

THE STATE
versus
MORGAN TSVANGIRAI

HIGH COURT OF ZIMBABWE
GARWE JP
HARARE, 3 February 2003 – 26 February 2004 and 15 October 2004

Assessors: Mr M. Nyandoro and Mr J. Dangarembizi

Mr B Patel with *Mr Musakwa* and *Mr Nemadire*, for the State
Adv. G. Bizos with *Adv. C. Andersen SC* and *Adv. E. Matinenga*, for
the Accused

GARWE JP: The accused in this case is charged with the crime of high treason it being alleged by the State that he approached a company called Dickens and Madson carrying on business in Canada and requested the company to arrange the assassination of President Mugabe and the staging of a military coup. At the commencement of trial the particulars of the charge against the accused were that:-

1. On 22 October 2001 at Heathrow Airport in the United Kingdom the accused requested Ari Ben Menashe of Dickens and Madson to organize the assassination of President Robert Gabriel Mugabe and to arrange for a military coup against the Government of Zimbabwe.
2. On 23 October 2001 and at Heathrow Airport, London, accused 2 faxed to Dickens and Madson a memorandum of understanding which in actual fact was cover for the unlawful plot to overthrow the Government of Zimbabwe.
3. On 3 November 2001 and at Royal Automobile Club, London, in the United Kingdom accused one requested Ari Ben Menashe of Dickens and Madson to organize the assassination of President Robert Gabriel Mugabe and to arrange for a military coup against the Government of Zimbabwe. On the same date

Dickens and Madson received from BSMG a company representing accused persons US\$97,400 as initial deposit previously promised, constituting fees for the plot to carry out the assassination of President Robert Gabriel Mugabe and the overthrow of the Government of Zimbabwe.

4. On 4 December 2001 and at Dickens and Madson offices, in Montreal, Canada, accused one requested members of Dickens and Madson to arrange for the assassination of President Robert Gabriel Mugabe and the carrying out of a military coup against the Government of Zimbabwe.

Following the acquittal of the 2nd and 3rd accuseds at the close of the State case, the particulars of the charge against the present accused were amended by the State to read as follows:

1. On 22 October 2001 and at Heathrow Airport in the United Kingdom the accused person requested Ari Ben Menashe of Dickens and Madson to organize the assassination of President Robert Gabriel Mugabe and to arrange for a military coup against the Government of Zimbabwe.
2. On 3 November 2001 and at Royal Automobile Club, London, in the United Kingdom accused requested Ari Ben Menashe of Dickens and Madson to organize the assassination of President Robert Gabriel Mugabe and to arrange for a military coup against the Government of Zimbabwe. At a later stage Dickens and Madson received from BSMG a company representing accused persons, US\$97,400 as initial deposit previously promised, constituting part of the fees for the plot to carry out the assassination of President Robert Gabriel Mugabe and the overthrow of the Government of Zimbabwe.

3. On 4 December 2001 and at Dickens and Madson offices in Montreal, Canada, accused person held a meeting with members of Dickens and Madson as well as a Mr Simms also known as Schuur and Mr Rupert Johnson at which the elimination of Present Robert Mugabe and the setting up of a transitional Government in furtherance of the aforesaid plot were discussed.

The accused pleaded not guilty to the charge. He also denied the particulars of the charge as itemized.

THE EVIDENCE

The following is common cause or at least not seriously in dispute. Dickens and Madson is a company incorporated in Canada and carrying on business in Montreal, Canada. The Movement for Democratic Change popularly referred to as the MDC is an opposition political party in Zimbabwe. The discussions between the MDC and Dickens and Madson that have given rise to the present allegations against the accused were facilitated by one Rupert Johnson. Rupert Johnson was fairly well known to Renson Gasela, the MDC Member of Parliament and Shadow Minister of Agriculture. Mr Gasela first came to know Mr Johnson in 1992 when Mr Johnson won a tender to supply grain to Zimbabwe following a drought in the country. At the time Mr Gasela was the general manager of the Grain Marketing Board. Sometime in 2001 Mr Johnson also made contact with Dickens and Madson. Thereafter Rupert Johnson arranged a meeting between the MDC and Mr Ben Menashe at the Heathrow Hilton Hotel, London, on 23 October 2001. Following that meeting a decision was taken by Dickens and Madson to arrange another meeting with the accused. That meeting took place at the Royal Automobile Club in London on 3 November 2001. The discussions that took place during that meeting were audio-taped by Tara Thomas, an assistant to Mr Menashe. The audio tape produced was of poor quality but a

transcript was produced by Tara Thomas and Elizabeth Boutin, also employed by Dickens and Madson. Mr Menashe eventually took the audio tape, transcript and disk and handed these over to Air Vice-Marshal Mhlanga in Harare on 23 November 2001. It was on that date that Mr Menashe advised the authorities in Zimbabwe of a request allegedly made by the accused and his colleagues for Dickens and Madson to arrange the assassination of the President and the carrying out of a military coup. A decision was made that further evidence of the request be collected. A sum of US\$30,000 was provided by the Government of Zimbabwe for this purpose. A third meeting was then convened at the offices of Dickens and Madson in Montreal on 4 December 2001. That meeting was video taped. Following this a sum of US\$200,000 was transmitted to Dickens and Madson on 14 December 2001. A formal agreement was then entered into between Dickens and Madson and the government of Zimbabwe on 10 January 2002 in terms of which the former was to provide public relations consultancy services and attract investment. That contract was subsequently renewed in March 2003.

What is in dispute in this case is the nature of the discussions that took place at each of the three meetings as well as the role played by Rupert Johnson. Rupert Johnson has not availed himself to give evidence and indications are that he is somewhere in the United Kingdom. The State on the one hand is saying the accused requested Dickens and Madson to arrange the assassination of the President and the staging of a military coup and that it was the MDC that sent Rupert Johnson to arrange the first meeting in London during which the request was allegedly made. The accused denies this and says Rupert Johnson approached the MDC indicating that he was a director of Dickens and Madson and that his company was able to do lobbying work on behalf of the MDC in North America and to raise funds for the party.

The State called a number of witnesses. These were Mr Ben Menashe, Tara Thomas, Air Vice-Marshal Robert Mhlanga, Bernard Schober, Chief Superintendent Moses Magandi, Senior Assistant Commissioner Mutamba, Retired Brigadier Happyton Bonyongwe, Air Marshal Perence Shiri, Constantine Musango, Tineyi Nyawasha and Edward Tamukaneyi Chinhoyi.

The defence called the accused, Mr Welshman Ncube, Mr Renson Gasela and Mr Giles Mutseyekwa. The evidence led during the trial was very lengthy. The trial spanned a period of over a year. A detailed summary of the evidence given by the various witness has been prepared and is attached to this judgment as Annexure 'A'.

CREDIBILITY OF WITNESSES

Mr Ari Ben Menashe

He is the main witness for the prosecution as it was him who played the leading role in the meetings that took place with the accused and also arranged the recording of the meeting of 4 December 2001 in Montreal, Canada.

The defence attacked his reputation during cross-examination. Various allegations made in various press articles and publications attacking his general reputation were put to him. He denied these allegations. No witnesses were called to give evidence on his reputation. All that is before the court therefore are unsubstantiated allegations made in some cases by persons who are unknown. Having carefully considered the evidence this court is of the view that the allegations suggesting a bad reputation on the part of Mr Menashe have not been proved.

Turning to Mr Menashe's demeanour in the witness box, there is no doubt that Mr Menashe was very rude during the proceedings despite being warned by the court on several occasions. On occasions he made gratuitous remarks about the accused. He would desist when warned but would thereafter engage in similar conduct.

He derided defence counsel. In reference to the accused and his erstwhile co-accused, he used language such as murderers, a criminal, a terrorist. He remarked, at one stage, that the accused has no intellectual capacity to undertake an analysis of the results of the referendum. In reference to the accused he further remarked that a person who negates himself in evidence is mentally unstable. During cross-examination by Advocate *Bizos* he remarked at one stage "You are talking nonsense" and "Stop your nonsense".

The witness was unpleasant and continued to exhibit contemptuous behaviour even after being warned by the court. There were occasions he appeared not to appreciate he was in a court of law.

There is however need for fairness and on a careful reading of the record it is apparent that the cross-examination by lead counsel was unnecessarily long and in some instances repetitive. This was brought to the attention of lead counsel on occasions. The cross-examination was at times confusing. The language used in some instances was not always the most polite. This may, to some extent, explain the sudden and somewhat puerile outbursts on the part of Mr Menashe. Nevertheless this cannot be an excuse for some of the utterances he made during the course of the proceedings.

There are aspects of Mr Menashe's evidence that call for closer analysis.

The first relates to the role played by Rupert Johnson and in particular whether Rupert Johnson represented the MDC in the meetings that took place. It will be recalled that it was Mr Menashe's evidence that Mr Johnson represented the MDC in all the dealings they had with him. Mr Menashe was asked to explain a number of documents which reflect Mr Johnson as a director of Dickens and Madson. These are Mr Johnson's business card, the contract dated 24 September 2001 (Exhibit 3), the contract dated 23 October 2001 (Exhibit 4) which is addressed to Mr Johnson and the money transfer

request dated 2 November 2001 (Exhibit 24) addressed by Mr Johnson as director of Dickens and Madson to Natwest Bank London. A careful perusal of these documents shows that Johnson must have represented himself, with the knowledge and approval of Mr Menashe, as a director of Dickens and Madson. The court says so for the following reasons. Mr Menashe admits he saw a copy of the contract signed by Mr Johnson dated 24 September 2001. Mr Johnson signed that contract in his capacity as a director of Dickens and Madson. All Mr Menashe did was admonish him telephonically. He also observed Mr Johnson carrying a Dickens and Madson card which reflected him as a director of the company. Again all he did was reprimand him. He did nothing else. Further the contract between Dickens and Madson and the MDC (Exhibit 4) is on MDC letterheads. It is addressed to Rupert Johnson in his capacity as a director of Dickens and Madson. The face of the document reads: "Re: Memorandum of Understanding". This is followed by the words "Dear Rupert Johnson" which are handwritten. Mr Menashe initialled page 1 of the document and effected two amendments on page 2 of the same document. He then signed on behalf of Dickens and Madson. Mr Menashe would no doubt have noticed that the contract was addressed to Mr Johnson as a director of Dickens and Madson. He would have noticed that the contract was on MDC letterheads and that it was signed by Welshman Ncube. He did not correct the misrepresentation made in the document. Instead he signed the document. Further Mr Johnson, again writing as a director of Dickens and Madson, remarks in the request for transfer of the money (Exhibit 24):-

"To assist with the verification of this transfer and for the benefit of our Bankers in Canada, Messrs HSBC, please would you be good enough to advise a routing reference code or number by return."

Mr Menashe also admitted accompanying Mr Johnson to the Congo on two occasions during this period. He says he paid his own

fare and was largely a spectator. He wanted to find out what the MDC was up to. This trip was never brought to the attention of the Zimbabwean authorities and was only disclosed during cross-examination when the witness was questioned on the contents of the transcript of the audio tape (Exh 13). On balance the totality of the evidence suggests that Mr Johnson represented himself as part of Dickens and Madson with the knowledge and tacit approval of Mr Menashe.

The second is the role played by Mr Simms. Mr Simms chaired the Montreal meeting posing as a representative of the American Government. In the latter part of the video, he is heard to talk about funding and mentions a figure of US\$6 million. Mr Menashe is heard in the video saying to the accused that work had been done for his party in the United States right up to congress. Mr Menashe admitted no such work was done and that the meeting was a pretence. Promises of money being raised were part of the pretence. Mr Menashe denied having met Mr Simms before the Montreal meeting or knowing where he can be contacted. He says his presence at the meeting was never discussed but was arranged by Mr Legault. Mr Legault did not give evidence before this court the reason, according to Mr Menashe, being that someone had to remain in the office. Mr Menashe and Tara Thomas agreed that the purpose of the Montreal meeting was to record what was being said during the meeting. The inference is therefore irresistible that Mr Simms was brought in to give an air of authority to the meeting and to show that the Americans were involved in whatever was being discussed. Mr Simms came into the meeting with a file. The accused told the court the file had a map of Zimbabwe on it and this was not disputed. Mr Simms, if that be his real name, was obviously pretending. It is difficult to imagine Mr Menashe not knowing where Mr Simms can be contacted or what his true names are. Mr Menashe must know or is able to find out who Mr Simms is and where he can be found. His

denial seems highly improbable. The State has no idea who Mr Simms is or where he can be found. He is unlikely to be a member of "Team America". Brigadier Bonyongwe in his evidence was of the view that Mr Menashe knows Mr Simms and that he has a definite link with him.

The third relates to the second London meeting and the attempt to record that meeting. No proper explanation has been given why a decision was not taken to employ someone with more expertise to do the recording. Mr Menashe told the court he did not know if Tara Thomas was competent to do the recording. She had joined Dickens and Madson in May 2001. Indeed she admitted she had never done this before and was unable to record part of the meeting because, unbeknown to her, the batteries were flat. Mr Menashe also told the court he does not know how and why Tara Thomas was asked to go to London to record the meeting. He personally did not make the arrangements. He did not discuss with her why she was going there or what had happened at the first meeting. He did not discuss with her what she was expected to do there. He did not discuss with her the murder plot. Tara Thomas in her evidence however says Mr Menashe said the accused was going to say something which could be quite amazing, namely, the assassination of President Mugabe. She says Mr Menashe had told her to record the meeting. It appears to this court that Mr Menashe may have tried to distance himself from the unsuccessful attempt to record the second meeting.

The fourth relates to the circumstances surrounding the transcription of the audio tape. Mr Menashe's evidence was that Tara Thomas and Elizabeth Boutin occasionally put words together without actually hearing the words. This was contradicted by Tara Thomas who told the court that what they transcribed is what they heard on the diskette. Of significance however is the fact that the transcript makes reference to persons and situations Mr Menashe

accepts are real. There is reference to Edith and former Zambian President Chiluba's corrupt tendencies. The transcript refers to Kenzo who was shot dead. It is not in dispute that the person shot dead was one Penza. There is then talk of Mwenzi Kongolo who was at the time the Minister of Security in the Democratic Republic of Congo. Mr Menashe accepts that Kongolo was the Minister of Security and that when he and Mr Johnson went to the Congo Mr Johnson wanted to request assistance from Kongolo in recruiting Zimbabwean soldiers. Menashe also admitted that his company acted as consultants to the President of Gambia. There is reference to the Gambia in the transcript. Mr Menashe also admits that during the meeting there was talk of seeing the Director of the CIA or a senior American official and to keep the meeting discreet. This is in the transcript. It is clear that Tara Thomas and Elizabeth Boutin were able to hear and transcribe some portions of the tape. Mr Menashe says he did not listen to the audio tape or see the transcript. Tara Thomas says he did.

Of some concern is the fact that the audio tape given to Air Vice-Marshal Mhlanga and subsequently produced before this court was found to be inaudible. Unfortunately the equipment used by Tara Thomas and Elizabeth Boutin was not made available so that the Court could ascertain whether in fact the tape was audible in places.

The fifth is that up until 23 November 2001 everything that Mr Menashe did in connection with this matter was without the knowledge or sanction of the government of Zimbabwe. The first meeting between Mr Menashe, the accused and his colleagues was held at the Heathrow Hilton on 22 October 2001. It was at this meeting that the accused allegedly made the request for the assassination of the President and the staging of a military coup. This was followed by another meeting at the Royal Automobile Club on 3 November 2001. It was that meeting that Tara Thomas audio taped. Mr Menashe tried to contact Air Vice-Marshal Mhlanga on or

about 14 November 2001 but the latter was out of the country. Mr Menashe eventually came to Harare and saw Air Vice-Marshal Mhlanga on 23 November 2001 and brought with him the audio tape and transcript. It was then that he indicated he had been requested by the accused and other MDC officials to arrange the assassination of the President and the staging of a military coup. For a period of one month Mr Menashe made no contact with the government of Zimbabwe to warn the latter about the request. The convening of the second meeting and the recording of that meeting were done without reference to the Zimbabwe Government.

The sixth is that having delivered the audio tape and the transcript to Air Vice-Marshal Mhlanga and after it was agreed that further evidence of the plot be gathered, Mr Menashe then arranged for Mr Schober to install the necessary devices to record the meeting that was to take place on 4 December 2001. A sum of US\$20,000 was then forwarded to Dickens and Madson by the Government of Zimbabwe on 30 November 2001 i.e. a week after the meeting in Harare. This was followed by a further US\$10,000 on 4 December 2001. It is not in dispute the money was intended to meet the cost of procuring additional evidence. It is apparent that out of the total sum of US\$30,000 sent to Dickens and Madson to pay for the procurement of the evidence, a sum of US\$5,000 was given to Mr Schober and the balance of US\$25,000 was retained by Dickens and Madson. The meeting of 4 December 2001 was then secretly videotaped and the original video given to Messrs Magande and Bonyongwe who arrived in Harare on or about 10 December 2001. On 14 December 2001 a further sum of US\$200,000 was transmitted to Dickens and Madson. A consultancy agreement was then signed between Dickens and Madson and the Government of Zimbabwe on 10 January 2002. That contract was effective for a year. By August 2002 Dickens and Madson had received a total sum of US\$615,000 from the government of Zimbabwe. At the commencement of the

trial in February 2003, discussions for the renewal of the contract were taking place and on 11 March 2003 the contract was renewed for a further period of 12 months on the same terms and conditions. Negotiations for the renewal had commenced 2-3 weeks before the signing. It is clear therefore that at the time Mr Menashe gave evidence he was providing services to the Zimbabwe government, a fact accepted by Mr Bonyongwe the Director General of the Department of State Security. Mr Menashe believed he is still owed US\$365,000 although it appears the figure is in dispute.

It also seems highly unlikely that having spent considerable sums of money before he met Air Vice-Marshal Mhlanga Mr Menashe did not expect reimbursement. Indeed Brigadier General Bonyongwe remarked that Mr Menashe could not have done all he did for nothing. He flew to London in first class whilst Tara Thomas flew business. They obviously incurred expenses. Thereafter he flew to Zimbabwe to meet Air Vice-Marshal Mhlanga and then flew back to Canada.

Two other matters need to be mentioned. The first is that the second and third meetings were convened in part for the purpose of recording utterances by the accused. The attempt at the second meeting was not successful. When Mr Menashe flew to Harare to meet Air Vice-Marshal Mhlanga, it was found that there was hardly any evidence on the audio tape and transcript and a decision was taken that more evidence be collected. The third meeting was then convened. A video was then produced of that meeting.

The second is that on Mr Menashe's evidence he never intended acting on the request he says was made by the accused. He attended the meetings in order to collect evidence of the request.

Regard being had to the role he played in this matter and the fact that he stood to gain financially his evidence must be treated with circumspection.

Tara Thomas

She is an employee of Dickens and Madson. It is clear from her evidence that she was completely inexperienced in the taping exercise for which she flew with Mr Menashe to London. Her story however about why the tape did not capture all the discussions did not sound credible. In her evidence in chief, she told the court she did not check the batteries. Under cross-examination she told the court she bought new batteries in London because Mr Legault had suggested that she does so in London. Having bought new batteries she did not immediately put them in the tape but instead decided to use the old. It was when she went out about 30 minutes after the commencement of the meeting that she realized the recorder was not working. She then put in the new batteries. This explanation sounded far-fetched and improbable. It appeared to be an attempt to explain why the audio tape did not capture the whole meeting.

She also appeared hard pressed to explain paragraphs 14 and 15 of her statement to the police. In paragraph 14 she says the accused sought to discuss the transitional period but Mr Menashe asked him to be clear about what was to transpire to bring about this transition and whether this was after the elimination of President Mugabe. In paragraph 15 she says the accused responded by saying he was not prepared to discuss that issue and appeared upset. She says at that stage the accused got up from the table and asked Rupert Johnson to join him outside. Under cross examination she said her statement was incomplete because her memory failed. She also remarked, as did Mr Menashe in similar terminology, that the statement was accurate but incomplete. In the statement she says the accused indicated he was not prepared to discuss that issue and appeared upset. The issue referred to was what was to transpire to bring about this transition and whether this was after the elimination of President Mugabe.

