

Alicia Winokur  
English 301  
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Morality and Magazine Girls:  
Hannegan v. *Esquire* Magazine

It is almost difficult to imagine a time when images of women's naked bodies were kept behind closed doors – from Victoria's Secret advertisements boasting busty blondes to shows like *Game of Thrones* using soft-core pornography to advance storylines, it is nearly impossible to avoid images of women baring all. It is easy to forget that as recently as seventy years ago, women's scantily clad bodies were considered lewd and could only be accessed through purchasing publications like *Esquire* magazine. For a mere fifty cents per issue, anyone could have George Petty and Alberto Varga's exclusive drawings of women in tight clothing, provocatively posed and looking downright sexual, delivered right to their doorstep.

Not long before the magazine began publishing drawings of pin-up girls, America had seen a radical sexual revolution followed by an immediate reversion to more conservative attitudes. The 1920's allowed more relaxed views towards sexuality following the Suffragist movement – hemlines on dresses were raised above the knee and necklines dipped down to the breastbone, starkly contrasting the floor-length, long-sleeved, collared dresses of time immemorial in America. By the time the Great Depression rolled around, the dignified glamour of Hollywood and somber national atmosphere caused a regression to more traditional dress and morals that lingered through the 1950's.

Despite modest morals dictating the American way, the magazine found its readership in the throes of World War Two with Varga and Petty's drawings titillating the G.I.s fighting overseas. The classically beautiful women wearing short-shorts and swimsuits and teasing the viewer by contorting their bodies to hide their breasts and buttocks [see fig. 1, “Jun” and “Dec”]

left little to the imagination. In *Hedda Hopper's Hollywood*, a World War Two morale film from 1942, comedian Bob Hope joked, “Our American troops are ready to fight at the drop of an *Esquire*.” Considering the magazine sent advertisement-free versions of the magazine (that is to say, completely filled with pin-ups) to the soldiers under the advisement of the Special Services Division of the Armed Forces, their popularity was no surprise.

Even considering the magazine's following amongst men fighting overseas and within the some parts of the government, not all were pleased with the publication. On December 30, 1943, Postmaster General Frank Comeford Walker denied the magazine its mailing privileges due to its risqué content in an attempt to shut down *Esquire*. Walker used his power and position to act as the arbiter of morality; the ostentatious drawings of pin-up girls severely contrasted the conservative Catholic morality by which he lead his life. He felt it was his job to protect the American masses from publications which he believed went against his personal morals – it was a personal affront to the man ultimately responsible for the magazine being distributed.

To lead his crusade, Walker used the precedent of an 1865 Act of Congress which declared, “no obscene book, pamphlet, picture, print, or other publication of a vulgar and indecent character, shall be admitted into the mails,” as well as the Statues at Large Act of 1879 which defined the “second class” mailing privileges of publications. The latter congressional act dictated (among other things relating to frequency, location, and method of production) that publications must be “published for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry, and having a legitimate list of subscribers.” Magazines like *Lady's Home Journal*, *Life*, and *McCall's* neatly fit into Walker's list, publishing articles covering domesticity; movie reviews; news about the war; and interviews with politicians, and were rewarded with mailing privileges.

Although *Esquire* did publish articles focusing on political debates, short stories, and sports, the salacious drawings included led Walker to decide that the entire magazine was abominable. Walker knew all too well the effect that his ruling would have on the magazine in terms of its ability to publish. Magazines and other periodicals sent “second-class” mail at a maximum of ten cents per pound, while domestic first-class mail (such as letters) cost a flat rate of forty-eight cents per pound. Any magazine with a sizable readership would be unable to maintain itself financially if forced to send its publication through first-class mail, and *Esquire* estimated that it would cost more than \$500,000 per year in postage without the correct mailing privileges. Walker knew his decision would likely mean the end of the magazine, as he had done the same to other publications such as *Peek* and *Stocking Parade* which printed subjects he considered unsavory.

Walker's decision was not met without controversy. A publisher of *Esquire*, David A. Smart, called the decision “another typical and brazen attempt by the Roosevelt administration to invade freedom of the press,” and warned that other publications and newspapers would soon feel the “weight of Walker's sword.” An opinion piece in *The Los Angeles Times* said Walker “could not have made more mistakes, or sillier, if he had let his opponent plan his course of conduct, so he seems relatively sure of a licking in the long run.”

