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The Revival of Involuntary Limited-Purpose Public Figures—*Dameron v. Washington Magazine, Inc.*

In our constitutional system, free political discussion is essential in making government responsive to the will of the people.[1] Unfortunately, this principle of free political discussion frequently conflicts with the right to protect one's reputation and privacy.[2] In an effort to define the proper accommodation between these conflicting concerns, the United States Supreme Court has limited the protection given to public officials and public figures.[3] Public officials and figures can recover for a defamatory publication if they can show "actual malice,"[4] while

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1. The Supreme Court stated in *New York Times* that "[t]he maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people . . . is a fundamental principle of our constitutional system." New York Times Co. v. Sullivan 376 U.S. 254, 269 (1964) (quoting Stromberg v. California, 283 U.S. 359, 369 (1931)).

2. *See* Curtis Publishing Co. v. Butts, 388 U.S. 130, 151 (1967).

3. *Id.* at 155. Prior to the 1964 decision of New York Times Co. v. Sullivan, 376 U.S. at 254, the Supreme Court had held that the Constitution did not protect defamatory publications, and that each state had complete autonomy in regulating defamation. *See, e.g.*, Konigsberg v. State Bar, 366 U.S. 36, 49-51 (1961); Times Film Corp. v. Chicago, 365 U.S. 43, 48-50 (1961). In *New York Times*, however, the Court announced that first amendment principles require a public official to show "actual malice" on the part of the publisher to recover damages for a defamatory publication. 376 U.S. at 279-80. The Supreme Court extended the "actual malice" requirement to public figures in Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967). The Court reasoned that the public interest in statements concerning public figures is no less than that involved in statements concerning public officials. *Id.* at 154. In Rosenbloom v. Metromedia, Inc., 403 U.S. 29 (1971), the Court embraced an even broader application of constitutional protection by stating that a private person involved in an "issue of public or general concern" would also be held to the "actual malice" requirement. *Id.* at 44. No longer would the Court consider whether the plaintiff was a public or private figure; rather the Court would only consider whether the defamatory statement was newsworthy. *Id.*

Within three years after *Rosenbloom*, the Court established new rules to govern defamation. In Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974), the Court re-evaluated the accommodation required to assure vigorous debate on public issues while at the same time affording protection to an individual's reputation, and concluded that the *Rosenbloom* "public interest test" had gone too far in protecting public debate. *Id.* at 346. The Court held in *Gertz* that the "actual malice" test would apply only to public figures and officials. *Id.* at 347-48.

4. "Actual malice" was defined by the Court to mean "with knowledge that [the published statement] was false or with reckless disregard of whether it was false or not." *New York Times*, 376 U.S. at 280. To establish "actual malice," the plaintiff is held to a

private persons can recover if they can show the degree of fault required by state law.[5] Consequently, the determination of whether a plaintiff is either a public official or figure is essential to the outcome of a defamation suit.

In defining who is a public figure, the Supreme Court in *Gertz v. Robert Welch, Inc.*,[6] stated 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."[7] While the Court gave no examples of this rare type of involuntary public figure, it later stated that a person may become a public figure by being "drawn into a particular public controversy."[8]

Recently, the D.C. Circuit relied upon *Gertz* to revive the concept of "involuntary public figures." In *Dameron v. Washington Magazine, Inc.*,[9] the court used the *Gertz* "involuntary public figure" language to hold that an air traffic controller was "an involuntary public figure for the limited purpose of discussion of the Mt. Weather [plane] crash" which took place while the controller was on duty.[10] This casenote examines whether the *Dameron* court extended the involuntary public figure category beyond what the Supreme Court intended and what public policy mandates. Part I of this casenote analyzes the *Dameron* court's use of this category. Part II addresses the potential problems of adopting a broad interpretation of the involuntary public figure category. This casenote concludes in part III that

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constitutional burden of "clear and convincing proof." *Gertz*, 418 U.S. at 342.

5. *Gertz*, 418 U.S. at 342, 347. As of 1985, private figures are required to prove negligence in thirty-one states, actual malice in four states, and gross irresponsibility in one state. GOODALE, COMMUNICATIONS LAW 203-09 (1985).

6. 418 U.S. 323 (1974). In *Gertz*, Mr. Gertz was falsely accused by the defendant of "engineering" a policeman's conviction of second degree murder. The defendant also implied that Gertz had a criminal record and labeled him a "Leninist" and a "Communist-fronter." *Id.* at 326. The Court held that Gertz was not a public figure because he "did not thrust himself into the vortex of [a] public issue, nor did he engage the public's attention in an attempt to influence its outcome." *Id.* at 352.

