

**Responses of Mary H. Murguia
Nominee to be U.S. Circuit Judge for the Ninth Circuit
to the Written Questions of Senator Jon Kyl**

- 1. A May 10, 1996 report of the television program 20/20 mentioned you in an investigatory report into then-U.S. Attorney Janet Napolitano's refusal to seek a search warrant in a child pornography case. This particular search warrant was related to an investigation called "Operation Special Delivery." In response to a written question Senator Grassley sent you following your confirmation hearing for the District Court, you described this operation as one "designed to target for prosecution those who possessed, produced and trafficked in child pornography." The search warrant in question concerned a man named James Norman Moore, who allegedly ordered child pornography from the undercover postal inspectors conducting Operation Special Delivery.¹ Mr. Moore's name arose in the investigation in connection with the Spartacus organization, which apparently was an organization that had distributed both child pornography and legal pornography involving adult males.**

- a. At that time, you were the Deputy Chief of the Criminal Division of the U.S. Attorney's Office and supervised the violent crime section, which prosecuted child pornography offenses. Was it your responsibility to review requests for search warrants? If yes, did you review this particular request for a search warrant?**

Response: As Deputy Chief of the Criminal Division of the United States Attorney's Office for the District of Arizona, I supervised the Violent Crime Section, which prosecuted sexual crimes against children, including child pornography. I supervised the Assistant United States Attorney ("AUSA") assigned to Mr. Moore's case. As Deputy Chief, it was my role to review all search warrants in the Violent Crime Section and to provide guidance to AUSAs with respect to the issuance of search warrants. Along with the Criminal Chief and the line AUSA, I did review the specific request for a search warrant related to Mr. Moore.

- b. Please explain your decision about whether the search warrant sought in that case should have been approved.**

Response: It was my view, and that of the United States Attorney's Office for the District of Arizona, that the investigation had not yet developed sufficient information to support a search warrant that would lead to a successful prosecution resulting in Mr. Moore's conviction. My view at the time was that the prosecution of Mr. Moore would have been more likely to succeed if the case agents could have obtained additional evidence of guilt, and that further factual

¹ Amy Silverman, *20/20 Out of Focus: News Report Critical of Arizona's U.S. Attorney Omitted Exculpatory Facts*, PHOENIX NEWS TIMES, May 23, 1996.

development in the case would have been prudent and important, especially in light of the prospect of an entrapment defense.

2. **According to a post on the Wolters Kluwer “Judiciary Watch” website:**

“Lawyers interviewed for the *Almanac of the Federal Judiciary* said the following about Murguia: ‘She is a fast learner with excellent legal skills.’ ‘Her legal ability is much stronger on the criminal side than civil.’ ‘She is always polite and courteous to all.’ ‘She has an ever so slight leaning toward the underdog or the plaintiff [in civil cases].’ ‘The government gets most of the close calls in trial. She has a strong pro-government bias. She makes it tough for criminal defense lawyers.’”²

Please respond.

Response: Bias or favoritism has no place in our judicial system, and I endeavor to provide all litigants that appear before me with equal consideration under the law. I believe that my record as a district court judge reflects my commitment to resolving legal questions by applying controlling precedent to the facts at issue.

Although my own personal experience as a litigator was in criminal law, during my ten years on the district court bench, I have presided over a wide range of civil matters, including multi-district litigation and other complex matters. I believe that my record reflects that I have the legal skills, ability and experience to preside over all types of cases, both civil and criminal, in a fair and just manner.

² Judge Mary H. Murguia Nominated to 9th Circuit Court of Appeals, <http://www.judiciarywatch.com/2010/04/judge-mary-h-murguia-nominated-to-9th-circuit-court-of-appeals.html> (last visited July 12, 2010).