In the Postal Service's committee hearing to revoke *Esquire's* second-class mailing privileges, the magazine argued that the lewd jokes were simply satire and the images of women were of no harm to the reader. Psychologist Kenneth J. Tilloston testified that the pin-up drawings were a “good, clean picture as glorifying a good physique and good American womanhood.” A second psychologist, Clement Fry, debunked the Post Office's argument that the drawings and jokes inspired impure thoughts in young men, saying, “They get stimulation from a

lot of things. They get stimulation from the Bible.” Most humorously, journalist H.L. Mencken was called as a witness to testify regarding the language used in the magazine. When asked about the term 'sunny-south' being used as a euphemism for a woman's buttocks, Mencken answered, “I myself in such a situation use the word 'caboose,' but then everybody has his favorites...only what he would call it if she was facing south, I don't know.”

A majority of the Post Office's witnesses were clergymen. Presbyterian Reverend Dr. Peter Marshall called *Esquire* “definitely indecent,” and Episcopalian Bishop Edwin Holt Hughes said the Varga girls were “not worthy of circulation.” Rabbi Solomon H. Metz took the accusation one step further, saying “I deem [*Esquire*] destructive of morality and consequently ethics, and I furthermore deem that such publications is [*sic*] in a way preparing the ground for the downfall of our democratic system.” Suffragist Anna Kelton Wiley also took the stand and condemned the magazine for degrading and sexualizing women; the papers portrayed her as a prude, crotchety old woman [see fig. 2] whose testimony was laughable.

Despite the preceding cases, the Post Office's expert witnesses, and Walker's power, the hearing committee ruled in 2-1 in favor of *Esquire*. The committee reasoned that the charges of obscenity were unfounded, recommending that “the proceeding herein be dismissed and that the second class entry of the magazine *Esquire* be continued in full force and effect.” While the press celebrated the victory of free speech, Walker seethed. Disregarding the recommendation of the committee, he rescinded *Esquire's* postal privileges, saying the publication was “bound to do more than refrain from disseminating material which is obscene or bordering on the obscene. It is under a positive duty to contribute to the public good and the public welfare.” Naturally, *Esquire* retaliated and filed a suit in a federal district court countering Walker's decision, claiming his decision had been “contrary to law and to the established practice of a post office department.”

Even with the public support of *Esquire* and the committee's decision, federal district court Judge T. Whitfield Davidson ruled to uphold Walker's revocation of the magazine's second-class mailing privileges. Davidson was a strongly conservative man much like Walker, and ruled in favor of his own moral compass. To justify his decision, Davidson reasoned that as Postmaster General, Walker had the right to revoke mailing privileges, calling the magazine "smoking room literature," and declaring, "Free speech and whether or not the magazine was obscene do not enter the case." Davidson also explained to reporters that the Congressmen who wrote the original law regarding which publications were acceptable for the mail meant those which were "wholesome literature of educational value" such as the *McGuffey Reader*, an educational primer used as textbooks from the 1850's to 1950's.

Again, *Esquire* filed an appeal against the decision on the grounds that Davidson's decision and Walker's actions went against the freedom of the press and freedom of speech. Rather than continue to argue that their magazine did no harm by way of its contents, *Esquire* focused its case on the basis of an abuse of power by Walker. By the time they officially filed their appeal with the United States Court of Appeals in April 1945, Walker had stepped down from his role as the Postmaster General, making way for his successor Robert E. Hannegan, who would be the one to battle with the publication from that point forward. The presiding Judge Thurmond Arnold was a much more open-minded judge than Davidson, and ruled in favor of *Esquire* and their publishing privileges, saying, "this is the last time a Government agency will attempt to compel the acceptance of its literary or moral standards relating to material admittedly not obscene." Following a full page advertisement for skimpy nightwear for women [fig. 3], *The Chicago Daily Tribune* ran an article which said, "Judge Arnold's opinion is welcome. We hope the post office department will take it to heart." *The Los Angeles Times* suggested that this was

not the end of the matter, and that it would possibly end up in the Supreme Court. They wrote optimistically, “The Supreme Court has not failed to uphold the freedom of the press in all its decisions on the question for the past 20 years, it seems extremely likely that this finding of the Court of Appeals will be sustained.”

On October 22, 1945, The Supreme Court accepted an appeal filed by the United States Postal Service, and on January 11, 1946, deliberations began. *The New York Times* reported that the Department of Justice “asserted in its appeal today that the decision left the Post Office Department 'at sea' and cast doubts upon the constitutionality of possible legislation in the future to limit second-class mailing privileges.”

On February 4, the Supreme Court “unanimously ruled in favor of the shapely legs and curvaceous form of the Vargas girl,” as *The Chicago Daily Tribune* reported. The Justices agreed that the Postmaster General had acted inappropriately in trying to force his own moral code on the citizens of the United States. Of the decision, Justice William O. Douglas wrote:

To withdraw the second-class rate from this publication today because its contents seemed to one official not good for the public would sanction withdrawal of the second-class rate tomorrow from another periodical whose social or economic views seemed harmful to another official.