The witness also admitted that there was nothing to suggest that the injury she sustained had anything to do with the Zimbabwe Government. That notwithstanding she received US\$8,000 from the Zimbabwe Government “as compensation for injuries sustained ... while executing duties assigned ... by Dickens and Madson in fulfillment of its consultancy services to the Government of the Republic of Zimbabwe”.

There is need to treat her evidence with caution in view of the role she played and her relationship with Mr Menashe.

Chief Superintendent Magande

His evidence was largely common cause. He told the court Mr Menashe was evasive on the identity of Mr Simms. He also admitted there was no evidence of a plot on the transcript of the audio tape. He further admitted they were aware that what Mr Menashe was being quoted as saying publicly differed from that which was on the tape.

Bernard Schober

His evidence does not call for much comment. He was paid by Dickens and Madson to set up the recording equipment. His travelling expenses to and from Zimbabwe to give evidence were met through Dickens and Madson. On his evidence he was being paid US\$1,000 per day for the duration of his stay in Zimbabwe. He seemed a good witness but it is clear the picture and audio quality of the video he produced was generally poor. His explanation that surveillance cameras are very small and that the picture he produced was the best in the circumstances was not shown to be incorrect, especially regard being to the fact that the recording was on VHS and the recording in turn was done on long play. Indeed Mr Chinhoyi confirmed this claim. A significant remark he made was that the technology does exist, perhaps not in Zimbabwe, to remove

the background buzzing noise and to get clearer audio. This suggestion was not followed up by the State.

Director-General Bonyongwe

He was subjected to lengthy cross-examination on the work that was performed by Mr Menashe which justified the various payments made by the Government. When advised that Mr Schober who installed the recording equipment had only been paid US\$5,000, he told the Court the balance of US\$25,000 may have been used in meeting other expenses. When further advised that Mr Menashe had told the court that the company had not benefited at all he stated that he did not believe Mr Menashe did all that he did for nothing. Mr Menashe's evidence was that all the money was passed along to Mr Schober who installed the listening and recording devices. The witness appeared reluctant to give details of the work done by Mr Menashe before the contract was formally signed in January 2002. He explained that some of the activities fell within the covert area of the department's operations and some of the vouchers related to these activities were destroyed after three months in accordance with the department's internal regulations. He confirmed that the reason why his department entered into a contract with Mr Menashe was because he had produced the video.

He believed Mr Menashe had definite links with Mr Simms also known as Schur. Mr Menashe had even promised to get Mr Simms to come to Zimbabwe. It was his evidence that they paid compensation to Tara Thomas because they had been made to believe that her injuries were connected to the work she was doing for Zimbabwe. His belief that Tara Thomas was entitled to compensation appeared genuine. However considering the evidence given by Tara Thomas it is apparent that his department was misled in this regard.

Air Marshal Perence Shiri

He appeared a good witness and was credible. He admitted meeting members of the MDC on two occasions in January 2002. The discussion centred around the possibility of the witness supporting the accused in the event he won the elections. He denied meeting Giles Mutseyekwa at a meeting held in the office of the Minister of Defence.

Messrs Musango and Nyawasha

The evidence of these two was not really in dispute. They both told the court the video was of poor quality and they experienced difficulty in understanding what was being said. Mr Musango told the court he had to play the tape several times and there were times he could not say who was speaking. Mr Nyawasha had a difficulty with Mr Legault's accent.

Mr Chinhoyi

He appeared a good witness. He had no reason to lie. On synchronization he told the court he could not see the lips of the speakers because the picture was too far out and hazy. In other aspects the movements and gestures by the speakers were consistent with the words spoken.

He described the picture as poor and hazy. It was difficult to see details and the speakers were not always audible. He confirmed surveillance cameras are not meant to provide a good picture.

The Accused

In general he did not appear confident when questions were put to him in cross-examination and in particular when asked to explain the remarks he made in the video. He reluctantly admitted that there was indeed a discussion between him and the other participants during the Montreal meeting about the elimination of the President and that the word elimination was used in a sinister

way. His stance initially had been that the word elimination had been used in an innocuous sense. He told the court that as the meeting progressed it dawned on him that Mr Menashe was using the word elimination in a sinister sense. The accused was also unable to explain why a sum of US\$50,000 was paid from the personal account of Mr Weeks. He called Mr Welshman Ncube who explained that Mr Weeks did so pending clearance of a cheque that had been deposited into the MDC account. If this was a normal business transaction and considering that BSMG operated an account for the MDC, it made little sense for Mr Weeks to take such a large sum of money out of his own personal account and transmit it to Dickens and Madson. If a cheque was awaiting clearance in the MDC account it is not clear why BSMG could not have waited for a few days to allow for the clearance of the cheque and then pay out in the normal way. Alternatively BSMG could have issued its own cheque in anticipation of the cheque deposited being cleared. The explanation given in this regard is unsatisfactory and leaves one with the impression that the whole truth has not been told.

The MDC was represented in Europe by BSMG a big consultancy and lobbying company. The company also had offices in North America. The accused and his colleagues opted instead to use Dickens and Madson which was relatively unknown. The only reason given was that Renson Gasela vouched for the integrity of Mr Rupert Johnson and that they believed Dickens and Madson would do a better job in North America. The decision to use BSMG raises some suspicion. However one can go further than that.

The accused accepts as largely correct the intelligible portions of the transcript of the video - Exhibit 18. Perusal of the transcript shows that the accused made remarks or statements which are exculpatory on one hand and incriminatory on the other. The court will now proceed to look at these in greater detail. In interpreting the remarks made during the meeting sight must not be lost of the fact

that Mr Menashe was out to collect evidence of a request from the accused. It is not in dispute that the accused was the only person in the conference room who did not know that the discussions were being recorded.

(a) Incrimatory Remarks

- At 8:53:34 Mr Menashe remarks that Mugabe's Government is not going to go away by itself. He then says the MDC represented by the accused, "commits to let us call it whatever you want to call it, the coup d`etat or the elimination of the President ... wants Shiri to agree with the way to pursue this ... what chances do we have that Shiri will cooperate?" In response, the accused does not deny that this is the purpose of the meeting. Instead he says "to win an election is another thing in Zimbabwe". He talks of the military being divided on what to do with Mugabe.
- 09:08:01 Mr Menashe says until now you weren't seeing the meaning of the word elimination. There are different interpretations as to the words used exactly. Tara Thomas said the words were "the weight of the word elimination". In response the accused says, amongst other things, the arrangements of elimination of the President are in a different scenario. He says "we have to work at another strategy to communicate with them, But how do you communicate with them in the event of what is going to happen? It is now a new scenario, then we have to relook at that." Under cross-examination the accused admitted the scenario referred to was the illegal removal of the President.
- 09:22:03 Mr Legault says his understanding of the London meeting was that definitive action against President Mugabe was necessary because of the uncertainty of the electoral process. The accused agrees that when he came to the meeting his understanding was that "the second meeting would brief me about the transitional arrangement, what's going to happen if we

move towards this how then do you move to the next step, and the next step. The next step being a three-phase program, the transitional program, the election process and the post transitional program ... and this meeting was supposed to be talking about, ok, we have moved so far; we can definitely say that Mugabe is going to be eliminated. What is the transitional arrangement that is in place.”

- 09:26:39 There is talk of power sharing. The accused asks what the formula would entail. He says on their side power sharing is not a problem but he asks whether that will mean that the head of the military will head the government. There is talk of an interim president. The accused then says “in the event of that happening” the army must guarantee that “that they will remain an outside guarantee for enforcing a bi-partisan Government, a transitional Government between ZANU(PF) and the MDC for a certain duration. That duration should ... lay down the basis for a clean election.”
- 09:28:27 When asked who is to call for the emergency the accused says “all they need to do is tell the Vice President that, look, we have got a crisis, we cannot proceed immediately after the President’s elimination but we want to form a transitional relationship with the MDC to ensure that conditions are put in place for a free and fair election. We cannot move into free and fair elections under circumstances where the country is not stable because the head of State is gone....”
- 09:30:42 The accused says in his view that would be the most stable way to proceed and it will not raise suspicions.
- 09:31:28 The accused says Perence Shiri must be brought on board not on the question of the elimination of Mugabe, but on the fact that they have to guarantee a peaceful transition.
- 09:37:32 The accused says the most serious concern in Zimbabwe is that if Mugabe goes into the election, then there will

be mayhem. He says “that emphasises that moving Mugabe aside creates more opportunities ...”

- 09:43:56 Mr Legault says if Mugabe is taken out before the election you are going to run into some kind of chaotic mess. The accused says “To me that’s the fundamental issue ...”.
- 09:46:03 In response to an earlier question by Mr Legault that if Mugabe is harmed, there will be chaos and mayhem, the accused says “And that’s where I think, the problem is. But all we can pray for is for the military to understand that these are the scenarios that have emerged.”

(b) Exculpatory Remarks

- 09:00:58 Mr Menashe asks whether in the event of a breakdown of power, Perence Shiri would support the MDC. The accused says it depends what kind of power breakdown to which Mr Menashe says “The President is eliminated.” To this the accused responds “If the President goes, then there is a vice-president: who is supposed to take over in terms of the constitution.
- 09:01:35 When asked by Mr Menashe what they are talking about the accused says “We are talking about an arrangement where if Mugabe goes the Vice-President takes over and within three months there will be elections, that’s the constitutional arrangement .”
- 09:01:50 Mr Menashe then says he thought they were talking about “the elimination arrangement, having a transitional government to which the accused responds by saying “How is it going to come about?” When Menashe says “That’s exactly the point!” the accused says “Because in terms of the Constitution ...” after which he is interrupted by Mr Menashe who says it looks like they are guilty but they can all talk openly.

- 09:05:08 After further talk of the elimination of the President and a transitional government and Mr Simms refers to \$6 million in government funding and the process involved the accused remarks "Yes, don't mistake me, I am not opposed to a transitional arrangement, I am saying, practically, how is it going to emerge. I am not opposed to a transitional arrangement, how is it going to emerge, in the event that the president is gone."
- 09:07:39 At this stage there is a dispute as to what was said before the accused responded. Mr Menashe says there was a question by Mr Legault whether a meeting had been held with people in the current power structure. Indeed there are words to that effect on the tape but they are not very audible. The defence suggested that these words may have been inserted. Whatever the correct position, the accused remarked "The discussion was never about the elimination of Mugabe. It was about the election and the post election outcome." Mr Menashe immediately steps in and says "But now there is a different story". Mr Menashe further says "Because until now you weren't seeing the meaning of the word elimination". The remark by Mr Menashe "But now there is a different story" followed by the further remark "Because until now you were not seeing the weight of elimination" are not entirely consistent with the question raised by Mr Legault whether there had been a meeting with people in the current power structure.
- 09:09:34 The accused then remarks "I think lets not get confused. The circumstances under which the MDC and all the power institutions communicated were based on moving towards an election. So don't try to arrange, or to set up, these arrangements of elimination of the President are in a different scenario. In a different scenario, then, we have to work at another strategy to communicate with them. But how do you

communicate with them in the event of what is going to happen? As far as I am concerned the arrangements and discussions so far were based on the election process. Its now a new scenario, then we have to relook at that.”

- 09:10:22 Mr Menashe says they had discussed this new scenario but he was now very surprised as this was a completely new scenario. The accused asks “which one” and Mr Menashe comments: “Well Morgan is talking about elections, now he thinks we didn’t talk about elections ... He agreed to us on the transitional Government but suddenly we hear he is talking of elections ... we are hearing the backtrack of the situation.” In response to this the accused says “I do not think so. I think you got the point wrong.”
- 09:11:58 Mr Menashe says they are not hired guns neither are they going to murder Mugabe and then assassinate or eliminate or whatever. He further remarks that this is not what they do for a living. To this the accused remarked “I am certainly agreeing with you there. The arrangement really is, when we last met at the RAC Club we agreed that the route we were going to take was that if Mugabe goes there will be a transitional arrangement but the method of implementation was not discussed.”
- 09:13:33 After Mr Menashe remarks that work has been done up to Congress and to get people “on site for the elimination” the accused then left the room together with Rupert Johnson. It is at this stage Tara Thomas says the accused looked upset. However there are also words to the effect “Lets stop the process” before the accused walks out.

THE AUDIO TAPE

This was brought to Harare by Mr Menashe when he came to see Air Vice-Marshal Mhlanga on 23 November 2001. Air Vice-

Marshal Mhlanga described the tape as inaudible. Mr Menashe also brought with him a transcript of the tape. It is not in dispute that using normal transcribing equipment available in this country one cannot produce the same kind of transcript as did Tara Thomas and Elizabeth Boutin from the same tape. Tara Thomas told the Court that the transcript was made possible after the audio tape had been recorded on to a diskette and the diskette in turn played on equipment with equalizer. Unfortunately the equipment that was used in transcribing the tape was not brought and it is therefore not possible to confirm the truthfulness of Tara Thomas' evidence in this respect. In fact the transcript was only made available to the defence after the commencement of the trial largely because the State considered it of no consequence. Indeed the police officers who gave evidence told the Court it was not included in the docket because there was nothing on the audio and there were many gaps in the transcript.

That the transcript is a relevant piece of evidence there can be no doubt. Indeed it should have formed part of the investigations. According to Mr Menashe and Tara Thomas, there was a request at the second meeting for the assassination of the President and the staging of a military coup. Tara Thomas accompanied Mr Menashe to London to record the discussion on the tape recorder. The transcript produced by Tara Thomas and Elizabeth Boutin has complete sentences in certain sections and one can follow the discussions that took place in those sections. The court has already noted that the transcript refers to former Zambian President Frederick Chiluba and his alleged corrupt practices as well as other players on the Zambian political scene including Edith and one Penza who was killed. There is reference to the Congo and the Minister of Security Mr Kongolo. The transcript is therefore relevant containing, as it does, portions which reflect clearly the discussions that took place. What is in the inaudible portions will of course never be known. But to the extent to

which the transcript contains meaningful discussions during that meeting, it is relevant.

It is relevant because the State says there were various requests by the accused during that meeting for the assassination of the President and the staging of a military coup. It is not in dispute that the transcript does not in fact contain evidence of such a request. Although the transcript is not complete, the fact that it does not confirm that such a request was made is relevant. A document is not only relevant because it supports the case for the prosecution. It is also relevant if it does not do so or if it contradicts the prosecution witnesses.

In the light of this it was improper for the State to have ignored the transcript or at the very least not to have brought the contents of the transcript to the attention of the defence. The duty of the prosecution to do so in these circumstances is now settled law - see *Smyth v Ushewokunze & Anor* SC 1997 (2) ZLR 544, 549, *Mutevera v S* HH 112/01. However in fairness to the investigation team, there appears to have been a genuine but misguided belief that it was not relevant.

THE VIDEO TAPE AND TRANSCRIPT

Besides the oral evidence given by Mr Menashe and Tara Thomas to the effect that the accused requested for the assassination of the President and the staging of a military coup, the video tape and accompanying transcript are no doubt important pieces of evidence in this case. Mr Menashe told the court that the meeting in Montreal was recorded in order to provide proof of the criminal intention of the accused.

The video was played several times during the course of the trial. The video is accompanied by a humming sound almost similar to the sound that one hears on an aircraft in motion. The state witnesses attributed the interference to a central air conditioning

system for the entire office block. What was said by the witnesses is audible in some places but not in others. This much is apparent from the transcript of the proceedings which reflects gaps in various places.

There is no doubt that both the picture and audio quality of the video tape are poor. The picture does not provide clear focus generally although one can identify the different people who took part in the meeting. The audio quality is certainly poor as there are various inaudible portions in the video. In short the video does not provide a complete record of what was discussed.

The State led evidence from Mr Chinhoyi. Mr Chinhoyi showed the court the various techniques used in tampering with a tape. He told the court in general poor focus cannot result by mistake especially if there is a monitor. He examined the video tape in this case and did not see any evidence of tampering. He told the court however that one cannot say so with certainty as there are modern techniques that can be used in such a way as to make alterations undetectable. It was also his evidence that it is easier to tamper with a poor picture than a picture of good quality. In his opinion the real difficulty with the video is that whilst the picture remains unbroken the sound is interrupted in several places.

Mr Schober in his evidence told the court that technology exists to remove the buzzing sound and thereby enhance the audio sound. This was not followed up. The result is that there is before this court a video tape in which some of the discussions during the meeting are audible and others are not. Because of the gaps one cannot say what words followed or how those words might have qualified the words that are audible.

The question that arises is whether the video is admissible.

In his evidence the accused told the court that he used the transcript to "jog" his memory. His assessment was that generally the audible portions of the tape correctly reflect the discussions that

took place in Montreal. There were a few amendments to the transcript by Mr Menashe, Tara Thomas and the accused. Most of the amendments were not in contention. There is some dispute however on what was said before the accused uttered the words –

“The discussion was never about the elimination”

In short therefore the correctness of the portions that are audible is not really in dispute although the admissibility of the video has been challenged.

The law on the admissibility of video and audio tape recordings was considered in *S v Ramgobin & Others* 1986 (4) SA 117. In my view that decision correctly reflects the law on this topic. In the present case the authenticity and accuracy of the video have been established although suggestions have been made that it may have been interfered with. The fact that a tape is inaudible in parts is no reason to require its exclusion, particularly in a case, such as the present, where the accused accepts the accuracy of the portions that are audible. In all the circumstances therefore this court reaches the conclusion that the video tape is admissible.

Of significance however is the fact that it is common cause that nowhere in the video tape is there a direct request to Mr Menashe or his company Dickens and Madson to arrange the assassination of the President and to carry out a coup d`etat. Indeed it was for this reason that the State, at the close of the State case, amended the charge and removed all reference to such a request during the third meeting.

FINDINGS ON THE FACTS

The following are the findings of the court on what happened.

First, on the evidence before the court, Rupert Johnson could not possibly have been representing the MDC. The documentary evidence available suggests that Rupert Johnson represented himself

as a director of Dickens and Madson, with the knowledge of Mr Ari Ben Menashe. The suggestion that Rupert Johnson approached Dickens and Madson in his capacity as a representative of the MDC is not therefore tenable.

Second, the transcript of the meeting held at the Royal Automobile Club, though incomplete, does not reflect the request that Mr Menashe says was made for Dickens and Madson to arrange the assassination of the President and the staging of a military coup. The intelligible portions of the transcript reflect discussions on other topics.

Third, it is clear that the third meeting, like the second, was recorded on tape by Dickens and Madson in order to secure evidence of a request by the accused for assistance in arranging the assassination and military coup. Mr Menashe had been told that what he had brought to Harare on 23 November 2001 contained no evidence of such a request.

Fourth, the video recording is generally of poor quality. The picture appears hazy and somewhat lacking in focus. Though audible in places, the audio quality is generally poor. The transcript of the video confirms that a lot of what was said is not inaudible. In short there are gaps and it is not possible to say what was said on those occasions.

Fifth, it is clear that by the time the video recording took place Dickens and Madson had been paid US\$30,000 out of which sum Mr Schober was paid US\$5,000. About two weeks later on 18 December 2001 a sum of US\$200,000 was sent to Dickens and Madson by the Government of Zimbabwe.

Sixth, the audible portions of the video tape do not reflect a request on the part of the accused for Dickens and Madson to arrange the assassination of the President and the staging of a *coup d`etat*. It was for this reason that the State applied to amend the charge following the discharge of Welshman Ncube and Renson

Gasela at the close of the State case. In the application the State says "The evidence of the State witnesses at the trial shows that the accused requested members of Dickens and Madson to arrange for the assassination and coup *d'état* at the first and second meetings. There is no evidence to show that the accused specifically repeated this request at the third meeting in Montreal."

