

5-30-2019

Nathan Roscoe Pound and the Nazis

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Recommended Citation

Peter Rees, *Nathan Roscoe Pound and the Nazis*, 60 B.C.L. Rev. 1313 (2019),
<https://lawdigitalcommons.bc.edu/bclr/vol60/iss5/2>

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PETER REES†

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† The subject and the research for this article originated in a seminar paper, and I am most grateful to Daniel Coquillette, the paper's supervisor, and Bruce Kimball, for their intellectual guidance and financial support over the past five years.

NATHAN ROSCOE POUND AND THE NAZIS

PETER REES*

Abstract: When Roscoe Pound, Dean of Harvard Law School, accepted an honorary degree from a leading German university in 1934, it was interpreted as a gesture of support for the Nazi Party. Was this a naïve misstep, or something more sinister? This Article addresses that question. It highlights previously unknown encounters between Pound and senior Nazi figures at the time, and an unusual relationship between Pound and a suspected Nazi agent that lasted throughout the Second World War, and beyond. These revelations necessarily bring into question Pound's personal ethics and his professional responsibilities as a lawyer.

INTRODUCTION

Nathan Roscoe Pound, Dean of Harvard Law School from 1916 to 1936 and one of America's brightest legal minds in the Twentieth Century, had closer links to National Socialism than previously believed. An analysis of Pound's papers, including diary entries made during a trip through Europe in 1934, reveals that Pound was entertained on more than one occasion during that trip by established figures within the Nazi Party.¹ The individuals Pound met included Hans Frank, a legal advisor to Adolf Hitler and future Governor General of Occupied Poland, and Josef Bühler, a future participant in the Wannsee Conference of January 1942 in which Nazi Party leaders agreed to the "final solution" to the Jewish question.² Later in 1934, Pound made public displays of support for the National Socialist government. He actively defended the rise of Hitler in an interview with an international newspaper³ and in private conversations with his colleagues at

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* JD, Boston College Law School. I would like to thank Daniel Coquillette, Mona El-Bira, David Hamann, Bruce Kimball, Catherine Lizotte, and Alexander Ruoff for their input and support. Thanks are also due to Kayleigh McGlynn, Samuel Thomas, and the editorial team at *Boston College Law Review* for their invaluable contributions.

Note: A number of the sources referred to in this Article are archived at <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?filename=0&article=3778&context=bclr&type=additional>.

¹ See, e.g., Roscoe Pound, Diary Entry (July 12, 1934) [hereinafter Pound, Diary Entry on July 12, 1934], *microformed on* Roscoe Pound Papers, Part II Writings, Lectures, Addresses, Teaching Notes, and Miscellaneous Manuscripts, Reel 41 (Univ. Publ'ns of Am.) (recording a meeting with Hans Frank, Josef Bühler, Edmund Mezger, and Walter Luetgebrune).

² See *infra* notes 31–62 and accompanying text.

³ See *infra* notes 80–84 and accompanying text.

Harvard Law School,⁴ and he accepted an honorary degree from the University of Berlin presented by the German Ambassador, Hans Luther.⁵

Correspondence found in Pound's papers, together with records from the Federal Bureau of Investigation (FBI) and the U.S. Department of Justice (DOJ), also bring to light a controversial relationship between Pound and a German legal scholar named Anton-Hermann Chroust.⁶ From the late 1940s until his death in 1982, Chroust was a highly-regarded legal theorist and law professor at Notre Dame University.⁷ In the 1930s, however, Chroust allegedly worked as an agent for the National Socialists while present in the United States.⁸ These charges led to Chroust's detention as an enemy alien shortly before the end of the Second World War.⁹ During this period, Pound maintained a close friendship with Chroust, who had been an exchange student at Harvard from 1932 to 1934.¹⁰ Pound attempted to use his influence to help the young German in two different ways. First, when Chroust was looking for employment in the United States in the late 1930s and early 1940s, Pound wrote numerous letters of recommendation on his behalf.¹¹ Second, following Chroust's detention as a suspected enemy alien in 1941, Pound campaigned aggressively to clear his mentee's name. In these latter efforts, Pound appears to have deliberately misled the U.S. Attorney General, and he may have committed perjury.¹²

Part I of this Article discusses Pound's travels in Germany in the summer of 1934, including meetings with National Socialist German Workers' Party ("NSDAP") figures and Chroust, and an interview with the *Paris*

⁴ See *infra* notes 101–111 and accompanying text.

⁵ See *infra* notes 85–97 and accompanying text.

⁶ See *infra* notes 114–201 and accompanying text. Chroust's name appears in some places as "Anton-Hermann Chroust" and in others as "Anton Hermann Chroust," without the hyphen. This Article uses the hyphen because Chroust included it when signing his name in his letters to Pound. See, e.g., Letter from Anton-Hermann Chroust to Roscoe Pound (Sept. 26, 1946), *microformed on Roscoe Pound Papers, Part I Correspondence 1907–1964, Reel 69, Frame 612* (Univ. Publ'ns of Am.).

⁷ See *Professor Anton-Hermann Chroust*, 57 NOTRE DAME LAW, No. 3, Feb. 1982, *reprinted in* 27 AM. J. JURIS. [vii] (1982) (eulogizing Chroust and celebrating his scholarly achievements); see also *infra* notes 114–118 and accompanying text.

⁸ See *infra* notes 121–135 and accompanying text (summarizing the allegations against Chroust, including that he held various positions in the National Socialist German Workers' Party and traveled in the United States and abroad on missions for the Nazi Party).

⁹ See FED. BUREAU OF INVESTIGATION, NW: 15440, DOCID: 70001963, at 148 [hereinafter FBI CASE FILE NO. 70001963] (reporting Chroust's arrest on December 9, 1941); *id.* at 153 (classifying the charge against Chroust as "INTERNAL SECURITY – G, ENEMY ALIEN CONTROL"); see also *infra* notes 119–120 and accompanying text.

¹⁰ See *infra* notes 136–154 and accompanying text.

¹¹ See *infra* notes 141–154 and accompanying text.

¹² See *infra* notes 155–201 and accompanying text.

Herald that provides evidence of Pound's sympathies for National Socialism.¹³ Part II explores additional examples of Pound's support for the NSDAP—his acceptance of an honorary degree from the University of Berlin in 1934,¹⁴ and his correspondence with colleagues leading up to that event.¹⁵ Part III summarizes the allegations leading to Chroust's arrest,¹⁶ explores Pound's relationship with him,¹⁷ and raises the concern that Pound committed perjury by knowingly providing Chroust with a false alibi for his alleged involvement in the Blood Purge of 1934.¹⁸

I. A SUMMER VACATION AND A MEETING

Under Adolf Hitler's leadership, the NSDAP—the Nazi Party—surged to power in Germany in early 1933 and began deconstructing the democratic institutions that had been established in the preceding fourteen years of the so-called Weimar Republic.¹⁹

The following summer, from June 30 until July 2, 1934, Germany's political landscape plunged deeper into the abyss. During this period, the NSDAP's paramilitary wing, the *Schutzstaffel* ("SS"), carried out a series of executions in more than twenty cities across the country.²⁰ Victims included allegedly disloyal members of the original paramilitary division, the *Sturmabteilung* ("SA"), which Hitler no longer trusted, as well as political opponents of the Chancellor in the German Parliament.²¹ Known as the "Blood

¹³ See *infra* notes 19–84 and accompanying text.

¹⁴ See *infra* notes 85–97 and accompanying text.

¹⁵ See *infra* notes 98–113 and accompanying text.

¹⁶ See *infra* notes 114–135 and accompanying text.

¹⁷ See *infra* notes 136–154 and accompanying text.

¹⁸ See *infra* notes 155–201 and accompanying text.

¹⁹ See KLAUS P. FISCHER, *NAZI GERMANY: A NEW HISTORY* 28, 180 (1995) (describing the Weimar Republic as a constitutional democracy and noting its eventual downfall); WILLIAM L. SHIRER, *THE RISE AND FALL OF THE THIRD REICH: A HISTORY OF NAZI GERMANY* 5, 56 (1960) (describing the ratification of the Weimar Constitution in 1919 and the establishment of the Third Reich in 1933); Russell A. Miller, *A Pantomime of Privacy: Terrorism and Investigative Powers in German Constitutional Law*, 58 B.C.L. REV. 1545, 1568 (2017) (referring to the Nazis' destruction of the Weimar Constitution).

²⁰ See MAX GALLO, *THE NIGHT OF THE LONG KNIVES 2* (Lily Emmet trans., 1972) (stating that the Night of the Long Knives took place between June 30 and July 2, 1934); SHIRER, *supra* note 19, at 221–23 (describing the series of executions that the SS carried out on June 30, 1934). The SS was founded in 1925 and was Hitler's "personal bodyguard," replacing the SA in that role after the SA's leaders were executed in the Blood Purge, and becoming the most powerful Nazi organization. ROBERT WISTRICH, *WHO'S WHO IN NAZI GERMANY* 19, 350, 351 (1982).

²¹ See SHIRER, *supra* note 19, at 222–23 (explaining that SS troops executed SA members as well as political and military leaders and others who either opposed Hitler or "knew too much"). The SA was also called the "storm troopers" or the "Brownshirts." WISTRICH, *supra* note 20, at 350. The SA was founded in 1921 as "Hitler's first bodyguard." *Id.*

Purge,” these killings received widespread attention in Germany and around the world.²² The period between July 2nd, when the assassinations finished, and August 2nd, when German President Paul von Hindenburg died and Hitler added the office of the President to his power, was a formative period in the ascension of the NSDAP.²³

Two days after the Blood Purge had finished, on July 4, 1934, Nathan Roscoe Pound, Dean of Harvard Law School, arrived in France with his wife, Lucy Miller, to begin a summer vacation in Europe.²⁴ The German Consulate in Boston knew the details of Pound’s trip in advance; days before embarking, Pound received a letter from the Consul General, Baron Kurt von Toppelskirch.²⁵ The letter provided Pound with “a special recommendation to be used when passing the German frontier in both directions” and wished him “a pleasant voyage and a successful stay in Europe.”²⁶ Pound replied shortly afterwards, thanking von Toppelskirch for the “thoughtful courtesy.”²⁷

Less than a week into their trip, on July 10th, Pound and his wife arrived in the picturesque town of Oberammergau in southern Bavaria, Germany.²⁸ The following day, they attended the centenary performance of the celebrated Oberammergau *Passionsspiel* [Passion Play], a dramatic depiction of the life

²² See SHIRER, *supra* note 19, at 221–23 (describing the series of executions that the SS carried out on June 30, 1934); WISTRICH, *supra* note 20, at 252 (stating that the Night of the Long Knives is also known as the Blood Purge); see also FISCHER, *supra* note 19, at 284–93 (describing the Röhm Purge, which is also called Operation Hummingbird or the Night of the Long Knives). See generally GALLO, *supra* note 20 (providing a historical narrative about the Night of the Long Knives).

²³ See GALLO, *supra* note 20, at 2 (stating that the Night of the Long Knives ended on July 2, 1934); SHIRER, *supra* note 19, at 226 (stating that von Hindenburg died on August 2, 1934, and that, on that same day, “the offices of Chancellor and President [were] combined” and Hitler became “Fuehrer and Reich Chancellor”).

²⁴ See Roscoe Pound, Diary Entry (July 4, 1934) [hereinafter Pound, Diary Entry on July 4, 1934], *microformed on* Roscoe Pound Papers 1888–1964, Part II Writings, Lectures, Addresses, Teaching Notes, and Miscellaneous Manuscripts, Reel 41 (Univ. Publ’ns of Am.).

²⁵ Letter from Baron Kurt von Toppelskirch, German Consul Gen. in Bos., to Roscoe Pound, Dean of Harvard Law School (June 25, 1934), *microformed on* Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 98 (Univ. Publ’ns of Am.).

²⁶ *Id.*

²⁷ Letter from Roscoe Pound, Dean of Harvard Law School, to Baron Kurt von Toppelskirch, German Consul Gen. in Bos. (June 28, 1934), *microformed on* Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 98 (Univ. Publ’ns of Am.).