7. *Id.* at 345. The Court in *Gertz* stated that there are three types of public figures: (1) persons who occupy positions of such persuasive power and influence that they are deemed public figures for all purposes; (2) persons who have thrust themselves into the forefront of a particular controversy in order to influence the resolution of the issues involved; and (3) persons who through no purposeful action of their own are involuntarily drawn into a public controversy. *Id.* This casenote is concerned with only the third type of public figure.

8. *Id.* at 351.

9. 779 F.2d 736 (D.C. Cir. 1985), *cert. denied*, 106 S. Ct. 2247 (1986).

10. *Id.* at 743.

the *Dameron* court's approach improperly balances the interests of free political discussion and protection of privacy.

I. *Dameron v. Washington Magazine, Inc.*

A. Background

As part of an article on air safety, *The Washingtonian* magazine reported that air traffic controllers were partially responsible for a 1974 plane crash which killed ninety two people.[11] Mr. Dameron, who was the sole air traffic controller on duty during the 1974 plane crash, brought suit against the publisher of *The Washingtonian* magazine claiming that the statement was false and defamatory.[12] The district court entered summary judgment for the magazine on the ground that it enjoyed a conditional fair reporting privilege to publish reports of the National Transportation Safety Board (the source for the magazine's statement concerning the 1974 crash).[13] On appeal, the circuit court agreed with the district court's conclusion that the alleged libel was protected, but differed on the basis for such protection.[14] The circuit court found that the fair reporting privilege did not apply to the published statement, but that Mr. Dameron's role in the public controversy resulted in his becoming an involuntary limited-purpose public figure; hence, he would have to show actual malice by *The Washingtonian* publishers to recover.[15]

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11. The statement that *The Washingtonian* magazine published is as follows:

> Since then [1956]—despite hair-raising talk among controllers about computer malfunctions, fatigue-induced errors, and reports of "near misses" in mid-air—it is believed that no major crash has been caused solely by controller error. They 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) . . . .

Id. at 738.

12. *Id.* In a decision issued in 1977, the United States District Court for the Eastern District of Virginia held that the government was not liable for the 1974 TWA 727 Flight 514 crash. Specifically, the court held that Mr. Dameron was not negligent and had performed his air traffic controller duties properly. Brock v. United States, 14 Av. Cas. (CCH) 18,246 (E.D. Va. 1977), *aff'd*, 596 F.2d 93 (4th Cir. 1979).

13. Dameron v. Washington Magazine, Inc., 575 F. Supp. 1575, 1577 (D.D.C. 1983), *aff'd*, 779 F.2d 736 (D.C. Cir. 1985), *cert. denied*, 106 S. Ct. 2247 (1986). The district court also noted that Mr. Dameron was not a public figure or a public official with respect to the plane crash. *Id.* at 1576-77.

14. 779 F.2d at 737.

15. *Id.* at 740, 743. Mr. Dameron did not allege actual malice and admitted that he could not prove such. *Id.*

B. Reasoning of the Circuit Court

The circuit court, after reviewing the history of the public figure status, relied on the three-part test established in *Waldbaum v. Fairchild Publications, Inc.*[16] to determine whether Mr. Dameron was a limited-purpose public figure.[17] This test requires the court to determine whether the publication involved a public controversy, whether the plaintiff voluntarily played a central role in that controversy, and whether the alleged defamation was germane to the plaintiff's involvement in the controversy.[18]

The court concluded that under this test "[t]here was indisputably a public controversy," and it cannot be "doubted that the alleged defamation was germane to the question of controller responsibility for air safety in general and the [1974] crash in particular."[19] However, recognizing that the second part of the *Waldbaum* test required the defamed person to have voluntarily thrust himself into a public controversy, the court determined that the second part needed to be modified "to accommodate the possibility of a potentially *involuntary* limited-purpose public figure."[20] To justify this modification, the court cited the *Gertz* language which provides for an involuntary public figure status in exceedingly rare cases. The court thus held that Mr. Dameron was an involuntary limited-purpose public figure and that Mr. Dameron "by sheer bad luck . . . became embroiled, through no desire of his own, in the ensuing controversy over the causes of the accident [and] thereby became well known to the public in this one very limited connection."[21]

The court, after distinguishing *Times, Inc. v. Firestone*[22]

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16. 627 F.2d 1287 (D.C. Cir.), *cert. denied*, 449 U.S. 898 (1980).