Seventh, the audible portions reflect various statements being made by all the people in attendance. In the majority of cases questions were put to the accused and he would answer. It is apparent from the video that the accused initially appeared confused and gave the impression he did not know what was being referred to. In later portions of the video he appears less hesitant and makes a number of remarks, some of them not innocuous.

Eight, the discussions at the Montreal meeting touched on the transitional period following the elimination of the President, the post election period as well as the funding needed for this purpose. The meeting discussed what would happen in the event the President was eliminated, the possibility of chaos, the role of the army in this situation and the need to engage the army so that they provide stability during the transitional period. There is talk of the need to meet Perence Shiri. There is no doubt that the accused took part in this discussion and that the discussions at this stage were anything but innocuous.

WHY MR MENASHE AND TARA THOMAS MUST BE TREATED AS SUSPECT WITNESSES

Allusion has already been made to the need for the evidence of Mr Menashe and Tara Thomas to be treated with caution. On the evidence there can be no doubt that Mr Menashe had a financial interest in this case. Tara Thomas was his assistant. She did as instructed. Neither he nor Tara Thomas can be described as impartial. They were out to trap the accused. In *S v Ohlenschlager*

1992 (1) SACLR 695 it was suggested that in such situations the ordinary principles of co-perpetrator or accomplice should prevail. In short both must be treated as suspect witnesses. The remarks by HOLMES JA in *S v Machinga* 1963 (1) SA 692 A 693-694 that -

“Whatever the juristic niche into which he may be classified as a witness, his evidence had two things in common with that of an accomplice. First he had a possible motive to benefit himself by false implication of others, Secondly by reason of his participation in this crime he was in a position to deceive the unwary by a realistic account of it.”

are pertinent.

The need for caution in these circumstances was also stressed in *S v Mupfudza* 1982 (1) ZLR 271, 273C where BARON JA remarked as follows:

“There are several types of witnesses who, for one reason or another must be regarded as suspect and whose evidence must be regarded as suspect and whose evidence must be approached with particular caution In all such cases there is potentially a danger of false incrimination, and before a trial court can safely convict on the testimony of such a witness it must satisfy itself that that danger has been excluded”

Considering the role played by Mr Menashe before the Government of Zimbabwe became involved in this matter, the fact that he was engaged by the Government after procuring the video tape and the extent to which his company has benefited as a result of the contract it signed with the Government there is need for the evidence of both Mr Menashe and Tara Thomas to be treated with caution.

WHAT THE STATE IS REQUIRED TO PROVE

Reference has already been made to the particulars of the amended charge that the accused is facing. The particulars of the charge may be summarised as follows:-

- (a) in respect of the meeting of 22 October 2001 that the accused requested Mr Menashe to organize the assassination of President Mugabe and to arrange a military coup.

- (b) in respect of the meeting of 3 November 2001 that the accused again made the same request and thereafter transmitted a sum of \$97,400 being part payment of the fee charged to carry out the plot.
- (c) in respect of the meeting of 4 December 2001 that the accused held a meeting with members of Dickens and Madson as well as Mr Simms and Mr Johnson, at which the elimination of the President and setting up of a transitional government in furtherance of the plot were discussed.

Section 146 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] provides that each count of an indictment, summons or charge should set forth the offence with which the accused is charged in such manner and with such particulars as to the alleged time and place of committing the offence and the person, if any, against whom ... the offence is alleged to have been committed, as may be reasonably sufficient to inform the accused of the nature of the charge. In other words the charge should be framed in such a way that the accused fully understands the nature of the charge he is facing. Although this is elementary it is necessary to stress once again that a charge must correctly state the basis of the allegation made against an accused person. Unless another offence is a competent verdict, or unless the essential elements of the other offence are included in the essential elements of the offence actually charged, an accused person cannot be convicted of an offence with which he is not charged. Thus for example a person charged with theft cannot be convicted of assault even if that offence is proved in evidence. The court will revert to this aspect in due course.

In respect of the crime of treason the position is now established that -

“there are ... as many acts of high treason as there are overt acts; and ... each may constitute a separate offence, in itself, susceptible of forming the subject matter of a separate count ”

- see *South African Criminal Law and Procedure*, vol. II, *Common Law Crimes*, 3 ed. by JRL Milton at page 38.

In practice however the State often sets out the various alleged overt acts, not as separate counts but by way of particulars of a single count - see *South African Law and Procedure (supra)* at page 38.

Indeed it has been suggested that where there are several acts chargeable, it is desirable to group them together in one count, with separate paragraphs in date sequence, all those which are of the same character - see *Gardiner and Landsdown*, 6 ed. (1957) 1002.

The above remarks are pertinent regard being had to the fact that although the accused is facing a single count of high treason, three particulars of the offence have been set out by the State in the present case.

The evidence given by Mr Menashe and Tara Thomas may be summarised as follows. At the first meeting held at the Hilton Hotel, Heathrow on 22 October 2001 the accused in the company of Mr Welshman Ncube and Mr Renson Gasela requested Dickens and Madson to arrange for the assassination of the President and the staging of a military coup. Mr Menashe says they went to the second meeting "to make sure I and everyone else heard correctly". He says on this occasion the request was repeated and in addition practical matters to be dealt with in order to carry out the plan were also discussed. During the third meeting they discussed what would happen after the assassination of the President as well as the transitional process.

On the basis of this evidence and in the light of the particulars of the charge supplied by the State the court found, at the close of the prosecution case, that only one overt act had been alleged in the indictment - namely the request made to Dickens and Madson to arrange the assassination and staging of a military coup. The court held that all three meetings were important and composite elements of the overt act. The second and third meetings were a continuation

of the first. On that basis this court held that only one overt act had been alleged although three meetings had been held between the parties to discuss the request. On reflection however it does appear that each request as alleged in the original charge may have constituted a separate overt act. Nothing however turns on whether there was more than one overt act charged in this case. I will revert to this shortly.

The State submitted in argument that if only part of the overt act is proved and that which is proved amounts to treason then a conviction for treason would be proper in the circumstances. This submission must be accepted as correct. In other words if a request had been shown to have been made at any one of the three meetings then the crime of treason would have been committed.

The gravamen of the allegation in the first and second particulars of the amended charge is requesting Mr Menashe to assassinate the President and to organize the coup. Put another way the charge against the accused is that he incited Mr Menashe. A request to another to engage in criminal conduct amounts to incitement – see the remarks of HOLMES JA in *S v Nkosiyana* 1966 (1) SA 655. An inciter is one who unlawfully makes a communication to another with the intention of influencing him to commit a crime – *South African Criminal Law and Procedure*, vol 1, 3 ed. by JM Burchell, page 39. Although there is reference to a plot in paragraphs 2 and 3 of the particulars to the charge, this appears to refer to nothing more than the request. Indeed the Acting Attorney-General stated during his closing address that the discussion was “in furtherance of the plot constituted by the request”.

In respect of the third meeting, the gravamen of the allegation is that there was a discussion “in furtherance of the aforesaid plot”.

At this stage it is necessary to comment on what appears to be a misunderstanding on the part of the prosecution as to the overt act or acts the accused is alleged in the charge to have committed in

this case. Although the particulars allege a request, reference has been made during the trial to a conspiracy and a plot. In paragraph 31 of its closing address the State says the charge is plotting to assassinate the Head of State and to overthrow the Government. However in paragraph 35 of its closing submissions, the State says the accused incited and sought to arrange the assassination of the President, the carrying out of a military coup and the setting up of a transitional government. The Acting Attorney-General stated that the discussion was in furtherance of the plot constituted by the request. There is a big difference between a request (i.e. incitement) and an agreement (i.e. conspiracy). A plot has been defined in the Concise Oxford Dictionary as a secret plan or scheme. It may also mean a conspiracy. Certainly on a charge as serious as treason the particulars of an overt act of conspiracy must be clearly stated. The particulars must identify the co-conspirators and the agreement they are alleged to have concluded.

Paragraph 2 of the original charge alleged that a memorandum of understanding was faxed to Dickens and Madson and that it was a cover for the unlawful "plot" to overthrow the government. No further detail of the "plot" was given. No indication was given as to who was involved in the plot. Were the plotters the three accused or was it the three accused and Mr Menashe? The evidence of Mr Menashe was never that there was a conspiracy between him and the accused at any of the meetings. His evidence was that he pretended to go along in order to obtain evidence and did not intend to act on the request. In these circumstances there cannot therefore be any question of a conspiracy - see *R v Harris* (1927) 48 NLR 330.

In the light of all these facts this court found at the close of the State case that only one overt act had been charged i.e. incitement. The court has already accepted that on reflection each request could have been treated as a separate overt act. The accused's erstwhile co-accuseds were acquitted firstly because the evidence against

them was flimsy and secondly because they could not have been convicted, whether or not there was more than one overt act, on the evidence of only one witness, namely Mr Menashe. The allegation that there were discussions in furtherance of the plot was only substituted following the acquittal of the erstwhile co-accuseds at the close of the State case. Consequently it would not have made any difference, so far as the erstwhile co-accuseds were concerned, whether more than one overt act had been alleged.

What the State is required to prove may be summarised as follows. In respect of the first meeting, that there was a request. In respect of the second the same but further that a sum of \$97,400 was forwarded "as part of the fee for the plot". In respect of the third meeting that there were discussions in furtherance of the plot. There is no allegation that there was a conspiracy at the third meeting. The allegation is that there was a discussion in furtherance of "the aforesaid plot" i.e. the plot allegedly hatched during the first two meetings.

The remark made that there is no allegation of a conspiracy at the third meeting requires amplification. At the commencement of the trial the allegation in respect of the third meeting was that the accused requested members of Dickens and Madson to arrange for the assassination of the President and staging of a military coup. Following the acquittal of the accused's erstwhile co-accused at the close of the State case, the prosecution conceded there was no evidence of such a request. Instead the prosecution sought to amend the charge to allege that there was a discussion between the accused and various other persons at which the elimination of the President and setting up of a transitional government in furtherance of the plot were discussed and agreed. The court ruled that since the accused had come to court to answer the allegation that he had requested Dickens and Madson to arrange the assassination of the President and staging of a military coup, the State was not entitled,

half way through the trial, to amend the charge to allege that there was an agreement between the accused and the other persons who attended the Montreal meeting. The court found that such an amendment would have been highly prejudicial. Accordingly the court granted the amendment but the words "and agreed" were struck out. In short therefore the court ruled that so

far as the Montreal meeting was concerned the State was not entitled at such a late hour to allege a conspiracy when all along the allegation had been one of incitement.

The Court is aware that an overt act may take the form of speaking or writing words. Indeed in *R v Wenzel* 1940 WLD 269 the court held that a person who writes or speaks in the furtherance of an intent to overthrow or coerce the government would be guilty of treason.

HAS ANY OVERT ACT AND HOSTILE INTENT BEEN PROVED?

It has been noted that the State is relying on three particulars of the charge, each of which in turn relates to each of the three meetings. It is necessary to look at the evidence led in respect of each meeting and thereafter determine the extent to which that evidence proves the act alleged.

Turning to the first meeting that took place on 22 October 2001, the only available evidence is that of Mr Menashe. He says there was a request. There is no other evidence which confirms that this request was made. The court has already found that Mr Menashe is a suspect witness. In all the circumstances it cannot be said there is reliable evidence of a request having been made during the first meeting. Put another way the evidence before this court does not clearly establish that such a request was made.

Coming to the second meeting, in addition to Mr Menashe's evidence, there are other pieces of evidence. There is the evidence of his assistant Tara Thomas. For reasons already given the evidence given by both Mr Menashe and Tara Thomas must be treated with caution. Further the contract signed at the second meeting does not in any way substantiate the claim that there was such a request. The contract itself does not say so. To the contrary it talks of Dickens and Madson representing the MDC in the USA and Canada and lobbying for support of the MDC's programmes and objectives. There is also nothing to suggest that the sum of US\$97,400 transmitted by BSMG was anything other than part of the fee of US\$500,000 charged by Dickens and Madson for lobbying services in terms of the memorandum of understanding. Then there is the transcript of the audio. The transcript however does not in any way confirm that a request was made. Indeed when Mr Menashe met with Air Vice-Marshal Mhlanga and Retired Brigadier Bonyongwe, it was agreed that there was no reliable evidence of a crime having been committed at that stage and that there was need for further evidence to be obtained. In short there is also no reliable evidence of a request having been made at that meeting. Nor is there any evidence of a "plot" having taken place at that meeting.

Turning to the third meeting different considerations however apply. This meeting was video-recorded. It is common cause however that nowhere in the video tape is there a request by the accused to Mr Menashe to arrange the assassination of the President and to stage a military coup. The court has already noted that the video tape is not audible in places. The transcript has gaps. In other words one cannot say what else was said in the portions that are not audible. During the meeting however there is clear evidence of a discussion touching on several issues such as what would happen following the elimination of the President, the post-election period, the role of the army and Air Marshal Perence Shiri in particular, etc.

The discussions in this regard have previously been commented upon. In addition to the video tape the State is also relying on the evidence of Mr Menashe and Tara Thomas both of whom say the accused made the request and that the third meeting discussed the aftermath of the illegal removal of the President. The court has already found that the two are suspect witnesses and that whatever they have told the court must be viewed with caution. Mr Menashe in particular must have been under considerable pressure to get an admission on tape from the accused to confirm his story that there had been a request. It goes without saying that Mr Menashe and the others who knew that the proceedings were being recorded would have steered the discussions in such a way as to induce an admission. Some of the utterances made by the accused particularly at the beginning suggest that there were statements being made that he did not agree with. There were occasions he appeared confused. In the latter part of the discussion however he seemed more at ease and responded to questions and also put questions to the other persons in attendance.

Sight must not be lost of the fact that the allegation in respect of the third meeting held in Montreal is that there were discussions in furtherance of a previous plot. It has already been noted that there were indeed discussions touching on several issues following the removal of the President. The evidence, as has been noted, does not disclose either a request or a plot at either the first and second meeting. In the result, in so far as the third meeting is concerned, the evidence discloses a discussion but there is nothing to suggest that the discussion was "in furtherance of a previous plot". Nor can one say, in the light of the contradictory remarks made by the accused in the video, that the video conclusively proves that a plot had previously been agreed upon and that the discussions during the meeting were in furtherance of that plot.

Is a discussion in these circumstances treasonous? The State submitted that “even a preparatory act done with hostile intent” or “mere signification can be sufficient”. Whilst this statement in general terms is correct, the State faces some difficulties.

The first and most serious difficulty is that contrary to remarks that have been thrown about during the course of this trial the accused did not come to court to face a charge of conspiracy in respect of the third meeting. The allegation initially was that he made the request at all three meetings. Only after the discharge of his erstwhile co-accused did the State amend the charge to allege that he and others took part in discussions which were in furtherance of the previous plot.

The second is that even if it were to be assumed for a moment that the charge is one of conspiracy it is clear that on the authority of *R v Harris (supra)* there can be no question of a conspiracy as there was no intention on the part of Mr Menashe and the others to act on any understanding as this was a trapping exercise.

The third difficulty is that the evidence does not in any event show that there was a conspiracy or a plot at either the first or second meetings. Put another way, there is no evidence of “the aforesaid plot” having taken place at either the first or second meeting.

The fourth is that a mere discussion “in furtherance of the aforesaid plot” is not, in the absence of evidence of an incitement or a conspiracy, treason.

In *R v Labuschagne* 1941 TPD 271 there were three meetings during which there was a discussion as to whether the parties should participate in acts of treason. The discussions were certainly not innocuous. GREENBERG JP who presided over the trial remarked on pages 273-5 of the judgment:-

“We now come to the third meeting in which the first and third accused are implicated. This meeting, of course, must be taken in its setting in so far as the happenings of the first and second

meetings are relevant to a full understanding of the third meeting. The meeting, as I have said before, was a meeting on a farm outside Potchefstroom. The first and third accused and six or seven soldiers – I think seven is the number – Kennedy and the two brothers Prinsloo, the owners of the farm, were present at that meeting and the first question to be considered is whether there is evidence of a conspiracy on that occasion, taking the facts there in conjunction with what happened before.

The evidence shows that a plan was produced by one van Jaarsveld, one of the soldiers. It had been suggested at an earlier meeting that he should get this plan and that it was necessary for their further activities. I omitted to mention that in regard to the acquisition of this plan, it is not proved that the accused who was present when the plan was mentioned knew that this was arranged and therefore he cannot be convicted of complicity in this matter.

But to return to the third meeting, the evidence shows that the plan was produced and that it was studied by all the persons present, including the first and third accused. They all looked at it and the plan was explained to them by van Jaarsveld. There was then a discussion and Kennedy mentioned the proposal that 150 of the people whom he claimed to control and whom he described as “stormjaers” would attack the camp. It was pointed out by one of the soldiers present that it was out of the question to attempt to attack the camp with 150 men and, I think, the evidence is that this soldier said that 500 or 600 men would be necessary. I am not perfectly clear whether this figure was mentioned by the first accused, but it is clear that the first accused associated himself with the view that 150 men were wholly insufficient for such an attack and that 500 or 600 men would be required.

As far as we can see, nothing further was done; it certainly was not agreed at that meeting that there would be an attack on the camp. Kennedy at an earlier meeting said that the attack had to take place within six weeks. There is however nothing to connect accused No. 1 and No. 3, or accused No. 2 for that matter, with knowledge of that statement.

The first accused was then called upon to deliver what was described as a “slotwoord” – a sort of benediction – on the meeting, but that does not mean that there was any final decision at that meeting because the evidence negatives this. The evidence does not go so far as to show that the project was dead, but it certainly does not establish that anything was decided or that it was decided to prorogue the meeting and consider the matter at a future date.

I think, therefore, that the evidence does not disclose a conspiracy at that stage and if the evidence does not disclose a

conspiracy the accused cannot be convicted either on the ground that they took part in the conspiracy or on the ground that they did not report it. I shall assume that the failure to report may be high treason itself, but in the view I take of the matter it is unnecessary to decide whether the failure to report must be failure to report an intention to commit high treason on the part of other persons or to report treasonable acts which have already been committed. It can be assumed that failure to report past conduct which is treasonable is also treason. The last point would be relevant if there were evidence that Kennedy or any other person incited the other to commit high treason, but there is no evidence of that. It does not appear to me, as I indicated before, that the mere discussion as to whether the parties will take part in conduct which is high treason amounts to high treason. It may be that part of that discussion in itself would amount to incitement and that this would be criminal, but there is no evidence in the present case that the discussions which took place involved incitement by any person and, therefore, there was no duty on any person present to report."

In the absence of both incitement and conspiracy, the accused in the above case were acquitted. JRL Milton in the *South African Criminal Law and Procedure (supra)* at page 22 expresses the view that it was unlikely, in any event, that there was sufficient evidence of "hostile intent".

In *S v Banda & Others* 1990 (3) SA 466, 474, FRIEDMAN J remarked:-

"Equally important is to note that a mere discussion of the possibility of acts of treason, not resulting in any agreement, nor including any mutual incitement, does not amount to high treason."

In the present matter there is evidence of a discussion during which the accused and others talked about what could happen following the elimination of the President. The State conceded there was no evidence of a request at the third meeting. The State alleges that there were discussions "in furtherance of the aforesaid plot". There is no suggestion that there was a conspiracy or an incitement during the discussions. The plot which is alleged to have taken place previously has not been proved. A mere discussion in this context is

different from speaking or writing in furtherance of an intent to overthrow the government as was observed in *R v Wenzel (supra)*. As further noted in the *South Africa Criminal Law and Procedure Vol. II, Common Law Crimes (supra)* at page 32 for a man to express without incitement or conspiracy hostile sentiments will not constitute treason, not because there is no overt act but because there is no hostile intent.