²⁸ Roscoe Pound, Diary Entry (July 10, 1934) [hereinafter Pound, Diary Entry on July 10, 1934], *microformed on* Roscoe Pound Papers 1888–1964, Part II Writings, Lectures, Addresses, Teaching Notes, and Miscellaneous Manuscripts, Reel 41 (Univ. Publ’ns of Am.).

and death of Jesus Christ.²⁹ That same day, Pound's diary records a meeting for lunch with an acquaintance identified as "Dr. Chroust."³⁰

One day later, on July 12th, Pound and his wife took the train from Oberammergau to Munich, the capital city of Bavaria, arriving before mid-day.³¹ Pound recorded the events of that afternoon in his diary:

At one thirty L and I entertained at lunch by the Minister of Justice (Frank), the Dean of the Law Faculty (Mezger), and the Vice President of the Academy of Law (Luetgebrune). At 5 we are the guests of the Minister of Justice in his box at the Staatstheater at Parsifal. Dr. Chroust and the Staatsanwalt (Bühler) take us over and Chroust and a lieutenant take us back. Great Day.³²

The day after meeting with Frank, Mezger, Luetgebrune, and Bühler, Pound visited the University of Munich, where he was welcomed by the ProRector, and delivered a speech on "Recent American Juristic Movements."³³ On July 14th, Pound's diary records that he and his wife were hosted for tea at Mezger's, along with, amongst others, Chroust, Mrs. Luetgebrune, and an individual identified only as "Lieutenant."³⁴

²⁹ Roscoe Pound, Diary Entry (July 11, 1934) [hereinafter Pound, Diary Entry on July 11, 1934], *microformed on Roscoe Pound Papers 1888–1964, Part II Writings, Lectures, Addresses, Teaching Notes, and Miscellaneous Manuscripts, Reel 41* (Univ. Publ'ns of Am.).

³⁰ *Id.*

³¹ Pound, Diary Entry on July 12, 1934, *supra* note 1.

³² *Id. Parsifal* is an opera by German composer Richard Wagner.

³³ Roscoe Pound, Diary Entry (July 13, 1934) [hereinafter Pound, Diary Entry on July 13, 1934], *microformed on Roscoe Pound Papers 1888–1964, Part II Writings, Lectures, Addresses, Teaching Notes, and Miscellaneous Manuscripts, Reel 41* (Univ. Publ'ns of Am.). On July 13, 1934, the same day that Pound spoke at the University of Munich, Adolf Hitler gave a speech to the Reichstag [Parliament] in Berlin in response to public unease with the so-called Blood Purge, remarking, "Wenn mir jemand den Vorwurf entgegenhält, weshalb wir nicht die ordentlichen Gerichte zur Aburteilung herangezogen hätten, dann kann ich ihm nur sagen: In dieser Stunde war ich verantwortlich für das Schicksal der deutschen Nation und damit des deutschen Volkes oberster Gerichtsherr." 1934-07-13 - Adolf Hitler - Reichstagsrede - Über die Entstehung und den Verlauf der SA-Revolution, INTERNET ARCHIVE, <https://archive.org/details/19340713AdolfHitlerReichstagsredeUeberDieEntstehungUndDenVerlaufDerSARevolution68m22s> [https://perma.cc/UG8L-7WDF]. This translates to the following: "If anyone reproaches me and asks why we did not call upon the regular courts for sentencing, my only answer is this: in that hour, I was responsible for the fate of the German nation and was thus the Supreme Justiciar of the German Volk!" 1 MAX DOMARUS, HITLER: SPEECHES AND PROCLAMATIONS 1932–1945, at 498 (Mary Fran Gilbert trans., 1990).

³⁴ Roscoe Pound, Diary Entry (July 14, 1934) [hereinafter Pound, Diary Entry on July 14, 1934], *microformed on Roscoe Pound Papers 1888–1964, Part II Writings, Lectures, Addresses, Teaching Notes, and Miscellaneous Manuscripts, Reel 41* (Univ. Publ'ns of Am.).

A. The Attendees

The entries in Pound's diary appear, at first glance, unremarkable. On closer inspection, however, they are anything but that. The individuals Pound met on July 12th were not simply lawyers and academics of high standing in Germany. They were senior legal advisors within the NSDAP.³⁵ These individuals played prominent roles in the Third Reich, in particular in Germany's occupation of Poland and the atrocities committed against the Jews of Europe.³⁶

1. Hans Frank

The "Frank" who entertained Pound for lunch and hosted him at the theatre on the evening of July 12th was Hans Frank, Bavarian Minister of Justice and personal legal advisor to Adolf Hitler.³⁷ Frank joined the German Workers' Party (the NSDAP's precursor) in 1919, and he joined the SA in 1923 and reportedly walked behind Hitler in the failed Beer Hall Putsch that same year.³⁸ Over the subsequent decade, Frank's profile in the NSDAP

³⁵ See *infra* notes 39–40 (describing Frank's legal positions within the NSDAP); *infra* note 49 (stating that Bühler was a legal advisor to Hitler); *infra* notes 55–60 (explaining Mezger's role in the NSDAP); *infra* notes 61–62 (stating Luetgebrune's legal roles in the NSDAP).

³⁶ See *infra* notes 40–48 (explaining Frank's leadership in the NSDAP, including his participation in the execution of Jews); *infra* notes 50–54 (describing Bühler's appointment as Deputy Governor of Occupied Poland and participation in the Wannsee Conference); *infra* notes 57–58 (describing Mezger's view on Jewish criminality); *infra* notes 61–62 (stating Luetgebrune's legal roles in the NSDAP).

³⁷ ERNST KLEE, *DAS PERSONENLEXIKON ZUM DRITTEN REICH: WER WAR WAS VOR UND NACH 1945? [A DICTIONARY OF THE PEOPLE OF THE THIRD REICH: WHO WAS WHAT, BEFORE AND AFTER 1945?]*, at 160 (2003); see WISTRICH, *supra* note 20, at 78–79 (summarizing Frank's participation in Nazi Germany).

³⁸ ANTHONY READ, *THE DEVIL'S DISCIPLES: HITLER'S INNER CIRCLE 3* (2004); see KLEE, *supra* note 37, at 160 (stating that Frank was born on May 23, 1900). The Beer Hall Putsch was a failed attempt by Hitler to seize power in Bavaria. See SHIRER, *supra* note 19, at 68–75 (describing the Beer Hall Putsch). Hitler wanted to overthrow the Weimar Republic, and he thought that he would succeed if he first gained the support of the Bavarian government. *Id.* at 63. On the evening of November 8, 1923, Bavarian State Commissioner Gustav von Kahr was scheduled to speak about the Bavarian government's program at a meeting at the Buergerbräukeller beer hall in Munich. *Id.* at 65, 67. Hitler had been developing a different plan to begin his revolution, but when he learned of the meeting from a press announcement, he took advantage of the opportunity to act then. *Id.* at 67. Hitler planned to seize power in Bavaria by forcing its triumvirate—von Kahr, along with "General Otto von Lossow, commander of the Reichswehr [the Weimar Republic's limited standing army] in Bavaria, and Colonel Hans von Seisser, the head of the state police"—to join his Nazi revolution at gunpoint. *Id.* at 65, 68; WISTRICH, *supra* note 20, at 350. About thirty minutes into von Kahr's speech, Hitler arrived at the hall with six hundred armed SA troops, forced his way inside, shot his revolver at the ceiling, and shouted that "[t]he National Revolution ha[d] begun!" SHIRER, *supra* note 19, at 68. Hitler's plan failed, however. The Bavarian leaders refused to join him, despite his threats to shoot them. *Id.* at 69. Hitler did not gain the support that he expected. See *id.* at 69–71. On the morning of November 9th, Hitler lead his troops

grew as he defended party members against criminal and civil charges.³⁹ In 1933, he was given primary responsibility for the legal affairs of the NSDAP.⁴⁰ Later that year, when the role of Bavarian Minister of Justice was incorporated into the national government, Frank became Minister Without Portfolio.⁴¹ Though his prominent position in the NSDAP was not unchallenged—disputes with Heinrich Himmler weakened his influence—Frank remained in Hitler's favor throughout.⁴² On October 12, 1939, in recognition of his talent and loyalty, Hitler appointed Frank Governor-General of the Occupied Polish Territory,⁴³ a responsibility he appears to have relished according to World War II historian Anthony Read:

Ruling like some oriental despot from the splendour of Cracow Castle, Frank more than fulfilled his brief, turning his fiefdom into the bloodiest of all the occupied territories, with the possible exception of the western Soviet Union under Alfred Rosenberg's tender care. Basically insecure, and with his authority threatened by a constant power struggle with the SS, Frank compensated for his weakness with exaggerated brutality. He supervised the slaughter of the Polish intelligentsia, shipped hundreds of thousands of slave labourers to the Reich, and provided the sites for several of the

to the War Ministry in Munich, where the police defeated them. *Id.* at 73–74. Following the failed coup, in February 1924, Hitler was brought to trial for treason before a special court, found guilty, and sentenced to prison. *Id.* at 75, 78–79.

³⁹ READ, *supra* note 38, at 3.

⁴⁰ KLEE, *supra* note 37, at 160.

⁴¹ DENNIS LEROY ANDERSON, *THE ACADEMY FOR GERMAN LAW, 1933–1944*, at 42 (1987). In Nazi Germany, Ministers Without Portfolio were positions in the Reich Cabinet with no specific responsibilities. See *Kerrl Appointed to Reich Cabinet*, N.Y. TIMES, June 17, 1934, at 20 (describing a Minister Without Portfolio role as “without defined duties”).

⁴² See FISCHER, *supra* note 19, at 497 (describing a dispute between Frank and Himmler about the SS); READ, *supra* note 38, at 3 (explaining Frank's role in the NSDAP, describing Hitler's orders to Frank when he appointed him Governor-General of Poland, and stating that Frank effectuated those orders); see also 22 TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL 541–43 (1948) [hereinafter NUREMBERG TRIBUNAL] (describing disputes between Frank and Himmler about Germany's legal system and the control of the police, and stating that Hitler sided with Himmler in many of the disputes about the police, but also stating that Hitler appointed Frank Governor General of the Occupied Polish Territory). Himmler was “*Reichsführer-SS* [Reich Leader of the SS], head of the Gestapo [State Secret Police] and the Waffen-SS [armed SS elite], Minister of the Interior from 1943 to 1945 and the second most powerful man in Nazi Germany.” WISTRICH, *supra* note 20, at 138, 349–51. Himmler participated in the Beer Hall Putsch of 1923, and from 1925 to 1930, he was the acting propaganda leader of the NSDAP. *Id.* at 138. Himmler also was the mastermind of the Blood Purge of 1934 and the “supreme overseer of the ‘Final Solution.’” *Id.* at 138, 141. Himmler committed suicide before he could be tried for his crimes. *Id.* at 142.

⁴³ See NUREMBERG TRIBUNAL, *supra* note 42, at 542 (stating that Frank became Governor General of the Occupied Polish Territory on October 12, 1939).

most notorious death camps, including Auschwitz, Treblinka and Sobibor, proclaiming that his mission was “to rid Poland of lice and Jews.”⁴⁴

Following the conclusion of the war, Frank was one of twenty-four senior NSDAP figures tried at the Nuremberg Tribunal.⁴⁵ On October 1, 1946, he was found guilty of war crimes and crimes against humanity, and sentenced to death.⁴⁶ Frank was executed on October 16, 1946.⁴⁷ The final opinion of the tribunal described some of the evidence against Frank as follows:

As early as 6 February 1940, Frank gave an indication of the extent of this reign of terror by his cynical comment to a newspaper reporter on [Konstantin] Von Neurath’s poster announcing the execution of the Czech students: “If I wished to order that one should hang up posters about every seven Poles shot, there would not be enough forests in Poland with which to make the paper for these posters.” . . . On 16 December 1941, Frank told the Cabinet of the Governor General: “We must annihilate the Jews, wherever we find them and wherever it is possible in order to maintain there the structure of the Reich as a whole.” By 25 January 1944, Frank estimated that there were only 100,000 Jews left.⁴⁸

2. Josef Bühler

The “Bühler” who escorted Pound to the theatre on the evening of July 12th was Josef Bühler, a friend and colleague of Frank, who, in 1933, served as Administrator to the Court in Munich, and was also a legal advi-

⁴⁴ READ, *supra* note 38, at 3. Rosenberg mentored Hitler and was “the semi-official ‘philosopher’ of National Socialism and head of the Nazi Party’s Foreign Affairs Department.” WISTRICH, *supra* note 20, at 255. Rosenberg frequently attacked Jews, and in 1939, he declared that “Germany will regard the Jewish Question as solved only after the last Jew has left the Greater German living space.” *Id.* at 257–58. Rosenberg claimed that Slavs were inferior too, and in July 1941, Hitler appointed him as Minister for the Occupied Eastern Territories, where there were “bloody slave-states.” *Id.* 258–59. At the Nuremberg Tribunal, Rosenberg was found guilty of war crimes and sentenced to death. *Id.* at 259.