In their report on the Supreme Court's decision, *The Washington Post* wrote, “It would make of [The Postmaster General] a censor as well as a letter carrier – a responsibility which no American should desire or be allowed to take...It seems to us that this is no less than an essential freedom.” While ultimately the decision was made based on setting boundaries for the authority of the United States Postal Service, the entire legal battle was entrenched in a question of censorship and the freedom of the press. Rather than allowing a government institution to intimidate and silence their publication, *Esquire* instead chose to dig their heels into the sand and argue in favor of drawings of scantily-clad babes.

It would be excessive to compare the lawsuit to other more famous court cases regarding freedom of speech and freedom of the press – however, it is the precedent the case set that makes it unique. In the years after the Supreme Court decision, magazines such as *Hustler*, *Penthouse*, and the enduring *Playboy* surfaced in the shadow of the little pin-up drawing magazine that could. While today *Esquire* markets itself as a men's lifestyle magazine with nary a bosom in sight (and even *Playboy* has recently announced it will be removing nude images from its magazine), the ability to do so if they or others choose without punitive action from government workers imposing morality rests on the shoulders of the publication.

The question of personal taste versus constitutional right looms in every debate regarding freedom of speech and freedom of the press. It is easy to wish that our personal views could be foisted onto every newspaper and magazine in the country, that our opinions be repeated back to us and all opposing arguments be denied the right to be printed. However, as is shown in *Hannegan v. Esquire Magazine*, to have one entity act as the authority of morality in a way that affects the freedom of the press and freedom of speech goes directly against the constitution.

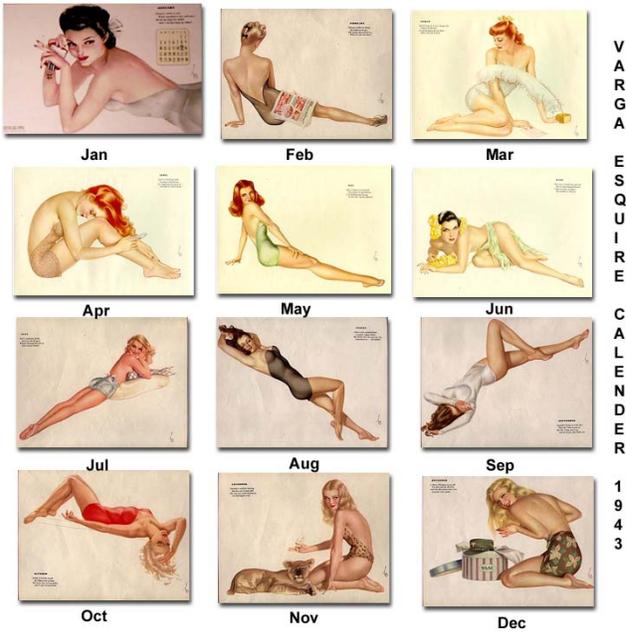


Figure 1. Varga Esquire Calendar from 1943.  
<http://www.pinterest.com/vargasID/esquire-years.htm>



Figure 2. Anna Kelton Wiley at the Stand Champlain, Helene. "Pesky 'Esky' Dubbed Herald of 'Derogatory' Contents." *The Washington Post* (1923-1954): 1. Nov 06 1943. ProQuest. Web. 15 Nov. 2015 .

Figure 3. Advertisement for Nightwear *Chicago Daily Tribune* (1923-1963): 17. Jun 07 1945. ProQuest. Web. 15 Nov. 2015.

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**"SUMMER SHORTY" ... THE CLASSIC ROBE WITH NINE LIVES!**

**\$895**

**Look! There's more to sleep tonight!**

**BARE MIDDIE NIGHTWEAR!**

*Be comfortable, quite perfectly!*

*Be soft, sure, sure! Midgee, Chicago!*

**1945**

- An instantly able to wear head job, perfect
- Cool to the touch, so warm, warm, warm!
- Washable, clean, clean!
- Soft, soft, soft!
- Soft, soft, soft!
- Soft, soft, soft!

*Also available in other colors and styles.*

- In misses' sizes 10 to 20!
- Five irresistible colors!
- Careful! Against Yellows! Rings! Nails!
- Washable, clean, clean!
- Cool and extra protected!

It has nine lives... this shorty robe! (Indulge with only, you can wear it to bed, to the bath, even your sleeping or lounge pajamas! (Midgee with this feature will instantly help to) to short length eliminates any chance of slipping when they're thinking baby toes with to bath.)

It's so jolly, tailored you can't help but feel cozy and soft! It's with something when you're bound to look your best to bed!

**BY THE WAY, ENJOY THE NEW THIS CHRISTMAS! BEAT YOUR OWN RECORD!**

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Name \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_

Shipping Agent: 2010 Plaza, New Francisco, 400 Park and Lake Placid

Fig. 113 10-10

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