The fifth difficulty is that because of the gravity with which the crime of treason is viewed special provisions have been put in place to provide some measure of protection to persons facing such a charge. One of these is the two witnesses rule. The other is that evidence shall not be admitted of any overt act not alleged in the indictment unless to prove some other overt act alleged therein. In other words if conspiracy has not been alleged in respect of the third meeting, can the State now turn around and say there is evidence of a conspiracy in respect of that meeting and therefore the accused should be found guilty of treason on that basis? The Criminal Procedure and Evidence Act forbids this except if the evidence is relevant to prove the request alleged to have been made at the first and second meetings.

Putting aside the above problems for a moment the totality of the evidence in this case is such that one cannot say with certainty that the overt act charged in respect of the first and second meetings i.e. incitement has been proved beyond a reasonable doubt or that it has been proved beyond a reasonable doubt that the discussion at the third meeting was in furtherance of a previous plot. The law is settled that where such doubt exists it must be resolved in favour of the accused. No onus rests on an accused person to convince the court of any explanation he gives. It is sufficient if a court thinks there is a reasonable possibility that it may be true. Even if the explanation given is improbable the court must acquit unless proof beyond a reasonable doubt is adduced - see *Edward*

Chininga v S SC 21/02; *Mupfunde v S* SC 37/95. In this case the possibility that the version given by the accused could be true has not been discounted. Put another way it cannot be said the State has proved beyond a reasonable doubt that high treason was committed in this case.

In my view this case aptly illustrates the difficulties that can be associated with a charge of high treason and how vague the crime can be. It may be a moot point whether on a charge that the accused requested another to organize the assassination of a head of State and to arrange a military coup the State would be entitled to amend the charge to allege that there was a discussion in furtherance of a plot. It is also difficult to conceptualize what “discussions in furtherance of the aforesaid plot” refers to. If by the word plot the State was referring to the request, the accused should simply have been charged with making that request i.e. with incitement rather than with having discussions “in furtherance of the aforesaid plot”. In my view the allegation against the accused in respect of the third meeting is vague. For this reason the State has during this trial interchangeably referred to the charge against the accused as incitement or conspiracy. In view of the conclusion that this court has reached it will not however be necessary to make a definite finding on these matters.

In the circumstances the court must return a verdict of not guilty and the accused is accordingly discharged.

ANNEXURE ‘A’

SUMMARY OF EVIDENCE

A. PROSECUTION

Ari Ben Menashe

His evidence was as follows. He is the President of Dickens and Madison based in Montreal, Quebec, Canada. Dickens and Madison is a company providing consultancy services to various governments. In particular the company provides political and economic advice and does lobbying work in various countries. He knows Rupert Johnson whom he first met in the first half of the year 2001. Rupert Johnson had contacted one Ian Waite, a representative of the company in the United Kingdom, indicating he wanted to do business in Africa with the company. Thereafter whilst on a trip to Europe he met Mr Johnson at the Hilton Hotel, Heathrow Terminal Four. During the meeting Rupert Johnson talked about Zimbabwe and how well he knew the country. He told Rupert Johnson he also knew some people in the Zimbabwe government. Rupert Johnson indicated he had a home and business in South Africa and that he knew Renson Gasela well. The witness told the court that Rupert Johnson had no connection with Dickens and Madison. Rupert Johnson kept coming back to the witness suggesting that Dickens and Madison should meet the Movement for Democratic Change (the MDC) which he knew to be an opposition party in Zimbabwe. As a company they did not want to have any dealings with the MDC. However the situation changed when Mr Johnson started talking about President Mugabe having to be removed.

The witness told the court he had previously been employed by the Israeli Foreign Intelligence Service. He came to Zimbabwe in the 1980's whilst so employed. In the 1990's he came back to Zimbabwe whilst lobbying for a foreign government. It was then he got to know a number of people in government. He even offered the Zimbabwe government a consultancy but the government hired Cohen and Woods of the United States instead.

One day Rupert Johnson sent to Dickens and Madison a copy of a contract he had signed with the MDC and in which he purported to act for Dickens and Madison in the capacity of director. The contract

appeared to be one of their standard contracts which Rupert Johnson could have acquired from anywhere. As a company they advised their legal counsel in the United States, one William Sharpe, that this was a fraudulent document. They also tried to contact Rupert Johnson to ascertain why he had signed as director of the company. Once they got hold of him they admonished him. The witness also decided, the next time he saw Rupert Johnson, to tell him in no uncertain terms that what he had done was not acceptable. He eventually met Rupert Johnson at Heathrow Terminal 4. Rupert Johnson apologized but indicated the leadership of the MDC was currently in Europe and they had worked out a plan which they wanted to discuss with Dickens and Madson. The witness told the court he found this interesting as it had been indicated that a big lobbying and consultancy company known as BSMG was doing some consultancy work for the MDC. The meeting thereafter took place at the hotel. During the meeting the accused, who was accompanied by Welshman Ncube and Renson Gasela, remarked that Mugabe was not going to leave office unless he was carried away in a coffin. He further indicated that agreement had been reached that real action should be taken. He went on to say Mugabe must be killed and a *coup d`etat* staged but added that it must not look like the MDC was involved. He wanted Dickens and Madson to facilitate the assassination of the President, to arrange a *coup d`etat* with the assistance of the commander of the air force and to put in place a transitional government by the end of December 2001. During the meeting the witness told the court he went out and advised the vice-president of Dickens and Madson, one Alexander Legault, about this development. It was decided that the meeting should continue and he should sign a contract with the MDC after which the conspiracy would then be reported. The accused stated that he wanted to be president of Zimbabwe by the end of 2001 and Dickens and Madson would be paid US\$30 million. The witness suggested that a contract

for US\$500,000 be signed of which a sum of US\$100,000 would be payable immediately and the balance at a later stage. The following day Welshman Ncube faxed the contract to him. In terms of the contract Dickens and Madson were given a general mandate to do whatever was necessary to pursue the objectives of the MDC. The witness signed the contract and faxed it back. He took a copy and left for Canada. In Canada he had a meeting with Alexander Legault and Herbert Fraser, a former senior intelligence officer with the Canadian Government, who had previously been employed by the company. Mr Fraser took it upon himself to report the matter to the authorities of the Federal government whilst Mr Legault took it upon himself to report the matter to the United States authorities the next day. They further decided to take advice and arrange another meeting with the accused to confirm the request by the accused and his colleagues. They contacted Mr Johnson and asked him to arrange the next meeting.

That meeting took place at the Royal Automobile Club in London. He proceeded to London in the company of Tara Thomas an assistant working for Dickens and Madson. The meeting commenced between 9.00 - 9.30a.m. and in attendance was the witness, the accused and Rupert Johnson. Tara Thomas came to the meeting about 45 minutes later. The meeting was concerned with the practical matters to be dealt with in order to carry out the plan. The plan was that Dickens and Madson would hire a team to assassinate the President and the witness would meet Perence Shiri, the head of the Air Force, and give him a US\$10 million bribe to get him to support the plan. The accused gave the impression that Shiri was willing to co-operate but indicated that there was need for the witness to meet him in South Africa. During the meeting Tara Thomas tried to record the proceedings on tape but the tape was subsequently found to be inaudible. Thereafter they went for lunch and returned. He and Tara Thomas spent the night at Heathrow and

only left the following day. Before Rupert Johnson left however he noticed he had a Dickens and Madson business card which reflected him as a director of the company. He remonstrated with him, reminding him that he had made the same representation when the first contract was signed. He told the court he did not do so too harshly because they were in the middle of a delicate plot. Rupert Johnson however apologised and promised not to do it again.

He confirmed that Dickens and Madson received three payments totaling US\$97,600 from BSMG of the United Kingdom. The sum has been retained in a separate account in Canada and will be transferred to the Government of Zimbabwe after the trial.

After the second meeting a decision was taken to advise the Zimbabwe government of the plot. The witness eventually contacted Air Vice-Marshal Mhlanga of the Air Force and advised him of the plot. He took the tape and some documents and flew to Harare. There he briefed the Air Vice-Marshal and thereafter the Minister of Defence Sydney Sekeramayi, the Director of the Department of National Security Elisha Muzonzini and his deputy Happyton Bonyongwe. It was suggested that further evidence of the plot be collected by Dickens and Madson. There was no contract between Dickens and Madson and the Government of Zimbabwe at that stage. It was left to their discretion how to collect further evidence. He then flew back to Canada. The accused then started calling the company offices asking if everything was on course. So too did Renson Gasela. The witness, Mr Legault and their lawyer Mr Sharpe then decided that any further meeting with the accused be properly video and audio taped. Mr Johnson also kept on phoning asking when the next meeting would take place. In the meantime Dickens and Madson hired a company called Megapro to install the necessary recording equipment in the company conference room. This was done by a Mr Schober, an employee of Megapro, in the presence of the witness as well as Mr Legault and two other men who introduced

themselves as members of the Royal Canadian Mounted Police. No one sought the identification of these two men. The meeting was scheduled for 3 December 2001 but the accused only arrived in the evening of that day. In the evening of the same day the witness met a gentleman who introduced himself as Ed Simms, a member of the Central Intelligence Agency (CIA) also known as "Team America". The following morning the meeting, chaired by Mr Simms, started. Also in attendance were the accused, Rupert Johnson, Tara Thomas and Mr Legault. During the meeting they discussed the aftermath of the assassination of the President and the transition process. During the meeting the word elimination was used frequently in the context of the murder or assassination of the President. The accused left the following morning. In the evening of 5 December 2001, Happyton Bonyongwe, then Deputy Director-General of the Department of State Security and a police officer, Moses Magandi, came to Montreal. The following day they watched the video. They were then given the original cassette and two copies. One copy was retained and was then sent to the Zimbabwe High Commission in Ottawa. Dickens and Madson did not retain any copies of the video. About two or three weeks later he received a call from Happyton Bonyongwe who advised that the Government of Zimbabwe wanted to enter into a consultancy contract with Dickens and Madson. In January 2002 he flew to Harare where he discussed the consultancy agreement with Minister Nicholas Goche. A contract was eventually signed. One of the issues that required the attention of Dickens and Madson as consultant was the forthcoming Commonwealth meeting in Australia where Zimbabwe was expected to feature prominently. Dickens and Madson lobbied heavily with the Canadian Government and also asked Minister Goche to let them have a copy of the tape so that it could be aired by SBS Television in Australia. The tape was made available and Mark Davies of SBS came to view the tape at the company offices in Montreal. He also flew to Zimbabwe where he

interviewed the President of Zimbabwe and the accused. He believes Zimbabwe as a country benefited considerably from this work. In terms of the agreement signed between the two parties the contract price was US\$227,000, excluding expenses. To date approximately US\$1,1 million has been claimed in terms of the agreement. Not all the money has been received. In time the Government of Zimbabwe expanded the contract so that work could be done in other parts of the world, such as Russia.

The witness then took the court through the video, pointing out what the various people attending the meeting said. In particular the witness told the court that the statement by the accused that “the discussion was never about the elimination of Mugabe but about the election ...” was in response to a question by Mr Legault whether the accused had approached anyone else in the current power structure. The accused was referring to discussions he and his party had with Air-Marshal Perence Shiri and not to discussions at previous meetings.

Under cross-examination the witness further stated as follows. That through a company called Carlington Sales of which he was president, he had dealings with Frederick Chiluba, former President of Zambia. Carlington Sales went through bankruptcy because Chiluba did not perform and a judgment was issued against the company after the lender, Nedcor bank, ceded the debt. As regards Mr Simms, he told the court it was Mr Legault who arranged for him to attend the meeting. Mr Simms introduced himself as a member of team America i.e. the Central Intelligence Agency. He did not know how Mr Legault had come to meet Mr Simms as the matter was never discussed. He did not subsequently make any attempt to ascertain who exactly Mr Simms was or where he can be contacted. He admitted that at the commencement of the police investigations he did not disclose Mr Simms’ name to the police. He told the court the company did not receive any money during the period

September-December 2001 for the work done in recording the meetings with the accused. Even the cost of air travel was borne by the company. In terms of the contract the company was to be paid US\$225,000 of which US\$100,000, payable on signing of contract, was to be a retainer. He told the court the contract was widened sometime in March 2002 after it was agreed that the company was to do lobbying work in other parts of the world. Films and press releases were made. Pressed for further detail he told the court that the details of the work the company did was subject to a confidentiality clause and he was therefore not at liberty to disclose them. The company however worked with Cohen and Woods in the United States and arranged meetings with State Department officials to discuss Zimbabwe-United States relations. Meetings were also arranged with United States intelligence services to discuss the presence of Zimbabwean soldiers in the Congo. Business meetings involving delegations from Russia and West Africa were also arranged. A delegation from Zimbabwe went to Canada. He denied that he was paid for recording the meetings. He admitted however that a sum of money was sent through the company to pay the people who were doing the video recording. The money was paid through his ex-wife's trust account in order to secure further evidence of the plot and not as a reward to the company. Asked whether the company had done work before the end of 2001 which entitled it to payment from the Zimbabwe government he told the court that from December 2001 there were negotiations between the Minister of National Security and Mr Legault and some work was done for the Zimbabwe government in terms of the contract. Research was done in the second half of December 2001. He also told the court that although the Zimbabwe government has so far paid a sum of US\$615,000 the government still owes the company some money. On the interview of President Mugabe by Mr Davies of SBS Television, he told the court he asked Minister Goche to arrange

the interview with the President. At that time false information was being peddled about Zimbabwe and it was important that heads of state were given the details of the coup plot since they were to make decisions on a possible embargo on and status of Zimbabwe. He admitted that the audio tape was of poor quality. He told the court the transcript of the tape was an attempt at transcription. At no time did he tell anyone that the audio tape contained evidence of the plot as he had not even listened to it. He also told the court that Mr Johnson told him about the plot approximately five minutes before the meeting with the accused. The witness further stated that after the request to assassinate the President had been made at the first meeting in London, he decided to "go along". The accused had said he wanted Dickens and Madson to co-ordinate the plot with the CIA. On the decision to video record the meeting, he told the court the company took advice from a lawyer, one Leslie Grossley, who advised Mr Legault that they could proceed. No other details or requirements were discussed. The tape was kept by Miss Thomas under lock and key in the office. He denied that during the second meeting he "drove" the accused on so that he could be entangled in a conspiracy. The witness also told the court the accused was anxious to meet an American official to further his plot and kept on phoning. He denied that the accused attended the meeting in Montreal because he had been told that high ranking US officials would attend the meeting and he should convince them to support his party financially after the elections. He admitted that during the meeting the accused believed the witness and the other people were on his side. They made the decision to record the meeting so that his plans could be made known to the Zimbabwe government. He further told the court that it never occurred to him to use an expert to record the second meeting. He was not aware whether Miss Thomas knew what to do in order to record the meeting on audio tape. He did not personally arrange her trip but believes this had

been done in the office. She must have known about the murder plot from the general discussions in the office. He was aware she had an audio tape on her person. On the transcript of the audio tape it was his evidence that Miss Thomas said she tried as best as she could and at times she and Elizabeth Boutin put sentences together without actually hearing the words. He also admitted going to the Congo on two occasions in the company of Rupert Johnson. In the Congo Rupert Johnson talked to the Minister of Security about recruiting Zimbabwean soldiers for the MDC. He himself was very much a spectator. Dickens and Madson paid for his ticket so that he could find out what the MDC was up to. He admitted that in the transcript of the second meeting the words murder and assassination do not appear. Nor is there reference to the accused's desire to become President by the end of December 2001. He also told the court he was advised that the vouchers requested by the defence (regarding the work done for the Zimbabwe Government) had been destroyed by Mr Legault because of security concerns. He also told the court the company lawyer in America, Mr Sharpe, had advised that the documents registered under the FARA legislation in America were public documents which the defence could access, even on the internet. Asked why there is reluctance to disclose the account number into which the money sent by the MDC was deposited he told the court Mr Legault and their lawyer Mr Sharpe advised that for legal reasons the account should not be disclosed. This was because there are legal proceedings pending in Australia by the MDC and a criminal complaint has also been lodged by the MDC in Canada with the police. On the composition of the company he reiterated that he and Legault are shareholders whilst Mrs Francis Lang is the sole director of the company, which is permissible in Canada. In this respect she supervises the activities of the company in all fields. He admitted that the accused said "So don't try to arrange these arrangements of elimination are in a different

scenario". He told the court after he remarked that the accused was backtracking the accused then walked out. Asked whether the accused is recorded as having requested the assassination of President Mugabe or a *coup d`etat*, the witness told the court he could not recall.

Tara Thomas

She is currently employed as an assistant to the President and Vice President of Dickens and Madson. She joined the company in May 2001 as a receptionist and was thereafter elevated to her current position, which involves research and analysis. She is native American and has an interest in politics. In the office she would go through international papers containing articles on America and Africa where their clients were. She would find out what was relevant and analyse such information. She would also occasionally prepare press releases. She would be asked to do research on particular issues. Her employers would thereafter critique her work. She did a lot of research on Zimbabwe. She came to know Rupert Johnson when the latter visited their offices between August and September 2001. He did so at least twice. He also came to the office in December 2001 and attended the meeting which took place on 4 December 2001. She told the court Mr Johnson would make frequent telephone calls to the office and would speak to Mr Menashe most of the time. He had no association with Dickens and Madson and was not a director. He was never a consultant of the company nor was he ever employed by the company. As far as she was aware he was not well liked by Mr Menashe and Mr Legault.

She attended the meeting that took place at the Royal Automobile Club, London. At about 9.00a.m. she went out of the club to purchase batteries for a micro cassette tape recorder which she was going to use to record the proceedings of the meeting. Mr Menashe had told her to record the meeting. She admitted however

that she was not an expert. At the time she was not sure whether the batteries in the tape recorder were in good functioning order. She returned to the club about 30 minutes later and with Mr Menashe, Mr Johnson and the accused they proceeded into St. James room. The tape recorder was in her bag. On her way in she pressed the record button but was not able to check whether it was working or not. Mr Menashe had told her that the accused was going to say something which could be quite amazing to her - namely the assassination of President Mugabe. They occupied a table near the window. During the discussion Mr Menashe then said he wanted to clarify what the meeting was for. The accused then responded and said the meeting was to discuss the elimination of President Mugabe and the transitional government that was to follow. The meeting then continued. She remembers in particular the accused saying for a smooth transition to take place the death of President Mugabe must look like an accident or the result of a natural cause such as a heart attack otherwise the army would step in and no transitional government would be possible. After about 20-30 minutes she went out of the room and into the bathroom to check on the batteries. She found they were not working. She put in new batteries and went back to the meeting. The discussion centred around the nature of the transitional government, the joint leadership between the accused and the Vice President with backing from the army to ensure stability. Elections would be held six months later. The accused also wanted Dickens and Madson to ascertain where the intelligence agencies in the United States stood and whether they would be supportive. There was no discussion about lobbying the United States and Canadian Governments on behalf of the MDC. Thereafter they moved to another room for coffee. From there they went to a restaurant not far from the club where they had lunch.

She told the court the tape recorder was a regular cassette recorder - a micro cassette recorder but she was not sure. She

purchased the cassette in Canada. Back in Canada she listened to the recording on the same recorder. There was a lot of background noise. They listened to the tape on equipment that had an equalizer. Elizabeth Boutin, the receptionist, did most of the transcribing since the witness had other work to do. But she would help occasionally whenever Elizabeth encountered problems. Elizabeth and her boyfriend had transferred the tape to a mini-disk which they listened to in the office. The transcript that was produced had many gaps. What they did hear however was accurate although it was not much. She was also present on December 4 when a meeting took place at the Dickens and Madson offices in Montreal. Before the meeting she contacted Bernard Schober through the yellow pages. Mr Schober came to the offices where Mr Menashe told him what they wanted done. He thereafter came to the office in the company of two men who were said to be former Royal Canadian Mounted Police officers. Mr Schober then set up the cameras and microphone and connected these to a video recorder in an adjoining room. They told her how to operate the recorder. On the day of the meeting between 8.30-9.00a.m. she pressed the record button and the tape ran through right to the end. She saw the video tape in the office. Police officers from Zimbabwe thereafter came to collect the tape. No copies of the tape were made. She had no opportunity to watch the tape before it was handed over and only did so in Zimbabwe when she came to give evidence. In Canada she only saw bits and pieces.