⁴⁵ See 1 NUREMBERG TRIBUNAL, *supra* note 42, at v (1947) (listing the names of the twenty-four defendants at the International Military Tribunal held at Nuremberg, Germany).

⁴⁶ 22 *id.* at 542, 544 (1948).

⁴⁷ KLEE, *supra* note 37, at 160.

⁴⁸ NUREMBERG TRIBUNAL, *supra* note 42, at 542–43. From 1932 to 1938, von Neurath was German Foreign Minister. In 1939 he became Reich Protector of Bohemia and Moravia, and in this position, he “was responsible for dissolving the Czech Parliament and political parties, abolishing freedom of the press, closing down Czech universities, crushing student resistance, persecuting the churches and adopting the Nuremberg racial laws in the Protectorate.” WISTRICH, *supra* note 20, at 218–19.

sor to Hitler.⁴⁹ Bühler's career was ultimately tied to that of Frank, through whom he became a notable figure in the NSDAP regime. In 1941, Bühler was appointed Deputy Governor of Occupied Poland, second in command to Frank.⁵⁰ On January 20, 1942, Bühler was one of fifteen participants at the infamous Wannsee Conference outside Berlin.⁵¹ During this meeting, senior NSDAP figures agreed on the "final solution" for the Jews of German-occupied Europe.⁵² The protocol of the meeting includes the following note, "State Secretary Dr. Bühler asserted that the General Government would be grateful if the final solution to this problem could be initiated in the General Government."⁵³

Bühler testified at the Nuremberg Tribunal on behalf of Frank before being extradited to Poland and tried before the Supreme National Tribunal of Poland for crimes against humanity. He was found guilty of these crimes, sentenced to death, and executed on August 21, 1948.⁵⁴

3. Edmund Mezger

The "Mezger" who joined Pound for lunch on July 12th was Edmund Mezger, an expert in criminal law and criminology who was a professor in the law faculty at the University of Munich.⁵⁵ During the Second World War, Mezger served on the *Strafrechtkommission* [Criminal Law Committee] under German Justice Minister Franz Gürtner.⁵⁶ Though Mezger did not hold such influential positions as Frank and Bühler, he sought, through his membership on this committee, to bring the German penal code in line with National Socialist views on race.⁵⁷ In 1944, Mezger authored an article in which he observed that "[i]n particular with regards to the marked criminality of the Jews, older studies insufficiently distinguish between race and

⁴⁹ KLEE, *supra* note 37, at 81.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² SHIRER, *supra* note 19, at 965.

⁵³ KLEE, *supra* note 37, at 81. "Staatssekretär Dr. Bühler stellte fest, daß das Generalgouvernement es begrüßen würde, wenn mit der Endlösung dieser Frage im Generalgouvernement begonnen würde." *Id.* (translated by this Article's author).

⁵⁴ *Id.*

⁵⁵ *Id.* at 409.

⁵⁶ *Id.* at 410. Gürtner was Minister of Justice from 1932 to 1941 and was responsible for "'coordinating' jurisprudence in the Third Reich." WISTRICH, *supra* note 20, at 115–16.

⁵⁷ See, e.g., EDMUND MEZGER, KRIMINALPOLITIK UND IHRE KRIMINOLOGISCHEN GRUNDLAGEN 146 (3d ed. 1944) (writing about the alleged criminality of the Jews). See generally FRANCISCO MUÑOZ CONDE, EDMUND MEZGER—BEITRÄGE ZU EINEM JURISTENLEBEN (Moritz Vormbaum trans., 2007).

religion In the racial legislation of the new nation, race will now have its due consideration.”⁵⁸

At the Nuremberg Tribunal, Mezger worked on the defense team of Konstantin von Neurath, Foreign Minister of Germany from 1932 to 1938.⁵⁹ For his own role in the Third Reich, Mezger was sentenced to a term of imprisonment.⁶⁰

4. Walter Luetgebrune

The “Luetgebrune” present at the lunch was Walter Luetgebrune, who until late 1933 served as chief legal advisor to both the SA and the SS.⁶¹ Luetgebrune made his name successfully defending the German general Erich Ludendorff for his involvement, at Hitler’s request, in the failed Beer Hall Putsch of 1923.⁶²

B. *The Academy for German Law*

Pound does not mention in his diary why he met Frank, Bühler, Mezger, and Luetgebrune for lunch, what they discussed, or why he joined Frank at the theatre in the evening. The four NSDAP figures with whom Pound met did share one other thing in common, however, which offers an explanation for the events of that day. Frank, Bühler, Mezger, and Luetgebrune were all members of the *Akademie für Deutsches Recht* [Academy for German Law] (“ADR”).⁶³

⁵⁸ MEZGER, *supra* note 57, at 146.

Gerade bei der besonderen Kriminalität der Juden leiden die älteren Untersuchungen vielfach an einer ungenügenden Unterscheidung zwischen Rasse und Konfession In der Rassengesetzgebung des neuen Staates findet die Rasse selbst nunmehr ihre gebührende Berücksichtigung.

Id. (translated by this Article’s author).

⁵⁹ HUBERT SELIGER, POLITISCHE ANWÄLTE? DIE VERTEIDIGER DER NÜRNBERGER PROZESSE 107–08, 165 (2016); see WISTRICH, *supra* note 20, at 218 (stating that von Neurath was “German Foreign Minister from 1932 to 1938”). At the Nuremberg Tribunal, the judges found von Neurath “guilty of war crimes, crimes against peace and crimes against humanity.” WISTRICH, *supra* note 20, at 219.

⁶⁰ SELIGER, *supra* note 59, at 108, 245–46, 246 n. 744.

⁶¹ ANDERSON, *supra* note 41, at 556; Rudolf Heydeloff, *Starranwalt der Rechtsextremisten: Walter Luetgebrune in der Weimarer Republik*, 32 VIERTELJAHRSHEFTE FÜR ZEITGESCHICHTE, 373, 373 (1984), https://www.ifz-muenchen.de/heftarchiv/1984_3_2_heydeloff.pdf [<https://perma.cc/TZC2-TSY3>].

⁶² Heydeloff, *supra* note 61, at 391. Ludendorff joined the German army in 1881 and held several military positions during and after the First World War, until he was dismissed from the military in 1918. In 1923, Ludendorff was a leader in the Beer Hall Putsch, including leading 3,000 storm troops toward Munich. WISTRICH, *supra* note 20, at 198–99.

⁶³ ANDERSON, *supra* note 41, at 41, 46, 545, 556, 558.

Frank established the ADR in 1933, and he served as its president until 1943.⁶⁴ The Academy's primary goal was to provide legal reasoning and research in support of the policies and practices of the NSDAP. Through publications, speeches, and conferences, it sought to show the world, and persuade sceptics within Germany, that fundamental legal principles supported the NSDAP's changes—that there was a method to the madness.⁶⁵ As Frank stated at an event to mark the founding of the institution: "There is a desperate need in our national politics for an organization that is charged with renewing German law, in accordance with the national socialist world outlook, based on strict scientific methods. I have therefore decided to establish an Academy for German Law."⁶⁶

The year after Frank established the Academy, Hitler wrote him a personal note thanking him for creating a lasting institution "that is in the position to reform the law in support of the implementation of the national socialist world view on all levels, without inhibiting justice in the narrow sense."⁶⁷

One of the ways the Academy sought to achieve its goals was by establishing relationships with foreign legal scholars. These relationships, the Academy believed, would allow a mutual exchange of ideas.⁶⁸ The Academy could absorb valuable legal scholarship from other countries while also winning support for the activities of the NSDAP by demonstrating that these actions were guided by coherent legal theories. The Academy viewed it as particularly important to build these bridges to countries whose governments were suspicious of Hitler and his party, such as the United Kingdom and the United States.⁶⁹

Roscoe Pound would have been an ideal point of contact for the ADR. In the early 1930s, he was not only dean of one of the leading law schools

⁶⁴ KLEE, *supra* note 37, at 160.

⁶⁵ ANDERSON, *supra* note 41, at 45–46.

⁶⁶ Susanne Adlberger, *Nützliche Kooperation—Die Juristische Fakultät der Ludwig-Maximilians-Universität und die Akademie für Deutsches Recht*, in *DIE UNIVERSITÄT MÜNCHEN IM DRITTEN REICH: AUFSÄTZE. TEIL I*, at 405, 408 (Elisabeth Kraus ed., 2006). "Es besteht ein dringendes staatspolitisches Bedürfnis für eine Organisation, welche die Erneuerung des Deutschen Rechts im Sinne der nationalsozialistischen Weltanschauung nach den Grundsätzen strenger wissenschaftlicher Methode vorzubereiten berufen ist. Ich habe mich daher entschlossen eine Akademie für Deutsches Recht ins Leben zu rufen." *Id.* (translated by this Article's author).

⁶⁷ LOTHAR GRUCHMANN, *JUSTIZ IM DRITTEN REICH 1933–1940: ANPASSUNG UND UNTERWERFUNG IN DER ÄRA GÜRTNER* 115 (3. Verbesserte Aufl. 2001) ("die Sie in den Stand setzt, ohne Beschränkung auf die Justiz im engeren Sinne bei der Durchsetzung der nationalsozialistischen Weltanschauung auf allen Gebieten der Neugestaltung des Rechts mitzuwirken") (translated by this Article's author).

⁶⁸ ANDERSON, *supra* note 41, at 398, 435.

⁶⁹ *Id.* at 398–99, 435.

in the United States, but he was also viewed as one of the country's pre-eminent legal scholars. The Academy may also have been aware that Pound was something of a Germanophile. Since his early studies of botany, a field in which German experts excelled, Pound had been enamored of German intellectualism and the country's cultural heritage.⁷⁰

Pound's activities in Munich—his lunch with Frank, Mezger, and Luetgebrune; his visit to the theatre, at Frank's invitation and accompanied by Bühler; his speech at the University of Munich; and his afternoon tea with the Mezgers and Mrs. Luetgebrune—were the kind of activities the Academy would have arranged for a visiting legal scholar with whom it sought to curry favor.⁷¹

The files of the German Foreign Office support the position that the German government deliberately targeted Pound, though the files do not mention the ADR.⁷² A report dating from June 1934 describes Pound as someone who had long been, and continued to be, favorable toward Germany. As an example of Pound's favorable attitude toward Germany, the report describes him as having publicly supported the German boycott of Jewish goods.⁷³ The report recommended that, to strengthen Pound's favor toward Germany, he should be awarded an honorary degree from the University of Berlin. The report suggested that this honor was important because Harvard Law School alumni in leading positions in the U.S. government felt a connection to Pound, as the dean of their alma mater.⁷⁴ The report also recommended that Pound be approached formally during his trip to Germany in

⁷⁰ See PAUL SAYRE, *THE LIFE OF ROSCOE POUND* 46 (1948) (explaining that Pound began studying German during his childhood); *id.* at 53 (noting that Pound attended the German Methodist Sunday School, and his mother was fluent in German); *id.* at 63 (describing Pound's childhood studies in botany and entomology). Botany was Pound's first love. *Id.* He received his bachelor's degree in this subject in 1888, a master's degree the following year, and a Ph.D. in 1897. *Id.* at 1, 58, 63, 65. In 1897, he served as the Director of the Botany Survey of Nebraska, a club of botany students at the University of Nebraska. *Id.* at 1, 68. Internationally, the leading survey of plant life at the time was the *Ecology of Germany*, and German scientists were the most highly regarded in the field. *Id.* at 69. Pound recognized that Nebraska's semi-arid prairies required their own survey, and his *Phytogeography of Nebraska* presented "many more plants and much fuller analysis of geographical developments for Nebraska and substantially for other states than had ever occurred before." *Id.* This work drew widespread recognition internationally, in particular from German experts. *Id.* As a result, Pound had a fungus named after him, the "Roscoepoundia," an honor bestowed by the celebrated, if controversial, German botanist Dr. Otto Kuntze. *Id.*

⁷¹ See Adlberger, *supra* note 66, at 416–17 (describing events that the ADR hosted to impress visiting legal scholars); see also ANDERSON, *supra* note 41, at 435 (explaining that the ADR sought to build relations with legal figures in the United States).

