.* at 14.

watch the event develop."[282]

Granted, Jewell could have declined to answer any questions that did not directly relate to the events he witnessed. Unlike Jewell, a trained media expert could have made that judgment on the spot. However, such a refusal by itself could have been construed as contributing to the controversy of the safety at Centennial Olympic Park. After all, if the security guard at the scene of the bombing refused to say that he had the proper training to handle the situation, that omission alone would be sufficient to raise safety concerns. Likewise, if he refused to say that people should continue attending the games, he would have sparked a controversy. In short, to accept the view that his answers to non-eyewitness questions pushed him over the line into public-figure territory effectively condemned Richard Jewell to that status from the moment he agreed to an interview.

Furthermore, in terms of the involuntary public figure doctrine resurrected by the appellate court in Georgia, this doctrine might as well be called the "bad luck" or "too bad, so sad" doctrine. Jewell's "bad luck" of being a hero harmed him because "[h]e became embroiled in the ensuing discussion and controversy over park safety . . . ."[283] The irony is that Jewell was in the right place at the right time when it came to saving people's lives in Centennial Olympic Park. Unfortunately, he was in the wrong place at the wrong time when it came to his libel suit. The appellate court in Georgia even failed to cite the language in *Gertz* expressing that the category of involuntary public figures must be "exceedingly rare."[284] This oversight, coupled with the failure of the court to grapple with the *Gertz* language, and its failure to come to terms with or even to consider the language from the United States Supreme Court's critical decisions in *Hutchinson v. Proxmire*[285] and *Time, Inc. v. Firestone*,[286] severely undermined the legitimacy of the opinion.[287] Completely ignoring Supreme Court precedent without ever making an attempt to distinguish it or to demonstrate why it was not relevant to the case at bar was not only lazy, but inexcusable when First Amendment rights were at stake.

282. MITCHELL STEPHENS, BROADCAST NEWS 203 (3d ed. 1993) (on file with author).

283. *Atlanta Journal-Constitution*, 555 S.E.2d at 186.

284. *Gertz*, 418 U.S. at 345 (emphasis added).

285. 443 U.S. 111 (1979).

286. 424 U.S. 448 (1976).

287. *See supra* notes 145–57 and accompanying text (discussing these two cases).

VI. CONCLUSION

Journalists may have a right to be angry at Richard Jewell. After all, he and his high-profile attorney, L. Lin Wood,[288] sued numerous media outlets claiming that their reports allegedly defamed Jewell.[289] They extracted settlements from several of these news entities, including a reported $500,000 from NBC.[290] Some have suggested that this suit against NBC was a nuisance, and could not have had much chance of success had it gone to trial.[291]

Perhaps other journalists are angry at Jewell because he ultimately did not fit the story they framed for him—that of a hero-turned-villain, a criminal hiding behind the façade of a Southern good ol' boy.[292] No one is happy to go down one road at full speed only to find that it dead ends.

Beyond this, many journalists disdain Jewell because they feel that they did no more than accurately report the facts of his case.[293] Journalist Paul Nucci, for instance, recently wrote in *Editor & Publisher* that the *Atlanta Journal-Constitution* "printed accurate information" that Jewell was, indeed, a suspect according to federal authorities.[294] Some journalists now claim there is a so-called "Jewell Effect" in journalism, a fear that accurately publishing the name of a suspect who is neither arrested nor charged with a crime will lead to a slew of defamation lawsuits filed by that suspect should the person later be cleared of any wrongdoing.[295] The

288. Wood was identified by *Editor & Publisher* in November, 2000 as "among the most powerful legal foes facing the press today." Jim Moscou, *Truth, Justice, and the American Tort*, EDITOR & PUBLISHER, Nov. 27, 2000, at 18. Among Wood's current clients are John and Patsy Ramsey, who have filed several lawsuits against media outlets on behalf of their son, Burke. *Id.* at 21.

289. Jewell reportedly has settled lawsuits against NBC, CNN, the *New York Post*, and an Atlanta radio station for a total of more than one million dollars. Edith Stanley, *Atlanta Park Bomb's Blast Still Echoes*, L.A. TIMES, Sept. 28, 2000, at A5.

