

Exhibit 38

To Defendants' Memorandum in Support of Motion for
Summary Judgment

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January 9, 2011

Evidence Points to Methodical Planning

By **MARC LACEY**

TUCSON — Prosecutors charged Jared L. Loughner, a troubled 22-year-old college dropout, with five federal counts on Sunday, including the attempted assassination of a member of Congress, in connection with a shooting rampage on Saturday morning that left six people dead and 14 wounded.

Evidence seized from Mr. Loughner's home, about five miles from the shooting, indicated that he had planned to kill Representative [Gabrielle Giffords](#), Democrat of Arizona, according to documents filed in Federal District Court in Phoenix.

Special Agent Tony M. Taylor Jr. of the [F.B.I.](#) said in an affidavit that an envelope found in a safe in the home bore these handwritten words: "I planned ahead," "My assassination" and "Giffords."

Mr. Loughner, who is believed to have acted alone, is in federal custody and is scheduled to make his first court appearance before a magistrate judge in Phoenix on Monday.

Ms. Giffords was in critical condition after surviving, against the odds, a single gunshot wound to the head at point-blank range. Her doctors were cautiously optimistic that she would survive, and said on Sunday that they had removed nearly half of her skull to prevent damage from the swelling of her brain.

An outpouring of grief was on display all over Tucson, where friends of the many victims joined complete strangers in lighting candles and offering tear-filled prayers. From the back of the temple Ms. Giffords attends, Naomi Present, the distraught daughter of a rabbi, cried out on Sunday morning, "Why, why, why, why?"

Many across America were asking the same thing, and the state found itself on the defensive, with its top lawmakers asserting that Arizona was not a hothouse of ugly rhetoric. [President Obama](#) called on Americans to observe a moment of silence at 11 a.m. Monday in honor of the wounded and dead.

Robert S. Mueller III, the director of the F.B.I., traveled to Tucson to oversee the shooting investigation at Mr. Obama's request. He said an intensive investigation was seeking to determine "why someone would commit such a heinous act and whether anyone else was involved." Mr. Mueller added that discussions were under way to increase security for all members of Congress.

Capitol security agencies are planning to join the F.B.I. on Wednesday in a security briefing for members of Congress. Already, the United States Marshals Service has increased protection for federal judges in Arizona.

Investigators here focused their attention on Mr. Loughner, whom they accused of methodically planning the shootings, which occurred outside a supermarket. The court documents said Mr. Loughner bought the semiautomatic Glock pistol used in the shooting at Sportsman's Warehouse, which sells hunting and fishing gear, on Nov. 30 in Tucson.

The gun was legally purchased, officials said, prompting criticism of the state's gun laws, which allow the carrying of concealed weapons. Sheriff Clarence W. Dupnik of Pima County, a critic of what he calls loose gun restrictions, bluntly labeled Arizona "Tombstone."

The documents also indicated that the suspect had previous contact with the congresswoman. Also found in the safe at Mr. Loughner's home was a letter from Ms. Giffords thanking him for attending a 2007 "Congress on Your Corner" event, like the one she was holding Saturday morning when she was shot.

Along with being accused of trying to kill Ms. Giffords, Mr. Loughner was charged with the killing and attempted killing of four government employees: **John M. Roll**, the chief federal judge in Arizona, who was killed; Gabriel Zimmerman, a Congressional aide, who was also killed; and Pamela Simon and Ron Barber, aides who were wounded. Mr. Loughner could face the death penalty if convicted.

The indictment against Mr. Loughner indicated that the authorities had surveillance video, which was not released, that captured events outside the supermarket. Outside lawyers said the footage would probably be saved for court. The authorities did release 911 tapes of the minutes after the shooting, at 10:11 a.m. Saturday, in which caller after caller, many out of breath, dialed in to report shots fired, many shots, and people falling, too many to count.

Mr. Mueller said additional state charges might be filed, and he did not rule out the filing of terrorism charges.

Mr. Loughner has refused to cooperate with investigators and has invoked his Fifth Amendment rights, the Pima County sheriff's office said.

Judy Clarke, a federal public defender who has handled major cases, has been appointed to represent Mr. Loughner, CNN reported. Ms. Clarke has defended [Theodore J. Kaczynski](#), who was convicted in the Unabomber attacks, and [Zacarias Moussaoui](#), the Qaeda operative.