⁷² See generally 8 AUSWÄRTIGES AMT [FOREIGN OFFICE], VIW AKTEN, WISSENSCHAFT, HOCHSCHULWESEN (June 21, 1934) (available at Politisches Archiv Des Auswärtigen Amts [Political Archive of Foreign Office], R64256).

⁷³ *Id.* at 2.

⁷⁴ *Id.* at 1, 2–3.

the summer of 1934, including having someone welcome him at the Oberammergau Passion Play and inviting him to present a guest lecture at the University of Berlin or in Munich or Heidelberg. The report suggested that Anton-Hermann Chroust could be helpful in arranging Pound's activities because of his personal relationship with Pound.⁷⁵ Pound's diary entries confirm that many of the report's suggestions were carried out—during his trip to Germany in the summer of 1934, Pound attended the Oberammergau Passion Play, met with Chroust on more than one occasion, and delivered a speech at the University of Munich.⁷⁶ Later, in September 1934, Pound received an honorary degree from the University of Berlin.⁷⁷

C. *Paris Herald* Article, August 1934

If Pound's program of activities in Munich was wholly or in part organized by the ADR, the Academy can claim it was successful. The *Münchener Neueste Nachrichten*, one of the largest daily newspapers in Germany at the time, highlighted the visit of the "prominent American jurist" and covered Pound's speech at the university in detail.⁷⁸ More importantly, a number of incidents that took place in the months immediately following Pound's July 1934 visit to Munich evidenced Pound's clear sympathy toward the NSDAP and an intent to engender support for the party outside of Germany.⁷⁹

The first public evidence of Pound's support for the NSDAP emerged at the end of his summer vacation, during an interview he gave to the *Paris Herald* published on August 4, 1934.⁸⁰ In an article entitled *Austro-Reich*

⁷⁵ *Id.* at 3–4.

⁷⁶ Pound, Diary Entry on July 14, 1934, *supra* note 34; Pound, Diary Entry on July 13, 1934, *supra* note 33; Pound, Diary Entry on July 12, 1934, *supra* note 1; Pound, Diary Entry on July 11, 1934, *supra* note 29; Pound, Diary Entry on July 10, 1934, *supra* note 28.

⁷⁷ Roscoe Pound, Diary Entry (Sept. 17, 1934) [hereinafter Pound, Diary Entry on Sept. 17, 1934], *microformed on Roscoe Pound Papers 1888–1964, Part II Writings, Lectures, Addresses, Teaching Notes, and Miscellaneous Manuscripts, Reel 41* (Univ. Publ'ns of Am.).

⁷⁸ *Besuch eines hervorragenden amerikanischen Juristen*, MÜNCHNER NEUESTER NACHRICHTEN, July 18, 1934, at 192.

⁷⁹ See *infra* notes 80–84 and accompanying text (analyzing the interview that Pound gave to the *Paris Herald*); *infra* notes 85–97 and accompanying text (explaining Pound's acceptance of an honorary degree from the University of Berlin); *infra* notes 98–113 and accompanying text (describing Pound's conversations with his colleagues regarding the honorary degree).

⁸⁰ *Austro-Reich Border Quiet, Dean Pound Says After Tour*, N.Y. HERALD TRIBUNE (Paris), Aug. 4, 1934, at 1. The *Paris Herald* was founded in the late nineteenth century as the European edition of the *New York Herald*. It later changed its name to the *New York Herald Tribune*, then the *International Herald Tribune*, and then the *International New York Times*. Emily Steel, *IHT to Be Rebranded in Overseas Drive*, FIN. TIMES (Feb. 25, 2013), <https://www.ft.com/content/fa2badc8-7f78-11e2-8d96-00144feabdc0#axzz2M1HVprDw> [<https://perma.cc/VW98-VSXR>]; *Retrospective: The International Herald Tribune*, N.Y. TIMES, (Dec. 18, 2017), <https://www.nytimes>.

Border Quiet, Dean Pound Says After Tour, Pound is reported to have spoken about his time in Munich, where he “discussed the current situation as well as the new movement in German law with German teachers of the University of Munich.”⁸¹ Based on these discussions, and Pound’s presence at “strategic points” during this period, he told the paper that he was “everywhere impressed by the absence of tension and by the peaceful manner in which the people accepted Hitler as their leader.”⁸² Pound attributed the rise of Hitler to Germans being “tired of internal bickering” and anxious to support someone who could bring them “freedom from agitating ‘movements.’”⁸³ With regard to the long-term prospects for the National Socialist Party, Pound stated that he saw “no reason why it should fail if it continues to attract the confidence of the people.”⁸⁴

II. THE HONORARY DEGREE

The second incident in which Pound offered public support to the NSDAP took place six weeks later, after he returned to Boston. His diary entry for September 17, 1934, reads as follows: “Hard rain all day and night, sticky hot—80%. At 12 noon, Dr. Hans Luther, German Ambassador comes to the school and presents me the diploma of an honorary Doctor of Laws (J.U.D.) of Berlin, and 1:30 the ambassador gives a luncheon at the Ritz”⁸⁵

The minimalist style of this entry masks the significance of the event. Publicly accepting an honorary degree from a German university, presented by the German Ambassador to the United States, was widely seen as a

com/2017/12/18/world/retrospective-the-international-herald-tribune.html [https://perma.cc/RQ7H-7FE8].

⁸¹ *Austro-Reich Border Quiet, Dean Pound Says After Tour*, *supra* note 80.

⁸² *Id.* The article states that Pound had “crossed and re-crossed the border eight times” without seeing an Austrian soldier at any point. *Id.* Indeed, the article quotes Pound as saying, “we had much less trouble passing the border than a person meets getting from Canada into the United States.” *Id.* It should be noted here, as highlighted above, that Pound had received a special recommendation from the Charges D’Affaires in Boston prior to his trip, with the purpose of making it easier for him to cross the German-Austrian border. See Letter from Baron Kurt von Tippelskirch, *supra* note 25 (stating that von Tippelskirch enclosed with his letter “a special recommendation [for Pound and his wife] to . . . use[] when passing the German frontier in both directions”). Further, Pound was crossing the German-Austrian border at a time of great political tension. On July 25, 1934, just days after Pound left Austria for Switzerland, the NSDAP assassinated the Austrian Chancellor, Engelburt Dollfuss, and attempted to overthrow the Austrian Government. See SHIRER, *supra* note 19, at 279 (describing Dollfuss’s assassination on July 25, 1934). That Pound did not see any soldiers until his arrival in Switzerland is surprising.

⁸³ *Austro-Reich Border Quiet, Dean Pound Says After Tour*, *supra* note 80.

⁸⁴ *Id.*

⁸⁵ Pound, Diary Entry on Sept. 17, 1934, *supra* note 77.

statement of support for the German government. The *Boston Evening Transcript*, presumably given prior notice of the event, left readers with little doubt as to whose interests were ultimately being served, running the front-page headline, *Hitler Envoy Presents Law Degree to Dean Pound at Harvard Ceremony*.⁸⁶

Correspondence in Pound's papers reveals that planning for this event likely had begun after his return to the United States. On September 12, 1934, Pound received a lengthy letter from von Tippelskirch, the German Consul in Boston, that began, "My Dear Dean, I was so disappointed that I had to inform you last Saturday that the Ambassador could not adapt his plan to our⁸⁷ tentative arrangement for Friday, September 14."⁸⁸ In a comment that must surely have alerted Pound to the real purpose of the ceremony if he was not already aware of it, von Tippelskirch's letter also stated, "It would, of course, be important that the presence of President Conant who was ready to accept an invitation for Friday, could be secured also for Monday."⁸⁹

The press criticized Pound's acceptance of the honorary degree.⁹⁰ In an article entitled *Germany Up to Her Old Tricks*, published in *The New Republic*, Charles A. Beard admonished Pound and wrote that "the institutions and citizens of the United States shall not be used by foreign governments and agents for the purposes of their propaganda."⁹¹ There was a mixed reaction among Pound's colleagues at the law school. Although a number of them attended the ceremony,⁹² at least some did so reluctantly. The Presi-

⁸⁶ *Hitler Envoy Presents Law Degree to Dean Pound at Harvard Ceremony*, BOSTON EVENING TRANSCRIPT, Sept. 17, 1934, at 1.

⁸⁷ The use of "our" suggests that Pound may have suggested or encouraged inviting the Ambassador to present the award, perhaps to make the ceremony more prestigious.

⁸⁸ Letter from Baron Kurt von Tippelskirch, German Consul Gen. in Bos., to Roscoe Pound, Dean of Harvard Law School (Sept. 12, 1934) [hereinafter Letter from Baron Kurt von Tippelskirch on Sept. 12, 1934], *microformed on* Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 98 (Univ. Publ'ns of Am.). The letter indicates that the original plan was for the German Consul to confer the award, only for this to be changed and an invitation extended to the German Ambassador. *Id.* The change of presenter is accidentally confirmed in a memorandum written by Felix Frankfurter, who was initially told of a luncheon to be hosted by the German Consul, and then by the German Ambassador—a discrepancy Frankfurter rather unfairly noted as a mistake by Pound's secretary, commenting that "[p]lainly, Miss McCarthy [Pound's secretary] had been inaccurate in her message to Miss Cummings [Frankfurter's secretary], and the German Ambassador and not the German Consul was involved." Memorandum from Felix Frankfurter of Conversation with Pound and President Conant Regarding an Invitation from Pound 2 (Sept. 14, 1934) [hereinafter Frankfurter Memorandum], *microformed on* The Papers of Felix Frankfurter 1900–1965, Reel 55, Frame 340 (Library of Congress Photoduplication Serv.).

⁸⁹ Letter from Baron Kurt von Tippelskirch on Sept. 12, 1934, *supra* note 88.

⁹⁰ STEPHEN H. NORWOOD, *THE THIRD REICH IN THE IVORY TOWER: COMPLICITY AND CONFLICT ON AMERICAN CAMPUSES* 56 (2009).

⁹¹ Charles A. Beard, *Germany Up to Her Old Tricks*, NEW REPUBLIC, Oct. 24, 1934, at 299.

⁹² Pound, *Diary Entry on* Sept. 17, 1934, *supra* note 77.

dent of Harvard University, James Bryant Conant, was anxious not to be publicly associated with the event.⁹³ “I’m not in it,” he bristled, when asked to appear in a photograph, “[i]t’s strictly a matter between these two gentlemen.”⁹⁴ Conant’s efforts to distance himself from the event appear to have been in vain, however. The subtitle of the *Boston Evening Transcript* article read, “President Conant Among the Guests as Dr. Hans Luther Pays Visit to Law School.”⁹⁵

Pound made a light-hearted effort to play down the symbolism of the event by suggesting the conveyance was “[s]imply made on general principles.”⁹⁶ Analysis of the records of the German Foreign Office, however, suggests that Pound was fully aware of the message being conveyed, and was unperturbed by the criticism he received. A report written for the German Foreign Office in Berlin by the German Ambassador reports that Pound was quite comfortable with the ensuing controversy: “I happen to know, however, that the gratitude of Dean Pound for the title bestowed upon him, which he had already indicated in private he was willing to accept, was not diminished in the slightest by the attacks directed against him, including from many of his friends.”⁹⁷

That Pound viewed the award as more than simply a form of academic praise is further shown by his active role in organizing the event, and by the conversations he had around this time with Conant and Felix Frankfurter, a colleague on the law faculty and future Justice of the United States Supreme Court.

A. Pound, Conant, and Frankfurter Correspondence

Correspondence between Pound and Consul General von Tippelskirch, and a lengthy memorandum covering the affair written by Pound’s colleague Frankfurter, suggests that Pound played a central role in organizing the ceremony in which he was to be honored. He compiled a list of Harvard fellows,

⁹³ See Frankfurter Memorandum, *supra* note 88 (recounting a conversation in which Conant expressed concerns about the event and indicated that he did not want to attend the event but felt that he was obligated to attend because he was the president of the university).

⁹⁴ *Hitler Envoy Presents Law Degree to Dean Pound at Harvard Ceremony*, *supra* note 86, at 1.

⁹⁵ *Id.*

⁹⁶ *Pound Gets Reich Honor*, N.Y. TIMES, Sept. 18, 1934, at 11.

