

MRS. ONASSIS HELD A 'PUBLIC FIGURE'

But Judge Warns That Isn't
Issue in Galella Case

By MAX H. SEIGEL

Judge Irving Ben Cooper declared in Federal Court here yesterday that it would be normal for photographers to want to take pictures of Mrs. Aristotle Onassis.

"There is no doubt in my mind," he said, "that any person who has become what we commonly refer to as a public figure—a First Lady of the land certainly falls within that category, whether she wishes it or not—I can understand that information concerning her is of general interest."

But that, he said, is not the issue in Mrs. Onassis' counter-suit, which seeks to enjoin Ronald E. Galella, the freelance photographer, from approaching within 200 yards of her apartment house and 100 yards of her to take pictures.

"The issue," the judge asserted, "is whether or not the method, the manner with which these photographs were taken, meets with the approval of the law."

Editor Cross-Examined

Judge Cooper expressed these views during cross-examination of Miss Bernadette Carrozza, editor of Photoplay.

In the cross-examination, Alfred S. Julien, counsel for Mr. Galella, continued an effort he began Wednesday to test the credibility of the witness. She had testified that Mr. Galella admitted taking photographs of Mrs. Onassis in alleged violation of a restraining order.

The lawyer clashed briefly with Judge Cooper when the judge sustained an objection to his reading into the record parts of Photoplay articles that dealt with intimate details of Mrs. Onassis' life. She sat expressionless in the courtroom during this reading.

Mr. Julien contended the details were essential to his case to prove that what Mr. Galella was charged with seeking to learn about Mrs. Onassis was already common knowledge.

'Harassment' Alleged

After a luncheon recess, Martin London, one of Mrs. Onassis' lawyers, spent the afternoon reading from the pre-trial deposition of Mr. Galella. The lawyer explained he was reading into the court record evidence to show "constant surveillance" and "harassment" of Mrs. Onassis by Mr. Galella and the lengths to which the photographer went to take photographs of her.

Mr. London will resume reading from Mr. Galella's pre-trial deposition today.

The Cloudy Galella-Onassis Case

By LESLEY OELSNER

From the crowded spectators' benches in Federal Court here, it hardly seems serious at all—a little dramatic sometimes, perhaps, as when the judge and a lawyer angrily accuse each other of "professional misconduct," but most times not much more than a bit of healthy fun. There is Mrs. Aristotle Onassis, in person, and one can stare for hours. There she is on the witness stand, facing a crowd come to see her, saying she doesn't think the public is interested in her. And there is Ronald E. Galella, the photographer who started the litigation, contradicting his testimony, grinning at the judge, shrugging, explaining that he wished Mrs. Onassis wouldn't wear sunglasses because glasses, after all, reduce the selling price of photographs.

News Analysis

crowd come to see her, saying she doesn't think the public is interested in her. And there is Ronald E. Galella, the photographer who started the litigation, contradicting his testimony, grinning at the judge, shrugging, explaining that he wished Mrs. Onassis wouldn't wear sunglasses because glasses, after all, reduce the selling price of photographs.

Serious Issue at Stake

But a trial it is. And for all the glamour of Mrs. Onassis and the curious nature of some of the testimony, the issues involved are serious indeed.

There are fundamental questions about freedom of the press and about the right to privacy. There are charges and countercharges involving harassment, emotional distress, assault.

In nearly all these areas the law is unclear and still developing, and the lack of clarity is further compounded by the fact that Mrs. Onassis is a former First Lady, the wife now of one of the world's richest men and a perennial entry on lists of both the "best-dressed" and "most-admired" women.

For despite her lawyers' contentions to the contrary, there is little question that she is a "public figure." The judge Irving Ben Cooper, noted this himself yesterday, and most legal experts agree. And the courts have held in a variety of cases that the rights of public figures are often less than the rights of the nonpublic, basing the distinction on the public's "right to know" embodied in the First Amendment's free-press guarantee.

