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To Defend the Accused in a Tucson Rampage, First a Battle to Get Inside a Mind  
By JOSEPH GOLDSTEIN and MARC LACEY

TUCSON — Judy Clarke, the public defender for the man charged in the Tucson shooting, Jared L. Loughner, has made motions on his behalf and entered a plea for him of not guilty. But one of her most essential acts of lawyering came when she patted Mr. Loughner on the back in court last month, leaned in close and whispered in his ear.

For the small cadre of lawyers specializing in federal death penalty cases, getting the defendant to trust them, or just to grudgingly accept them, can be half the battle. That is especially true when mental illness is a factor, as it may be in the case of Mr. Loughner, a troubled young man accused of opening fire on a crowd on Jan. 8 in an attempt to kill Representative Gabrielle Giffords.

In her unassuming, almost motherly way, Ms. Clarke excels at getting close to people implicated in awful crimes. In jailhouse meetings that can stretch most of the day, she listens intently and grows to know her outcast clients in a way few ever have in their troubled lives, colleagues say.

Still, Ms. Clarke, who has made a name for herself representing notorious murderers and terrorists, sometimes falls short. One client threatened to kill her during his trial. More than one has tried to dump her midway through.

How Mr. Loughner and Ms. Clark get along, or fail to, will set the course for how the criminal case unfolds. One of Ms. Clarke's biggest challenges may be persuading Mr. Loughner to allow her to raise questions about his mental health; that issue led to conflict between Ms. Clarke and some of her previous clients, like the Unabomber, Theodore J. Kaczynski, and the Qaeda operative Zacarias Moussaoui.

"It could go many different ways," said Michael First, a psychiatrist who has worked on a case with Ms. Clarke. "He could be totally acknowledging he's mentally ill, or he could be the Kaczynski and Moussaoui type and be absolutely adamant there is nothing wrong with him."

Mr. Kaczynski severed ties with Ms. Clarke and the rest of his legal team when they pushed the idea of presenting his mental illness to the jury as a reason to spare his life. Once a mathematician, he was proud of his mind and found his lawyers' suggestion offensive.

And Mr. Moussaoui, who faced the death penalty on charges that he helped plan the Sept. 11 attacks, opposed the efforts of his legal team, which Ms. Clarke was assisting, to portray him as mentally ill. Mr. First recalled spending hours outside Mr. Moussaoui's cell, being rebuffed in his efforts to coax him into a conversation.

Next to nothing is known of what Mr. Loughner and Ms. Clarke have spoken about in the month since he was arrested. But it is unlikely, former colleagues of Ms. Clarke say, that she and her two co-counsels, Mark Fleming and Reuben C. Cahn, are very far along in planning his defense. It is possible, lawyers say, that they have not even broached the extent of Mr. Loughner's mental

illness or the shooting that left six dead and 13 wounded, among them Ms. Giffords, who is recovering in a rehabilitation center in Houston.

“That’s not something you jump into during the first or the fourth or even the 10th interview,” said Michael Burt, an experienced capital defender who worked with Ms. Clarke to defend Eric R. Rudolph, a serial bomber responsible for the fatal blast at the 1996 Olympics in Atlanta. “It takes a long time to get to that point.”

In the Loughner case, Ms. Clarke agreed with the prosecution’s request to move the court proceedings from Phoenix to Tucson, but she said she had questions about the facility where he would be held. Ms. Clarke last week temporarily prevented the United States Marshals Service from releasing new photographs of him.

In past cases, Ms. Clarke has used her initial meetings with defendants to improve their lot in the short term, by trying to get them less restrictive conditions in jail or relaying messages to family members.

“We didn’t talk about the death penalty or anything legal at first,” said Quin Denvir, Ms. Clarke’s co-counsel on the Unabomber case. “We spent a lot of time getting him out of the Sacramento County jail to the federal detention center, because it was quieter and he couldn’t stand how noisy the county jail was. That’s the kind of thing where we can help.”

Ms. Clarke, rather than focusing on her clients’ innocence, spends much of her defense work trying to persuade jurors to spare her clients’ lives. She does this by presenting what lawyers call a “mitigating social history” — a narrative of abuse, violence or mental illness that the defendant may have suffered. She sends investigators to find grade-school teachers, former girlfriends, classmates, anyone who can provide insight into what made her client go awry.

Ms. Clarke rarely gives interviews to the news media, but she did explain her philosophy last year in a law school publication at Washington and Lee University. “None of us, including those accused of crime, wants to be defined by the worst moment or worst day of our lives,” she said.

In representing Susan Smith, a South Carolina mother who killed her two boys, Ms. Clarke focused the jury’s attention on the facts that Ms. Smith’s father had committed suicide and that her stepfather had sexually abused her.

“She was able to change her from Susan the monster to Susan the victim,” said Tommy Pope, a South Carolina legislator who prosecuted the case against Ms. Smith. A jury spared her life.

Ms. Clarke helped Buford O. Furrow Jr., a white supremacist, avoid the death penalty even after he confessed to wounding five people by opening fire at a Jewish community center in Los Angeles and then shooting a postal worker in 1999. During the trial, it came to light that Mr. Furrow had threatened to kill Ms. Clarke and the rest of his defense team, but they remained on the case.

In the case of Roy C. Green, an inmate accused of fatally stabbing one guard and wounding four others in 1997, a judge agreed with Ms. Clarke that Mr. Green was mentally incompetent to stand trial even though the defendant agreed with prosecutors that he was fit. During a hearing, Ms. Clarke told the judge that Mr. Green had expressed fears that she and others were working against him, using it as evidence of his paranoid delusions.

In her court arguments, Ms. Clarke can be quite vehement, lawyers who have seen her at work say. Ms. Clarke once told *The Los Angeles Times*: “I like the antagonism. I like the adversarial nature of the business. I love all of that.”

But her demeanor changes to that of a social worker when meeting with her clients one on one.

“Even people who are quite mentally ill can identify someone who is real and who wants to protect them,” said David Bruck, a lawyer at Washington and Lee University’s School of Law who has worked with Ms. Clarke. “She’s a great listener, and she’s focused on the client. She tries to understand the client. The client becomes her world.”