⁹⁷ 2 AUSWÄRTIGES AMT [FOREIGN OFFICE] (Nov. 6, 1934), *supra* note 72, at K516636 (available at Politisches Archiv des Auswärtigen Amtes [Political Archive of Foreign Office], R64237) (“Im übrigen ist mir aber bekannt, daß die Freude des Dekans Pound an der ihm zuteil gewordenen Ehrung, zu deren Annahme er sich zunächst vertraulich bereit erklärt hatte, durch die sogar von manchen seiner Freunde deswegen gegen ihn gerichteten Angriffe nicht im allermindesten beeinträchtigt worden ist.”) (translated by this Article’s author).

faculty members, and senior staff he wanted to attend,⁹⁸ and asked those individuals in advance to keep the date free.⁹⁹ Pound then provided the German Consulate with a list of those to whom invitations should be sent.¹⁰⁰

In the course of this preparation, Pound engaged in conversations with colleagues in which he was described as actively defending Hitler and the NSDAP.¹⁰¹ Upon hearing about a ceremony involving the German Consul, Frankfurter immediately suspected that an event “which impliedly would mean prestige for Hitlerism, was afoot.”¹⁰² In a memorandum that Frankfurter wrote at the time, and preserved in his papers, Frankfurter recorded that:

[Pound] had also indicated to me his Nazi sympathies, and [Harvard Law School Professor Calvert] Magruder told me that he had told him what a wonderful speech he had heard Hitler make and that the American and English rendering of the speech was a scandal; that there was no persecution of Jewish scholars or of Jews generally who had lived in the country for any length of time, that only the very recent Polish Jewish immigrants had been expelled.¹⁰³

Pound’s reported comment to Frankfurter, made in September 1934, that there was no persecution of Jews generally, or Jewish scholars, was almost certainly known by Pound to be incorrect. In May 1934, for example, just six months earlier, Pound had received a letter from Joseph Schumpeter, a fellow professor at Harvard University who was born in Austria and briefly served as Minister of Finance there.¹⁰⁴ In this letter, Schum-

⁹⁸ Letter from Roscoe Pound to Baron Kurt von Tippelskirch, German Consul Gen. in Bos. (Sept. 13, 1934) [hereinafter Letter from Pound on Sept. 13, 1934], *microformed on* Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 98 (Univ. Publ’ns of Am.). The list of individuals Pound wanted to have present at the ceremony, which he forwarded to von Tippelskirch on September 14th, included President Conant, two fellows of Harvard College, nine law professors, two assistant professors, and the secretary of Harvard Law School. *Id.* From Pound’s diary, we know that most of these individuals attended, together with some other acquaintances of Pound. *See* Pound, Diary Entry on Sept. 17, 1934, *supra* note 77 (listing some ceremony attendees).

⁹⁹ *See, e.g.*, Frankfurter Memorandum, *supra* note 88, at 1 (recalling Pound coming to his office and telling him, “[n]ext Friday I think there will be a ceremony in the School here, at which I want you especially to be present, so I hope you will keep open next Friday and I will let you know more about it later”).

¹⁰⁰ Letter from Pound on Sept. 13, 1934, *supra* note 98.

¹⁰¹ *See* Frankfurter Memorandum, *supra* note 88, at 1 (recalling a conversation with Harvard Law Professor Calvert Magruder about Pound’s statements in support of Hitler and the NSDAP).

¹⁰² *Id.*

¹⁰³ *Id.* Magruder later became a judge of the United States Court of Appeals for the First Circuit.

¹⁰⁴ Letter from Joseph Schumpeter to Roscoe Pound (May 8, 1934) [hereinafter Letter from Schumpeter], *microformed on* Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 94 (Univ. Publ’ns of Am.); *see Papers of Joseph Alois Schumpeter: Collection Over-*

peter asked for Pound's help in assisting Friedrich Schulz, a renowned expert in Roman Law in Germany, who "ha[d] been dismissed for no other reason than that his wife [was] a Jewess."¹⁰⁵ Schumpeter added that Schulz was looking for an opening in America and that Schumpeter "should be grateful beyond measure if you [Pound] would grant me [Schumpeter] an interview to talk this sad case over."¹⁰⁶ Pound wrote back to Schumpeter, admitting that "[a] number of such cases have been brought to my attention," but warning him that "it will not be easy to find anything for Professor Schulz."¹⁰⁷

Frankfurter's memorandum continues with a description of a conversation between himself and President Conant in which they discussed Pound's acceptance of the degree. Frankfurter recalled President Conant telling him:

view, HARVARD LIBRARY, <https://hollisarchives.lib.harvard.edu/repositories/4/resources/4124> [<https://perma.cc/46LG-EPZF>].

¹⁰⁵ Letter from Schumpeter, *supra* note 104.

¹⁰⁶ *Id.*

¹⁰⁷ Letter from Roscoe Pound to Joseph Schumpeter (May 22, 1934), *microformed on Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 94* (Univ. Publ'ns of Am.). It is beyond the scope of this Article to consider in detail how much Pound knew, or should have known, about the intentions of the NSDAP at the time. It can be noted, however, that by June 1934, the NSDAP had already drafted, passed, and was applying a number of racist laws. For example, the *Gesetz zur Wiederherstellung des Berufsbeamtentums* [Law for the Restoration of the Professional Civil Service] ("BBG"), passed on April 7, 1933, required that universities terminate non-Aryan professors. *Gesetz zur Wiederherstellung des Berufsbeamtentums*, published in the *Reichsgesetzblatt*, <http://alex.onb.ac.at/cgi-content/alex?aid=dra&datum=1933&page=300&size=45> [<https://perma.cc/G7DX-E97M>]. The University of Berlin had already begun the process of implementing this law when it bestowed Pound's honorary degree. See generally Sven Kinas, *Massenentlassungen und Emigration*, in *GESCHICHTE DER UNIVERSITÄT UNTER DEN LINDEN: DIE BERLINER UNIVERSITÄT ZWISCHEN DEN WELTKRIEGEN 1918–1945*, at 325, 325–404 (Heinz-Elmar Tenorth & Michael Grüttner eds., 2012) (describing instances of the University of Berlin forcing non-Aryan university professors to leave through open-ended sabbaticals, retirement, and suspensions, or by revoking their licenses to teach). For example, well-known criminal lawyer James Goldschmit was forced to leave the University of Berlin in 1933, a dismissal he fought to have framed as a "sabbatical." Christoph Jahr, *Die Nationalsozialistische Machtübernahme und ihre Folgen*, in *GESCHICHTE DER UNIVERSITÄT UNTER DEN LINDEN: DIE BERLINER UNIVERSITÄT ZWISCHEN DEN WELTKRIEGEN 1918–1945*, *supra*, at 295, 305–07. Other victims of the BBG in the law faculty included: Honorary Professor Max Alsberg, a well-known criminal lawyer, who left the university in the summer of 1933; Julius Magnus, an expert in patent law and international law, who left the faculty in September 1933; Elemér Balogh, an expert in Roman law, who left the university in April 1933; and Walter Landé, an expert in education law, who also held a senior position in the Ministry of Culture. ANNA-MARIA GRÄFIN VON LÖSCH, *DER NACKTE GEIST: DIE JURISTISCHE FAKULTÄT DER BERLINER UNIVERSITÄT IM UMBRUCH VON 1933*, at 64 (1999). Just a few weeks after the passing of the BBG, on April 26, 1933, the German government passed another law, targeted this time at Jewish students. The *Gesetz gegen die Überfüllung deutscher Schulen und Hochschulen* [Law Against the Overcrowding of German Schools and Universities] required that universities limit the proportion of non-Aryan students in their student bodies to the proportion of non-Aryan students in the country as a whole. *Gesetz gegen die Überfüllung deutscher Schulen und Hochschulen*, published in the *Reichsgesetzblatt*, *supra*.

I knew Pound was pro-Nazi when he came in here recently and talked with me about Germany. He is being given an honorary degree by the University of Berlin. He came to tell me that and to say that the Germany [sic] Ambassador was asked to confer it in person in the Law School.¹⁰⁸

Frankfurter declined Pound's invitation to attend the ceremony, writing to Pound that he could not "attend any function in honor of a representative of a government which Mr. Justice Holmes has accurately characterized as 'a challenge to civilization.'"¹⁰⁹ Pound replied to Frankfurter that he was "surprised that [Frankfurter] could not take the trouble to find out the facts," and that Frankfurter should "presently come to me [Pound] and find out what is taking place."¹¹⁰ There is no further mention of what was discussed, but Frankfurter is not among the listed attendees at the event.¹¹¹

After the controversy surrounding the degree conveyance, Pound does not appear to have made further public statements or gestures in support of the NSDAP. We know from Pound's diary entries that he visited Germany two more times in the following years, however. In the summer of 1936, Pound spent nineteen days travelling through Germany, starting in Berlin and making his way gradually down to Munich.¹¹² The following year, in the summer of 1937, Pound spent more time in the country, visiting Berlin, Dresden, Karlsbad, Nuremberg, and Frankfurt over a period of around nine days.¹¹³ Not all of Pound's diary entries for these trips are legible. Those

¹⁰⁸ Frankfurter Memorandum, *supra* note 88, at 3.

¹⁰⁹ *Id.* at 1.

¹¹⁰ *Id.* at 4.

¹¹¹ *Id.*; see Pound, Diary Entry on Sept. 17, 1934, *supra* note 77 (listing some ceremony attendees, and not listing Frankfurter).

¹¹² See, e.g., Roscoe Pound, Diary Entry (July 23, 1936), *microformed on* Roscoe Pound Papers 1888–1964, Part II Writings, Lectures, Addresses, Teaching Notes, and Miscellaneous Manuscripts, Reel 41 (Univ. Publ'ns of Am.) (noting that Pound was leaving Munich for Paris); Roscoe Pound, Diary Entry (July 22, 1936), *microformed on* Roscoe Pound Papers 1888–1964, Part II Writings, Lectures, Addresses, Teaching Notes, and Miscellaneous Manuscripts, Reel 41 (Univ. Publ'ns of Am.) (noting that Pound was in Munich); Roscoe Pound, Diary Entry (July 4, 1936), *microformed on* Roscoe Pound Papers 1888–1964, Part II Writings, Lectures, Addresses, Teaching Notes, and Miscellaneous Manuscripts, Reel 41 (Univ. Publ'ns of Am.) (noting Pound's arrival in Berlin). For more details on Pound's trip to Germany in 1936, see his daily diary entries from July 4, 1936 through July 23, 1936.

¹¹³ See Roscoe Pound, Diary Entry (July 2, 1937), *microformed on* Roscoe Pound Papers 1888–1964, Part II Writings, Lectures, Addresses, Teaching Notes, and Miscellaneous Manuscripts, Reel 42 (Univ. Publ'ns of Am.) (noting that Pound was on a train to Frankfurt); Roscoe Pound, Diary Entry (June 30, 1937), *microformed on* Roscoe Pound Papers 1888–1964, Part II Writings, Lectures, Addresses, Teaching Notes, and Miscellaneous Manuscripts, Reel 42 (Univ. Publ'ns of Am.) (noting that Pound was on a train to Nuremberg); Roscoe Pound, Diary Entry (June 29, 1937), *microformed on* Roscoe Pound Papers 1888–1964, Part II Writings, Lectures, Ad-

that are legible do not reveal meetings with individuals occupying senior positions in the NSDAP.

III. ANTON-HERMANN CHROUST

The other individual mentioned in Pound's diary entry on July 12, 1934, is Anton-Hermann Chroust.¹¹⁴ Chroust was a young German scholar who had recently finished a scholarship under Pound at Harvard Law School.¹¹⁵ At first look, Chroust's name is overshadowed by the more prominent figures present at lunch and escorting Pound to the theatre. Yet the relationship between Pound and Chroust also raises troubling questions about Pound's views on National Socialism, and the integrity of his conduct at the time.

The history books have recorded Chroust as a talented legal theorist who came to Harvard Law School on a scholarship in the early 1930s, returned to Germany briefly in 1934, and then decided to move to the United States permanently.¹¹⁶ After struggling to find employment during wartime, he was offered a position on the faculty of the law school at Notre Dame University in 1946.¹¹⁷ In the post-war period, Chroust published a number

dresses, Teaching Notes, and Miscellaneous Manuscripts, Reel 42 (Univ. Publ'ns of Am.) (noting that Pound was on a train to Karlsbad); Roscoe Pound, Diary Entry (June 24, 1937), *microformed on Roscoe Pound Papers 1888–1964, Part II Writings, Lectures, Addresses, Teaching Notes, and Miscellaneous Manuscripts, Reel 42* (Univ. Publ'ns of Am.) (noting that Pound was on a train to Berlin). For more details on Pound's trip to Germany in 1937, see his daily diary entries from June 24, 1937 through July 2, 1937.

