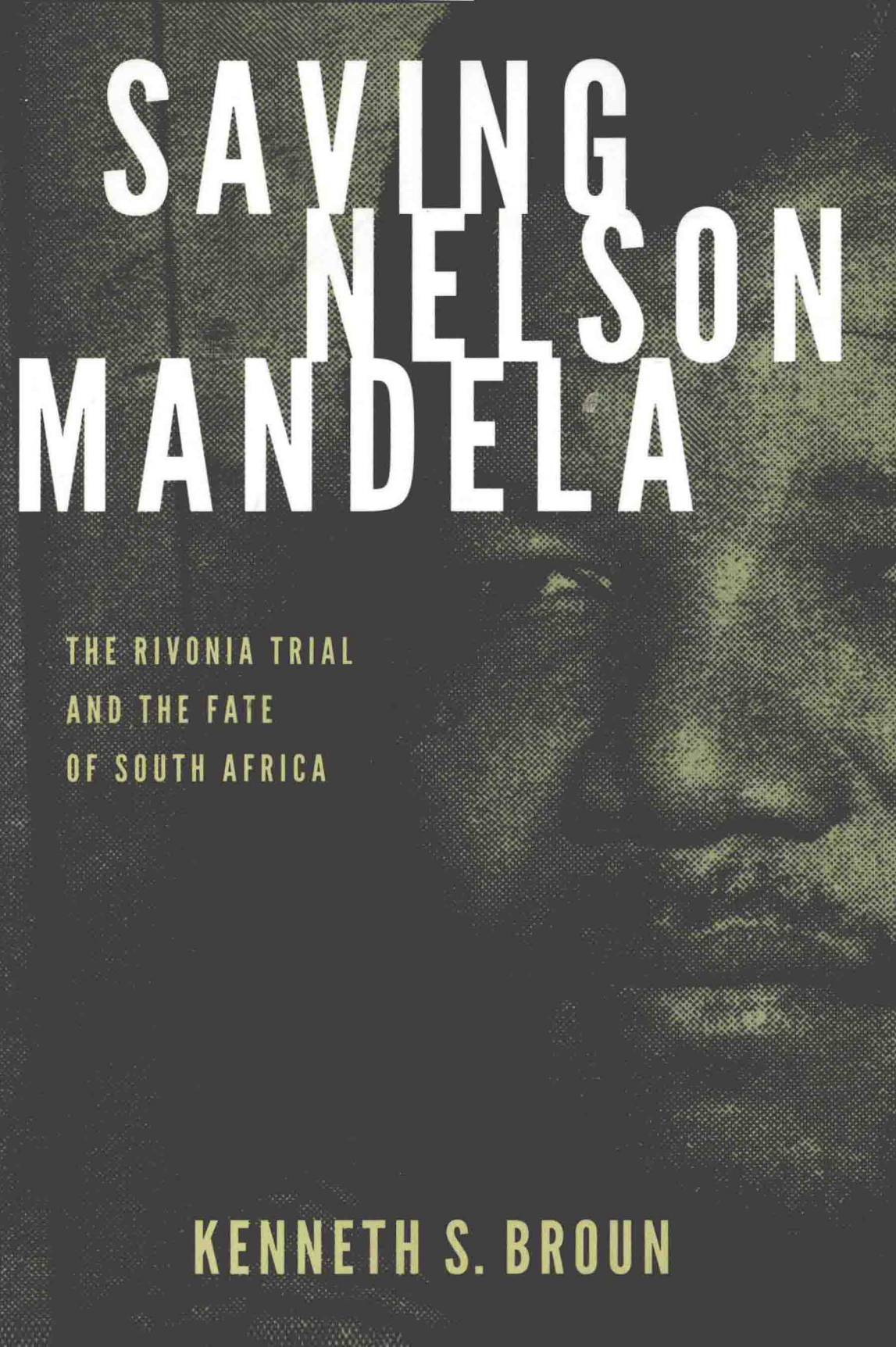




SAVING NELSON MANDELA

THE RIVONIA TRIAL
AND THE FATE
OF SOUTH AFRICA

KENNETH S. BROUN

Saving Nelson Mandela

The Rivonia Trial and the Fate of
South Africa

KENNETH S. BROOKIN



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People Involved in the Rivonia Trial

Defendants

THE defendants in the Rivonia Trial were listed in the indictment as Accused 1 through 10 and usually referred to at the trial by their numbers rather than their names.

