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**From:** Scheel, Ann (USAAZ)  
**To:** Hernandez, Rachel (USAAZ); Burke, Dennis (USAAZ)  
**Sent:** 3/5/2011 9:47:38 AM  
**Subject:** Re: Washington Post-- with video footage of Dennis

Lots of coverage in the Republic ...Loughner, Fast and Furious, the mat wit we are holding for SC and Harris and his support for 1070/kidnapping stats.

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**From:** Hernandez, Rachel (USAAZ)  
**Sent:** Saturday, March 05, 2011 08:50 AM  
**To:** Burke, Dennis (USAAZ); Scheel, Ann (USAAZ)  
**Subject:** Fw: Washington Post-- with video footage of Dennis

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**From:** Smith, Jessica A. (SMO)  
**Sent:** Saturday, March 05, 2011 07:18 AM  
**To:** Hernandez, Rachel (USAAZ); Sherwood, Robert (USAAZ) <Contractor>; Ramey, Jenna (USAAZ) <Contractor>  
**Subject:** Washington Post-- with video footage of Dennis

<http://www.washingtonpost.com/wp-dyn/content/article/2011/03/04/AR2011030403727.html?hpid=moreheadlines>

## Washington Post

# Federal grand jury in Tucson shootings indicts Loughner on 46 new charges

By Sari Horwitz  
Washington Post Staff Writer  
Friday, March 4, 2011: 10:31 PM

Accused Tucson gunman Jared Lee Loughner was charged Friday with 49 federal counts of murder and attempted murder in connection with a January rampage, an attempt by prosecutors to treat victims equally and to protect the public's right to assemble for meetings with federal officials.

Loughner had already been arraigned on three counts of attempted murder against Rep. Gabrielle Giffords (D) and two aides as they gathered at a Tucson supermarket to meet with constituents.

But, employing a novel legal argument, prosecutors persuaded a federal grand jury to indict him on 46 new charges, on the theory that the shootings occurred on protected federal ground, as if it happened in Congress. Six people, including a chief federal district judge, were killed, and 13 - including Giffords - were injured.

U.S. Attorney Dennis K. Burke told reporters in Phoenix that he wants to seek justice for all the victims and make no distinction between those who were federal employees and those who were merely attending the congresswoman's event.

"These victims were exercising one of the most precious and fundamental rights of American citizens: the right to meet freely, openly and peaceably with their member of Congress," Burke said. "It is a civil right. And their safety in participating in this federal activity is protected by federal law."

The superseding indictment now charges Loughner with the murders of two federal officials - U.S. District Judge John M. Roll and Giffords's aide, Gabriel M. Zimmerman. Loughner is also accused of causing the deaths of four participants at a federal activity: Dorothy J. Morris, Phyllis C. Schneck, Dorwan C. Stoddard and 9-year-old Christina Taylor Green. He is charged with injuring 10 others struck by bullets on Jan. 8. He faces numerous weapons charges.

The additional charges were made under a provision in federal civil rights law that is usually applied to hate crimes but can be extended to crimes against any person "participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by the United States." In this case, that would be Giffords's "Congress on Your Corner" meet-and-greet with her Tucson constituents.

The federal law forbids anyone from injuring, intimidating or interfering with any such person, or attempting to do so.

A source close to the case said that courts have held the civil-rights statute should be interpreted broadly, adding that it has been used successfully in recent cases.

Loughner, 22, faces the death penalty if convicted. He will be arraigned on the new charges Wednesday, inside the same federal district courthouse in Tucson where Roll had presided.

Some legal experts called the strategy risky, saying it could raise appellate issues.

"I am unfamiliar with that legal theory," said Aitan D. Goelman, a former federal prosecutor who helped prosecute Oklahoma City bombers Timothy McVeigh and Terry Nichols. "In Oklahoma, we charged McVeigh and Nichols with eight counts for the federal agents who were killed. We did not charge 168 murder counts for the other 160 people who were inside the federal building."

Stephen Saltzburg, a law professor at George Washington University, called the legal strategy excessive.

"They clearly have the congresswoman, her staff and a federal judge covered by federal law, and for everyone else they could prosecute him in state court," said Saltzburg, a former deputy assistant attorney general in the criminal division of the Justice Department. "You don't need to stretch it and try to argue that everyone was in a federally protected area. That is a really sweeping view of the federal law."

Loughner's attorney, Judy Clarke of San Diego, did not respond to phone calls seeking comment.

A prominent federal public defender and opponent of capital punishment, Clarke has helped defendants in other high-profile cases avoid death sentences, including Eric Robert Rudolph, the Atlanta Olympic Park bomber; Theodore J. Kaczynski, the Unabomber; and Susan Smith, who drowned her two sons in South Carolina.

Bystanders at the Safeway event on Jan. 8 tackled Loughner, who was arraigned on the initial indictment 16 days later. Inside the courtroom, he smiled and stared but remained silent. The court entered a not-guilty plea on his behalf.

At Loughner's arraignment in January, the judge asked Clarke whether she was prepared to discuss her client's mental competency. "Not at this time," she replied. Legal experts say her team may try to mount an insanity defense.

Loughner is accused of opening fire during the first "Congress on Your Corner" event Giffords had staged since her fall reelection to Congress. Witnesses say he ran up to the congresswoman, shot her at close range and then turned his Glock 19 semiautomatic handgun on her staff and the crowd.

Assistant U.S. Attorney Wallace Kleindienst, 59, will prosecute the case. His father, Richard, was chosen to be U.S. attorney general by President Richard Nixon after John Mitchell stepped down to run Nixon's reelection campaign in 1972. Five days later, burglars were caught at the Watergate.

Kleindienst was not implicated in the break-in and cover-up, and he resigned less than a year later.

Wallace Kleindienst, a Phoenix native who now lives in Tucson, is an Episcopal lay minister and the father of two teenage boys. Before becoming a prosecutor in Arizona, he worked in the U.S. Attorney's Office for the District of Columbia, prosecuting street crimes.

"Wally is one of the best trial attorneys in the United States Attorney's system," said Arizona U.S. Attorney Dennis K. Burke. "He was my first choice. He's a remarkable prosecutor who has an abundance of experience, knows how to

analyze a case, knows how to present it and works very well with victims."

Defense attorney Clarke has not asked for a change of venue for the trial, which at this point is expected to be in Tucson.

U.S. District Judge Larry A. Burns of San Diego was appointed to preside over the trial after Roll's colleagues on the Arizona federal bench recused themselves. Last week, Burns said he expected that the trial will begin no later than Sept. 20.

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**Jess Smith**  
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