¹¹⁴ See Pound, Diary Entry on July 12, 1934, *supra* note 1.

¹¹⁵ See Letter from Roscoe Pound to the Honorable Christian Herter, Representative, U.S. House of Representatives (May 29, 1944) [hereinafter Letter to Herter], *microformed on Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 542* (Univ. Publ'ns of Am.) (stating that Pound recommended Chroust for a Holtzer Scholarship, and Chroust studied at Harvard Law School under that scholarship in the 1933–1934 school year).

¹¹⁶ See *Professor Anton-Hermann Chroust*, *supra* note 7 (eulogizing Chroust and celebrating his scholarly achievements); see also FBI CASE FILE NO. 70001963, *supra* note 9, at 30 (noting that Chroust left the United States to go to Germany in May 1934 and returned to the United States in November 1934).

¹¹⁷ Letter from Anton-Hermann Chroust to Roscoe Pound (Sept. 26, 1946), *microformed on Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 611* (Univ. Publ'ns of Am.); see, e.g., Letter from J. Seelye Bixler, President, Colby Coll., to Roscoe Pound (Sept. 7, 1944), *microformed on Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 551* (Univ. Publ'ns of Am.) (replying to Pound's letter inquiring about a teaching position for Chroust, and stating that there was no room on the faculty); Letter from Charles F. Phillips, President, Bates Coll., to Roscoe Pound (Sept. 23, 1944), *microformed on Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 552* (Univ. Publ'ns of Am.) (replying to Pound's letter advocating for the college to hire Chroust, and stating that there was no "vacancy in Dr. Chroust's field"); Letter from Kenneth C.M. Sills, President, Bowdoin Coll., to Roscoe Pound (Sept. 9, 1944), *microformed on Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 553* (Univ. Publ'ns of Am.) (replying to

of significant works on legal theory and was a highly respected and influential legal scholar at the time of his death in 1982.¹¹⁸

Digging deeper into Chroust's past, however, reveals a life of suspicion and duplicity. In the early morning hours of December 9, 1941, FBI agents arrested Chroust at his rooming house at 24 Irving Street, Cambridge, and charged him with being a dangerous enemy alien.¹¹⁹ The arrest came two days after the attack on Pearl Harbor, and the day after the United States declared war on Japan. The FBI put together the case against Chroust over a sustained period, however. FBI records list no fewer than fourteen different informants against Chroust, including members of the Harvard faculty.¹²⁰

The accusations levelled against Chroust by his informants were wide-ranging and serious in nature. They alleged that Chroust had boasted of being a member of the NSDAP at various levels including Gauleiter (district governor),¹²¹ an officer in the storm troopers,¹²² and an army reservist;¹²³ that he claimed involvement in the Blood Purge of 1934;¹²⁴ visited Cuba,¹²⁵ Belgium,¹²⁶ Mexico City,¹²⁷ and Texas¹²⁸ on missions for the Nazi Party; boasted of reporting on Germans living in New England who were critical of the NSDAP;¹²⁹ bragged about his connections with the German Ministry for Propaganda in Berlin;¹³⁰ given a speech in favor of the Nazi government

Pound's letter advocating for a teaching position for Chroust, and stating that the college could not hire any new faculty at that time).

¹¹⁸ See *Professor Anton-Hermann Chroust*, *supra* note 7.

¹¹⁹ See FBI CASE FILE NO. 70001963, *supra* note 9, at 148 (reporting the arrest); *id.* at 149 (classifying the charge against Chroust as "ESPIONAGE G"); *id.* at 153 (classifying the charge against Chroust as "INTERNAL SECURITY – G, ENEMY ALIEN CONTROL").

¹²⁰ See, e.g., *id.* at 2 (describing an FBI special agent's interview with Dr. Carl Friedrich of the Harvard School of Public Administration); *id.* at 9 (describing Harvard Law School Professor James Angell McLaughlin's statement to the FBI); *id.* at 10 (stating that FBI special agents spoke to Harvard Law School Dean James Landis as well as Professors Sheldon Glueck and George Knowles Gardner); *id.* at 45 (recording an FBI special agent's interview of a Harvard Law School fellowship student named Grove); *id.* at 285 (stating that Harvard Law School Professor Abraham I. Feller indicated that Chroust admitted to him to being a storm trooper).

¹²¹ See *id.* at 2, 8; see also WISTRICH, *supra* note 20, at 349 (defining "Gauleiter" as "District Leader of the Nazi Party").

¹²² See FBI CASE FILE NO. 70001963, *supra* note 9, at 8, 10.

¹²³ See *id.* at 6, 14–15.

¹²⁴ See, e.g., *id.* at 14–15.

¹²⁵ See *id.* at 122.

¹²⁶ *Id.* at 294.

¹²⁷ See *id.* at 122.

¹²⁸ *Id.* at 2, 7, 55.

¹²⁹ *Id.* at 8.

¹³⁰ *Id.*

at a Christmas party;¹³¹ boasted of a friendship with Hitler¹³² and acquaintances with Hermann Goering,¹³³ Rudolph Hess, and Hermann Schultz;¹³⁴ and showed off Nazi uniforms he owned, including that of a storm trooper given to him by Hitler.¹³⁵

A. A Friendship?

Pound and Chroust first came into contact in 1932 when Pound recommended that Chroust be awarded a Holtzer Scholarship to attend Harvard Law School.¹³⁶ A unanimous judgment of the deans composing the scholarship committee approved this recommendation.¹³⁷ Harvard Law

¹³¹ *Id.* at 9, 122.

¹³² *See id.* at 55 (stating that “Chroust received his Nazi uniform from Hitler, himself”); *id.* at 165 (reporting that Chroust told Dr. F.W. Grob, of Harvard University, “that he was the personal representative of Hitler in Cambridge, Massachusetts”); *id.* at 294 (reporting that a witness heard Chroust state that he had once saved Hitler’s life).

¹³³ *See id.* at 15. Goering was “Commander-in-Chief of the Luftwaffe [German Air Force], President of the Reichstag [Parliament], Prime Minister of Prussia and, as Hitler’s designated successor, the second man in the Third Reich.” WISTRICH, *supra* note 20, at 101, 349–50. Goering participated in the Beer Hall Putsch of 1923, created the Gestapo (the Nazis’ secret police), and led the Blood Purge of 1934. *Id.* at 102, 349. At the Nuremberg Tribunal in 1946, the judges found Goering guilty on all four counts: “of conspiracy to wage war, crimes against peace, war crimes and crimes against humanity.” *Id.* at 104. Goering was sentenced to death but committed suicide two hours before he would have been executed. *Id.* at 105.

¹³⁴ *See* FBI CASE FILE NO. 70001963, *supra* note 9, at 242 (stating that Chroust was a classmate of Hess and Schultz at the University of Munich). Schultz was “the former German Consul in Boston.” *Id.* Hess was “Deputy Leader of the Nazi Party” and “the [number three] man in Nazi Germany” after Goering. WISTRICH, *supra* note 20, at 130. At the Nuremberg Tribunal, Hess was found guilty of “crimes against peace and conspiracy to commit other crimes listed in the indictment” and was sentenced to life imprisonment. *Id.* at 132.

¹³⁵ *See, e.g.*, FBI CASE FILE NO. 70001963, *supra* note 9, at 10 (stating that Harvard Law School Professor Sheldon Glueck had reported to the FBI that a fellowship student, Professor Grob, told Professor Glueck that Chroust showed Professor Grob “his uniform as an Officer of the Storm Troopers of the German Army”); *id.* at 55 (stating that, according to an FBI special agent’s report, “Chroust received his Nazi uniform from Hitler, himself”).

¹³⁶ *See* Letter to Herter, *supra* note 115, at 542 (stating that Pound recommended Chroust for a Holtzer Scholarship, and Chroust studied at Harvard Law School under that scholarship in the 1933–1934 school year); QUINQUENNIAL CATALOGUE OF THE LAW SCHOOL OF HARVARD UNIVERSITY 371 (1939) (stating that Chroust received his S.J.D. degree from Harvard Law School in 1933). It appears, however, that Pound’s letter recalling when he first met Chroust contains an error because Harvard Law School Records indicate that Chroust received his S.J.D. degree in 1933, meaning that he studied at the school during the 1932–1933 school year. *See* QUINQUENNIAL CATALOGUE OF THE LAW SCHOOL OF HARVARD UNIVERSITY, *supra*, at 371.

¹³⁷ Roscoe Pound, Statement on Behalf of Anton Hermann Chroust, at 2 [hereinafter Statement on Behalf of Chroust], *microformed on* Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frames 566–73 (Univ. Publ’ns of Am.). The Holtzer Scholarship is a Harvard University scholarship for students who were born and completed their education in Germany. *Id.*

School records indicate that Chroust completed his S.J.D. there in 1933.¹³⁸ Shortly thereafter, in May 1934, Chroust returned to Germany for about six months.¹³⁹ He came back to the United States in late November 1934, intent on building a life for himself, and searching desperately for employment.¹⁴⁰

In his search for work, Chroust found Pound to be a staunch ally. Despite declaring himself unable to help other, more prominent, German academics, Pound wrote a steady stream of letters to his contacts across the country in order to find a position for Chroust. Some of these letters were solicited; many were not. They contained persuasive endorsements of not only Chroust's academic expertise, but also his character.¹⁴¹ A letter to Dr. H.T. Parlin, Dean of the College of Arts and Sciences at the University of Texas, Austin, for example, stated that "Dr. Chroust has a thoroughgoing all round acquaintance both with philosophical literature and the literature of philosophical jurisprudence. Also he is not only a scholar but a thorough gentleman of attractive personality."¹⁴²

These letters stand in contrast to the lack of assistance that Pound offered figures such as Fritz Schulz, referenced above, who had also written to Pound directly asking for help in October 1934.¹⁴³ In response to that request, Pound indicated that, although he wished that "it might be possible for you [Schulz] to come to this country and lecture on the subjects which you develop in the book [on Roman Law]," there was little help he could offer, as he continued: "Just now is not a very good time, however."¹⁴⁴

¹³⁸ QUINQUENNIAL CATALOGUE OF THE LAW SCHOOL OF HARVARD UNIVERSITY, *supra* note 136, at 371.

¹³⁹ See FBI CASE FILE NO. 70001963, *supra* note 9, at 29–30 (stating that, according to Chroust's application for pre-examination with U.S. immigration services filed on February 19, 1941, Chroust left the United States for Germany on May 15, 1934 and returned on November 27, 1934); see also *id.* at 14 (stating that Chroust told an FBI informant that he returned to Germany in 1934 and participated in the Blood Purge).

¹⁴⁰ See *id.* at 30 (stating that Chroust returned to the United States on November 27, 1934). See generally Roscoe Pound Papers, *microformed on* Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frames 404–627 (Univ. Publ'ns of Am.) (containing Pound's correspondence relating to Chroust, including a multitude of recommendation letters that Pound wrote to several colleges and universities on Chroust's behalf throughout the late 1930s and 1940s while Chroust was seeking employment).

¹⁴¹ See, e.g., Letter from Roscoe Pound to Dr. H.T. Parlin (Jan. 31, 1938), *microformed on* Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 408 (Univ. Publ'ns of Am.).

¹⁴² *Id.*

¹⁴³ See Letter from Fritz Schulz to Roscoe Pound (Oct. 4, 1934), *microformed on* Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 94, Frame 860 (Univ. Publ'ns of Am.) (asking Pound for help finding a teaching position in the United States).

¹⁴⁴ Letter from Roscoe Pound to Fritz Schulz (Oct. 18, 1934), *microformed on* Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 94, Frame 861 (Univ. Publ'ns of Am.).

