



*J. Lepore, "On Evidence:
Proving Frye as a Matter of Law,
Science, and History",
The Yale Law Journal 2015, 124,
1092-1158,
and J. Lepore, "The Secret History
of Wonder Woman", Knopf, Borzoi
NY 2014.*

Seeing the two titles juxtaposed above, you probably wonder at the connection between the 1923 US Supreme Court Frye precedence and *Wonder Woman*: this summer's blockbuster film that set new box office records, and a story based on a comics by the same name. The link between the two is Dr William Moulton Marston, one of the early pioneers of polygraph. During the First World War Marston made tests on German prisoners of war, using a conventional blood pressure cuff, a sphygmomanometer, and a stethoscope to take systolic blood pressure readings of a suspect during questioning for the purpose of detecting deception. Later in 1923 Marston examined James Alphonso Frye, the test that set the precedence of polygraph inadmissibility in courts that lasted for 70 years. William Marston was also the author of *Wonder Woman* comics in 1941.

Jill Lepore, the author of the two publications is a professor of American history at Harvard University. Judging by the thorough historical research, it seems that William Marston has fascinated the author, and there is every reason for that.

While in *The Yale Law Journal*, Lepore described and analysed the effect of law on history as follows:

This Essay is a cautionary tale about what the law does to history. It uses a landmark ruling about whether scientific evidence is admissible in court to illustrate how the law renders historical evidence invisible. *Frye v. United States* established one of the most influential rules of evidence in the history of American law. On the matter of expert testimony, few cases are more cited than *Frye*. In a 669-word opinion, the D.C. Circuit Court of Appeals established the *Frye* test, which held sway for seven decades, remains the standard in many states, and continues to influence federal law. “Frye,” like “Miranda,” has the rare distinction of being a case name that has become a verb. To be “Frye’d” is to have your expert’s testimony deemed inadmissible. In *Frye*, the expert in question was a Harvard-trained lawyer and psychologist named William Moulton Marston. Marston’s name is not mentioned in the court’s opinion, nor does it generally appear in textbook discussions of *Frye*, in the case law that has followed in its wake, or in the considerable legal scholarship on the subject. Marston is missing from *Frye* because the law of evidence, case law, the case method, and the conventions of legal scholarship – together, and relentlessly – hide facts. It might be said that to be Marston’d is to have your name stripped from the record. Relying on extensive archival research and on the narrative conventions of biography, this Essay reconstructs Marston’s crucial role in *Frye* to establish facts that have been left out of the record and to argue that their absence is responsible for the many ways in which *Frye* has been both narrowly and broadly misunderstood.

In “The Secret History of Wonder Woman” the same Lepore lets readers take a peek into Marston’s life. By uncovering Marston’s private documents and photographs and interviewing family members, the connection between the Wonder Woman – the iconic feminist superhero who used her Lasso of Truth (also known as the Magic Lasso and the Lasso of Hestia) to extract truth from people – and polygraphy all of a sudden becomes logical.

Marston was born in Massachusetts in 1893. He studied at Harvard and received his bachelor degree in psychology in 1915. His undergraduate thesis, *Systolic Blood Pressure Symptoms of Deception*, was published in *Journal of Experimental Psychology*. He continued to study law and earned his law degree in 1918 and his doctoral degree in 1921. His dissertation focused on emotions and detection of deception, as measured by changes in blood pressure. He was also interested in sex, sexual difference, and sexual adjustment. His research work on *Sex Characteristics of Systolic Blood Pressure Behavior* was also published in *Journal of Experimental Psychology*.

His pro-feminist approach started while Marston was an undergraduate student at Harvard, and was influenced by early suffragists and feminists. Later he fell in love with the niece of the most influential feminist of the early 20th century, a woman who opened an abortion clinic in New York in 1920.

Upon receiving his doctoral degree, Marston commenced an academic career at the American University. With his wife, he conducted a series of experiments concluding that women are more reliable jurors than men. Later Marston was fired from his post of the Chairman of the Department of Psychology at the American University, after he was indicted and arrested for fraud in connection with a business venture he was involved in. (All the charges were later dropped.) In 1925 he taught at Tufts University, where he fell in love with one of his students and was expelled on grounds of unethical behaviour. He moved to Columbia University, where he continued the affair with the same student, who moved with him from Tufts to Columbia. Later the student moved to live with Marston and his wife under the same roof. They lived with their four children (two with each woman), making Marston legally a monogamist and practically a bigamist.

Marston's method of lie detection, based on blood pressure readings, never took off as a detection of deception practice but he has harnessed it to detect the emotions of film viewers, and named it the Love Meter. In an experiment conducted in front of full Manhattan's Embassy Theater in 1928, he monitored the responses of women watching the silent film *Flesh and the Devil*, starring Greta Garbo. Marston claimed that his study proved that brunettes were easier to arouse sexually than blondes, and that blondes react to more "superficial things".

Marston was also attracted to and involved in the growing film industry. As a student he wrote a screenplay that won a national competition. He also conducted experiments with his Love Meter, monitoring the emotional responses of people watching movies. In late 1928 Marston was hired by Universal Studios to pre-screen movies for emotional content, making him a pioneer of audience testing and studio self-censorship. After one year, Marston was replaced at Universal by Leonard Keeler who pre-screened and edited their horror blockbuster *Frankenstein* in 1931. Later Marston was hired to do a similar task by Charlie Gaines, the publisher of Superman comics first published in 1938, followed by Batman a year later. His involvement in the comics industry was the testing ground for his creation of Wonder Woman in 1941.

Marston's love of limelight took another turn in 1938, when he starred in an advertisement published in *Saturday Evening Post* and *Life* magazine. It showed shaving men

claiming that Gillette Razor Blades are the best. They were strapped to Marston's "lie detector" and Marston was the one to substantiate the veracity of their claim.

Marston died of cancer in 1947 (at 54), and his two spouses continued to live together for many years until their death.

While J. Edgar Hoover, Director of the FBI, tagged Marston as "a phony", reading Lepore's book you cannot ignore Marston's unique and colourful personality. Yet the mystery surrounding Marston's motivations – Was it fame hunting? Social justice? Greed? Scientific curiosity? Sexual impulses? Or perhaps all of the above?– remains unresolved.

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