SPEECH OF JOSEPH P. LOUGHEAD, ESQ.

[We give below the able argument of Mr. Loughead, on behalf of the Commonwealth, delivered on Monday, in the Court of Oyer and Terminer, in the case of Thomas Washington Smith.]

Gentlemen of the Jury: The important cause whose painful interest has been borne, increasingly, on through so many days of patient investigation, is fast drawing near to a conclusion. My part in this grave exhibition will soon be done, and your last and most solemn duty, under the instruction of the Court, will alone remain to be performed. How you shall discharge that great responsibility to the community and to the prisoner, between whom you stand, in justice to the accused and in vindication of outraged law, you will answer to your consciences and your God.

In bespeaking your attention for a short time, I may be permitted to thank you for your patient and untiring attention during the whole of this necessarily protracted investigation, darkened, as it has been, by much sadness and distress; an investigation which has opened up to public gaze a page of life's history clouded by frailty, blasted hopes, brooding revenge, and terrible, relentless murder. If, as I trust and doubt not they will be, your remaining functions are discharged with the same care and conscientious regard which have marked your course during our protracted and wearying sessions, the throbs both of the prisoner and community will be well earned and deserved by you.

Let me say to you in the outset, however, that your duty in this case is one as delicate and difficult as it is painful and responsible. Not only is the momentous question of the prisoner's fate to be passed upon by you, but the solution of that question is to be obtained, as the issue has been presented to you, by a nice and critical examination, of the texture of his mind, the powers of his emotion, the existence and strength of his reasoning powers, his perception of right and wrong, his ability to discriminate good, and his power to resist evil—questions of natural and moral philosophy, requiring your utmost judgment and your calmest deliberation, and coming, too, surrounded by circumstances which can hardly fail to affect your sympathies, and to a degree weaken the scrutiny of human inquiry into human error; they render your important obligation one of peculiar and grave responsibility.

But while you are discharging these duties with merciful regard towards the prisoner, to the community you owe a no less important accountability; and if you allow sympathy to lead your judgment, prejudice to cloud your deliberations, indignation at real or supposed aggression to blind your perception, so that you suffer the errors of the dead to give immunity to the fearful and guilty act of the living, and accept the weak cover of illusory insanity as an excuse to pronounce a judgment over the bloody grave of the victim, you inflict upon society a most fearful wrong, and upon your consciences a heavy burden.

That your duty is most painful, the oppression and regret I feel in my more humble one but too well convinces me; but it is time that public officers fearlessly and plainly speak, and juries as plainly and unflinchingly act, for murder stalks abroad in our midst. It no longer, as my colleague well said to you, gentlemen, when he opened this case, seeks its guilty consummation by stealthy steps and under cover of darkness and secrecy. The bolder and more audacious its exhibition has been, the greater and more lamentable the immunity which appears to have attended it. Our calendar groans with these cases, and the horror of the community which their rarity used to excite, seems almost to have subsided into the indifference which established custom induces.

I do not make these remarks, gentlemen, to excite feeling against the prisoner, or in the smallest possible degree to prejudice your minds against his defence—that must rest upon its own merits—but in their discussion to warn you of your obligations, conscientiously and plainly to perform mine, and to place upon you your due responsibility. Look to it how it is discharged! It is my duty in this cause to reply as fire as the limited time I ought to occupy your attention will allow me, to the arguments presented by the eloquent gentlemen who defend the prisoner. To follow them both through every path of commentary and declamation through which they have led you, would be, perhaps, beyond my physical strength or your endurance, and I shall endeavor to answer what has fallen from them, by as concise a review as possible of the main features of the case, noticing the prominent points presented by my learned friends as they may be appropriate to the view I discuss.

Let me here say, with great deference and diffidence, if this were a mere profession struggle between the distinguished counsel for the prisoner and the Commonwealth officers, or even a professional victory, a gladiatorial exhibition of forensic power—you should not be troubled with any competition by me for the glittering prize.

Their well-earned reputations, distinguished ability and my just sense of self-deficiency, would forbid the dangerous aspiration that would render for me the comparison most unfortunately odious. But here, a court of justice the forum, the fearful fate of life or death to the prisoner the issue, such rivalry would be as criminal as it is indiscreet. I therefore beg you, gentlemen of the jury, to believe that I shall make no effort in this discussion, save for the earnest, proper, and unostentatious discharge of an humble but grave and painful duty.

The duties and position of my learned friends and myself are so widely different, and in their sphere, and around their unhappy client, there is so much for pathos, so much for sympathy, so much for feeling, so much of passion, so much for pity, that nothing is left to the Commonwealth save a sense of stern and unbending duty. I can appeal to nothing in that jury-box of sympathy, of feeling, of passion, prejudice, or pity; I can only speak to your calm, fixed judgments; I can only appeal to your sense of painful, exacting duty. To that I address myself; from that I demand your serious attention.

I shall not, gentlemen, enter into the bewildering and intricate field of metaphysical discussion into which the ingenious and able tactics of the learned gentleman who first addressed you would draw me.

I shall not follow him into the refinements of medical jurisprudence as exactly applied in the case of Sarah Jane Graham, which he has so learnedly and ably discussed. Whatever the learned gentleman who first addressed you would draw me,