

INTERVIEWEE BIOS: Natalie White, Kamala Lopez, and Wendy J. Murphy, JD

Natalie White, Visual artist and gender equality advocate; spokeswoman for the Equal Means Equal movement

Feminist by nature, a riot by habit. Natalie White is a provocative and progressive feminist and artist, best known for her self-portrait work with Giant Polaroid photography, and her contribution as a "Muse" to the work of many of today's art and fashion luminaries. Her creative drive and unapologetic spirit have led her to collaborative ventures with artists such as Peter Beard, George Condo, Olivier Zahm, Michael Dweck, Will Cotton, Spencer Tunick, and Sean Lennon.

Growing up in a small town in West Virginia, Natalie first gained attention internationally as a young model, featured on the covers of numerous European Magazines. Never one to shy away from the risque, she was also the first American ever featured in French Playboy.

In 2013, at the "Who Shot Natalie White?" show, amidst a retrospective of 25 different artists for whom she has been a muse, Natalie debuted herself as a solo artist. Through this series of double exposed Giant Polaroid nudes, she re-defined herself as "her own muse."

As a leader in female empowerment and self-affirmation through art, Natalie also works in activations for women's rights. She has performed at the "Art Basel Miami Women in Art Benefit" in collaboration with the Brooklyn Museum's Elizabeth Sackler Center, as well as the "Natalie White for Equal Rights" show at the Hole in 2015 and a 2016 follow-up at the WhiteBox Foundation for the Arts. In July 2016, She led a 16 day, 250-mile march from NYC to DC promoting the fight for inclusion of The Equal Rights Amendment to the Constitution.

Kamala Lopez, Executive Director of Equal Means Equal

Executive Director of the Equal Means Equal organization and director of the award-winning film of the same name: *EQUAL MEANS EQUAL* offers an unflinching look at how women are treated in the United States today. Examining both real-life stories and precedent-setting legal cases, director Kamala Lopez uncovers how outdated and discriminatory attitudes inform and influence seemingly disparate issues, from workplace harassment to domestic violence, rape and sexual assault to the foster care system, and the healthcare conglomerate to the judicial system. Along the way, she reveals the inadequacy of present laws that claim to protect women, ultimately presenting a compelling and persuasive argument for the urgency of ratifying the Equal Rights Amendment. See *APPENDIX* for more information on the *Equal Rights Amendment*.

Wendy J. Murphy, JD, Counsel for the lawsuit

For more than fifteen years, Wendy Murphy has served as adjunct professor of sexual violence law at New England Law|Boston, where she also co-directs the Women's and Children's Advocacy Project under the Center for Law and Social Responsibility. A former Visiting Scholar at Harvard Law School, Wendy prosecuted child abuse and sex crimes cases for many years. In 1992 she founded the first organization in the nation to provide pro bono legal services to crime victims.

Wendy is an impact litigator whose work in state and federal courts has changed the law to better protect the constitutional and civil rights of victimized women and children. Wendy writes and lectures widely on the constitutional and civil rights of women and children, and criminal justice policy. She is a contributing editor for The Sexual Assault Report, and writes a regular column for The Patriot Ledger. Wendy has published numerous scholarly articles including a landmark law review article explaining the legal relationship between sexual assault on campus and Title IX. Dubbed the “Goddaughter of Title IX” by the “Godmother of Title IX,” Dr. Bernice Sandler, Wendy’s impact litigation in the area of campus sexual assault, beginning in the early 1990s, includes groundbreaking victories against Harvard College in 2002, and Harvard Law School and Princeton University in 2010, which cases led the way to widespread awareness and reforms, including the well-known April 2011 Dear Colleague Letter.

Wendy is a popular and bold speaker on the lecture circuit who describes herself as “fiercely non-partisan.” Wendy is also a well-known television legal analyst who Emmy Award-winning journalist Emily Rooney calls the “best talker” on television with a “finger on the pulse of victims’ and women’s rights.” Wendy has worked for NBC, CBS, CNN and Fox News. She regularly provides legal analysis for network and cable news programs.

Her first book, “And Justice For Some,” was published by Penguin/Sentinel in 2007, and re-released in paperback in 2013.

