

SPPECH BY JUSTICE JONES DOTSE, CHAIRMAN OF THE BOARD OF TRUSTEES AT THE OPENING OF REFRESHER COURSE FOR JUDGES AND PROSECUTING STATE ATTORNEYS.
THURSDAY 21ST JANUARY 2010.

My Lords of the Supreme Court,
My Lord Acting Director of the J.T.I,
Colleague judges of the Superior Courts,
Distinguished Prosecuting Attorneys,
Ladies and Gentlemen,

It gives me great pleasure on behalf of the Hon. Lady Chief Justice to open this refresher course for judges presiding at the criminal session and prosecuting state Attorneys.

Daniel Webster, on November 11, 1803 in a note to **Thomas Merrill** stated thus:-

“Accuracy and diligence are much more necessary to a lawyer than great comprehension of mind or brilliancy of talent”

It is therefore in an attempt to sharpen your accuracy and diligence in the discharge of your respective duties that the Chief Justice and the Hon. Attorney-General have put together this refresher course as a pilot programme. It is my hope that even though generally speaking, you are reputed to be knowledgeable in the law, there is no harm in your quest for more knowledge or revision of what you already know.

As you are no doubt aware, your task as judges and prosecutors in the criminal session is a very onerous one, one that must be discharged with utmost diligence and circumspection.

When a person commits a crime against another person or his property, he is regarded under our system of criminal justice of having committed an offence against the state, and is dealt with by the bureaucratic procedure of the state responsible for criminal justice delivery.

By means of formalised procedures, the state takes over the role of the victim or the complainant and almost invariably monopolises the process.

As a former Chief Justice, Justice F.K Apaloo put it in a lecture to the Ghana Bar Association in June 1995,

“It is no news that this is done by formal organs called courts whose duty is to discharge their duty by procedures laid down by law and the punishable transgressions are clearly laid down as well as the mandatory or discretionary sanctions”

But even before the criminal law is set in motion against the suspect, later to become an accused person, one has to do a lot of background work. This means that the crime must be thoroughly investigated, evidence and all materials that would convince an impartial adjudicator of facts that the offence has been committed by the person charged must be sifted and its probative value ascertained.

The single most important and powerful official of state who is mandated to invoke the criminal law against an individual is the A-G whom Article 88(1) of the Constitution describes as the principal legal advisor to the Government. Article 88(3) of the Constitution 1992, puts the burden of criminal prosecution on the A-G in the following terms:-

“The Attorney-General shall be responsible for the initiation and conduct of all prosecutions of criminal offences”

But as I have just stated, the background work, which is preparatory to a successful prosecution is not done by the A-G, but is done by the police and other state security apparatus as agents of the A-G.

This therefore means that the A-G has the power to decide whether to initiate any prosecution based on an investigation so conducted on her behalf. Even if the case has already been rushed to court, the A-G has powers under Section 54 of the Criminal and other Offences (Procedure) Act, Act 30, formerly the Criminal Procedure Code to enter a Nolle Prosequi.

As prosecuting State Attorneys, and judging from my own experience, when I worked briefly in the A-G's Department, I will urge you to be bold and independent when studying duplicate dockets submitted to your office for advice, preparation of the Bill of Indictment and prosecution. In times past, we had the courage to point out the inaccuracies and vacuum in this or that aspect of the investigations and send the docket back for further investigations. When the

clarification or further evidence sought is not forthcoming, that will be the end of the case.

You must therefore take the Criminal and other Offences Act, Act 29 and the Criminal and other offences (Procedure) Act, Act 30 as your handbook from which you must base every action you take.

The tendency these days to send every case to court for prosecution and leave the case to the discretion of the trial judge must be discouraged and stopped.

That is why you all need to sharpen your skills accurately and diligently by taking advantage of your resource persons who have had vast experience, either as prosecutors and judges of repute or as distinguished legal practitioners and judges.

I have no doubt in my mind that your ½ day at the J.T.I will be time that is well spent.

Before I conclude my speech, let us do a small amount of introspection by taking stock of how we fared at the opening of the criminal session last week. Let us list what should have been done better or differently. It is my belief that it is only when we accept our mistakes openly and with a free heart that we can make progress. Once again, I wish you all the best.
Thanks for the indulgence.

JONES DOTSE.