She told the court the meeting was chaired by Mr Simms. She had a note book. The meeting was to ascertain what arrangements had been put in place in Zimbabwe to ensure a smooth transition after the elimination of the President and whether the army would co-operate. The accused said he was not prepared to discuss this. Mr Menashe then threatened to stop the process altogether if he was now talking of going towards an election with President Mugabe still alive. At this stage the accused was upset. He thereafter went out

followed by Rupert Johnson. They came back and Mr Johnson said everything was on course. Thereafter there was discussion on timing and the sources of the MDC funding. There was talk of a future meeting with Perence Shiri in South Africa. There was also talk of funding following the transition and Mr Simms indicated the United States was willing to put money forward. She admitted that in paragraph 14 of her statement to the police she says the accused said he was not prepared to discuss that issue. She understood him to have been referring to the arrangements made on the ground for the period immediately following the elimination of the President.

On the injuries she sustained she told the court she sustained these in a bicycle accident. She was riding along a path. There was no-one else on the path. She suddenly found herself on the ground in pain and shock. Two black men stood near her and spoke to her but walked away when a lady in a car came and offered to take her to the doctor. She did not know if the accident was in any way connected to this case.

The witness then took the court through the tape. In particular she told the court that when the accused stated that “the discussion was never about the elimination ...” he was referring to discussions held between Perence Shiri and the MDC Shadow Minister. She also made a number of corrections to the tape. On the whole she found the transcript of the audible portions of the video to be accurate.

Under cross-examination she stated as follows. That when she joined Dickens and Madson in May 2001 the company was renting an office which comprised two rooms. The only people working for the company were Mr Menashe, Mr Legault and herself. She was the receptionist. She was told by Mr Legault of the existence of a company called Carlington in which Mr Legault and Mr Menashe were principals and which was in financial problems. She was advised that the Zambian Government was a client of that company. At the time the only client for Dickens and Madson was Dominica but the

company was not doing any work for that country. She did not receive any cheques and therefore assumed Dickens and Madson had no income. She accepted that Mr Legault and Mr Menashe were apparently not in a healthy position financially but also told the court she did not in fact know their financial position. The only money paying client they had by the end of 2001 was the MDC and the Ivory Coast. The Zimbabwe Government only became a client in 2002. As part of her duties as a researcher she would peruse news reports and bring any pertinent news to the attention of her seniors. She could not say how Mr Menashe and Mr Legault were able to meet her salary and that of Miss Elizabeth Boutin who joined the company in September as a receptionist. As far as she was aware no preliminary work was done for the Zimbabwe Government before the year 2002. She admitted that at the two meetings she attended Dickens and Madson pretended to be on the accused's side and to be supporting him. She admitted they "acted a lie" and "went along" with what was happening in order to collect evidence. She was adamant that although the accused talked of a constitutional process during the Montreal meeting, this was to take place only after the assassination of the President and the setting up of a transitional process leading to free and fair elections. It was also her evidence that about two days before the meeting at the Royal Automobile Club, Mr Menashe briefed her about the first meeting attended by the accused and his erstwhile co-accuseds and why she had to attend the second meeting. It was on that occasion Mr Menashe told her that the accused had requested for assistance in assassinating the President. He advised her that she would be required to tape the meeting as it was likely the accused would again make this request but she should not look surprised. She denied the suggestion that this was a money-making exercise. As regards the tape recorder she told the court she tested it in Canada by pressing the record button and then placing it a distance away whilst she spoke. She then

played it back and found it to be working. Mr Legault suggested she buys the batteries in London to replace those in the recorder. She did not change the batteries before going into the meeting. She did not seek expert advice on how to record the meeting. Mr Menashe travelled first class whilst she travelled business. She was adamant that after Mr Menashe opened the meeting the accused immediately said they were meeting to discuss the elimination of President Mugabe before the March 2002 elections and this surprised her. She heard the accused say the assassination must look like an accident otherwise there would be no guarantee that the army would cooperate. She also told the court that Elizabeth Boutin made a copy of the audio tape on her boyfriend's musical equipment at the request of Mr Menashe. When the audio tape was played in court she told the court she could barely hear the words on it but on changing the speed she was able to make out some words. She told the court the tape appears to be in a different condition than when she heard it. It was her evidence that they recorded the audio tape onto a disk using an equalizer to get rid of background noise and the result was a much clearer recording. The transcript was done from the disk. She denied the suggestion that the original tape has been substituted or "doctored". The witness further told the court that the video tape was kept somewhere in the office and all the people in the office had access to it. It was kept in the office until the following week when officials from Zimbabwe were given the tape. She also told the court that Mark Davies visited the offices in late December in connection with the tape. She also admitted that during the Montreal meeting she pretended to be taking notes. There was no objection from the accused and the accused remained relaxed. On being re-examined she told the court that she did not in fact know of the financial position of Dickens and Madson or that of Mr Menashe and Mr Legault. She did not know if the company had other clients or the income or expenditure of the company. She also told the court she

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was not aware of any work done by the company for the Zimbabwe Government before January 2002.

Air Vice-Marshal Robert Mhlanga

He is the Air Vice-Marshal and Chief of Staff - Operations in the Air Force of Zimbabwe. He came to know Mr Ari Ben Menashe in about 2000 when the later came to Zimbabwe selling military aircraft to the Air Force of Zimbabwe on behalf of Carlington Sales. He met Mr Menashe several times during the course of a week. At that time the witness was the Director for Supporting Services responsible for procurement. No agreement was reached as there were no immediate plans to purchase aircraft and no money had been allocated for this purpose. Mr Menashe contacted him telephonically once or twice thereafter enquiring about the failed deal. The next time he had contact with Mr Menashe was on or about 20 November 2001 on his return from Europe. Mr Menashe advised that he had an urgent matter to bring to the attention of the authorities and that this concerned a plot to assassinate the President by the MDC. It was agreed that Mr Menashe flies to Harare. He arrived about three days after the conversation and the witness received him at the airport and took him to his house. There Mr Menashe played a mini cassette on a small recorder he had. The cassette was virtually inaudible and he could not make head or tail of it. It was not worth while listening to it. He also looked at the transcript which Mr Menashe had brought with him. He could not make sense out of it. In addition to the mini tape there was also a diskette. Mr Menashe further disclosed that he had held meetings in London with the accused, Mr Welshman Ncube and Mr Renson Gasela during which they discussed a plot to assassinate the President. The witness told the court he decided to report the matter to the relevant authorities. He therefore decided to call the Deputy Director of the Department of National Security, Happyton Bonyongwe who came to the house together with the Director General who at that stage was Brigadier General Muzonzini and the Minister of Defence, Sydney Sekeramayi. Mr Menashe then explained

to them what had happened in London. The decision taken was that Mr Bonyongwe was to pursue the matter and take custody of the tape, the disk and transcript.

Under cross-examination he further explained as follows. That when Mr Menashe approached his department, he said he was selling a whole array of aircraft and that he was the President of Carlington Sales which was involved in agricultural commodities and military hardware. It was from this encounter that Mr Menashe became an acquaintance and thereafter they would communicate telephonically. It was also during this visit that Mr Menashe met Perence Shiri the Air Force Commander during one of the meetings. Mr Menashe did not appear to know anyone else outside of the Air Force nor did he say he knew the President of the Republic of Zimbabwe. The witness told the court that Mr Menashe told him he had important information and was coming to Zimbabwe. He talked of the plot to assassinate the President. The witness then waited for Mr Menashe to arrive, which he did on 23 November 2001. He admitted that he relied primarily on what Mr Menashe told him as the tape and the transcript were not very helpful. At that stage Mr Menashe did not talk about money.

Bernard Schober

He is 65 years old and a private investigator and security consultant operating a company called Kaybar International. He started off as an under cover investigator with a detective agency in Montreal. Thereafter he formed his own company but sold it at a later stage. During the course of his career he and others installed many hidden cameras. He went into retirement but decided to go back into the security business. He would be contracted by a company called Megapro - a private investigation company - to install video cameras and generally act as their security consultant. Megapro did only private investigations whilst other work requiring

security services would be referred to him. In November 2001 he was asked by Megapro to go and ascertain what the requirements of Dickens and Madson were. His contact at Dickens and Madson was Tara Thomas who then introduced him to Mr Ben Menashe. He also met Mr Legault. Mr Menashe indicated they wanted him to record and video tape a discussion which was to take place and thereafter to produce a video tape of the meeting. Mr Menashe indicated he was a political consultant and had an important meeting coming up which he wanted video taped. Mr Menashe himself was going to be present during the meeting. The witness then agreed to do the recording. He explained that according to the laws of Quebec one can provide such a service at the premises of a client but only if the client is also present. He agreed to do the work and hired two people to do the installation. One was a helper whilst the other, a man called Allan Rencourt, did the installation. Allan Rencourt had done many installations for him in the past and possessed considerable expertise. Allan Rencourt provided two marshal cameras and one delta quad split monitor. Also provided was a Panasonic video recorder and a Vetamax audio transmitter or microphone. He told the court that in his view the marshal cameras were the best. Because this was a hidden camera it was very small but nevertheless the best on the market. The installation was done on a Sunday in the presence of Mr Ben Menashe, Alex Legault, and Tara Thomas. The two cameras and audio transmitter were installed one on either end of the room so that they could provide a full picture of the boardroom whilst the transmitter was installed in the centre of the ceiling. The video recorder was placed in the kitchen. The cameras were installed at an angle. After the installation, they tested the equipment. They had to make a number of adjustments until they were satisfied that they would be able to get a picture of all the people in the room as well as the audio. He told the court there was a constant buzzing sound on the audio. They found that it was from

the heating and ventilation system. They advised Mr Menashe that there was not much they could do unless the ventilation system was switched off completely. As there were other offices in the building this was not possible as it was in winter. They were satisfied with the black and white picture but not the sound. They decided not to use colour because that would have required considerable lighting. The installation and testing took about 2½ - 3 hours. They instructed Tara Thomas on what to do in order to operate the equipment. This was after Allan Rencourt had set the time and date and programmed it. He told the court he could not remember how much they charged for this work but normally they charge US\$5,000 and he would then pay the other contractors. He believes he further told them that no-one should have access into the room once the equipment had been installed. He and Rencourt eventually came back to take the equipment on Wednesday. They did not view the recording.

Under cross-examination he further stated as follows. He operates from a desk at the offices of Megapro as a contractor earning US\$30,000 per year. During the time he came to give evidence he was charging a fee of US\$1,000 per day through the offices of Dickens and Madson. His air fare to Zimbabwe and hotel expenses in the country were catered for separately. In Canada he has separate business dealings with two other companies which contract him to do work for them. He was not aware that the payment for the video came through Mr Menashe's wife. He denied receiving the sum of US\$30,000 for the work he did for Dickens and Madson nor having any direct contact with the Zimbabwe Government. He denied that the tape produced was defective. He also explained that since the microphone was in the ceiling, it could pick sound depending on whether the speaker was facing up or down. The problem with that position however is that no-one speaks to the ceiling. The microphone is sensitive enough to pick up most conversation. He could not say why the audio was poor in those

instances where the position of the head remained unchanged whilst the person spoke. He denied that the picture produced by the equipment was not of good quality and told the court that the camera was a good camera given the circumstances. The tape was as good a tape as one can get. If the lighting had been stronger then a television quality picture would have been possible. He told the court he did not bring the equipment used to court because he only received the request to do so a day before he was to catch a plane to Zimbabwe. The time was too short. He denied the suggestion that the focus was not altered deliberately in order to produce a poor picture. He also denied that he was instructed not to produce a clear picture. The tape used was either a Memorex or a Maxwell. It was either 120 hours or 160 hours long but was recorded on long play. He told the court he was never asked to insert an identification mark on the tape they had produced and conceded that tapes of this type can be altered without detection. With proper technology one can change a number of things - the voice can be separated from the picture and the sound can be changed. What is said can also be substituted. This can be done on digital and replayed onto analogue.

The witness told the court that if the issue of the quality of the recording is important an expert can be found who can eliminate the buzzing sound and enhance the sound. Such technology exists and is used in old films.

Moses Magandi

He is a Chief Superintendent stationed at Police General Headquarters. On 5 December 2001, he was called to the Commissioner's office where he was assigned to accompany retired Brigadier Bonyongwe to Canada to meet certain informants. They flew to Canada and were met at the airport by Mr Ari Ben Menashe. On the morning of 7 December 2001, Mr Menashe picked them up from the hotel and took them to his offices. They were taken to a

room where there was a television, a video recorder and some chairs. They also met Tara Thomas. Mr Menashe then brought a tape of a meeting held with the accused on 4 December 2001. He then played the tape. On the tape he identified himself, Mr Legault, Tara Thomas, Rupert Johnson, the accused and another person he did not identify. Mr Menashe then left them to watch the video for about two hours. The witness' observation was that several matters were discussed in the video, elimination, discussions with military and transitional government. When Mr Menashe came back and asked what they thought about the video the witness told him he believed there was information which could lead to the compilation of a docket. Mr Menashe then handed the tape over to the witness. The video tape had some letters and numbers inscribed on it. He could remember T1605. Also inscribed were words "o.c." which Mr Menashe explained meant original copy. After discussing with Mr Bonyongwe they decided to take the tape back to Zimbabwe as an exhibit. He requested for two copies. One copy was to remain at the embassy in Ottawa. The other was to be sent by DHL back home to the office of retired Brigadier Bonyongwe. An officer from the embassy came to pick up a copy. They then flew from Canada and arrived back home on 10 December 2001. He thereafter briefed the Commissioner on the trip and the tape. He was instructed to hold on to the tape until further instructions. He kept the tape in a safe in his office. On 20 February 2002 he was then asked to join a team that had been constituted to investigate the case. The team comprised Assistant Commissioner Mutamba, Chief Superintendent Gora, Chief Superintendent Matema and Senior Assistant Commissioner Matema who was in overall charge. He availed the tape to the Chief Investigator, Assistant Commissioner Mutamba. They viewed the tape. Thereafter arrangements were made for Mr Menashe and Tara Thomas to come to Zimbabwe to make statements. They did so and on 23 February 2002 statements were recorded from them. The

witness was not involved in the recording of the statements. Statements were also recorded from the accused and his erstwhile co-accuseds. Arrangements were also made for statements to be recorded from Mr Schober and Mr Legault. The witness also collected from Mr Bonyongwe a mini cassette, a diskette and a transcript on 20 February 2004. They were not able to play the diskette because they did not have the equipment. They played the mini cassette but found it largely inaudible. They referred the mini cassette to the National Transcriber who produced a transcript which had many gaps in it.

Under cross-examination the witness further told the court as follows. There was nothing on either the mini cassette or the transcript to suggest an offence had been committed. When they left to go to Canada, he was not advised that a tape, diskette and transcript had been given to Air Vice Marshal Mhlanga. He admitted it was unusual for the evidence which was locked up in his office to have been aired on Australian television before the police had launched investigations. He does not know who made the decision to have the video aired in Australia and Zimbabwe. He also told the court that when they viewed the tape in Canada, Mr Menashe refused to identify the man who chaired the meeting saying he would disclose the name at a later stage. When Mr Menashe came to Zimbabwe to give a statement, he said he would only reveal the name in court. Tara Thomas however identified the man as Mr Simms in her statement. When Mr Menashe was advised of this his response was that they should record whatever Tara Thomas said but he would abide by his earlier position. It was also his evidence that he received a copy of the transcript from Mr Bonyongwe and not the original. He does not know what happened to the original. Having perused the transcript the investigating team formed the impression that the transcript was of no use and it was accordingly not included in the docket. The transcript was however kept in the office of the

chief investigator. He admitted that the intelligible portions of the transcript do not contain evidence of a conspiracy. He accepted that another transcript done by the National Transcribing Services, which was included in the docket, had much less information in it. As a team they were also aware of the contradiction between what Mr Menashe was saying publicly about the contents and what was actually on the tape and diskette. He also denied ever telling Mr Menashe that Mr Johnson had been a member of the Selous Scouts. He could not say where the fax copy of the transcript (Exh 13) came from but later recalled that what he collected from the Air Vice Marshall was a fax copy and not an original copy. He also told the court that he does not remember Mr Menashe mentioning a trip he and Mr Johnson took to the Congo to speak to a Minister there about recruiting young Zimbabwean troops. He also denied that Mr Menashe indicated that he had reported the assassination plot to a Mr Fraser in Canada. It was also his evidence that the government transcriber was given the original video tape at CID headquarters in his presence.

Senior Assistant Commissioner Stephen Mutamba

He is the officer commanding Criminal Investigations Department (CID) and is the chief investigation officer in this case. At the relevant time he was an Assistant Commissioner and Deputy Officer-Commanding CID. On 19 February 2002 he together with Senior Assistant Commissioner Matema (who was Officer-Commanding at that time), Assistant Commissioner Mhiripiri and Chief Superintendent Matema (now Assistant Commissioner) were called to Deputy Commissioner Matanga's office where they were briefed about an alleged assassination plot against the President by the accused and others. They were also given copies of a signed contract and a signed memorandum of agreement. At that meeting a team was constituted to investigate the matter. The head of the

team was Senior Assistant Commissioner Matema and the other members of the team comprised Assistant Commissioner Magande, Assistant Commissioner Matema, Assistant Commissioner Gora and the witness. They were then given a copy of the video tape which was said to have been recorded in Canada and on which was inscribed "o.c.". After this they were also given a copy of an audio tape, a transcript and a mini disk. All this occurred on 20 February 2002. Thereafter a Mr Wamambo of the Attorney-General's Office came to view the tape together with the officers after which he directed that they should continue with the investigations. On playing the tape, they picked a discussion about the elimination or assassination of the President, a *coup d`etat* and efforts to appease the military through people like Air Marshal Shiri. They also played the audio tape but found it unintelligible. They read the transcript and found some parts unintelligible. For that reason they retained the transcript but did not include it in the docket. Attempts by a government transcriber to transcribe the audio tape were largely in vain. Thereafter they called Mr Menashe to come to Zimbabwe. He did so in the company of Tara Thomas arriving in Zimbabwe on 22 February 2002. They were interviewed by the team at the CID headquarters on the same day. They explained what had taken place at the meetings with the accused and his erstwhile accuseds. Statements were then recorded from the two witnesses the following day. Thereafter they asked Mr Musango of the transcription services to transcribe the video tape. Mr Musango was given a copy whilst they retained the original. In the meantime the witness went to Canada where he recorded statements from Mr Schober, Mr Legault and Elizabeth Boutin. Before the trip to Canada they recorded statements from the accused and his erstwhile co-accuseds. Mr Welshman Ncube eventually furnished the team, through his lawyer, with a copy of a business card belonging to Rupert Johnson. Efforts to locate Rupert Johnson were in vain. He also explained how the team

attempted to get assistance from Interpol to get statements from witnesses in Canada. Nothing materialized and he, Assistant Commissioner Magande and Assistant Commissioner Matema proceeded to Canada where they recorded statements from the three witnesses at the Zimbabwe Embassy in Ottawa. Thereafter they proceeded to the offices of Dickens and Madson to see where the recording had taken place.

He told the court it was Tara Thomas who disclosed the name of Mr Simms whilst Mr Menashe's stance was that he would disclose the name in court. Thereafter a statement was recorded from Brigadier Bonyongwe. The video tape was also taken to Mr Chinhoyi the ZBC chief transmission officer for inspection to see if it had been tampered with in any way. A statement was then recorded from Mr Chinhoyi and thereafter from Air Marshal Perence Shiri. The video was also referred to a private company - Vickstrom - for transcription.