290. *See* Charlie Brennan, *Ramseys Retain Libel Lawyer*, ROCKY MOUNTAIN NEWS (Oct. 19, 1999), http://denver.rockymountainnews.com/extra/ramsey/1019rams2.shtml (reporting that L. Lin Wood "is best known for winning a settlement of more than $500,000 from NBC on behalf of Richard Jewell").

291. *See* Mifflin, *supra* note 52, at A16; Eric Mink, *Brokaw Goofed and NBC Paid*, DAILY NEWS (N.Y.), Dec. 11, 1996, at 74, LEXIS, News, News Group File, All ("Chances are, Richard Jewell ultimately would not have won a libel suit against NBC.").

292. *See* John Diaz, *Jewell Coverage: Excessive Force*, S.F. CHRON., Nov. 2, 1996, at A20 (discussing the "story line" that journalists used for Jewell's case and into which "the details rained like tiny treasures"). *See generally* JOSEPH N. CAPPELLA & KATHLEEN HALL JAMIESON, SPIRAL OF CYNICISM: THE PRESS AND THE PUBLIC GOOD 38–57 (Oxford Univ. Press 1997) (discussing how journalists "frame" news stories).

293. *See* Paul A. Nucci, *'Allegedly': I Hate It*, EDITOR & PUBLISHER, Jan. 22, 2001, at 62.

294. *Id.*

295. *See Public Rights on Trial*, *supra* note 6 (discussing the "Jewell Effect" as it relates to

self-censorship that allegedly was created by this fear (i.e., the decision not to publish names of known suspects) has been described as "the legacy of Richard Jewell."[296]

Unfortunately, the real legacy of Richard Jewell and his case against the *Atlanta Journal-Constitution* may have a chilling effect on potential news sources. This is the result of a ruling that deemed Jewell a limited-purpose public figure when he agreed to do less than a dozen media interviews.[297] While newspapers fear a "Jewell Effect" that chills the publishing of suspects' names, they really should fear a chilling effect on sources who may be more reticent to open up to journalists with what they know about significant public events.

Consider this hypothetical used by one of the authors of this article in his Media Law class at Penn State University. You are a volunteer firefighter, having coffee in the morning at the local coffee shop. You start to smell smoke and yell fire (not falsely, mind you)[298] as you herd the other customers out the front door, saving their lives in the process. While standing outside near the coffee shop as the fire crew puts out the blaze, you are approached by reporters from local television stations as well as the local newspapers asking what you might have seen. Although you have never dealt with the media before or ever been in the media limelight, you agree to tell them what happened. The journalists, in turn, put your information on television and in the newspapers, quoting you. A day later, you do another set of media interviews. Two days after that, those same television stations and newspapers do to you what they essentially did to Richard Jewell; they report that you are suspected of arson, that you fit the profile of someone who wants to be a hero, and that you, somewhat akin to what the *Atlanta Journal-Constitution* wrote about Jewell, are a "wannabe"[299] full-time firefighter. When you sue them for defamation, they claim you are a public figure.

---

covering a case of suspected arson in a Seton Hall University dormitory). *See generally* Brendan W. Williams, *Defamation As a Remedy for Criminal Suspects Tried Only in the Media*, 19 COMM. & THE L., Sept. 1997, at 61–65 (providing a very early analysis, using the Richard Jewell case as an example, of defamation as a legal remedy for individuals named in the media as suspects of crimes but who are later cleared of wrongdoing).

296. Allan Wolper, *Trapped in Jewell Box*, EDITOR & PUBLISHER, May 15, 2000, at 13.

297. Atlanta Journal-Constitution v. Jewell, 555 S.E.2d 175 at 183-85 (Ga. Ct. App. 2001).

298. *Cf.* Schenck v. United States, 249 U.S. 47, 52 (1919) (providing in famous dicta that "[t]he most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic").

299. *See* Scruggs & Martz, *supra* note 42, at A12 (The profile of a lone-bomber includes a police "wannabe.").