17. *Dameron*, 779 F.2d at 741.

18. *Waldbaum*, 627 F.2d at 1296-98.

19. *Dameron*, 779 F.2d at 741.

20. *Id.* (emphasis in original). The *Waldbaum* test requires a "voluntary thrusting" of oneself into a public controversy. 627 F.2d at 1297. *See also* Avins v. White, 627 F.2d 637, 648 (3d Cir.), *cert. denied*, 449 U.S. 982 (1980); Schiavone Const. Co. v. Time, Inc., 619 F. Supp. 684, 702 (D.N.J. 1985); McBride v. Merrell Dow and Pharmaceuticals, Inc., 613 F. Supp. 1349, 1353 (D.D.C. 1985), *aff'd in part and rev'd in part*, 800 F.2d 1208 (D.C. Cir. 1986).

21. *Dameron*, 779 F.2d at 742.

22. 424 U.S. 448 (1976). The court distinguished *Firestone* by stating that the outcome in *Firestone* was based on the lack of a public controversy and not on the issue of the plaintiff's status. *Id.* at 742. For a more detailed discussion of *Firestone* see *infra* notes 26-30 and accompanying text.

and *Wolston v. Reader's Digest Ass'n*,[23] concluded that the "circumstances in which an involuntary public figure is created will, we are confident, continue to be few and far between."[24]

II. The Potential Problems of the *Dameron* Court's Analysis

Since *Gertz*, the Supreme Court has permitted an intrusion into a person's privacy only when that person intentionally became involved in a public controversy. Consequently, the Court has never again recognized the possibility of an involuntary public figure. The *Dameron* court passed over this Supreme Court practice and adopted an approach that examines the public's interest in a controversy and not whether the plaintiff has voluntarily assumed a role in such a controversy. This public interest approach was explicitly rejected by the *Gertz* Court.[25] Additionally, the approach is inconsistent with the policies underlying the public figure doctrine: (1) whether the plaintiff has access to the media, and (2) whether he has assumed a position of public scrutiny. Finally, even if the involuntary public figure category exists, the *Dameron* court's approach does not make this category "exceedingly rare" as required by the *Gertz* Court.

A. Involuntary Public Figures Are "Exceedingly Rare," If Not Extinct

Since the Supreme Court announced the possibility of an involuntary public figure category in *Gertz*, it has not recognized the existence of this category when presented with the issue. In *Firestone*, *Hutchinson*, and *Wolston*, the Court concluded that a person who was involuntarily involved in public controversy was not a public figure.

In *Firestone*, the Court held that Mrs. Firestone, the wife of a member of a wealthy industrial family, had not become a limited public figure with respect to her divorce because the divorce

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23. 443 U.S. 157 (1979). The court differentiated *Dameron* from *Wolston* in that Mr. Dameron played a central role in a specific public controversy, and Mr. Wolston, by contrast, was not defamed with respect to the controversy in which he played a central role. *Id.* at 742-43. For a more detailed discussion of *Wolston* see *infra* notes 35-38 and accompanying text.

24. *Dameron*, 779 F.2d at 743.

25. The Supreme Court stated that the public interest approach would abridge the states' effort to enforce a legal remedy for defamatory falsehood. Gertz v. Robert Welch, Inc., 418 U.S. 323, 346 (1974).

proceeding was not a public controversy.[26] Although the Court held that Mrs. Firestone was not involved in a public controversy, the Court nonetheless addressed the issue of whether Mrs. Firestone was a public figure. The Court relied on only the first two of the *Gertz* public figure categories—the third category of involuntary public figures was conspicuously omitted.[27] The Court stated that there is little reason why private individuals should forfeit the protection which defamation law would otherwise afford them simply because they were "drawn into" a public controversy.[28] The use of the words "drawn into" seems to conflict with the *Gertz* language that a person may become an involuntary public figure by being "drawn into" a public controversy. Furthermore, although the defendant argued that Mrs. Firestone was an involuntary public figure because of her relationship with her well-known husband, the Court did not address this possibility.[29] Consequently, several authors suggest that the involuntary public figure category met its demise in *Firestone*.[30]