Under cross-examination he told the court he was not aware of any police investigations that were carried out between 23 November 2001 when Mr Menashe came to Zimbabwe and 20 February 2002 when the investigation team was set up. The witness told the court Tara Thomas indicated Mr Simms was from Canada. She did not explain why Mr Simms attended the meeting. He also told the court that if he had located Mr Johnson he would have treated him as an accused in this case.

Brigadier Happyton Bonyongwe

He is the Director-General of the Department of National Security but at the relevant time was the Deputy Director-General. His evidence was as follows. On 23 November 2001 he was contacted by Air Vice-Marshal Mhlanga who indicated he had information to pass on to the Department of National Security. The witness and the then Director-General Muzonzini then proceeded to

Mr Mhlanga's residence where they were introduced to Mr Ben Menashe. Mr Menashe indicated he had evidence of an assassination plot by the accused and others. As evidence of this he produced a small audio tape, a small diskette and a transcript which he said contained some recordings which showed that the accused in particular approached Dickens and Madson. The witness then listened to the tape briefly and could discern the accused's voice. There were other voices the witness could not identify. It was Mr Menashe who explained the plot. The witness also browsed through the transcript and formed the opinion that the recording was not very good. There was not much substance on which one could formulate the definite view that there were essentials of the plot. He recalls there were references to the first lady and the word elimination was also used. Mr Menashe said the audio tape and the diskette gave credence to the existence of the plot. He did not listen to the diskette. The witness told the court he believes the transcript was faxed from the offices of Dickens and Madson on 22 November 2001 whilst Mr Menashe was on his way to Zimbabwe. This is the explanation Mr Menashe gave. Mr Menashe further explained that his company had been engaged by the accused to assassinate the President and that there was going to be a follow-up meeting in December in Canada where conclusive evidence of the plot would be secured. This was because those present at the meeting had said they needed more in terms of evidence. Mr Menashe said he was to return to Canada and secure further evidence. Mr Menashe then left promising to keep the witness informed if there were further developments. The witness, with the agreement of all the people present, then took custody of the exhibits. Sometime before 3 December 2001 Mr Menashe contacted the witness asking for money to secure the video evidence. The money was sent to him. On 4 December Mr Menashe advised that the evidence had been secured and asked for a team from Zimbabwe to go to Canada to collect the

evidence. The witness then proceeded to Canada with Chief Superintendent Magande who had been nominated to undertake the trip by the Commissioner of Police. In Canada they were given a video recording of a meeting that had taken place on 4 December 2001. They viewed the tape and concluded that the accused had a case to answer. Two other copies of the video were produced. One copy was sent by courier to the Department of State Security whilst the other copy was sent to the Zimbabwean Embassy in Ottawa. Chief Superintendent Magandi retained the original. They were also given copies of contracts signed between the MDC and Dickens and Madson. In January or February 2002 the witness then handed over to the police the audio tape, diskette and transcript which had been in his custody since November 2001. The witness explained that his department carries out investigations which can be of an informal nature and in some instances covert means are used. Depending on the result, the matter can then be handed over to the police for overt investigations. In this case his department had to carry out its own investigations. There were people like Mr Johnson and Simms who had been involved. His office wanted to find out exactly what was taking place. When the matter was reported by an Australian television channel, they were stampeded into making the investigations public and getting the police to formally charge the accuseds. He did not know how the station in Australia was able to secure a copy of the video. The Zimbabwe television also showed excerpts of the video which had been recorded by the Zimbabwean ambassador to Japan. He told the court his department has continued to be involved in this matter and has assisted in securing the attendance of witnesses. They facilitated a trip by a team of police officers to Canada to record statements from witnesses. His department is sharing the accommodation and travel expenses with the Ministry of Justice in respect of Mr Menashe, Tara Thomas and Bernard Schober. Mr Schober was paid US\$8,000 in witness

expenses which his department hopes will be reimbursed. He explained that his department entered into a contract with Dickens and Madson on 10 January 2004. Prior to that date the company had done some work described in the contract which included public relations work in Canada and the United States. This work commenced towards the end of December 2001. After the firm had secured the video and after further discussions they formed the opinion that it was well placed to do the consultancy work described in the contract. That contract was valid for one year but was modified and renewed after that. He explained that Dickens and Madson did work such as publishing newsletters, lobbying influential people in the United States, Canada and Europe. When the contract was modified it covered other work done in Russia and in Africa. The modified contract gave greater emphasis to investments in Zimbabwe by companies from Russia and West Africa. On the payments made to Dickens and Madson he explained that the first two totaling US\$30,000 were paid in connection with the work done in securing the video evidence. The US\$200,000 paid on 18 December was in connection with the consultancy contract in terms of which the company was to represent Zimbabwe in Canada and the United States. Subsequent payments up to August 2002 covered work done under the consultancy contract such as issuing newsletters, lobbying and securing investments. The payments may have included hotel and travelling expenses. He accepted that there might be a sum of money still due to Dickens and Madson. This will be paid once the claim is substantiated. There were occasions when invoices were provided but in most instances the request was by word of mouth. The records used in processing payments would be destroyed after a certain period. This is in accordance with regulations which govern the operations of the department.

Under cross-examination the witness told the court he did not initially think he would be a state witness but only realized this in

March or April 2002. This was because his department is usually involved in matters in an informal manner and thereafter passes on information to the police. He admitted that in the video he did not hear the accused use words such as kill, murder or arrange a *coup d`etat* but told the court he used words to the same effect. He told the court when he first met Mr Menashe he appeared to be a well connected man and that his main line of business was public relations and political consultancy as well as lobbying. He told the court that until the three exhibits were handed over to the police, they were secure in a safe in his office and only he had access. On the money paid to Dickens and Madson the witness told the court that Mr Menashe wanted a sum of US\$30,000 to meet all sorts of expenses in procuring the video evidence. The money was paid in two sums - US\$20,000 initially and thereafter US\$10,000. Mr Menashe did not send any vouchers or receipts from the people doing the recording, His department played no role in identifying or selecting the person who was to do the recording and the statement by Mr Menashe that the department was in direct contact with them would be incorrect. The witness told the court that if Mr Schober was paid US\$5,000 out of the sum of US\$30,000, the remainder would have been used to meet other expenses as Mr Menashe was not doing this for free. If Mr Menashe says he passed over all the money received to Mr Schober then there would be a discrepancy. Asked why his department did not take over the recording of the Montreal meeting, the witness told the court he was made to understand there had been previous meetings in the past and the follow up meeting was to look normal. Involving the police or anyone else would have exposed what was taking place and the decision not to involve the police was a risk they had to take. He also told the court that they did not approach the police in Canada because official channels are lengthy and there was no time for this. At no stage did Mr Menashe advise him that the matter had been reported to the

Canadian authorities or to the American authorities. On the identity of the gentleman identified by Tara Thomas as Mr Simms he told the court Mr Menashe indicated the man was someone in the CIA but he did not want to reveal his name in case this compromised him. Mr Menashe did not explain why the person chairing the meeting had to be a member of the CIA. From December 2001 his department has been trying to identify who this man is exactly so that perhaps he can appear in court and testify. The witness also told the court that some vouchers and financial documents relating to the money forwarded to Dickens and Madson were destroyed as they related to the covert area of the operations of the department. It was also his evidence that negotiations for a consultancy started after the video evidence had been secured. Mr Menashe came to Zimbabwe in January 2002 and during that visit the contract was concluded. However there had been communication before then as the company had started doing some work for the government. That work commenced around 9-10 December 2001 after it became clear that Menashe was a wealth of information on the activities of the accused. At times he would phone 2-3 times a day with follow up information on the accused's whereabouts. Some invoices were received for expenses incurred under the contract. He further told the court that the sum of US\$200,000 wired to Dickens and Madson on 14 December 2001 was in respect of the contract to be signed. This was about five days after the witness arrived home from Montreal. The amount was negotiated by Mr Menashe and the then director general but he was also consulted. Asked whether the department would have entered into a contract had Mr Menashe not provided the video evidence the witness told the court probably not because after the video a relationship was born and Mr Menashe indicated he could get things done. The payment made on 5 March 2002 was for vital information on the accused's activities in West Africa. Some of the damage had to be undone and there was need to

influence a positive image of Zimbabwe. He told the court he does not accept Mr Menashe's claim that he is owed a further sum of almost US\$400,000 by the Government of Zimbabwe but accepted that Mr Menashe's greatest contribution was to give Zimbabwe access to other governments in order to influence opinion. He, as it were, opened doors. Because of the confidence in the work done by Mr Menashe a further contract similar to the one signed in January 2002 was also signed in March 2003. He told the court he believes a copy of the video was given to Mr Mark Davies by Mr Menashe. It was not provided by his department. He had two copies - one came by diplomatic bag whilst the other by DHL. The police had the original. He does not believe the police gave their copy to Mr Davies and believes Mr Davies got a copy from Mr Menashe. He could not say how Mr Menashe would have been able to get a copy but believed he may have kept a copy. On the amount paid to Tara Thomas, the witness told the court Mr Menashe advised them that Tara Thomas had been caused to fall off her bicycle. The assailants had then said to her "Let your Zimbabwe help you now". Because of the attitude that the injury had ensued from the work the company was doing on behalf of Zimbabwe, it was decided to pay her Canadian \$10,000-00. On being advised that Ms Thomas had indicated to the court that she did not know how she fell and that all she noticed were people who did not have a Canadian accent, he told the court the facts did not exclude payment. The request made for payment of the amount was telephonic but subsequently Mr Menashe came to Zimbabwe and gave a verbal briefing. He told the court early in 2003 Mr Menashe reported having a meeting with Mr Walter Kansteiner of the United States State Department. Mr Menashe also attracted some investments into the country. In his view without Mr Menashe's assistance the situation would have been much worse. Ghana for example softened its stance and supported other African countries although its Foreign Minister had expressed

negative sentiments on Zimbabwe. As regards Mr Simms the witness told the court that they knew Mr Menashe has a definite link with Mr Simms - also referred to as Mr Schur - and Mr Menashe even promised to assist to get him here. He also told the court that his understanding was that Mr Legault did not come to give evidence because of an outstanding case to do with his deportation and he was not prepared to go out of Canada. It was also his evidence that when Tara Thomas was paid C\$10,000 on 21 February 2003 this was because she was in Zimbabwe and there had been some problems with the amount previously transmitted to Mr Sharpe in the United States for onward transmission to Dickens and Madson. Although a debit had been effected on the local account, the bank in the United States was refusing to pay. Tara Thomas was then paid in cash on the understanding that the money previously transmitted would be returned.

The witness also revealed that at the time Mr Menashe gave evidence he was working for the Zimbabwe Government and was expecting some considerable sum of money in the near future. He also admitted that the contract was renewed on 11 March 2003 in the middle of the trial of this matter and that agreement on the renewal of the contract had been reached some 2-3 weeks before the contract was signed. The original contract had lapsed but the projects were still continuing. On the money paid by the MDC to Dickens and Madson, the witness told the court they advised Mr Menashe that he must send the money to the Zimbabwe Ministry of Justice as evidence and that he cannot keep "blood" money. Mr Menashe said the money was in a trust account. Mr Menashe did not send the money as promised but later said after consulting his lawyers it had been decided that the matter should follow the legal route. He told the court the vouchers were destroyed within three months because they believed those vouchers did not have anything

to do with the present case. They considered the contract a different matter.

Air Marshal Perence Shiri

He is the Commander of the Air Force of Zimbabwe. He told the court he has met one Giles Mutseyekwa who is a Member of Parliament for the MDC party and is the MDC Shadow Minister of Defence. He met Giles Mutseyekwa as a member of the Parliamentary Committee on Security Ministries in one of the committee rooms at Parliament. He denied ever meeting Mr Mutseyekwa outside Parliament. He also admitted seeing the video of the Montreal meeting. He recalls in the video there is a portion that refers to Mr Mutseyekwa having a meeting with him together with the army commander so that the army would support the MDC once it assumed power. He denied that any such meeting took place. He however admitted meeting three MDC members - Job Sikhala, Tafadzwa Musekiwa and Gift Chimanihire - on two occasions. On the first he met Job Sikhala and Tafadzwa Musekiwa. On the second he met Tafadzwa Musekiwa, Job Sikhala and Gift Chimanihire. He told the court he was approached by Mr Musekiwa and Mr Sikhala at Mazoe Hotel who indicated they wanted to speak with him privately. This was in January 2002. Eventually they met at his residence. At his instance and out of caution the meeting was also attended by an officer from State Security. Many issues were discussed. Mr Sikhala then indicated that the accused respected the witness and that if he were to win the elections he would want the witness to be his adviser. Mr Sikhala went further and said that the accused was interested in working with the witness and that if he assumed power he would want the witness to be the commander of the army. The accused also wanted the witness to play a pacifying role so that war veterans and the armed forces would accept his authority in the event he won the elections. Mr Sikhala went further and said

amongst all the army generals the witness was the most influential and would be listened to. Mr Sikhala further asked whether it would be in order for the accused to phone him to say hello. The witness told the court he refused saying he does not speak to politicians. Further discussions took place during which the witness indicated that he was in any event unhappy with the MDC because of its disrespect for the President and because of its unclear stance on the land issue. This he told them would make the mission impossible to convince other army officers to work with the MDC. The witness told the court he basically wanted to find out what they had in mind. There was no discussion as to how the MDC would get into power. But there was talk of elections.

On the second occasion Job Sikhala, Tafadzwa Musekiwa and Gift Chimanikire attended. The same officer from State Security was also asked to attend. During the meeting Mr Chimanikire said he had been sent by the accused to clarify several issues as a follow up to the previous meeting held the previous Monday. He further stated that the apparent disrespect for the President was just politicking and that the MDC accepted that the President was the father of the nation and would give due recognition to this if it came to power. On the issue of land he explained that the MDC accepted equitable land distribution but was against the modalities being employed. He also explained that their relationship with white farmers was one of convenience. Differences with war veterans would be ironed out if the MDC assumed power. Mr Chimanikire further stated that the accused wanted the witness to assist in the event he assumed power. There was no discussion on how that was to happen. Mr Sikhala said if the witness agreed to speak to the other generals and members of the army he would be paid \$10 million. The witness dismissed the offer saying he did not work for rewards. The three then left. On both occasions he briefed the army commander. The

Department of State Security was also aware of these developments and for that reason had assigned an officer to attend the meeting.

Under cross-examination the witness told the court that at no stage was there a meeting between the MDC shadow Minister of Defence and the Commander of the Army and the witness. He denied that during the second meeting discussions were held on possible assistance in the establishment of a school by the witness in Mvurwi. He told the court they discussed the professionalism of the army and adherence to the constitution. He also told the court the two meetings took place on a Monday and Thursday of the same week in January 2002.

Mr Constantine Musango

He is the recording supervisor employed by the Ministry of Justice, Legal and parliamentary Affairs. His department is responsible for the transcription of mechanically recorded proceedings. He explained that recording machines installed in court rooms use audio tapes which are then transcribed on transcribing machines. These machines have a foot pedal and an ear phone. The foot pedal controls the speed. The earphone is for individual listening. A speaker inside the machine can be used if there is more than one person who wants to listen. On 4 March 2002 he was requested by the police to transcribe a video tape. He told them that normally they transcribe from audio and not video tape. Arrangements were then made for him to take his recording equipment to CID Headquarters. He took a microphone and some audio tapes to record what was on the video tape. He then recorded what was being said on the video onto the recording machine. He then transcribed the tapes using a transcribing machine and produced a transcript. The position and identities of the persons appearing on the video were explained to him by Chief Superintendent Magande. This was to enable him to produce a

transcript showing the person or persons speaking. After doing the transcript he went to the CID offices where he did corrections after playing the video. Where he was not able to hear he would put dotted lines. He told the court he had a difficulty in transcribing because of a noise coming from the video. It was explained that the camera had been mounted next to a fan during the recording. It was difficult to say which speaker was speaking at any given time. He had difficulty making out what was said by Mr Legault, Mr Menashe, Mr Johnson and Mr 'X'(Simms). Later he was asked to insert the time on the left column against the person speaking at any given time. He then inscribed the time on the left margin of the transcript as the video was playing. He stressed that the times are a guideline and are not very accurate. He further told the court he had some difficulty hearing what was being said and it took him almost a month to complete the transcript as he had other duties to attend to. He would spare two full days a week to do the transcript. He was also asked to transcribe an audio tape - an ordinary radio cassette. He had to transfer what was on the cassette to the transcribing machine. It was very inaudible. It did not make sense. He brought this to attention of the police. He produced a transcript of that tape.

Under cross-examination he told the court the microphones used in his office are hundred per cent accurate and the equipment currently in use is fairly new. Used properly one should get a very accurate recording. Whatever was on the video would have been copied onto the recording machine. He told the court the video quality was poor. There were occasions he played the tape over and over again in order to be sure. After the first draft he would listen to the tape again and correct the transcript where necessary. Not every page was corrected. He told the court he was not always able to tell who was talking at a given time as he did not always see the lips move owing to the indistinct picture quality. The police said the video cassette they had given him was the original.

Tineyi Nyawasha

He is employed by Vickstrom Investments, a company that hires out electronic equipment for conferences and functions and does the transcription of video and audio tapes. Some of their clients would ask his company to video-record conferences and at the conclusion of the conference to transcribe the proceedings. In December 2002 he was requested to do a transcript by the police of a video tape. They explained what the video tape contained and the need for a transcript to be prepared for use in court. He commenced the transcription at CID Headquarters on 6 January 2003. He used a video recorder, TV set and headphones. He also connected external speakers to the TV set. He did not establish if the tape was an original or a copy. The police indicated the identities of the people on the screen. He played the tape, taking down some notes as the tape played. He went over the tape again comparing this with what was on the worksheet. He then produced a draft which he gave to the police. The police requested him to reflect the times. He did so and then typed a final copy which he gave to the police.

He worked about nine hours daily on the transcript and spent about ten days on the transcript. He found that there were some parts of the tape that were not very audible whilst there were other portions that were. Where he did not hear, he would insert dots. In particular he had difficulty hearing Mr Legault or following his accent. He also had difficulty at times with Mr 'X' ("Simms"). He believes he captured 70-80% of what is in the video in the transcript. He found that the video tape was five hours long.

Under cross-examination he told the court his company is not involved in surveillance and does not have equipment for that purpose. He admitted that he is aware of programmes where hidden cameras are used to record comments by members of the public. The quality of the picture in such cases is much better than in the

instant case. He could think of no particular reason why in the instant case it was not possible to get a clearer picture. He also told the court on his equipment it is possible to record sound clearly. He admitted however that he has no expertise on both clarity and sound of a picture.

Edward Tamukaneyi Chinhoyi

He is employed by the Zimbabwe Broadcasting Corporation as manager for TV Broadcasting Technology and Information Communications Technology. He is a qualified telecommunication technician and holds other qualifications in television broadcasting technology and management of information systems. Before being elevated to his current position he was chief engineer, a supervisory position charged with the supervision of engineers and technicians who do television transmission and outside television recordings. In his current position he manages two areas - television transmission in terms of technology and management of the information technology department. He has been involved in video recording since the time he joined ZBC. In May 2002 he was approached by the police and asked to analyse a video to ascertain if it had been tampered with in any way or re-edited after its original recording. The tape was a VHS tape recorded on long play i.e. a 4-hour tape had been made to record for 8 hours. He viewed the tape and noted that there was a recording by two cameras in fixed positions and focusing on a conference table. There was also a timer clock running at the bottom of the picture. In the video people came in and went out of the conference room. He was not asked to identify anyone but he identified the accused. He concentrated on the flow of the picture. He also looked at the sound and the picture to see if they were in synchronicity. He also looked at the clock running at the bottom of the picture. He did not see any evidence of a break in the recording and in his opinion the picture flow was continuous. On

synchronisation he could not make out the movement of the lips of speakers because the picture was too far out and somewhat hazy. However in other aspects the movements and gestures made by the speakers were consistent with what was being said. He did not see any evidence of a jump to suggest a break in editing. He told the court he is familiar with editing techniques. He is familiar with three types. One is straight editing where the video material is placed one after the other i.e. where you record, stop and then continue. If it is the same camera there would be what are called jump starts i.e. for example if a picture is moving it jumps to another position instantaneously. He told the court it is easy to detect this type of editing. He did not see any evidence of this. The second form is where one mixes a video signal and an audio signal from different sources. This may be in the form of a voice over or in the form of a narration or translation. Normally the voice would not be in synchronicity with the picture or what the person in the picture will be saying. He found no evidence of this in the present video. The third form is what is referred to as lipsyncing. In that case the voice of a person imitating the speaker is recorded with the picture of the speaker. This one may be difficult to detect and requires a lot of scrutiny. A lot of practice is required before recording to synchronise the voice to the picture. He told the court it would have taken a long time to lipsync in this case as this was an eight hour film. The witness then produced examples to illustrate the different types of editing.

