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# Jared Lee Loughner case: Does Tucson shooting deserve the death penalty?

As the Justice Department decides whether to seek the death penalty for Jared Lee Loughner, the brutality of the Tucson shooting may reinvigorate US support for capital punishment.



In this artist rendering, Jared Lee Loughner (r.) makes a court appearance with his lawyer, Judy Clarke, at the Sandra Day O'Connor United States Courthouse in Phoenix, Ariz., Monday, Jan. 24. Loughner pleaded not guilty to the attempted assassination of Rep. Gabrielle Giffords and the attempted murder of two of her aides.

(Bill Robles/AP)

By Patrik Jonsson, Staff writer

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Atlanta —

Jared Lee Loughner, the man accused of killing six people and wounding 14 others outside a Tucson, Ariz., grocery store, pleaded not guilty Monday to the attempted assassination of Rep. Gabrielle Giffords and the attempted murder of two of her aides.

But as Mr. Loughner prepared for the first time to answer the government's initial charges against him, an inescapable question surrounded the Phoenix courtroom: If convicted, will the troubled 22-year-old pay with his life?

The shooting at Ms. Giffords' meet-and-greet function sparked debate about the nature of political discourse in the US and raised questions about gun rights and gaps in the mental health system. But the cold and apparently calculated shooting also forced many Americans to take a deeper look at whether individuals like Loughner are true aberrations or, in fact, products of America's unique, and at times alienating, social contract.

## Arizona shooting: Seven times politics turned to threats or violence last year

As Loughner Monday began a legal journey that could take years to complete, those reactions may feed into a broader debate about the death penalty, which has faced increasing scrutiny by the courts, legislators and the American people in the last decade.

Whereas public opinion and to a certain extent legislation has shown increasing discomfort with the death penalty, the Tucson shooting "might be a turning point ... where it offers a pretty good argument that some crimes are just so heinous that they deserve that kind of penalty," says University of Buffalo professor David Schmid, author of "Natural Born Celebrities: Serial killers in American culture."

But there's a darker side to the impulse for vengeance, highlighted by a vigorous debate around whether vitriol in the public square motivated Loughner.

Politics aside, Loughner's reported alienation and disfranchisement from his friends and community, Professor Schmid adds, is recognizable to many people as a parable of despair and rootlessness that gnaw at the edges of the American experiment. "The way in which someone like Loughner points to the emptiness of heart of a lot of communities is what makes him so troubling," Schmid says. "Part of the reason that people assert so vigorously that he's an aberration is that we know he's not."

Loughner made an initial court appearance on Jan. 10, two days after the shooting, where federal prosecutors laid out a series of charges in order for a judge to determine whether or not Loughner could be released on bond, which was denied. At that time, Loughner was asked if he understood the charges, but was not required to enter a plea.

Loughner has yet to be indicted on two of those initial murder charges – for allegedly shooting to death federal Judge John Roll and Gabe Zimmerman, a Giffords aide. The federal murder charges are capital crimes, but before those indictments are sought, the US Justice Department will have to review – and Attorney General Eric Holder will have to approve – a death penalty demand.

Loughner will face separate state charges in the deaths of four civilians, including a 9-year-old girl, and wounding of the others. Arizona has the death penalty.

His not-guilty plea Monday was the first hint that defense attorney Judy Clarke will attempt to plumb Loughner's mental condition in an appeal for leniency. Though Loughner left behind a note that said, "My assassination" and "Giffords," neither his political or philosophical beliefs have given any clear hint to motive. Loughner has refused to talk to police even as the FBI has amassed a trove of hard evidence – including testimony from some 300 witnesses and a video tape of Giffords and Roll being shot.

In court Monday, Ms. Clarke, asked by US District Judge Larry Burns of San Diego if there was any question about Loughner's ability to understand the case against him, replied: "We are not raising any issues at this time," the Associated Press reported.

Even though Loughner may not prevail in the so-called McNaughton test for mental impairedness – that he was incapable of understanding the moral implications of his act – Clarke can still pursue a legal strategy aimed at trying to explain Loughner's state of mind in a way that could raise doubts about whether the death penalty is the appropriate remedy. Such strategies have worked for Clarke before, in cases including that of the Unabomber and Susan Smith, the mother who killed her children by drowning them in a lake.

"It is very rare for someone to be acquitted by reason of insanity," David Bruck, a clinical law professor at the Virginia Capital Case Clearinghouse, said in an interview with McClatchy newspapers. "But it is extremely common for people to avoid the death penalty because of their mental illness."

According to the Gallup polling organization, support for the death penalty in the US is at 64 percent, six points lower than in 2002 and lower than when it was in 1977, when death penalties resumed in the US after a four-year moratorium. Meanwhile, the number of executions in the US declined by 12 percent between 2009 and 2010 amid, among other issues, concerns raised by DNA-based death row exonerations.

But the brazen brutality of the Tucson shootings, says the University of Buffalo's Schmid, may serve as a reminder for some of the death penalty's necessity. And, he says, it may also sharpen uncomfortable questions about US society more broadly.

"It makes us feel vulnerable when something like this happens, and the impulse is to say everything is okay, it's just this one individual who is abnormal ... and we're happy if he goes away and we won't have to think about some of the issues that someone like Loughner raises," says Schmid.

"The death penalty has come rightfully under attack at a time when enhanced science has proven ... that the criminal justice system is not flawless," writes Scripps columnist Dan Thomasson. "Yet .. there are instances, it seems, when even the gentlest, God-fearing among us becomes so outraged our demand for vengeance is almost irresistible. ... Before it is over, this case may test the convictions of all of us."

Arizona shooting: Seven times politics turned to threats or violence last year

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