The case, in summary, is this:

Alleged Tort Involved

Mr. Galella charges that Mrs. Onassis has interfered with his business of photographing her by having Secret Service men and policemen harass him. He wants an injunction against such interference.

Mrs. Onassis, for her part, wants an injunction keeping Mr. Galella away from her, and says she is entitled to it on any of four grounds: invasion of privacy, harassment, as-

The Law at Issue Is Largely Unclear in Both Suits

assault and the infliction of emotional distress.

So far as the photographer's suit is concerned, the law recognizes a tort called interference with business relations, for which one can recover damages. But as one torts expert, Robert Keeton of the University of Minnesota Law School, says: "It is a very difficult claim to establish."

For one thing, most of the cases in the area have involved alleged interference with competition; there is no such claim here. Second, what law there is has not yet, as Mr. Keeton puts it, been worked into "objectively applicable rules."

The outcome thus depends largely on the type an amount of "interference" the claimant can prove. And here Mr. Galella has a problem, for he has given some contradictory testimony on the alleged interference, such as instances in which Mrs. Onassis supposedly ordered policemen or Secret men to harass or arrest him.

According to some torts experts, his case would be stronger if he could prove, in addition to those instances, some type of effort by Mrs. Onassis to persuade the news media, say, not to buy his pictures.

Surveillance Opposed

As for Mrs. Onassis' suit, she also has the problem that much of the legal theory on which she relies has not yet been firmly established—at least not in New York State. Beyond that she is a public figure.

Mrs. Onassis accuses Mr. Galella of intentional infliction of emotional distress through his constant surveillance of her. There is such a tort, but in New York it has been construed fairly narrowly.

And even as it is generally defined, Mr. Keeton notes, a plaintiff must show that the defendant "acted with the intent to cause severe emotional distress, and without a privilege to do so."

As for the "intent", Mr. Galella denies any, and the matter is thus a question of fact for the judge to decide. As for lack of "privilege," Mr. Galella's defense is that he has a privilege under the First Amendment's free-speech guarantee.

The law is somewhat clearer as to harassment and assault. Harassment, as defined in the state's Penal Code, includes the activity of following someone

"in or about a public place or places." The tort of assault means putting someone in fear of offensive or harmful physical touching.

Injunction a Tough Nut

But even if Mrs. Onassis can prove that Mr. Galella has committed either act, can she get an injunction against him? The First Amendment prohibits most restrictions on the press, and such an injunction would seem to be a restriction if Mr. Galella is—as he insists he is—a member of the press.

The conflict between the First Amendment and other rights is most apparent in Mrs. Onassis' final claim—that her privacy has been invaded. She bases her argument on the newly developing theory that one's privacy can be invaded by certain types of oppressive surveillance, even if that surveillance is carried out in public.

New York has yet to accept this theory, but some legal experts believe it is a valid one. Arthur Miller of the Harvard Law School, for instance—one of the countries leading experts on privacy law—believes that a person should have "some right to solitude, even in public places," and even if a public figure.

The Right to Privacy

He notes that the law allows even public figures privacy in their homes, thus putting some limit on the press. Why, he asks, should there not be another limit allowing at least some privacy in public places—particularly "when she's engaging in activities which are not in themselves newsworthy?"

But to many other experts, particularly those whose specialty is the First Amendment, that theory raises the difficulty of trying to figure out where to draw the line. As Mr. Kalven says, "it's hard to launch a rule like that and then try to circumscribe it."

So, says Mr. Kalven, echoing the thought of numerous others, he would "uneasily" allow the First Amendment to supersede.

But, he says, that does not necessarily mean victory for Mr. Galella. There is still the question of whether Mr. Galella's activities fall within the First Amendment protection.

There is no doubt that news media buy and use his pictures. But, as Mr. Kalven notes, there may be another purpose as well behind the photographers' activities.

If it can be shown that Mr. Galella acts from some "pathological" or perverted interest in Mrs. Onassis, for instance—as her lawyers claim—then restraint of those activities would probably not, he says, violate the First Amendment.