Early Sunday, the authorities released a photograph taken from the surveillance video of a possible accomplice in the shooting. But the man later contacted sheriff's deputies, who determined that he was a taxi driver who had taken the suspect to the mall where the shooting took place and then entered the supermarket with him when he did not have change for the \$14 fare.

Seasoned trauma surgeons, used to seeing patients in distress, were shaken by the scale of the shootings.

"I never thought I would experience something like this in my own backyard," said Dr. Peter M. Rhee, chief of trauma surgery at the University Medical Center, who has experience on the battlefields of Afghanistan and Iraq and who likened what happened in Tucson to the mass shootings in those places.

Doctors treating Ms. Giffords said she had been able to respond to simple commands, an encouraging sign.

At a news conference at the hospital, surgeons said she was the only one of the victims to remain in critical care at the hospital. They said she was lucky to be alive but would not speculate about the degree of her recovery, which they said could take months or longer.

"Over all, this is about as good as it's going to get," Dr. Rhee said. "When you get shot in the head and a bullet goes through your brain, the chances of you living are very small, and the chances of you waking up and actually following commands is even much smaller than that."

Dr. G. Michael Lemole Jr., the chief of neurosurgery, who operated on Ms. Giffords, said the bullet traveled through the left side of her brain "from back to front." It did not cross from one side of the brain to the other, he said, nor did it pass through some critical areas that would further diminish her chances of recovery.

Officials said the attack could have been even more devastating had several victims not overwhelmed the suspect as he tried to reload his gun. A bystander, Patricia Maisch, who was waiting to meet Ms. Giffords, grabbed the gun's magazine as the gunman dropped it while trying to reload after firing 31 rounds, officials said. Two men, Roger Salzgeber and Bill

D. Badger, then overwhelmed the gunman, and another man, Joseph Zamudio, restrained his flailing legs.

In addition to Judge Roll, 63, and Mr. Zimmerman, 30, who was the director of community outreach for Ms. Giffords, the others who died were identified as Christina Green, 9; Dorothy Morris, 76; Dorwin Stoddard, 76; and Phyllis Schneck, 79.

The new House speaker, Representative [John A. Boehner](#) of Ohio, denounced the attack in an early Sunday appearance in West Chester, his hometown, and said it was a reminder that public service “comes with a risk.”

Mr. Boehner urged people to pray for Ms. Giffords and the other victims and told his House colleagues to persevere in fulfilling their oath of office. “This inhuman act should not and will not deter us,” he said. “No act, no matter how heinous, must be allowed to stop us.”

He also said the normal business of the House for the coming week had been postponed “so that we can take necessary action regarding yesterday’s events.” That business had included a vote to repeal the health care overhaul.

Mr. Loughner had exhibited increasingly strange behavior in recent months, including ominous Internet postings — at least one showing a gun — and a series of videos in which he made disjointed statements on topics like the gold standard and mind control.

Pima Community College, which he had attended, said he had been suspended for conduct violations and withdrew in October after five instances of classroom or library disruptions that involved the campus police.

As the investigation intensified on Sunday, the police were still at the scene of the shooting, a suburban shopping center known as La Toscana Village. Investigators have described the evidence collection as a monumental task given the large number of bullets fired and victims hit.

All of the cars in the parking lot were scrutinized in search of a vehicle the gunman might have driven to the scene. Then the taxi driver stepped forward to help explain how the suspect had arrived.

Nobody knew for sure what compelled the gunman. Ms. Giffords, who represents the Eighth District, in the southeastern corner of Arizona, has been an outspoken critic of the state’s tough [immigration](#) law, which is focused on identifying, prosecuting and deporting illegal immigrants, and she had come under criticism for her vote in favor of the health care law.

Reporting for the Arizona shooting coverage was contributed by David M. Herszenhorn, Emmarie Huetteman, Janie Lorber, Thom Shanker, Michael D. Shear and Ashley Southall from Washington; Jo Becker, Lisa M. Button, Ford Burkhart, Renee Schafer Horton, Devlin Houser, Ron Nixon, Nancy Sharkey, Anissa Tanweer and Roxana Vasquez from Tucson; Joe Sharkey from Sierra Vista, Ariz.; Catrin Einhorn, J. David Goodman, Anahad O'Connor, Sharon Otterman, Mosi Secret, Sarah Wheaton and Kate Zernike from New York; and Kitty Bennett from St. Petersburg, Fla.