The Court's decision in *Hutchinson v. Proxmire*[31] also supports the argument that the involuntary public figure class has been abandoned. In *Hutchinson*, the plaintiff, a behavioral scientist whose research was supported by federal grants, was a recipient of Senator William Proxmire's "Golden Fleece of the Month Award," a vehicle that the Senator used to "publicize what he perceived to be the most egregious examples of wasteful government spending."[32] The Court held that the plaintiff was not a limited public figure because he had not thrust himself or

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26. 424 U.S. 448, 454 (1976). The Court noted that "[d]issolution of a marriage through judicial proceedings is not the sort of 'public controversy' referred to in *Gertz*, even though the marital difficulties of extremely wealthy individuals may be of interest to some portion of the reading public." *Id.*

27. *Id.* at 453. For a discussion of the three *Gertz* categories of public figures see *supra* note 7.

28. 424 U.S. at 457.

29. Brief for Petitioner at 35, Time, Inc. v. Firestone, 424 U.S. 488 (1976) (No. 74-944).

30. *See* Ashdown, *Gertz and Firestone: A Study in Constitutional Policy-Making*, 61 MINN. L. REV. 645, 681 n.175 (1977); Comment, *Developing Standards of Care After* Time, Inc. v. Firestone: *Experimentation is Needed*, 29 MERCER L. REV. 841, 849 (1978); 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, 1220 (1976); Note, *General Public Figures Since* Gertz v. Robert Welch, Inc., 58 ST. JOHN'S L. REV. 355, 366 n.46 (1984).

31. 443 U.S. 111 (1979).

32. *Id.* at 114.

his views into a public controversy to influence others.[33] The Court referred to the first two *Gertz* categories of public figures, but again left out the involuntary public figure category.[34] The scientist involved in *Hutchinson* would seem to have been a likely candidate for the involuntary public figure status because he was drawn out of the laboratory and into the public spotlight by Senator Proxmire's statements. The Court's failure to discuss this possibility weighs further against the existence of a involuntary public figure category.

The *Wolston* decision is further evidence of the demise of the involuntary public figure category. The plaintiff in *Wolston* sued the publisher and author of a 1974 non-fiction book that had identified the plaintiff as a Soviet espionage agent. The Court held that the plaintiff was not a limited public figure since he did not thrust himself into the controversy over Soviet espionage.[35] Additionally, although the defendant argued that Mr. Wolston had become an involuntary public figure,[36] the Court made no mention of this argument in its opinion.[37] Instead, the Court emphasized the requirement of "voluntarily thrusting" oneself into a public controversy to become a public figure, stating 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."[38]

In light of these three cases, the existence of an involuntary public figure is hypothetical at best. The Court stated in *Firestone, Hutchinson,* and *Wolston* that the public figure status is contingent on voluntary involvement.[39] Hence, the *Dameron*

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33. The Court even suggested that a person can actively publish information concerning a controversy and still not meet the public figure level. *Id.* at 135-36.

34. *Id.* at 134. For a discussion of the three *Gertz* categories of public figures see *supra* note 7.

35. 443 U.S. 157, 166 (1979).

36. Brief for Respondent at 30-31, Wolston v. Reader's Digest Ass'n., 443 U.S. 157 (1979) (No. 78-5414).

37. *Wolston,* 443 U.S. at 164.

38. *Id.* at 166-67.

39. Because of the Supreme Court's silence on the issue of involuntary limited public figures since *Gertz,* other courts, in attempting to determine the constitutional parameters of the involuntary public figure doctrine, have adopted several divergent theories. One theory suggests that individuals may become public figures by merely associating with public celebrities. *See* Brewer v. Memphis Publishing Co., 626 F.2d 1238, 1249-57 (5th Cir. 1980), *cert. denied,* 452 U.S. 962 (1981) (a private individual held to be a limited-purpose public figure because of his wife's former relationship to Elvis Presley); Carson v. Allied News Co., 529 F.2d 206, 210 (7th Cir. 1976) (wife of television entertainer held to be a limited-purpose public figure); Wynberg v. National Enquirer,

court's reliance upon Mr. Dameron's involuntary acts in holding that he was a public figure was improper.

B. The Dameron *Court's Analysis Has Been Rejected by the Supreme Court*

Even more troubling than the *Dameron* court's departure from the holdings of *Firestone, Hutchinson,* and *Wolston* is that by applying the *Gertz* involuntary public figure language to the facts in *Dameron,* the circuit court's analysis paradoxically leads to the reemergence of the *Rosenbloom* "public interest" test—the very test which the *Gertz* Court explicitly rejected.