After the appellate court's ruling in *Atlanta Journal-Constitution v. Jewell*,[300] there is a distinct possibility that you would be held as such. Had you known this would be the case, and that your defamation action would be made that much harder by having to prove actual malice instead of negligence, you might never have talked to the media. Your speech, in other words, might have been chilled.

The bottom line is that the United States Supreme Court, in its First Amendment jurisprudence, is decidedly concerned with what Justice Stephen Breyer recently called the "speech-restricting" consequences of legal doctrines.[301] Any doctrine that would call Richard Jewell either a voluntary limited-purpose public figure or an involuntary public figure has the distinct potential to restrict speech. The short-term victory the *Atlanta Journal-Constitution* may prove to be a long-term loss for the news media as a whole if the appellate court's decision stands.

The Supreme Court of Georgia denied that opportunity for change.[302] On October 23, 2001, Richard Jewell petitioned the high court of Georgia to consider the twin issues of whether he was either a voluntary limited-purpose public figure or an involuntary public figure.[303] In that petition, Jewell's attorneys laid down the "chilling effect" argument that the authors of this Article made:

> This case . . . directly presents the specific question of the consequences to private individuals who are eyewitnesses to or participants in a newsworthy event and as a result, are sought out by the media for print and broadcast interviews. This case addresses the right of those private individuals to exercise their First Amendment right of freedom of speech without having the exercise of that right chilled by the fear that by agreeing to media requests for interviews, they will be penalized by being deemed public figures if the media thereafter negligently attacks their reputations.[304]

Given the Supreme Court of Georgia rejected the opportunity to consider this issue, the authors of this Article believe that Jewell should petition the United States Supreme Court for a writ of certiorari. The Supreme Court should not only grant certiorari, but should, for the reasons

300. 555 S.E.2d 175 (Ga. Ct. App. 2001).

301. *See* Bartnicki v. Vopper, 121 S. Ct. 1753, 1766 (2001) (Breyer, J., concurring) (considering a balance between the "speech-restricting and speech-enhancing consequences" of federal and state wiretap statutes).

302. *See generally* Petition for Cert., *supra* note 19.

303. *Id.*

304. *Id.* at 10.

set forth in this Article, adopt the "Good Samaritan Source" rule. This rule would shield private individuals like Richard Jewell from public figure status when they do no more than comply with media requests for comments and answer media-posed questions on issues of public concern. Both the press and the public will be deprived of information without a rule that: (1) is premised on the First Amendment grounds that it is speech enhancing rather than speech restricting;[305] (2) informs and enriches the metaphorical marketplace of ideas;[306] and (3) strikes a balance between a private individual's right to speak and a corporate entity's right to defend itself in the constitutional calculus of libel law. As Jewell's attorneys argued in a supplemental brief, "a private person who agrees to media requests for information about matters of public interest does not lose valuable state protections against defamation unless he participates in the interviews in an effort to advocate . . . ."[307] Let the "Good Samaritan Source" rule be the lasting legacy of the long, strange journey of Richard Jewell from security guard to libel plaintiff.

305. *See supra* note 300 and accompanying text.

306. The "marketplace of ideas, is perhaps the most powerful metaphor in the free speech tradition." RODNEY A. SMOLLA, FREE SPEECH IN AN OPEN SOCIETY 6 (Alfred A. Knopf 1992). The marketplace metaphor "consistently dominates the Supreme Court's discussions of freedom of speech." C. EDWIN BAKER, HUMAN LIBERTY AND FREEDOM OF SPEECH 7 (Oxford University Press 1989). The metaphor is used frequently today, more than eighty years after it first became a part of First Amendment jurisprudence with Supreme Court Justice Oliver Wendell Holmes, Jr.'s often-quoted admonition that "the best test of truth is the power of the thought to get itself accepted in the competition of the market . . . ." Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting); *see* W. Wat Hopkins, *The Supreme Court Defines the Marketplace of Ideas*, 73 JOURNALISM & MASS COMM. Q. 40 (1996) (providing a fairly recent review of the Court's use of the marketplace metaphor).

307. Supplemental Brief of Appellant Richard Jewell at 3, Jewell v. Cox Enters., Inc., 555 S.E.2d 175 (Ga. Ct. App., 2001) (No. A01A1565).