1. Nelson Mandela
2. Walter Sisulu
3. Denis Goldberg
4. Govan Mbeki
5. Ahmed Mohamed Kathrada
6. Lionel "Rusty" Bernstein
7. Raymond Mhlaba
8. James Kantor
9. Elias Motsoaledi
10. Andrew Mlangeni

Defense lawyers

Bram Fischer, *advocate (lead counsel)*
Vernon Berrange, *advocate*
George Bizos, *advocate*
Arthur Chaskalson, *advocate*
Joel Joffe, *attorney*
Harold Hanson, *advocate*
George Lowen, *advocate*
H. C. Nicholas, *advocate*

Prosecutors

Percy Yutar, *deputy attorney general, Transvaal*
A. B. Krog

Judge

Justice Quartus de Wet, *judge president of the Transvaal Provincial Division*

The Police

Hendrik van den Bergh, *commander, Special Branch*

Captain T. J. Swanepoel

Lieutenant Willem Petrus van Wyk

Sergeant Carl Johannes Dirker

Sergeant Donald John Card

Sergeant Jonathan du Preez

Key State Witnesses

Bruno Mtolo (Mr. X)

Patrick “Abel” Mthembu (Mr. Y)

Joseph Mashifane

English Tolo Mashiloane

Cyril Davids

Caswell Mboxela

Defendants’ Wives and Family Members

Winnie Mandela, *Nelson Mandela’s wife*

Albertina Sisulu, *Walter Sisulu’s wife*

Hilda Bernstein, *Lionel Bernstein’s wife*

Esme Goldberg, *Denis Goldberg’s wife*

Annie Goldberg, *Denis Goldberg’s mother*

Juni Mlangeni, *Andrew Mlangeni’s wife*

Other African National Congress (ANC) or Communist Party of South Africa (CPSA) Leaders or Activists

Robert Hepple, *CPSA, originally named in Rivonia indictment*

Harold Wolpe, *CPSA leader, arrested after Rivonia raid but escaped*

Arthur Goldreich, *CPSA leader, arrested after Rivonia raid but escaped*

Chief Albert Luthuli, *ANC president general*

Oliver Tambo, *ANC leader (in exile)*
Ruth First, *CPSA leader*
Joseph Slovo, *CPSA leader (in exile)*
Michael Harmel, *CPSA leader*

South African Government Officials

Henrik Verwoerd, *prime minister*
John Vorster, *minister of justice*
Eric Louw, *minister of foreign affairs until December 31, 1963*
Hilgard Muller, *minister of foreign affairs after December 31, 1963*
G. P. Jooste, *foreign secretary*
Rudolf Werner Rein, *attorney general, Transvaal Province*

American Officials

Lyndon B. Johnson, *president*
Dean Rusk, *secretary of state*
McGeorge Bundy, *assistant to the president*
Maxwell Taylor, *chairman of the Joint Chiefs of Staff*
Adlai Stevenson, *ambassador to the United Nations*
Joseph C. Satterthwaite, *American ambassador to South Africa*

British Officials

R. A. Butler, *secretary of state for foreign affairs*
Hugh Stephenson, *ambassador to South Africa*
Leslie Minford, *consul general in Johannesburg*
Lord Dunrossil, *Foreign Office observer at trial*

Others

Arnoldus Johannus Greeff, *prison guard*
AnnMarie Wolpe, *Harold Wolpe's wife and James Kantor's sister*
Molly Fischer, *Bram Fischer's wife*
Canon L. John Collins, *dean of St. Paul's Cathedral, London, head of Defence and Aid Fund*

John Arnold, *British barrister, observer at trial*

Thomas Kellock, *British barrister, observer at trial*

Judge Charles Fahy, *American observer at trial*

Nadine Gordimer, *author working with defense*

Jaja Wachuku, *Nigerian foreign minister*

Alan Paton, *author testifying at sentencing hearing*

Introduction

ON FEBRUARY 11, 1990, Nelson Mandela walked out of a South African prison, a free man for the first time in twenty-seven years. He immediately assumed the leadership role that would move South Africa from a system of apartheid to a struggling but viable democracy. No one person, not even Nelson Mandela, was solely responsible for this miracle. But no one can doubt the crucial role that he played in the process that brought a new era to South Africa, or that his intellect, sturdy leadership, and political savvy made this process far more peaceful than anyone had predicted would be the case. In 1994 Mandela finally got the opportunity to serve as president of the Republic of South Africa under its new constitution.