Impact Litigation and Amicus Briefs

Wendy has filed numerous amicus and direct briefs in state and federal court, and with federal agencies, on many topics, including: autonomy theory in rape law; repeal of the “Fresh Complaint” doctrine; reform of rape- shield statutes; jury selection and jury instructions to prevent gender-bias in rape trials; “prior false complaint” evidence; drug and alcohol-facilitated sexual assault; constitutional privacy rights in mental health and medical treatment files; women’s civil rights; military rape trials; admissibility of “grooming” evidence in child sex abuse cases; standing doctrine as applied to victims of violence in criminal cases; due process and equal protection for third-parties in criminal trials; the scientific reliability of traumatic and recovered memories; “Parental Alienation” evidence and biases against protective mothers in family court; the constitutional rights of children as victims in child abuse trials; the withdrawal of consent in rape law; parental rights when rape causes the birth of a child; the rights of disabled crime victims to reasonable accommodations during criminal trials; free speech rights of crime victims; federal jurisdiction over state court proceedings including abstention, preemption, mootness and ripeness; Title IX, Title VI, Title IV, and Title VII; The Clery Act; HIPAA; the “vulnerable victim” standard in federal sentencing law; retroactivity doctrine; voluntary intoxication and diminished capacity; competency and capacity to testify; mistake defenses in rape law; corroboration rules and the definition of consent in rape law; grandparents visitation rights; judicial bias and linguistics and burdens of proof; anti-SLAPP laws on behalf of crime victims; the right of crime victims to a speedy trial, and other provisions of “Victims’ Rights” statutes; testimonial privileges and confidentiality statutes.

Wendy has also drafted model legislation on numerous criminal justice issues including the criminalization of rape without force; forbidding consent defenses in rape cases when serious bodily injury occurs or is threatened; parity of privilege statutes such that the rape counseling privilege is on par with the priest-penitent privilege; protecting child victims from intimidation tactics; preventing impregnation rapists from obtaining parental rights.

Wendy planned and brought the first test case in the nation using anti- SLAPP laws to win the dismissal of a retaliatory lawsuit against a domestic violence victim who was sued by her batterer for reporting his crimes to police, and testifying against him in court.

She has filed numerous test cases, since 1992, to improve constitutional and common law privacy rights for victims of violence regarding mental and medical health records, past sexual conduct and forced physical and mental examinations.

She planned and brought the first federal test case in the aftermath of the United States Supreme Court's decision in *Jaffee v. Redmond*, to establish that the federal common law privilege of confidentiality for licensed social workers extends also to nonlicensed volunteer rape crisis counselors.

She was the first attorney to write and submit an amicus brief on the admissibility of "grooming" evidence in a child rape case to explain a pattern of offender behavior that inhibited the child's ability to report the violence to authorities.

She planned and brought the first test case in the nation to establish that crime victims have a right to be heard in criminal proceedings and may directly address the court, with their own private attorney, to advance their rights under victims' "Bill of Rights" laws.

She filed and won a first-ever lawsuit against a criminal defense attorney for abuse of process when he unlawfully subpoenaed the records of a rape victim's therapist.

She represented a therapist who successfully resisted a subpoena for a victim's treatment records in a military rape trial. The court martial judge issued a warrant for the therapist's arrest, but Wendy prevailed by demonstrating that the military has no authority over the privileged files of a civilian witness.

She wrote the winning brief in a landmark California case establishing that if a woman initially agrees to sex, but changes her mind before the act is complete, and the actor continues, the crime of rape has been committed.

She planned and brought the first test case using Title IX and civil rights injunction laws to force a public school to provide special protection for a female student who received an internet death threat. School administrators, who refused to provide protection for the girl, were ordered by the court to restrain the freedom of the offending student and to take specific steps to ensure the victim's safety.

She used Title IX to initiate first-ever legal action at the Department of Education against Harvard after the college instituted a new policy requiring sexual assault victims to produce "sufficient independent corroboration"

before a rape allegation would be accepted for resolution under the school's disciplinary proceedings. The case forced Harvard to rescind the policy.

She won a groundbreaking case before the Massachusetts Supreme Judicial Court which established that an abusive parent loses their legal presumption of parental "fitness" in grandparent visitation cases, making it much easier for a protective grandparent to participate in the child's life even over the objection of the abusive parent.

She has been qualified as an expert witness in Title IX litigation, and was qualified as an expert witness in an Alaska case involving the constitutionality of certain victims' rights laws. Wendy testified about victims' typical difficulties with the criminal justice system and general inability to understand criminal proceedings, the meaning and consequences of certain actions and their rights in general as individuals and as participants in the criminal justice process.