On the picture quality of the video in this case he told the court the picture is very poor which makes it hazy and at times difficult to see the details. There are times when the speakers are not very audible. He told the court his area of expertise is video. He saw no evidence of the picture being cut.

Under cross-examination, the witness told the court that all he was asked to do was to ascertain whether there was evidence of the

continuity of the picture being tampered with. He told the court he did ask himself why the picture was so poor and came to the conclusion that this was because the recording had been done on VHS system normally used in the home. The VHS system is generally of very poor standard. He explained that people usually use VHS because it is the most affordable. In this case the recording was done on extended play which made the quality even worse. He told the court the quality of the picture, in addition to the type of video cassette used, can be affected by the type of equipment used. He admitted that it is easier to tamper with a poor quality tape than with a good quality picture. Therefore if one has a poor quality picture one must be more attentive. Considering his brief however he did not believe it was relevant. He also told the court one requires a good camera, properly focused, to produce a good picture. He admitted that the video in this case is not properly focused. If there was a monitor, then a poor picture could not have been made by mistake as this would have been apparent on the monitor. He told the court that sound is not his field of speciality and he cannot say whether there was interference in that regard. He admitted that sound and picture can be separated, altered on digital format and then converted back to analogue. What a speaker says on the original tape can be substituted with something else uttered by the same person at a different time. New words can be attributed to a person using his own voice. He told the court surveillance cameras are generally not meant to produce high quality recordings. A recording from a surveillance camera would therefore not be the best. He believes the surveillance camera and recording equipment used in this case were of poor quality. The witness told the court that with adequate equipment it may be possible to remove the background sound in the videotape and come up with clearer sound.

B. DEFENCE CASE

Morgan Richard Tsvangirai

He is the President of the Movement for Democratic Change (MDC) since its formation in 1999. He denied asking Ari Ben Menashe to arrange the assassination of the President and to stage a *coup d`etat*. He did not agree with anyone that a *coup d`etat* be carried out. The MDC did not pay any money for the assassination and *coup d`etat*. He told the court Rupert Johnson was a representative of Dickens and Madson and not the MDC. He explained how he joined the labour movement and how thereafter he moved up the ranks of the labour movement eventually becoming secretary general of the Zimbabwe Congress of Trade Unions in 1988. He told the court that although he was not trained as a freedom fighter during the years of the struggle for the independence of the country, trade unionism and politics were inseparable. He was arrested at one stage but was released. He supported the liberation struggle and regarded President Mugabe as his hero and hero of the liberation struggle. At independence in 1980, he became a member of ZANU(PF), which party was supported by the workers. After 1985 however disagreements emerged between the labour body and ZANU(PF) over some provisions of the Labour Act and in particular collective bargaining. There was disgruntlement amongst labour officials, arising in part from the corruption in the labour body. He was appointed Secretary General to correct the administration and to create a body which was autonomous from the government. Serious conflict arose after the government embarked on structural adjustment around 1990. As secretary general he embarked on various strategies to improve the labour union finances and to recruit membership. This saw membership jump from 100,000 to 400,000. This unnerved the government and Ministers were heard to remark that the union was planning to go into politics. As time went on the relationship became worse. Some meetings of the union were prohibited. Thereafter a conflict arose between the government and

war veterans over the payment of pensions. Government eventually agreed to pay but this had not been budgeted for. The government then came up with a levy which the union opposed as it was a further strain on workers. Thereafter he was physically assaulted by a group of war veterans at his office. The ZCTU spearheaded the formation of the National Constitutional Assembly which campaigned for constitutional reform. There were also other civic organisations which were critical of the government. Because of mounting pressure the government appointed a constitutional commission which came up with a report. It became clear the government was not listening to the people. Various bodies responded to a call by the ZCTU for a national convention to address various issues affecting the country. The ZCTU was tasked with the responsibility of spearheading the creation of a new political party. The MDC then came into being, with the witness as the president and Welshman Ncube as secretary general. The MDC campaigned against the adoption of the Constitutional Commission Report and the 'no' vote won. Two weeks later the government embarked on fast track land reform. The MDC has since then been portrayed as a white driven party driven by a foreign agenda. He denied suggestions that he does not support land reform in Zimbabwe but told the court the fundamental difference has been on the method of implementation. The MDC supports a transparent programme and not the government's fast track programme which he says resulted in chaos. He told the court violence increased right up to and following the 2000 parliamentary elections. Despite a number of restrictions his party won 57 seats out of 120. They also challenged some of the election results. In the presidential election that followed in March 2002 he stood against President Mugabe. The conditions inside the country continued to deteriorate. There were public debates within the ruling party and Government about the position of President Mugabe following the results of the referendum and parliamentary

elections. Various scenarios were considered. One was the state of his health, his age and speculation he may receive an exit package, the possibility of a new leader emerging from the ruling party after the ZANU(PF) congress. He told the court he held the view that the assassination of a head of State would result in military intervention and anarchy.

The witness told the court that in August 2001 Renson Gasela, the MDC Shadow Minister of Agriculture, approached him and indicated that he had been approached by one Rupert Johnson - with whom Mr Gasela had personal acquaintance during the time when he was general manager of the Grain Marketing Board - offering the services of his company Dickens and Madson to campaign for the MDC. He gave approval to Renson Gasela to speak to Welshman Ncube about this development, bearing in mind that the party was operating on a tight budget in view of the impending elections. Thereafter he was advised by Mr Gasela that Dickens and Madson wanted to meet with the MDC leadership to confer on matters of mutual interest. He became aware in September 2001 that Welshman Ncube had signed a contract in terms of which Dickens and Madson were to do lobbying for the MDC in the United States. Whilst in Europe in October 2001 with other senior party officials they were advised that a meeting had been arranged in London on their way back. They were advised that the meeting would take place at the Heathrow Hilton Hotel. He arrived at the venue at about 11.00a.m. and found Mr Gasela already there. He was then introduced to Mr Rupert Johnson who in turn introduced him to Mr Ben Menashe. Mr Menashe and Mr Johnson then gave him their business cards. Mr Johnson's card reflected him as a director of Dickens and Madson. Mr Menashe then talked about himself for sometime giving his background in the Israeli Intelligence, how he became an adviser to a former Israeli Prime Minister and how he gained wide experience in the international community, including

countries such as South Africa, Zimbabwe and the United States. He said he had contracts in the intelligence community and that two years previously he had been contracted by the Clinton administration to negotiate an exit package for President Mugabe consisting of a sum raised by the Jewish community in New York as well as a senior post at McGill University in Canada. Mr Menashe also explained that he had met a number of senior Zimbabwe Government officials including Speaker of Parliament Mnangagwa, Ministers Sekeramayi, Mahachi and Mudenge as well as senior military commanders such as Shiri. He said although President Mugabe had initially agreed to take the package, he had later reneged and this had caused disappointment within the Clinton administration and the Jewish community in New York. Because they felt betrayed the Jewish community wanted to switch their support to the MDC which would include a financial package of US\$2 million. He said he was severing his relationship with the Zimbabwe government and gave detail on his influence within the international community in countries such as Iran, Namibia, and contacts with senior people in the United States such as the CIA director and the Secretary of State, Colin Powell. Mr Menashe said he believed the MDC would benefit from lobbying activities by his company. He also said his company was able to arrange contacts for the MDC. These would include contacts between the Zimbabwe military and the MDC so that there would be an understanding on the post election period because it was one thing to win an election and another to win the power institutions. He added that if the MDC were interested in hiring the services of his company, the fee would be US\$500,000 for lobbying, fundraising and promoting the MDC so that it could be viewed as a government in waiting. He said the US\$20,000 provided for in the contract previously signed did not correctly reflect the rate at which Dickens and Madson would be paid and was too low as he was going to devote a lot of time to this work. The witness told the

court he was very impressed with Mr Menashe and believed he could deliver. The MDC did not have a company working for it in the United States and Canada. He told Mr Menashe that the MDC did not have money. Mr Menashe said the minimum he expected was US\$100,000 so that he could register the contract with the United States authorities. He mentioned that the Zimbabwe government had contracted Cohen and Woods to do work for them in the United States for a much higher fee. He further explained that American law did not allow Dickens and Madson to take the fee from the US\$2 million promised by the Jewish community in New York. At this stage the witness told the court that he and others took a 5-10 minute recess in order to discuss the proposal. It was agreed that a contract be signed and Mr Menashe was advised accordingly. Professor Welshman Ncube was asked to draft the agreement and complete all formalities with Dickens and Madson. Mr Menashe indicated that the witness should be ready to travel at a moment's notice as he wanted to arrange meetings with United States officials, in particular Colin Powell. It was also agreed that Mr Gasela and Mr Johnson would be the contact persons and communication between the two organisations would be conducted through them. He told the court he believed the MDC would get substantial funding in countries like the United States and Canada.

Thereafter he was advised by Mr Gasela that Mr Menashe wanted to have a meeting in London. He was already involved in the campaign and considered the meeting an inconvenience. He flew to London on the evening of 2 November 2001, arriving in London the following morning. He took a taxi to the Royal Automobile Club where he found Mr Johnson waiting for him. Mr Johnson said the meeting would be at 9.00a.m. The witness took a shower. Thereafter he met Mr Menashe in the lobby and they were joined by Tara Thomas. They proceeded to one of the rooms for the meeting. There was a lot of noise coming from a construction site outside. There

were also some old ladies in the room. They moved to another room after just 5-10 minutes at the request of hotel staff. Tara Thomas was in attendance right from the beginning and, as far as he could recollect, did not leave the room. He denied requesting Mr Menashe to arrange the assassination of the President and staging of a military coup during that meeting. At the meeting Mr Menashe was at pains to explain why he had been unable to secure United States officials for the meeting. He said they were occupied with developments in Afghanistan. He told the court he was not aware the proceedings were being tape recorded. Having gone through the transcript, his assessment is that it was poorly recorded but there are portions in it that have jolted his memory. Some sections correctly reflect what was discussed. He told the court his party was aware of the history of the Zimbabwe army as well as its political sympathies. They were advised that the military would take over if there was a sign that President Mugabe was losing power. This was an issue that had to be confronted by the MDC in forming a new government. He told the court President Nujoma's name came up because of his support for President Mugabe. There was need for him to be convinced that the election reflected the true wishes of the people. They expected Mr Menashe to intervene with President Nujoma. He remembers there was mention of Colonel Gaddafi and the training he was providing to the Zimbabwean military. Mr Menashe said President Chiluba should be given a wide berth because of his corrupt tendencies. There was also talk of various political figures in Zambia such as Edith, Tembo, Ronald Penso. There was also talk about what might emerge from the ZANU(PF) congress. Then there was talk of Zimbabwean soldiers in the Congo. Mr Menashe said he and Mr Johnson had been to the Congo and knew the Minister of State, one Kongolo. He added that the Congo was sending some of the Interharamwe fighters to Zimbabwe for military training. The witness indicated that if he became President he would

pull out Zimbabwean soldiers and sent back the Interharamwe. Then there was reference to the Iranians and how they were bringing pressure to bear on President Kabila not to withdraw from his relationship with Zimbabwe. Mr Menashe said the interest of the Iranians lay in shipping precious minerals from the Congo through the Gambia, also a Moslem country. Then there was talk of the Angolans and President Nujoma pulling out of the Congo. Mr Menashe then said the Americans had committed US\$50 million to the MDC government. He told the court nowhere in the tape does he request Mr Menashe to arrange the assassination of the President and the staging of a *coup d`etat*. When the meeting ended the understanding was that at the next meeting there would be a presence of the Americans. The transfer of money to Dickens and Madson was left to the Secretary General and the treasurer. He was advised that the money had been paid. It was also agreed that Dickens and Madson were to arrange the next meeting in the United States where the witness would meet Colin Powell, the Director of the CIA and other senior officials. Thereafter Mr Gasela advised that a meeting had been arranged in the United States but two days before the meeting they were advised the meeting was now to take place in Montreal, Canada. He then flew to Canada and was met at the airport by Mr Johnson. Mr Menashe passed by his hotel and advised him that the meeting would take place the following morning. He further advised that the CIA deputy director for Africa would be present. The following day he was collected from the hotel and taken to the offices of Dickens and Madson. The company looked small but he believed Menashe had lots of experience. He was not aware the meeting was being video taped and had no reason to doubt their sincerity. In the conference room he met Mr Johnson, Alex Legault, Tara Thomas and Mr Simms. Alex Legault was introduced as the deputy president of the company. Mr Simms was introduced as such but his designation was not given at that stage. Mr Simms

came into the room carrying a box file with a map of Zimbabwe on it. Mr Simms chaired the meeting whilst Tara Thomas, who had a pen and note pad, played the role of secretary and was taking down minutes. He told the court the purpose of the meeting was to meet a senior United States administration official to talk about funding for the MDC and the post-election government he believed would be formed by the MDC. As regards the video and its transcript, he told the court that generally the video is inaccurate and has gaps in it. It is inaudible in places. It is of a very low quality. However certain parts are audible and those parts correctly reflect the discussions during the meeting. He told the court that during the meeting, Mr Menashe dominated the discussions. He would interject and was overbearing. He constantly changed the agenda. The witness told the court that initially he did not understand some of the remarks being made. Later he sensed there was something wrong. With the benefit of hindsight, he now realizes the intention was to extract confirmation of the so-called agreement to assassinate the President and stage a military coup. There was an attempt by Mr Menashe to suggest that this was the purpose of the meeting which he denied. There were also several interjections by Mr Simms and Mr Legault which affected the flow of the discussion. There were occasions when two or three questions would be put at the same time. He would not be given the opportunity to answer. Mr Menashe's introduction of the purpose of the meeting was ambiguous and the words used were meant to suggest there was prior agreement. He talked of a *coup d`etat*, elimination of the President and Perence Shiri's co-operation. He told the court he did not respond to all the remarks. Instead he decided to respond to the last question. He did so in order to win over Mr Simms since he considered American support vital to any post election MDC government. A tense atmosphere ensued and there was unease on his part. He knew Mr Menashe's temperament and the need to avoid an open conflict in

front of an American official. At 09:00:58 in the transcript Mr Menashe asks what will happen if there is a breakdown. The witness asks what kind of breakdown. The witness instead says if the Present goes, the vice-president takes over in terms of the constitution. Mr Menashe continues to talk of elimination. The witness then asks how that is to come about.

The witness then proceeded to highlight some portions of the tape which suggest he and Mr Menashe were at cross purposes.

- 09:05:08 He asks how the transitional government is to come about in the event the President is gone.
- 09:07:39 He says the discussion was never about the elimination of Mugabe but about election and post election outcome. Mr Menashe then says that is a different story.
- 09:09:34 He says that his understanding was that the MDC and other institutions would move towards an election. Mr Menashe talks of a new scenario. The witness asks which one. Mr Menashe then says they are not going forward and there is a backtrack. The witness says he does not think so.
- 09:13:06 He says the route we were going to take was that if Mugabe goes there will be a transitional arrangement.
- 09:15:33 He says he was upset and asked Mr Johnson to accompany him out of the room, an aspect confirmed by Tara Thomas in her statement.
- 09:23:33 Menashe says "Exactly, exactly". The witness says "No. Let us try to be modest."

He told the court he was trying to establish a positive relationship with Mr Simms. In the tape he makes no request for an assassination and it is Menashe who introduces such terminology. In the ensuing discussions he talks of the army remaining a guarantee to a transitional MDC and ZANU(PF) bi-partisan government. This he told the court is not consistent with the claim he asked for a *coup d`etat*. He told the court the discussion around the army was centred

on the need for the army to guarantee stability, having been trained by President Mugabe. The issue was how it would react to a new government and the need to guarantee that there would be no retribution. The intention was to ensure that the army did not undermine the democratic process. During the meeting Mr Simms committed the United States Government into paying \$1,5 million to the MDC.

He told the court that after the new year Mark Davies came to interview him as President of the MDC and as a presidential candidate. He said nothing about the video. He became aware of the existence of the video whilst attending a meeting in South Africa. His reaction was that Mr Davies could air the video as nothing untoward had taken place in Montreal. The video was then aired in Australia and thereafter selected portions were shown on ZBC. It was used as campaign material and people from different walks of life were shown commenting on the contents of the video. Mr Menashe also gave interviews in South Africa, on CNN and BBC. He told the court sometime before the elections he allowed Job Sikhala to take someone with him to meet Perence Shiri. Job Sikhala went with Tafadzwa Musekiwa and thereafter made a report to him. He then authorised the deputy secretary general Gift Chimanikire to make a follow up. Thereafter Mr Johnson advised that a meeting had been arranged in Johannesburg with Sam Nujoma. He and Welshman Ncube travelled to South Africa but Mr Johnson then advised them of the cancellation of the meeting. He told the court the MDC has instituted proceedings in Canada for the recovery of the US\$97,000 received by Dickens and Madson. He also admitted addressing a crowd at Rufaro stadium during which he made remarks to the effect that if President Mugabe did not go peacefully he would be removed violently. After the statement had been made other members of the MDC expressed concern, saying the speech may be taken out of context. That afternoon he called a press conference where he

withdrew the remarks and clarified the position. That clip was extensively used as part of the propaganda against him. He told the court there have been occasions when President Mugabe has incited violence. The opening of the Pungwe Project is an example. He has also been heard to say he has degrees in violence. He told the court he does not subscribe to violence. The statement he made was prophetic. All he was saying was that if the government continued to ignore the people this may lead to confrontation. He was charged with treason for making that remark after which he took the matter up to the Supreme Court as a constitutional point. He was successful and the charge was withdrawn.

Under cross-examination, the witness further stated as follows. That he agreed with the provisions in the Draft Constitutional Bill that the State be empowered to acquire land and pay compensation only for developments but not for the land. He denied that the land issue was part of the campaign for the 'no' vote during the referendum. He also told the court that on its formation the MDC believed in equitable land redistribution under the aegis of a non-partisan land commission. It was also his evidence that he assumed the people he was meeting at the three meetings were aware of the public debates on the possible exit of Present Mugabe and indeed Mr Menashe said they were aware. For this reason he referred to scenarios during the meetings. He was asked to explain his remarks at Rufaro stadium that the President would be removed violently and that they could not wait until 2002 to remove him from power. He told the court all he was saying was that President Mugabe should look at the mood in the country and that there was need to arrest the fast deteriorating situation. He never agitated for the violent removal of the President. He admitted that he was interviewed by the BBC during which he remarked that in the event President Mugabe continued on a violent path and to undermine the electoral process South Africa should take measures including the cutting of

electricity and supplies. He accepted that this would have harmed ordinary people but explained that this would have been part of the struggle.