That Nelson Mandela would ever be freed was almost out of the question in 1964, when he was sent to prison. Mandela and his codefendants faced charges brought under the recently enacted Sabotage Act, the violation of which carried the death penalty. The South African government had proudly announced that it had brought to justice men who had planned and begun to carry out a campaign for its violent overthrow. The country's press celebrated the success of the police in catching the criminals, who represented a very real threat to the way of life of white South Africa. Foreign representatives were told by informed sources that the maximum sentence for the top leadership was possible, indeed likely. Most observers—white and black, government supporters and opponents—thought that Mandela and the others would all be hanged.

South Africa in 1963 was the product of more than three hundred years of racial and ethnic conflict. European settlers began coming to South Africa in the late 1600s. The native population was almost immediately segregated and subjugated. Wars were fought between the settlers and the black people inhabiting the land—wars that were inevitably won by the better-armed Europeans. The white settlers were eventually successful in

establishing themselves as a ruling minority throughout the area now encompassing all of southern Africa.

The Anglo-Boer War of 1899–1902 was fought for control of the country between two European groups—each of which oppressed the black population within the areas of their control.¹ On one side were the English, who were interested in making sure that the British Empire extended to the tip of Africa and included its vast mineral resources—especially gold and diamonds. On the other were the Afrikaners—a mixed European people who spoke a language, Afrikaans, reflective of the Dutch ancestry of many of them—who were mostly interested in settling the land and farming it, often on the back of black labor. The Afrikaners were referred to as Boers—Afrikaans for “farmers.” By the late 1800s, the Boers had set up independent republics in the heart of South Africa. The English won the war in a long, hard, and bloody fight. The Boer republics were merged into what would become the Union of South Africa and later the modern day Republic of South Africa. A large number of children and wives of Boer guerrillas were sent to concentration camps where more than 20,000 died of undernourishment or poor hygiene. Three-quarters of the dead were children.² English speakers were to dominate South African government for nearly a half century. Many Afrikaners came to view themselves as second-class citizens.

Black natives were part of the South African scene of continuing hostility between the English and the Afrikaners—tolerated only to the extent that they would serve the white people of both groups. The blacks were a majority of at least 80 percent, but their role was to provide cheap labor for the white mines, farms, and businesses, as well as domestic servants for their homes. Other ethnic groups also inhabited the country, including the so-called Coloured, a mixed ethnic group speaking Afrikaans and largely concentrated in the area near Cape Town; and Indians—South Asians who began coming to South Africa in large numbers in the latter part of the nineteenth century first as indentured laborers and later as traders. Although somewhat better treated than the native black population, Coloureds and Indians usually lived separately from both white and black South Africans and were treated as inferior to the whites.

Europeans owned almost all of South Africa’s fertile agricultural land. Schools and public facilities were segregated by law and custom. There was *de facto* segregation of living areas, although some mixed areas existed. The major cities such as Johannesburg and Cape Town were exclusively in white control. Blacks came to the cities to work—especially in

the gold and other mineral mines surrounding the city of Johannesburg. Blacks mingled with whites, but only as domestic servants and other laborers.

In 1963, less than 20 percent (3,250,000) of the total South African population of more than 17 million was white—roughly two-thirds Afrikaner and one-third English speaking. The black population was estimated at 11,640,000 (68.3 percent), with 1,650,000 Coloured and 520,000 Asians.³

By the middle of the twentieth century, Afrikaners were still hurting from what they perceived as oppression at British hands during and after the Anglo-Boer Wars. The political situation changed dramatically in 1948 with the political ascendancy of the Afrikaner-dominated National Party. Afrikaners were now in control of the government. They seized the opportunity both to preserve their culture and to quash what they saw as increasing English softness on issues involving the black population.