She represented Nebraska rape victim Tory Bowen, in state and federal litigation, after Bowen was ordered by a state court judge not to use the words "victim," "rape," "sexual assault nurse examiner" or "sexual assault kit" during her trial testimony. A federal court ultimately ruled that the state judge's order was improper, and reminiscent of the types of

judicial decisions rendered in countries where women wear "burqas."

She wrote the winning brief in an appellate case involving rape and intoxication. A lower court had ruled the jury could not consider the victim's intoxication on the issue of consent unless she was so drunk, she was "wholly insensible" or "utterly senseless." Wendy argued in favor of a fairer standard that would allow a jury to decide whether the victim was simply "too intoxicated" to consent.

She prevailed against Ohio State University and the University of Virginia in Title IX matters where the universities had adopted a policy of requiring sexual assault victims involved in campus judicial proceedings to prove their claims by "clear and convincing" evidence. Wendy's complaints with the Department of Education's Office for Civil Rights led both schools to retract the standard in favor of the less onerous "preponderance of evidence" rule.

Wendy represented a victim of sexual harassment in a case of first

impression involving the question: does a university have a duty to take steps to prevent sexual harassment that occurs in cyberspace, at websites such as "JuicyCampus.com"? This case against Hofstra University led to the immediate shut down of JuicyCampus.com and other similar sites that were facilitating sexual harassment on campuses nationwide. It also led to new federal guidance to ensure that schools take effective steps to redress cyber-harassment when the effects of the harassment are felt on campus.

She represented a child rape victim who, at the behest of her attacker (who confessed) was ordered by a judge to submit to a penetrating vaginal examination, to determine the condition of her hymen. After the order was affirmed by the state's highest court, Wendy filed an action with the United States Supreme Court and then sued the state court judge in West Virginia federal court.

Wendy filed an appeal on a matter of first impression involving the question: can a group of private plaintiffs who experience targeted violence based on gender, use a civil rights statute to obtain equitable remedies on behalf of women as a class, where the statute at issue primarily authorizes only state officials to obtain such remedies, but otherwise allows private persons to file state law-based civil rights lawsuits against individual private actors?

She won a landmark ruling involving the rights of disabled crime victims after a sexual assault victim with expressive aphasia was declared incompetent to testify on the grounds that she could not narrate her testimony. Wendy's appeal under the Americans with Disabilities Act overturned the competency ruling and led to a first-in-the-nation ruling by the Massachusetts

Supreme Judicial Court that set guidelines to ensure that all disabled crime victims obtain necessary testimonial accommodations to enable their full and equal participation in criminal proceedings.

She successfully filed complaints with the Office for Civil Rights at the Department of Education against Harvard Law School, Princeton University and the University of Virginia, regarding the schools' handling of sexual assault complaints under Title IX. Both schools were found to be noncompliant, and the cases led to the issuance of the Department of Education's April 2011 "Dear Colleague Letter," which provided unprecedented clarity and guidance regarding the obligation of schools to respond to reports of sexual violence on campus promptly, equitably and effectively.

She currently represents a victim who at age 14 became pregnant with a child conceived by rape when she was attacked by a 20 year-old man she knew from a church youth group. The rapist sought visitation rights with the child after being convicted of rape and being ordered by the criminal court judge to go to family court with his victim for sixteen years, rather than jail. The victim has been fighting for several years to stop the man from asserting any parental rights over her child.

She represented a high school student who nearly took her own life in school after relentless sexual harassment and retaliation by students and others who taunted and threatened her because of her status as a rape victim. Wendy obtained a landmark civil rights restraining order under Title IX and state civil rights laws that required the school to take proactive steps to protect the victim from harassment.

Selected Publications

Bystander Intervention Policies for Campus Sexual Assault Should be Framed as Civil Rights Programs, and Made Broadly Applicable to All Protected Class Offenses, -- Utah Law Review, No. 4, pp. 801-814 (2017)

Krakauer's Missoula: Where Subversive Meets Verisimilitude, 42 Journal of College and University Law, no. 2, pp. 479-517 (2016)

From Explicit Equity to Sports to Sexual Assault to Explicit Subjugation: The True Story Behind Title IX and Women's Ongoing Struggle for Equality in Education, in Paludi, M. (Ed.), *Sexual Harassment in Education and Work Settings: Current Research and Best Practices for Prevention* (pp. 47- xx) (Michele A. Paludi, et al., eds., 2015)