He told the court there were scenarios on the possible non-participation of President Mugabe in the 2002 elections. If any of the scenarios had occurred, given the period left before the elections, this would have resulted in uncertainty and disruption of the elections. When they engaged Dickens and Madson they were planning for any eventuality, including the possibility of a transitional government. The MDC had in mind a transitional government that would be bi-partisan, that would be allowed to extend beyond the constitutional requirements and create the necessary atmosphere for free and fair elections. There would have been need to negotiate for a bi-partisan government and Parliament would have had to consider the extension. Asked why he and the MDC thought the President would stand down just three months before the election, he told the court there were strong political pressures within ZANU(PF) because of uncertainties in the event President Mugabe decided to participate. Asked why the President would have announced an election date and then subsequently withdraw, he told the court these were the scenarios that were being considered. A new leader could emerge during the ZANU(PF) congress. The military was to guarantee stability, remain professional and apolitical and serve the government of the day. The military would not have been involved in any other way in the transitional period and no power sharing with the army was ever contemplated. Asked why they entered into a contract with Mr Menashe before checking his credentials, he told the court they believed he was reliable because he was also known by Mr Johnson who in turn was well known to Mr Gasela. They looked at all the possibilities and were prepared to take the risk. Asked why it was necessary to enter into a second contract with Dickens and Madson and yet another contract had been concluded a month

previously, he told the court Mr Menashe insisted on a new contract which would give him a general mandate to do whatever he deemed necessary to promote the interests of the MDC. He admitted the previous contract had a lobbying provision in it. The fee of \$20,000 provided for in the first agreement was not paid but Rupert Johnson had indicated to Mr Gasela that in order to speed up the whole thing, he would advance the money and reclaim it when funding became available. Asked why Mr Johnson, who they claim was part of Dickens and Madson, would advance his own company the US\$20,000 he told the court "that was the arrangement". He admitted that Mr Weeks was their consultant at BSMG. Asked why Mr Weeks authorised the payment of US\$50,000 from his own personal account, he told the court he did not know but was aware Mr Weeks was running their account. He also admitted that although in terms of the second contract the MDC was to pay a sum of US\$500,000 for the services of Dickens and Madson, no time frame was given. Most of the work was to be done before the elections and Mr Menashe said he was going to spend a lot of time in the United States and Canada. He admitted that BSMG had offices in the United States and Canada. Asked why they did not ask BSMG to do work for them in the United States, he told the court they were convinced Dickens and Madson would do a better job in Canada and the United States. He admitted that the contract with BSMG had been in existence for at least ten months before they started talking to Dickens and Madson and that BSMG had done very good work for the MDC in the United Kingdom. He told the court however that they believed BSMG did not have, in North America, the kind of influence which they had in Europe. Asked why BSMG, which had offices in North America, should pay a competitor, he told the court he believed the Secretary General had discussed the matter with Mr Weeks of BSMG. Further asked why if the intention was to seek political and financial support it became necessary to meet the CIA director, he told the court it

was Mr Menashe who suggested they meet the CIA director and Mr Colin Powell. He believed Mr Menashe could facilitate that contact. As regards the video, he told the court it is inaudible in parts but audible in others. The audible portions generally reflect the context of the meeting. Further asked why he did not immediately correct Mr Menashe when he introduced the purpose of the meeting as the elimination of the President and the staging of a *coup d`etat*, he told the court his party had engaged Dickens and Madson to do lobbying work on its behalf. He could not have started shouting at Mr Menashe in front of the CIA director whom they wanted to impress. It was Mr Menashe who was to arrange contact with ZANU(PF) to discuss transitional arrangements. He also told the court that as the third meeting progressed it started to dawn on him that Mr Menashe was using the word elimination in a sinister sense and that he was misrepresenting the purpose of the meeting. It was his evidence that when he remarked and stated that the discussion was never about the elimination he was referring to all the discussions that had taken place during the first and second meetings. He denied that his comments referred only to previous discussions with the military. He also drew the attention of the court to the remark he made that the discussion with the military was based on them respecting the outcome of the elections. There could not therefore have been talk of a military coup. He admitted that he said if Mr Menashe was now talking of the harmful removal of the President, they would have to relook at that. He also explained that the transitional government was to come about following constitutional amendments. He admitted at 9:13:33 Menashe is heard to say "Yeah. Just stop the process."

Professor Welshman Ncube

He was jointly charged with the accused but was acquitted at the close of the State Case. He is the secretary general of the MDC and a Member of Parliament for Bulawayo North East Constituency. His evidence was as follows. He first heard of Mr Rupert Johnson in or about August 2001 from Mr Gasela the MDC Shadow Minister for Agriculture. Mr Gasela indicated that he had known Mr Johnson for a very long time particularly during the time he was General Manager of the Grain Marketing Board. Mr Johnson was based in London but had business interests in South Africa. Mr Gasela advised him that he had heard from Mr Johnson that a company called Dickens and Madson operating in North America was eager to enter into some consultancy agreement with the MDC in order to do lobbying work, public relations and related work in the United States and Canada. As they had no firm representing the MDC in that part of the world he expressed interest but told Mr Gasela that Dickens and Madson should be advised that in the event an agreement was reached they should not insist on being the sole agent for the MDC and secondly that their fees would come from the monies they raised for the MDC. A few days later Mr Gasela came with a draft agreement signed by Mr Johnson in his capacity as director of Dickens and Madson. At that stage he had not met Mr Johnson. Mr Gasela vouched for Mr Johnson's integrity saying he had always performed, especially during the time he supplied grain to Zimbabwe through the Grain Marketing Board. He then signed the draft agreement. At the London meeting Mr Gasela further advised that Mr Johnson also owned a winery in Cape Town.

In October 2001 Mr Gasela contacted him whilst he and Mr Tsvangirai were in Europe and advised that Dickens and Madson wanted to have a meeting. He further advised that the President of Dickens and Madson would be flying from the United States to London to meet them. Mr Gasela flew to London and thereafter

advised them that the meeting would take place at London Heathrow as Mr Menashe was to catch a return flight the same day. On 22 October 2001 he went to the hotel where he was met by Mr Gasela who took him to a room where Mr Menashe and Mr Johnson were. Mr Tsvangirai arrived shortly thereafter. There were introductions and an exchange of business cards. Mr Johnson's card reflected that he was a director of Dickens and Madson. During the meeting Mr Menashe started explaining his personal background, his service in Israeli Intelligence and in the office of the Israeli Prime Minister, his international connections including world leaders and how he had then started a reputable consultancy. He said he was on a first name basis with world leaders including the Presidents of Iran, Namibia and the United States. In Zimbabwe he had good relations with the Minister of Defence Moven Mahachi, Perence Shiri the Commander of the Air Force and Minister Mudenge. He suggested that the MDC enter into a high profile consultancy agreement with Dickens and Madson and he would personally devote his time to the service of the MDC. He would ensure the MDC had good relations with Iran to counter the Libyan influence in Zimbabwe. He also mentioned that he had been requested by President Clinton to negotiate an exit package for President Mugabe and had travelled several times to Zimbabwe on this mission. Although President Mugabe initially agreed he later reneged and this had angered President Clinton and the Jewish community who had raised a substantial sum of money. He said the Jewish community had raised US\$2 million and that the money would be ready for collection if Dickens and Madson were appointed as agents. Mr Menashe went on to talk about the forthcoming elections in Zimbabwe and possibilities on who was likely to be the ZANU(PF) leader during that time. One of the scenarios he presented was the possibility of President Mugabe not running in the election for a number of reasons - ill health or disenchantment by his own party. Then there was talk of the need to

level the electoral playing field. He told the court most of what was discussed was in the public domain. The MDC had discussed various scenarios such as for example what the approach of the party would be if the candidate happened to be Emmerson Mnangagwa or Simba Makoni. A number of other topics touching on Zimbabwe were discussed, the referendum, parliamentary elections, the violence, the position of the army and the fact that electoral victory would not necessarily translate to political victory and the possibility that the military might stage a coup if it became apparent that President Mugabe was losing. In the event that the MDC won it might not have full control and the army might take over. These scenarios were considered. He told the court it has always been the wish of the MDC that the army remains professional and that it should not subvert the will of the people. They were aware that there were elements in the army who for historical reasons were close to the political leadership. There was discussion about some of the issues raised by Mr Menashe. Mr Menashe said he could alert the MDC on any of these developments and use his influence in the international community to act against scenarios not favourable to the MDC. He said being the only superpower left, it was important that the United States took the MDC seriously as a government in waiting. He said in the United States the MDC was regarded as a protest movement and he could arrange meetings with Colin Powell and President Bush.

He described the evidence given by Mr Menashe in court as completely false. At no time was a request made for the assassination of the President and the staging of a coup. He told the court that the use of violence in a country with a constitution is not acceptable both to him and to the MDC. Particularly because of the volatile political situation in the country it would have been obvious that the assassination of the President would have attracted a violent backlash. He admitted he was present at Rufaro stadium when the accused uttered words to the effect that the President

would be removed violently. He told the court he and other officials had an audience with the accused after the rally during which they expressed the view that the statement was unfortunate and inconsistent with what the party stood for. It was agreed that a press conference be convened to correct that statement.

He told the court the first agreement signed on 24 September 2001 by him and Rupert Johnson was discussed at the first London meeting. During that meeting Mr Menashe said the fee of \$20,000 provided for in that contract was too low as he was going to work full time for the MDC and he also wanted a general mandate authorising him to represent the MDC in all matters in the United States and Canada. He indicated he wanted US\$500,000 but after further negotiation he suggested they pay US\$100,000 to enable the work to be registered with United States authorities. Following this another contract was signed. He denied that the contract was false and told the court that it supplemented the previous agreement signed in September 2001. Mr Menashe also indicated that there was a sum of US\$2 million raised by the Jewish community which the MDC could access after registration. More money was to be raised for the organisation. It was then agreed that he was to draw up the agreement and fax it to Mr Johnson who would in turn fax it to Mr Menashe who was supposed to be leaving the same day. That agreement was addressed to Mr Johnson in his capacity as director of Dickens and Madson. When the witness received a copy of the signed agreement he noticed that Mr Menashe had signed it. He then referred the signed contract to the treasurer so that he would provide details of the transfer. He did eventually talk to Mr Weeks of BSMG who ran the MDC consultancy. Mr Weeks confirmed the money had been paid to Dickens and Madson.

He told the court at the London meeting there was discussion on what would happen if President Mugabe stepped down and another person took over. There was discussion on the need to even

the playing field and the need to extend the period of 90 days provided for in the constitution. The issue of a transitional government between ZANU(PF) and the MDC was also discussed. He was aware that the accused attended a second meeting in London at the instance of Mr Menashe. On his return the accused indicated that the meeting had not been very useful as the same issues were traversed and no firm commitment given on a meeting with United States officials. He was later advised that Mr Menashe had secured a meeting with United States officials and that the accused was required to travel to Washington.

Under cross-examination the witness further told the court that what he knew about Dickens and Madson at the time he signed the first contract in September 2001 was that it was a company involved in lobbying work in the United States and Canada and that one of the principal players was Mr Johnson who was well known to Mr Gasela from previous dealings. At the London meeting Mr Gasela further revealed that he and his wife had visited Mr Johnson in Cape Town and had stayed at his vineyard and secondly that in all his dealings Mr Johnson had always delivered. Mr Gasela indicated that he could vouch for Mr Johnson. He also told the court that during the London meeting they understood Mr Menashe to have been representing the American government in respect of the sum of US\$2 million allegedly raised by the Jewish community. He admitted that BSMG had an office in Boston and could therefore have represented the MDC in the United States. However when Mr Menashe came with an offer to access the highest office in the United States as well as funding they accepted. On the money paid by Mr Weeks from his personal account he told the court a cheque deposit for 88,000 pound sterling had been made into the BSMG account but the cheque had not yet been cleared. At the time Dickens and Madson were putting considerable pressure on BSMG for payment of the money. Without consulting the MDC Mr Weeks then paid from his account once he

had received instructions from the treasurer to pay. He also told the court that the sum of 88,000 pound sterling was money donated to the party but did not give further details.

Renson Minyikile Gasela

He is a member of Parliament and was previously employed by the Grain Marketing Board as General Manager. Prior to his discharge at the close of the state case he was a co-accused. He explained how he came to meet Mr Johnson in or about 1991 when the country faced a serious drought and large quantities of food had to be imported. Mr Johnson's company, Exatrade, was one of the companies that won a tender. It was based in Johannesburg. The company performed its obligations. The witness met Mr Johnson many times. In 1994 when he and his family went to Cape Town on business Mr Johnson invited them to his winery. After leaving the Grain Marketing Board he kept contact with Mr Johnson. He considered him a man of means, a solid business man with an international repute. He was not aware he had been a member of the Selous Scouts. The witness told the court he had some contact with Mr Johnson in 1996. He had no further contact with him until August 2001 when he phoned enquiring about the situation in Zimbabwe and what assistance he could give to the MDC. They talked about the need for financial assistance to the MDC. Mr Johnson said his company could be of some assistance in this regard. He said he would contact him again once he discussed the matter with his co-directors in Canada. He phoned back and asked the witness to repeat what he had said about the food situation and the need to raise funds so that his co-directors in Canada, who were connected to his phone, could hear. Thereafter Mr Johnson suggested that a meeting with the MDC top leadership be arranged so that they could decide what assistance was to be given in the area of lobbying for the MDC. The witness reported this to Welshman Ncube, the party's

secretary general. He advised Mr Johnson that he needed further convincing before he could discuss the matter with the leadership of the party. He subsequently met Mr Johnson at the Royal Automobile Club, where Mr Johnson was a member. The club membership fees are high and membership is restricted. In his mind this further confirmed the kind of person Mr Johnson was. They discussed the situation in Zimbabwe and the Abuja Agreement after which Mr Johnson gave him his card reflecting him as a director of Dickens and Madson. He went on to explain about his co-directors in Canada, how reputable the company was and the work they had done for other countries. He explained that the President of the company, Mr Menashe, himself a Jew, had strong connections with the Jewish community in the United States and also Iran. Mr Johnson then gave him a pro-forma contract which they used wherever they were engaged as lobbyists. In Harare he took the document to Welshman Ncube who agreed there was no harm in employing a lobbyist as long as there was no exclusivity. Welshman Ncube expressed concern that the MDC did not have resources to pay the US\$20,000 provided for in the contract. The witness told the court he contacted Mr Johnson and advised him that the MDC would be prepared to sign the contract provided Dickens and Madson were able to raise the sum of US\$20,000 from other sources. It had been indicated by Mr Johnson that there was a sum of US\$2 million available to the MDC from the Jewish community if Dickens and Madson were retained as lobbyists. Eventually Mr Johnson said Dickens and Madson would raise the US\$20,000. Welshman Ncube then signed the agreement. He denied there was ever a plan to arrange an assassination of the President and staging of a *coup d`etat*. He told the court nothing happened as a result of the contract. In October 2001 whilst the leadership of the party was in Europe arrangements were made for a meeting to take place in London with Dickens and Madson. The witness also travelled to London using a ticket purchased by Mr

Johnson. It was indicated that the meeting was to take place at the Heathrow Hilton as Mr Menashe was flying back the same day. They then met in a room where introductions were made. Both Mr Menashe and Mr Johnson produced business cards which they gave to the three of them. Thereafter discussions started. Mr Menashe exhibited a lot of knowledge about the MDC, the world and other leaders. He talked about himself, his stay in Iran, his service in the Israeli Military Intelligence and the various world leaders he knew including President Mugabe as well as Minister Sekeramayi, Minister Mahachi and the Commander of the Air Force, Perence Shiri. He explained how the Jewish community had raised funds for President Mugabe's exist and how President Mugabe had reneged. He stated that he now wanted to work with the MDC. There was talk of the chances of the MDC winning the elections, whether they would be free and fair, the various scenarios that would have a bearing on the elections such as the health of President Mugabe, the possibility that ZANU(PF) would decide to elect another leader at its December congress, the possibility of the army not accepting the results and staging a *coup d`etat*. Mr Menashe said a sum of US\$2 million would be made available once they appointed Dickens and Madson as lobbyists. He also undertook to arrange a meeting with senior American government officials and to talk to Perence Shiri to ensure that the army remained professional. He was also to discuss with regional leaders in particular Sam Nujoma to ensure that the MDC was accepted. He would also talk to the Iranians and American government to provide financial assistance. Mr Menashe then said what was now envisaged was a much bigger job where he himself would be involved and therefore a fee of US\$500,000 was necessary. He also added that a contract be drawn up to give him a general mandate to enable him to lobby and raise funds for the MDC. They advised him that the MDC did not have that kind of money and suggested that he could take the fee from the US\$2 million raised by

the Jewish community. Mr Menashe said that American law did not allow this and that they had to pay to enable registration. He also indicated that the fee he was asking for was small considering that the Zimbabwe government was paying Cohen and Woods of the United States US\$7,5 million. After a short adjournment, they agreed that Dickens and Madson be appointed since they were not asking for exclusivity and since the sum of US\$2 million was ready. They agreed that they pay US\$100,000 which Mr Menashe said would enable registration. It was agreed that a new agreement be drawn up by Welshman Ncube since he is a lawyer. Mr Ncube would then forward it to Mr Johnson to sign it in his capacity as a director of Dickens and Madson. He told the court his colleagues relied on his personal knowledge of Mr Johnson. Mr Johnson's demeanour during the meeting was such that no-one doubted his sincerity in entering into the agreement. He told the court that at no time was Mr Johnson ever a member of the MDC. Nor was he an agent of the MDC. At the London meeting it was agreed that the witness would be the contact person for the MDC and Mr Johnson for Dickens and Madson. The meeting then ended on the understanding that another meeting would be arranged with senior American government officials. Thereafter he maintained contact with Mr Johnson who indicated that the concern on their part was the need for the money to be transmitted to enable registration. Mr Johnson would phone almost daily. Arrangements were then made for the sum of US\$100,000 to be transmitted. Mr Johnson also asked him to arrange for the accused to come to London at the beginning of November. When he approached Welshman Ncube the latter suggested that the Vice President goes but Mr Johnson said senior American administration officials were coming and they specifically wanted to meet the accused. On his return, the accused said he had not met any American officials as they were said to be busy in Afghanistan but further promises of financial assistance had been made and a further

meeting was to be held in Washington. The accused attended a third meeting.

He told the court after payment of the US\$100,000 he phoned Mr Johnson several times to ascertain progress on the US\$2 million that had been promised. Various excuses were given and it was never paid. He learnt of the existence of the video. On contacting Mr Johnson, the latter said there would be nothing on it. Mr Johnson also indicated that the matter was all political and would just fizzle away. When he was asked by his lawyers to make a statement on what happened, he said he was consulting his lawyers.

Under cross-examination he told the court he regarded Mr Johnson as a friend. When they spoke in August 2001 Mr Johnson indicated that he was now staying in the United Kingdom. When he and Mr Johnson first discussed in August 2001 it was indicated that Dickens and Madson was to provide some assistance on the country's food requirements as well as money. Mr Johnson said Dickens and Madson was involved in consultancy and lobbying activities on behalf of political parties and Governments to raise their profiles, to fundraise and generally to open doors.

Giles Mutseyekwa

He is a member of Parliament and Shadow Minister of Defence for the MDC party. He retired from the army in 1986 having attained the rank of major. As shadow Minister, his responsibilities in Parliament included shadowing the Minister of Defence i.e. scrutinizing the action and responsibilities of the Minister of Defence and acting as the party's official spokesperson on matters pertaining to defence. In Parliament he pointed out various instances with the Minister in which defence forces had been deployed to suppress the activities of the opposition and to assault party members wearing party 'T' Shirts. The Minister of Defence professed ignorance. With the approval of the accused he decided to engage the Minister

outside Parliament. He therefore sought audience with the Minister and made an appointment to see him in his office. The Minister agreed. They met on a Wednesday in his office and the Minister then called Lt. General Chiwenga and Air-Marshal Shiri to the meeting. He was asked to narrate the purpose of the meeting. The Minister completely denied the allegations saying they had been concocted by the Daily News, an opposition newspaper. Only the Minister spoke. The Minister added that the armed forces would remain professional. The meeting ended about 30 minutes later after which he briefed the accused as well as the party's shadow cabinet.

Attorney-General's Office, legal practitioners for the State.
Atherstone & Cook, legal practitioners for the accused.