The National Party leadership escalated and institutionalized the prevailing segregation and subjugation of non-Europeans in what became known as apartheid. Apartheid had many aspects. The overall goal of the policy was total separation of the races—a separation that exceeded even the pernicious Jim Crow laws of the American South in scope and force. Of course words such as “oppression” or “subjugation” or their synonyms were never used by the regime. But the intent of the policy was clearly to maintain the status of non-Europeans as inferior. Apartheid legislation referred to the nation’s blacks as “Bantus.” Bantu is a language grouping that includes the languages spoken by many of South African blacks, including the very large Zulu and Xhosa groups. The term was one used consistently by the government and resented just as consistently by the people to which it referred, who preferred to be called simply black. Bantustans (homelands for native blacks) were created, a move that was intended eventually to deprive most black South Africans of any citizenship rights within the Republic of South Africa. The principle was that blacks were to be citizens of the Bantustans and, in essence, guest workers within South Africa proper. The Coloured population was totally denied the right to vote—a right it had had in parts of the country. The Group Areas Act dictated where various racial groups could live. The Bantu Education Act and similar legislation sought to insure that blacks would receive no education not befitting a domestic servant. Rigid racial laws governing all aspects of life were enacted. Estimates were made in the early 1980s that 60 percent of the laws of South Africa governed relations among the races.

Until 1994, South Africa had no effective constitutional limitations on the ability of Parliament to enact whatever racist legislation it believed would advance its agenda. Legislation denying basic civil rights could be adopted without fear that some court would strike it down. And as the apartheid policy began to take hold of the country, civil rights were increasingly curtailed.

The apartheid South African government touted its judicial system as independent—and to some extent it was. In 1956, Nelson Mandela and some 160 other people were charged with treason. The “Treason Trial” went on for five years in various stages. The defendants were free on bail for much of that time. The charges were weak by any criteria. The state could not prove that the defendants sought the violent overthrow of the government. None of the major antiapartheid movements had yet engaged in violence or even in planning for violence. The defenders and their supporters were simply seeking basic human and civil rights within their country. The judiciary was independent enough to ensure that the state was put to its proof. Many of the defendants were discharged long before the end of the proceedings. The Treason Trial ended in March 1961 with the acquittal of the thirty remaining defendants including Mandela.

Yet, as we will see, the independence of the judiciary did not mean that the judges had sympathy for those charged with opposition to the ruling regime. Judges appointed by the apartheid government were, with some notable exceptions, individuals who were, by upbringing and education, totally supportive of its views. Even to the extent that they might personally differ from the policies, they were sworn to obey the law. To many white South Africans, that meant a literal interpretation of the law unencumbered by notions of natural law or human rights.

Formed in 1912, the African National Congress (ANC) was traditionally a moderate voice that avoided mass demonstrations or confrontation of any kind. In the 1950s, it came under the influence of its Youth League, led by Mandela and others. Under their leadership, the ANC became increasingly more militant and confrontational. At the same time, leaders like Mandela shifted from a Black Nationalist stance that avoided working with white, Indian, or Coloured activists to one that sought allies wherever they could be found. Among those allies were members of the multiracial, but white dominated, Communist Party of South Africa. The party itself was made illegal in 1950, but its membership stayed involved in the struggle through other forms. Some of its members were devoted to a worldwide Communist movement led by the Soviet Union; many others were drawn

to the party because they saw it as the only reasonable outlet for their opposition to the South African government's oppression of its own people.

In 1955, the Congress of the People rally in Kliptown, Soweto—part of the vast black settlement or “township” near Johannesburg—adopted the Freedom Charter, a set of principles for a democratic South Africa. The principles of the Freedom Charter were adopted by a diverse set of anti-apartheid groups including, in 1956, the ANC.

Despite the Treason Trial of leaders actively involved in opposition to the apartheid laws, protests continued and built in size and success in the late 1950s and 1960s. A group calling itself the Pan African Congress (PAC) split from the ANC in 1959. The PAC espoused a more militant Black Nationalist creed than the more traditional ANC. In 1960, the PAC organized a mass protest against the hated passes that all blacks were required to carry. The protest culminated in the watershed Sharpeville incident in March 1960. During a protest in the Sharpeville township near the industrial city of Vereeniging south of Johannesburg, police fired into the crowd, killing sixty-nine people and wounding many others.

In reaction to the shootings, black militancy rose, as did white fear of the black population's response. White flight from the country increased greatly. New laws were enacted to curtail resistance to the government. The ANC and PAC, together with other organizations seeking rights for black populations, were declared illegal. Draconian security legislation was enacted.

One law prohibiting dissent was already on the books—the Suppression of Communism Act, adopted in 1950. The law, which took advantage of the post-World War II fear of Communism in South Africa and throughout the West, banned the Communist Party. It broadly defined Communism to meet the special needs of the South African regime. The act not only prohibited activities aimed “at the establishment of a despotic system of government based on the dictatorship of the proletariat,” it also prohibited activity “which aims at the encouragement of feelings of hostility between the European and Non-European races of the Republic.”