In *Rosenbloom,* the plaintiff, a distributor of nudist magazines, alleged that he had been defamed by a news broadcast that had recounted his arrest under city obscenity laws. In a plurality opinion, the Court found for the defendant by extending the actual malice standard to any material of public interest.[40] The Court stated that "the First Amendment's impact upon state libel laws derives not so much from whether the plaintiff is a 'public official,' 'public figure,' or 'private individual,' as it derives from the question whether the allegedly defamatory publication concerns a matter of public or general interest."[41]

Inc., 564 F. Supp. 924, 929 (C.D. Cal. 1982) (plaintiff with "close personal relationship" to Elizabeth Taylor found to be a public figure because he chose to enter a relationship with potential controversy and publicity); Meeropol v. Nizer, 381 F. Supp. 29, 38 (S.D.N.Y. 1974), *aff'd,* 560 F.2d 1061 (2d Cir. 1977), *cert. denied,* 434 U.S. 1013 (1978) (children of the Rosenbergs' attained public figure status involuntarily by their proximity and close relationship with their famous parents). This theory is misplaced because those associating with public celebrities generally do so knowing of, and even occasionally for the purpose of, sharing the celebrities prominence. Hence, those associating with public celebrities voluntary thrust themselves in circumstances susceptible to public scrutiny.

Another explanation of the *Gertz* involuntary public figure passage is that the Court was hesitant to sever all ties to the public-interest *Rosenbloom* approach. According to this theory, the Court in *Gertz* used the "involuntary" and "draw into" language so that it could apply the actual malice standard to otherwise private defamation plaintiffs when necessary to protect media investigation into public issues of overriding importance. *See* McDowell v. Paiewonsky, 769 F.2d 942, 949-51 (3d Cir. 1985) (engineer involved in a controversial building project was a limited-purpose public figure despite his desire to avoid notoriety); Buchanan v. Associated Press, 398 F. Supp. 1196, 1202 (D.D.C. 1975) (accountant whose firm had been retained by a finance committee to re-elect the President was "drawn into" controversy through association). This theory, which is essentially the approach used by the *Dameron* court, is flawed because of the four reasons stated in part II of this note.

40. 403 U.S. 29, 43 (1971).

41. *Id.* at 44.

The *Dameron* court's approach is similar to that of *Rosenbloom* in that the *Dameron* court emphasized the public interest in the 1974 plane crash. The court stated that Mr. Dameron was at the center of a controversy that was "widely publicized" and that "involved the loss of many lives."[42]

The public interest approach of *Rosenbloom* and *Dameron* was discredited in *Gertz*. The Supreme Court reasoned that the public interest approach failed to achieve a fair balance between the competing interests of free discussion and protection of privacy.[43] The *Gertz* Court stated that a private figure is entitled to more privacy protection than a public figure because a private person "has relinquished no part of his interest in the protection of his own good name."[44] The *Rosenbloom* and *Dameron* approach does not consider whether the plaintiff intended to give up his privacy, but instead focuses on whether the media has taken away such privacy by exposing his role in a public controversy. For example, if a television station decides to televise a report on the damage caused by a tornado in Omaha Nebraska, then any person mentioned in the context of the report must prove actual malice in order to recover for a defamatory statement because the report was a matter of public interest. Essentially, a person loses his privacy protection by being exposed to the public through the media. Consequently, the *Rosenbloom* and *Dameron* approach grants to the media the authority to answer the question of how much privacy a private person should receive.

C. Dameron *Is Inconsistent with the Policy Underlying the Public Figure Doctrine*

In *Gertz*, the Court stated that the reasons for requiring public figures and officials to prove actual malice are: (1) that they usually enjoy "greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals;" and (2) that those who seek public office or those who thrust themselves into public controversies accept certain necessary consequences of involvement in public affairs, specifically the risk of closer

42. 779 F.2d 736, 742 (D.C. Cir 1985), *cert. denied*, 106 S. Ct. 2247 (1986).
43. 418 U.S. 323, 346 (1974).
44. *Id.* at 345.

public scrutiny.[45] The *Dameron* case suggests an approach that is inconsistent with these reasons.