Alongside his efforts to help Chroust find paid employment elsewhere, Pound also retained Chroust's services as a researcher and an instructor at Harvard Law School.¹⁴⁵ Though it is unclear whether these activities were officially sanctioned, there is evidence that, in 1941, Chroust maintained an office in the Harvard Law School library,¹⁴⁶ and around the same time, he is reported to have taught a seminar for one of Pound's classes.¹⁴⁷

Chroust referred to these classes in a letter he wrote to Pound in January 1940, the tone of which adds a further layer of mystery to their relationship.¹⁴⁸ Despite Pound's seniority to Chroust in both age and stature, and despite the considerable efforts Pound had made on his mentee's behalf, Chroust delivered thinly veiled criticism to Pound for not doing more to aid him, and for taking advantage of his vulnerability:

My own attempts to find a teaching position have been unsuccessful, lacking proper backing and connections. But I am sure that there are quite a number of openings this spring—if you would try to make use of your nearly unlimited connections throughout this country in my behalf. . . . Again and again I have been assured by informed people that even at Harvard strenuous efforts on your part would not be unsuccessful, the more so since you are entitled to have an assistant, i.e. someone who does the work which I have been doing now for nearly two years.¹⁴⁹

From Pound's papers, we know that he not only continued to write letters on Chroust's behalf, and serve as a reference for his job applications,¹⁵⁰

Am.). The book Pound referred to in his letter was Schulz's *Prinzipien des römischen Rechts*, of which he sent Pound a copy. *Id.*

¹⁴⁵ See FBI CASE FILE NO. 70001963, *supra* note 9, at 8 (stating that, according to a clerk in the Harvard Law School Registrar's Office, in 1941, Chroust was an instructor at Harvard Law School, "teaching a seminar for one of the classes"); *id.* at 9 (explaining that, in 1941, Chroust "ha[d] an office in Langdell Hall but [wa]s not, to [Harvard Law School Professor James Angell] McLaughlin's knowledge, an instructor on the faculty of the law school"); *id.* (reporting that, according to Harvard Law School Dean James M. Landis, in 1941, Chroust was "not connected with the University in any manner, neither as a student or as a member of the faculty. He [wa]s apparently doing some research work for . . . Pound").

¹⁴⁶ *Id.* at 158.

¹⁴⁷ *Id.* at 8; see Letter from Anton-Hermann Chroust to Dean Ferguson, *microformed on Roscoe Pound Papers 1888–1964*, Part I Correspondence 1907–1964, Reel 69, Frames 425–26 (Univ. Publ'ns of Am.).

¹⁴⁸ See Letter from Anton-Hermann Chroust to Roscoe Pound (Jan. 5, 1940), *microformed on Roscoe Pound Papers 1888–1964*, Part I Correspondence 1907–1964, Reel 69, Frame 424 (Univ. Publ'ns of Am.) (referring to "the work which I have been doing now for nearly two years").

¹⁴⁹ *Id.*

¹⁵⁰ See, e.g., Letter from Roscoe Pound to Dr. D.N. Morehouse, President, Drake Univ. (Apr. 11, 1940) [hereinafter Letter to Dr. D.N. Morehouse], *microformed on Roscoe Pound Papers*

but also sought to help him extend his lawful status in the United States.¹⁵¹ In February 1941, Pound wrote a letter to the immigration authorities requesting that Chroust's non-immigrant student status be extended beyond March of that year, when it was set to expire.¹⁵² Pound then wrote a letter in May 1941, with the same purpose, that contained "considerable praise" of Chroust.¹⁵³ At some point around this time, Pound also submitted a guarantee of finances to the immigration authorities on Chroust's behalf.¹⁵⁴

B. *Alibi and Advocate*

Chroust's arrest and detention in late 1941 because of suspicion that he was an enemy alien necessarily challenged the friendship between the two men. Pound did not take this opportunity to distance himself from the young German, however. Nor did he inform the authorities that he and Chroust had met with senior NSDAP figures in the summer of 1934, a meeting that would appear to have been pertinent to the charges facing the German.¹⁵⁵

Instead, Pound campaigned for Chroust's release, and sought to help him through both direct and indirect channels. As an example of the former, Pound put himself forward as a witness for Chroust in his hearings before the enemy alien parole board.¹⁵⁶ According to FBI files covering these events, shortly after Chroust's arrest, at a hearing on January 5, 1942, he "introduced to evidence, his main witness, Dean Roscoe Pound of Harvard University."¹⁵⁷ The FBI report notes that Pound spoke highly of Chroust's

1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 422; FEDERAL BUREAU OF INVESTIGATION, NW: 15440, DOCID: 70001965, at 48 [hereinafter FBI CASE FILE NO. 70001965]. According to FBI records, Chroust applied for a job with them as a translator on August 14, 1941, listing Pound as a reference. FBI CASE FILE NO. 70001965, *supra*, at 48. On April 11, 1940, for example, in response to an enquiry from the President of Drake University in Iowa, Pound wrote that Chroust was "a man of conspicuous ability," who was "very much the superior of most of those whom [Pound had] seen obtaining positions." Letter to Dr. D.N. Morehouse, *supra*.

¹⁵¹ See FBI CASE FILE NO. 70001963, *supra* note 9, at 103.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ See *id.* at 46 (stating that Jerome Green, Secretary of the Harvard Corporation, told an FBI special agent that Pound sent a letter to immigration authorities on February 11, 1941, guaranteeing financial support of Chroust).

¹⁵⁵ See, e.g., Statement on Behalf of Chroust, *supra* note 137, at 1–8, *microformed on Frames 566–73*.

¹⁵⁶ See FBI CASE FILE NO. 70001963, *supra* note 9, at 164 (stating that Pound was Chroust's main witness).

¹⁵⁷ *Id.*

legal knowledge, and when the government cross-examined Pound, he claimed to have never discussed Chroust's political persuasions with him.¹⁵⁸

Pound's advocacy on behalf of Chroust was so fervent that the Director of the Alien Enemy Control Unit, Edward J. Ennis, in responding to later accusations that Pound made against him, observed:

When Professor Pound, in the teeth of the evidence, clings to the extreme position that Chroust is one of the most honorable men he has known, his extreme bias and partisanship is clear and throws suspicion on any charge he makes as another effort in excessive advocacy. . . . Inquiry from persons who have known Professor Pound in the Law School in recent years gives further support to the view that both his work and his emotional stability have suffered a marked decline with advancing age.¹⁵⁹

Linked to his appearances before the enemy alien parole board, Pound also wrote letters to figures involved in Chroust's detention, lauding his good character and criticizing the hearings the board gave him. For example, on April 6, 1942, at the suggestion of Chroust's wife,¹⁶⁰ Pound wrote a letter to Ennis.¹⁶¹ In it, Pound argued that one of the major allegations against Chroust, that he had served as head of the German exchange students in the United States, should not count against him because Chroust

¹⁵⁸ *Id.* Reference is also made in this file to evidence that Chroust was instrumental in securing Pound's honorary degree from the University of Berlin in 1934. *Id.*

¹⁵⁹ Memorandum from Edward J. Ennis, Dir. Alien Enemy Control Unit, to Thomas Campbell Clark, Att'y Gen. 6 (Feb. 20, 1946). Pound wrote a letter in which he alleged that Ennis displayed improper conduct in Chroust's repatriation hearing. *See id.* at 1 (discussing the letter that Pound wrote). Ennis responded to Pound's accusations in a memorandum to the Attorney General on February 20, 1946. *Id.* Ennis summarized Pound's accusations as follows:

The principal charges in Professor Pound's letter are that I, as chairman of the Board, (1) by the preliminary statement at the beginning of the hearing indicated prejudgment of the case; (2) "browbeat" the other witnesses; (3) sneered at Professor Pound; and (4) prevented Chroust from testifying and called him a liar.

Id.

¹⁶⁰ *See* Letter from Elizabeth Chroust to Roscoe Pound (Apr. 4, 1942), *microformed on* Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 422 (Univ. Publ'ns of Am.) (asking Pound to write a letter to Ennis "containing statements as to [Chroust's] moral character, loyalty [sic] personality, activities, etc. But even more important[ly] . . . some elaborate statements concerning . . . [Chroust's position as] 'leader of the German exchange students in the U.S.A.'").

¹⁶¹ Letter from Roscoe Pound to Edward Ennis, Dir., Alien Enemy Control Unit (Apr. 6, 1942) [hereinafter Letter to Ennis], *microformed on* Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 482 (Univ. Publ'ns of Am.).

had done so only unwillingly, so as not to “expose[] himself to punishment for ‘insubordination’ by his refusal.”¹⁶²

Pound also sought to secure Chroust’s release through more discreet means, using the weight of his reputation to apply pressure at higher levels of government. In February 1943, Pound wrote to a U.S. Senator from Massachusetts, David I. Walsh, setting out his arguments for Chroust’s innocence and requesting that the senator take action on the case.¹⁶³ In this letter, Pound conceded that, when Chroust first came to the United States, “he had very high hopes of the then newly risen regime,” but that Chroust had since changed his opinion completely.¹⁶⁴ Pound declared that he “ha[d] entire confidence in him, and [was] as certain as one can be of anything that he would not think of anything inimical to the United States.”¹⁶⁵ Shortly after Pound sent this letter, in March 1943, Chroust was released on parole.¹⁶⁶ Although it is unclear whether Senator Walsh played a role in Chroust’s release, completed parole forms in Pound’s papers suggest that Pound may have served as Chroust’s sponsor for this release.¹⁶⁷

Although he had been released on parole, Chroust remained under suspicion for alleged involvement with the NSDAP. Pound continued to try to address these problems. On May 29, 1944, Pound wrote a letter to Christian Herter, a Representative for Massachusetts in the U.S. House of Representatives, with the hope that Chroust’s status as parolee would be removed and he could remain permanently in the United States.¹⁶⁸ In this letter, Pound

¹⁶² *Id.*

¹⁶³ See Letter from Roscoe Pound to the Honorable David I. Walsh (Feb. 16, 1943), *microformed on Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frames 518–21* (Univ. Publ’ns of Am.).

¹⁶⁴ *Id.*, *microformed on Frame 518.*

¹⁶⁵ *Id.*, *microformed on Frame 521.*

¹⁶⁶ FBI CASE FILE NO. 70001963, *supra* note 9, at 231.

¹⁶⁷ See Immigration & Naturalization Service, Sponsor’s Agreement, *microformed on Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 537* (Univ. Publ’ns of Am.) (signed by Pound and stating that Pound agreed to be Chroust’s sponsor while he was on parole); see also Immigration & Naturalization Service, Parolee’s Agreement, *microformed on Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 538* (Univ. Publ’ns of Am.) (signed by Chroust and stating that Pound agreed to be Chroust’s sponsor while he was on parole).

¹⁶⁸ Letter to Herter, *supra* note 115 (praising Chroust’s scholarship and character, and stating that Chroust “desire[d] to be a thoroughgoing American such as an American citizen and the husband of an American wife ought to be”). Representative Herter later served as Governor of Massachusetts, U.S. Secretary of State, and the inaugural U.S. Trade Representative. *Biographies of the Secretaries of State: Christian Archibald Herter (1895–1966)*, U.S. DEP’T OF STATE: OFFICE OF THE HISTORIAN, <https://history.state.gov/departmenthistory/people/herter-christian-archibald> [<https://perma.cc/78R8-9FLQ>]; see *U.S. Trade Representatives*, U.S. DEP’T OF STATE: OFFICE OF THE HISTORIAN, <https://history.state.gov/departmenthistory/people/principalofficers/us-trade-representative> [<https://perma.cc/E4N9-X99S>].

again endorsed Chroust's character, and attempted to address the issue of his being head of the German exchange students by taking the blame for this himself:

There could be no greater mistake than to think of him as having come over as an emissary. It is true that at one time he was interested in the German-American Student Exchange. This, however, was chiefly at my instance as a means of carrying out the policy of President Lowell of which I spoke above.¹⁶⁹

On June 5, 1945, alarmed by stories that parolees were being seized and deported without notice, Pound wrote again to Senator Walsh.¹⁷⁰ After thanking the senator for his ongoing support, Pound remarked that he "hope[d] to have nothing of the sort happen in Dr. Chroust's case."¹⁷¹ He then suggested that the senator might be able to help, "[i]f something could be done to call the attention of the Department of Justice specially to his case and have it brought to the attention of the [immigration] authorities in East Boston the danger of a most unfortunate proceeding could, I think, be averted."¹⁷²

Senator Walsh replied to Pound on June 7th.¹⁷³ He reported that he had been in touch with the Attorney General recently on Pound's behalf, and had been told that there was "convincing evidence" in the DOJ files that Chroust had once been a member of the NSDAP,¹⁷⁴ and that he had served as a "propagandist for Hitler and the Nazis" prior to 1936.¹⁷⁵ Senator Walsh informed Pound that the Attorney General did not have any plans to change Chroust's status as an enemy alien parolee.¹⁷⁶

Pound responded on June 13th, arguing that the evidence that had been brought against Chroust thus far "ha[d] been . . . dispose[d] of very thoroughly," and that the government must have been hiding some other evi-

¹⁶⁹ Letter to Herter, *supra* note 115.