In 1962, Parliament enacted the Sabotage Act, prohibiting acts of sabotage. Persons charged under the act were denied rights guaranteed to defendants in other trials. Mandela and his codefendants were to be charged and tried under this act.

In addition, the General Law Amendment Act was adopted in May 1963. Clause 17 of that act permitted the minister of justice to detain any person suspected of a political crime for ninety days in an isolation cell

until he or she answered questions to the satisfaction of the minister. Once the ninety days were up, the suspect could be detained again under the same act. The successive number of detentions was unlimited—detention without trial could last, as then–Justice Minister John Vorster exclaimed, until “this side of eternity.” All of Mandela’s codefendants were initially detained under this act. Mandela was already in prison at the time of their detentions.

The 1963–64 trial of Mandela and his codefendants represented in many ways the culmination of South African history to that point. The nation was heading headfirst into a conflict brought on by three hundred years of racial conflict, an Afrikaner population frustrated by the loss of their independence and fearful of the destruction of their culture, and a black population that had seen its plight worsen day by day and year by year. Fifteen years after the National Party took control of South Africa’s government and began to institute apartheid, the time was ripe not only for a definitive judicial sanction for government opponents but for a verdict that would ensure that these enemies of the state would be out of the way forever.

The trial—the Rivonia Trial, as it was called, named for the Johannesburg suburb in which many of the illegal meetings took place and the arrests were made—was no model for procedural justice, but neither was it a kangaroo court. Some forms of trial familiar to lawyers in the Anglo-American world were present—including, most importantly, the right to cross-examine witnesses.

It was a pivotal moment in South Africa’s history, and one of high drama. A team composed of lawyers of great intellect, legal ability, and integrity defended the accused. They applied their considerable skill to a cause in which they deeply believed. The accused, through both their statements to the court and their testimony, demonstrated strength of character and devotion to a cause that even a hostile judge could not, in the end, ignore. The character and conduct of the judge before whom the case was tried illustrate both the strength and weaknesses of the South African judicial system. The judge may well have been independent of the government and its prosecutor, but his own prejudices guided him through much of the proceedings. International opinion and the actions of foreign governments figured in as well. White South African opinion was clearly in favor of the prosecution and harsh sentences for the accused. International opinion was almost unanimous in its support for them, particularly in the newly independent African states and the Communist

bloc. There was also considerable attention to the trial on the part of the major Western powers—or at least concern that death sentences would sour relations with African and other Third World people. The question was how the West—and in particular the United States and United Kingdom—might attempt to influence the trial's outcome.

My own interest in the Rivonia Trial was generated by several circumstances. I have been a trial lawyer and I have taught classes on evidence and trial advocacy in the United States for forty-three years, serving as both a member of the board of trustees and as director of the National Institute for Trial Advocacy (NITA). Almost every year of the past twenty-five, I have traveled to South Africa to participate in programs sponsored by the Black Lawyers of South Africa. The programs are designed to improve the advocacy skills of its trial lawyers, who were deprived of adequate educational opportunities during the apartheid years. We have trained more than a thousand young lawyers in the skills they would need to represent their clients in court.

My quarter century of involvement with South Africa, both before and after the end of apartheid, has given me an appreciation for that country and its struggles, in and out of the courtroom. I have of course observed the remarkable role Nelson Mandela played in South Africa's history and in its destiny. I was deeply honored that he agreed to write an introduction to my first book about South Africa, *Black Lawyers, White Courts*, which told the story of some lawyers who helped shape that destiny.

I was drawn to the Rivonia Trial because I was aware of its significance in South Africa's history. But I also became interested in the trial because of the respect I have for great advocacy. I met two of the lawyers who represented the defendants at the Rivonia Trial, George Bizos and Arthur Chaskalson, on my first trip to their country in 1986, and have known about and admired their abilities in a courtroom. The lead defense counsel at the Rivonia Trial, Bram Fischer, remains a legend in South Africa to this day.

Something happened in the course of the trial that began in October 1963 and ended in June 1964—the Rivonia Trial—something that ultimately saved the lives of Mandela and his codefendants and, ultimately, the very soul of their country. This book is an attempt to uncover what that something was.

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