First, since the 1974 accident occurred more than eight years before the publication of the alleged defamation, Mr. Dameron probably had little, if any, access to effective channels of communication. The 1974 accident was no longer current news and the media would not have been interested in publishing Mr. Dameron's response. Granted, Mr. Dameron may have had some access to the media in 1974 when the accident occurred, but when *The Washingtonian* defamed Mr. Dameron eight years later, Mr. Dameron's involvement in the accident was no longer current news. Hence, Mr. Dameron had no access to the media to rebut *The Washingtonian*'s statement.

Second, Mr. Dameron had neither thrust himself nor his views into public controversy to influence others, nor had he assumed any role of public prominence. Mr. Dameron had no desire to be a part of the 1974 air-crash investigation, and he was completely unknown to the public prior to that event.[46] One could argue that Mr. Dameron, by taking a job as an air traffic controller and being employed by the Federal Aviation Administration, willingly joined a profession subject to constant public scrutiny—one in which there is always the threat of public controversy—and thus assumed the remote risk of being involuntarily thrust into public controversy. But this degree of "voluntariness" ought not to be enough to invoke public figure status because almost all private figures assume similar remote risks of being thrust into public controversy by interacting with the public in day-to-day affairs.

Under the *Dameron* approach, a private person may become a public figure by being thrust into a public controversy as an incidental witness to a crime or the subject of a newswriter's pen. For example, suppose a little-known tourist, while traveling in Lebanon, was kidnaped by terrorists. A national newspaper reveals this incident and reports that the tourist was negligent in not leaving Lebanon when warned to do so. After being released, the tourist brings a defamation suit against the newspaper. Ac-

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45. *Id.* at 344.

46. Mr. Dameron's name was mentioned in the press during the 1974 TWA 727 accident, but he was personally interviewed for only one of the articles. Brief for Cross Appellee and Reply Brief for Appellant at 3, Dameron v. Washington Magazine, Inc., 779 F.2d 736 (D.C. Cir. 1985), *cert. denied*, 106 S. Ct. 2247 (1986) (Nos. 84-5056 and 84-5082).

cording to the *Dameron* approach, the tourist, by being exposed to the public on the pages of a national newspaper, involuntarily becomes a public figure and must prove that the newspaper printed the defamatory statement with "actual malice." This approach overlooks the second reason for having the public figure category—voluntary assumption of exposure to public criticism—and thus improperly favors the first amendment right to free political discussion over the individual's right to privacy.[47]

D. The Dameron *Court's Approach is Overinclusive*

Even assuming that the "rare" *Gertz* category of involuntary public figure has survived *Firestone, Hutchinson,* and *Wolston,* the *Dameron* court's analysis extends beyond this category's reasonable limits. In *Gertz,* the Court emphasized that the chance of one being an involuntary limited public figure is "exceedingly rare."[48] "Exceedingly rare" implies that the class of involuntary public figures would be relatively small. Under the *Dameron* court's analysis, however, every person who unwittingly becomes intimately involved in a controversy which can be expected to attract public attention can become a public figure. The *Dameron* court's approach would include in the class of involuntary public figures every private person who is mentioned on the front page of thousands of newspapers each day. If this was the approach the Supreme Court desired, the Court in *Gertz* would not have used the words "exceedingly rare."

III. Conclusion

The *Dameron* decision—holding that an air traffic controller was an involuntary public figure with respect to an air crash which occurred while the controller was on duty—fails to overcome the argument that after *Gertz* the Supreme Court has not acknowledged the existence of the involuntary public figure category. The *Dameron* court's approach also fails to consider that the public interest approach announced in *Rosenbloom* was expressly rejected in *Gertz* and that such an approach is inconsis-

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47. In April of 1986, the United States Supreme Court stated that private figures are held to a lower standard than that required by *New York Times* because they have lesser access to media channels useful for countering false statements and have not voluntarily placed themselves in the public's eye. Philadelphia Newspapers, Inc. v. Hepps, 106 S. Ct. 1558, 1562 (1986).

48. 418 U.S. 323, 345 (1974).

tent with the policy underlying the public figure doctrine. Finally, the *Dameron* approach would overly broaden the involuntary public figure category. Therefore, until the Supreme Court changes the balance it has stuck between first amendment protection of public debate and protection of private interests, the lower courts should not attempt to fit plaintiffs into the illusive category of involuntary public figures, but should concentrate their analyses on whether the plaintiff has voluntarily assumed the risk of public scrutiny and whether the plaintiff has access to effective channels of communication.

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