

# Leading War Criminal Dead, Not Prosecuted (1945)

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At his afternoon press conference on May 2, 1945, President Harry S. Truman announced that United States Supreme Court Justice Robert H. Jackson had accepted assignment to serve as U.S. Chief of Counsel to prosecute top Nazi war criminals. Jackson's task, Truman explained, was to prepare and prosecute "charges of atrocities and war crimes against such of the leaders of the European Axis powers, and their principal agents and accessories, as the United States may agree with any of the United Nations to bring to trial before an international military tribunal."<sup>1</sup>

White House counsel Samuel I. Rosenman had contacted Jackson in late April 1945 about the prospect of undertaking this assignment.<sup>2</sup> During their private conversations, and then as Jackson spoke further with President Truman, *the* leading Nazi war criminal and prospective lead defendant they discussed was Adolf Hitler. Indeed, Rosenman reported that his counterpart in bilateral planning discussions, Lord Chancellor John Simon of the United Kingdom, believed that "the higher [Nazi] officers, consisting generally of Hitler and his immediate associates, should be subject to separate trial..." Jackson took in this information, and it was part of his baseline as he took the job.

Of course Hitler soon killed himself to avoid Allied (Soviet) capture. So did a number of his inner circle Nazi associates. Hitler committed suicide on April 30, 1945, and his death became known in the

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<sup>1</sup> President Truman's May 2, 1945, press conference is available at <http://trumanlibrary.org/publicpapers/viewpapers.php?pid=29>.

<sup>2</sup> For background on Rosenman's work on this project in early 1945 under President Franklin Roosevelt's direction, see SAMUEL I. ROSENMAN, WORKING WITH ROOSEVELT 518-19, 539-40, 542-45 (1952).

U.S. government and to some reporters the next day. One day after that, President Truman, in the same press conference in which he announced Jackson's appointment, disclosed almost accidentally the "official information" that Hitler was dead.

Justice Jackson would have been interested to prosecute Hitler, but his agreement was to prosecute whichever leading war criminals the executive wished to submit to trial process and judgment. It seems that Jackson in April 1945 did not disapprove, personally or legally, of the prospect that the executive would decide to punish, and even to kill, a major war criminal directly, without trial. Jackson believed, as he had explained in a major public speech just two weeks earlier, before he began his discussions with Judge Roseman and President Truman, that such a decision should be made directly, and not dressed up as an alleged trial process that in fact had a foreordained result:

I have no purpose to enter into any controversy as to what shall be done with war criminals, either high or humble. If it is considered good policy for the future peace of the world, if it is believed that the example will outweigh the tendency to create among their own countrymen a myth of martyrdom, then let them be executed. But in that case let the decision to execute them be made as a military or political decision. We must not use the forms of judicial proceedings to carry out or rationalize previously settled political or military policy. Farcical judicial trials conducted by us will destroy confidence in the judicial process as quickly as those conducted by any other people.<sup>3</sup>

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<sup>3</sup> See Justice Jackson's April 13, 1945, speech to the American Society of International Law, available at [www.roberthjackson.org/the-man/speeches-articles/speeches/speeches-by-robert-h-jackson/the-rule-of-law-among-nations/](http://www.roberthjackson.org/the-man/speeches-articles/speeches/speeches-by-robert-h-jackson/the-rule-of-law-among-nations/).