Effective Gender Activism: An Exercise in Marginalization, in Martin, J.L. (Ed.), *Racial Battle Fatigue: Insights from the Front Lines of Social Justice Advocacy*, (pp. 191-208). (Santa Barbara, CA Praeger 2015)

Traumatized Children who Participate in Legal Proceedings are Entitled to Testimonial and Participatory Accommodations Under the Americans With Disabilities Act, 19 Roger Williams Law Review 361 (2014)

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Bullying and Harassment in Schools: Analysis of Legislation and Policy, in M.A. Paludi (Ed.), *Women and Management, Global Issues and Promising Solutions*, volume 2: Signs of Solutions (pp. 29-51). (Santa Barbara, CA Praeger 2013)

Unpacking the Rights of Third Parties in Criminal Cases, *Family and Intimate Partner Violence Quarterly*, 5, No. 1, (Summer 2012)

Sexual Harassment and Title IX: What's Bullying Got To Do With It, *New England Journal on Criminal and Civil Confinement*, 37, 305-324 (2011)

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Using Title IX's "Prompt and Equitable" Hearing Requirements to Force Schools to Provide Fair Judicial Proceedings to Redress Sexual Assault on Campus, *40 New England Law Review*, No. 4, pp. 1007-1022 (2006)

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New Strategies for Child Abuse Prosecutions After Crawford, *ABA Journal*, vol. 23, #8, pp. 129-133 (2004)

The Victim Advocacy and Research Group: Serving a Growing Need to Provide Rape Victims with Personal Legal Representation to Protect Privacy Rights and Fight Gender Bias in the Criminal Justice System, *11 Journal of Social Distress and the Homeless*, No.1, p. 123 (2001)

Special Problems Regarding the Discovery and Use of Privileged Information, *Massachusetts Continuing Legal Education*, *Superior Court Criminal Practice Manual*, Spring, (1999 and update 2003)

Minimizing the Likelihood of Discovery of Victims' Counseling Records and Other Personal Information in Criminal Cases: Massachusetts Give a Nod to a Constitutional Right to Confidentiality, *32 New England Law Review*, No. 4, Summer (1998) (recognized in "Worth Reading," *National Law Journal*)

Gender Bias in the Criminal Justice System, *Harvard Women's Law Journal*; 20th Anniversary Edition, June (1997)

Legal Rights of Trauma Victims, in *Trauma and Memory: Clinical and Legal Controversies*, Oxford University Press, (1997)

Debunking "False Memory" Myths in Sexual Abuse Cases, *Trial*, *Journal of the Association of Trial Lawyers of America*, (November 1997)

APPENDIX: About the Equal Rights Amendment, the platform cause of Equal Means Equal

The platform cause of Equal Means Equal, The Equal Rights Amendment (ERA) is a proposed amendment to the United States Constitution that would expressly prohibit discrimination against girls and women on the basis of sex. The Constitution does not guarantee equal rights for women. As late Supreme Court Justice Antonin Scalia stated: “Certainly the Constitution does not require discrimination on the basis of sex. The only issue is whether it prohibits it. It doesn’t.”

The ERA was passed by Congress in 1972: “Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.” By the time the deadline for state ratification ended in 1982, 35 states had ratified the amendment, just three states short of the number needed to put the ERA into the Constitution. Since then, the ERA has been reintroduced in Congress every session. Although polls indicate that more than 90% of Americans support the ERA, Congress has not once voted on it over the past thirty years.

Why do we need the ERA?

The ERA is an important statement of principle. The Constitution embodies the nation’s core values. Equality between women and men is a fundamental human right that should be guaranteed in the Constitution.

Sex discrimination continues to limit equal opportunity and justice for women. Economic inequality, pregnancy discrimination, violence against women, and other forms of discrimination against women and girls are pervasive and leave women without effective legal recourse. State laws are not uniform and federal laws are not comprehensive. Moreover, these laws can be, and in some cases have been, rolled back anytime.

The Equal Protection Clause of the Constitution does not protect women from sex discrimination. The Fourteenth Amendment provides equal protection of the law, but it has been interpreted to require state action and the intent to discriminate. Much discrimination occurs through private action and is not intentional, making intent hard to prove. The Supreme Court reviews sex discrimination claims using intermediate rather than strict scrutiny, a lower standard of review than for racial and religious discrimination claims.