¹⁷⁰ Letter from Roscoe Pound to the Honorable David I. Walsh, Senator, U.S. Senate (June 5, 1945), *microformed on Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 559* (Univ. Publ'ns of Am.).

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ Letter from the Honorable David I. Walsh, Senator, U.S. Senate, to Roscoe Pound (June 7, 1945) [hereinafter June 7 Letter from Walsh], *microformed on Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 562* (Univ. Publ'ns of Am.).

¹⁷⁴ Recent research has revealed that Chroust's NSDAP member card, dated 1939, is on file at the Bundesarchiv, the German federal archive in Berlin. The card's signature is BArch, R 9361-VIII Kartei/ 5141541. It is unknown whether the DOJ was aware of this member card.

¹⁷⁵ June 7 Letter from Walsh, *supra* note 173.

¹⁷⁶ *Id.*

dence.¹⁷⁷ He had strong words for the Attorney General, describing his statement that there was “convincing evidence” as “a good example of the sort of thing that goes on in administrative agencies in this country which I [Pound] have been calling administrative absolution.”¹⁷⁸

On July 3rd, less than three weeks later, Pound wrote another letter to Senator Walsh bringing to his attention a DOJ circular that confirmed that 2,299 Germans in parolee status would have their status reviewed, and that the appropriate parolees would be released from parole.¹⁷⁹ Senator Walsh replied two days later informing Pound that he was communicating with the Attorney General on this issue and would keep him updated.¹⁸⁰

Around three weeks later, on July 25th, Senator Walsh replied to Pound, enclosing a response from the Attorney General.¹⁸¹ In his letter, the Attorney General explained that he “had the whole file gone over once more with some care” on account of Pound’s “strong feelings” and Senator

¹⁷⁷ Letter from Roscoe Pound to the Honorable David I. Walsh, Senator, U.S. Senate (June 13, 1945), *microformed on Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 563* (Univ. Publ’ns of Am.).

¹⁷⁸ *Id.*

¹⁷⁹ Letter from Roscoe Pound to the Honorable David I. Walsh, Senator, U.S. Senate (July 3, 1945), *microformed on Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 564* (Univ. Publ’ns of Am.).

¹⁸⁰ Letter from the Honorable David I. Walsh, Senator, U.S. Senate, to Roscoe Pound (July 5, 1945), *microformed on Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 565* (Univ. Publ’ns of Am.). Senator Walsh noted in his letter that he was “communicating with the new Attorney General of the United States.” *Id.* When Pound began writing letters on Chroust’s behalf, Francis Beverly Biddle was Attorney General, but during Pound’s letter-writing campaign, in June 1945, a new Attorney General, Thomas Campbell Clark, entered office. See *Attorney General: Francis Beverly Biddle*, U.S. DEP’T OF JUSTICE (June 29, 2017), <https://www.justice.gov/ag/bio/biddle-francis-beverly> [<https://perma.cc/J7EW-SBXS>]; *Attorney General: Thomas Campbell Clark*, U.S. DEP’T OF JUSTICE (June 29, 2017), <https://www.justice.gov/ag/bio/clark-thomas-campbell> [<https://perma.cc/R83J-5GTL>]. Soon after Biddle left the DOJ, he became a judge at the International Military Tribunal at Nuremberg. *Solicitor General: Francis Biddle*, U.S. DEP’T OF JUSTICE (Oct. 31, 2014), <https://www.justice.gov/osg/bio/francis-biddle> [<https://perma.cc/4TSN-XL5E>]. Clark remained Attorney General until he was appointed to the United States Supreme Court in 1949. *Attorney General: Thomas Campbell Clark, supra.*

¹⁸¹ Letter from the Honorable David I. Walsh, Senator, U.S. Senate, to Roscoe Pound (July 25, 1945), *microformed on Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 574* (Univ. Publ’ns of Am.). From the text of the enclosed letter from the Attorney General to Senator Walsh, dated July 20, 1945, it is clear that it followed an earlier letter from the Attorney General to Senator Walsh, on the same topic, sent on July 6th. Letter from Thomas Campbell Clark, Attorney General, to the Honorable David I. Walsh, Senator, U.S. Senate (July 20, 1945) [hereinafter Letter from Clark to Walsh], *microformed on Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 575* (Univ. Publ’ns of Am.). The Attorney General’s July 6th letter, however, is not included in Pound’s papers, so it appears that Senator Walsh did not share it with Pound.

Walsh's interest in the issue.¹⁸² He subsequently justified in some detail Chroust's continued status as an enemy alien parolee, stating that:

During the years that Dr. Chroust was in Cambridge prior to 1937 he was not only frank but boastful about his allegiance to the Nazis and about his Nazi connections. There is such a wealth of reports as to this from entirely reliable persons that it is impossible not to regard this fact as established. . . . This evidence leads irresistibly to the conclusion that at least until 1936 Dr. Chroust, who is admittedly a brilliant and learned man, was also a whole-hearted Nazi and had been entrusted by the Nazi government with an important mission in this country.¹⁸³

The Attorney General's response continued by considering the sincerity of a supposed change of heart by Chroust in 1936 about the Nazis before coming to the "reasonable" conclusion that "his apparent change of allegiance in 1936 was insincere and that his earlier adherence to the Nazis continued until the war."¹⁸⁴ In coming to this conclusion, the Attorney General highlighted the fact that Chroust had remained a "paid up member of the Nazi Party" until 1941.¹⁸⁵

In response to the Attorney General's letter, Pound wrote a lengthy statement to Senator Walsh.¹⁸⁶ Running to almost eight pages, this statement sought to persuasively rebut each of the accusations against Chroust.¹⁸⁷ Pound insisted that he had personal knowledge of the falsity of many of the accusations and, in some cases, may even have been responsible for Chroust engaging in the suspicious activity.¹⁸⁸ Pound even treated some accusations with a feigned incredulity, asserting for example that "[s]ome of the things

¹⁸² Letter from Clark to Walsh, *supra* note 181.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* To support his conclusion, the Attorney General also cited the fact that, when questioned, Chroust "ha[d] not given accurate and reliable answers as to his earlier association with the Nazis but, on the contrary, ha[d] told somewhat different stories at different times." *Id.*

¹⁸⁶ See Letter from Roscoe Pound to the Honorable David I. Walsh, Senator, U.S. Senate (Aug. 10, 1945), *microformed on* Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 586 (Univ. Publ'ns of Am.) (stating that Pound was "sending [Senator Walsh] a statement of what [Pound knew] about [Chroust's] case" that addressed the points in the Attorney General's letter). See generally Statement on Behalf of Chroust, *supra* note 137.

¹⁸⁷ See generally Statement on Behalf of Chroust, *supra* note 137.

¹⁸⁸ See, e.g., *id.* at Frame 567 (taking responsibility for Chroust's interest in the German-American Student Exchange and stating that "to [those] who knew [Chroust] well there was nothing to [his statements allegedly in favor of the Nazi government] beyond a natural hope that the new regime would be what a cultured German would want it to be").

[Chroust] said . . . were elephantine [sic] attempts at humor, and no one had a right to regard them seriously.”¹⁸⁹

Addressing the charge that Chroust had been the head of the German-American student exchange program, a position that the FBI reasoned would only have been given to an NSDAP advocate, Pound sought to take the blame himself.¹⁹⁰ He acknowledged that Chroust may have been interested in the German-American student exchange when he first entered the country, but “largely at [Pound’s] insistence as a means of carrying out” Harvard University President Abbott Lawrence Lowell’s exchange program with universities in continental Europe.¹⁹¹ Pound continued by explaining that once Chroust realized that he would be required to engage in certain propaganda activities, “he absolutely refused to do anything of the sort.”¹⁹²

In response to the charge that Chroust was a member of the National Socialist Lawyers Guild, Pound argued that “every practising lawyer in Germany . . . had to belong to that organization.”¹⁹³ He then argued that Chroust had practiced only briefly, in order to help out a close family friend, a Jewish lawyer who had been excluded from the profession due to his race:

Dr. Chroust had not intended to practise, but in order to avoid total loss of what might be salvaged from the business, he undertook in the summer of 1934 to wind up the business and save for the firm a considerable amount of money. To do this he had to become a member of the Guild. The money salvaged was used to enable the lawyer’s only daughter and her husband to immigrate.¹⁹⁴

The most worrying of Pound’s statements, however, concerns one of the most serious accusations against Chroust: that he was involved in the Blood Purge. Pound sought to rebut this claim in the most direct way possible, by providing Chroust with an alibi.

¹⁸⁹ *Id.* at Frame 569.

¹⁹⁰ *See id.* at Frames 566–73 (taking responsibility for Chroust’s interest in the German-American Student Exchange); *see also* Letter from Clark to Walsh, *supra* note 181 (concluding, after reviewing the FBI’s file on Chroust, that “it seems unlikely that Dr. Chroust would have been given this assignment [the head of the German exchange students] had he not satisfied the Nazis of his political reliability”).

¹⁹¹ Statement on Behalf of Chroust, *supra* note 137, at 1–2, *microformed on* Frames 566–67. President Lowell apparently supported exchange programs with universities in continental Europe. *Id.* Lowell urged Pound to promote this exchange, Pound agreed, so that relations with European universities could return to their pre-First World War levels. *Id.*

¹⁹² *Id.* at 2, *microformed on* Frame 567.

¹⁹³ *Id.* at 1, *microformed on* Frame 566. According to Attorney General Thomas Campbell Clark, the National Socialist Lawyers Guild “was a Nazi organization.” Letter from Clark to Walsh, *supra* note 181.

¹⁹⁴ Statement on Behalf of Chroust, *supra* note 137, at 1, *microformed on* Frame 566.

At any rate, as to Dr. Chroust's supposed presence at and participation in the purge in 1934 I have personal knowledge to the contrary. . . . The "purge" occurred while he was with Mrs. Pound and me at Oberammergau and at Munich, and I know he was with no one else during that time or for some time afterward.¹⁹⁵

Senator Walsh passed on Pound's lengthy statement to the Attorney General August 14th.¹⁹⁶ The statement's existence raises questions concerning the morality of Pound's conduct and his relationship with Chroust for two reasons. First, there are omissions. Pound knew that Chroust was acquainted with at least some senior NSDAP figures because Chroust appeared in Pound's diary on July 12, 1934, when Chroust and Josef Bühler took Pound to his meeting with Hans Frank at the theatre.¹⁹⁷ Chroust also was present two days later, when Pound and his wife had tea at the Mezers' with Mrs. Luetgebrune and others.¹⁹⁸ This information would have been probative in determining whether Chroust was linked to the NSDAP, and it begs the question: did Pound have a moral or professional obligation to bring it to the attention of the Attorney General?

More significantly, Pound's claim that Chroust could not have taken part in the Blood Purge because he was with Pound and his wife at the time was clearly erroneous. The Blood Purge ended on July 2, 1934.¹⁹⁹ According to Pound's diary, he did not arrive in Europe until July 4th²⁰⁰ and his first encounter with Chroust, in Oberammergau, did not take place until July 11th, more than a week after the purge had ended.²⁰¹ The Blood Purge and its aftermath were highly publicized and dominated German politics and society over the summer of 1934. It seems unlikely that Pound, an informed and intelligent academic, could have mistakenly believed the purge took place while he was in the country when it had actually concluded before he arrived. The alternative explanation is that Pound lied in a statement that was quite possibly intended for the U.S. Attorney General, in order to protect a suspected NSDAP agent.

¹⁹⁵ *Id.* at 4–5, *microformed on* Frame 569–70.

¹⁹⁶ Letter from the Honorable David I. Walsh, Senator, U.S. Senate, to Roscoe Pound (Aug. 14, 1945), *microformed on* Roscoe Pound Papers 1888–1964, Part I Correspondence 1907–1964, Reel 69, Frame 583 (Univ. Publ'ns of Am.).

¹⁹⁷ *See* Pound, Diary Entry on July 12, 1934, *supra* note 1.

¹⁹⁸ *See* Pound, Diary Entry on July 14, 1934, *supra* note 34.

¹⁹⁹ *See* GALLO, *supra* note 20, at 2 (stating that the Night of the Long Knives took place between June 30 and July 2, 1934); WISTRICH, *supra* note 20, at 252 (stating that the Night of the Long Knives is also known as the Blood Purge).

²⁰⁰ Pound, Diary Entry on July 4, 1934, *supra* note 24.

²⁰¹ *See* Pound, Diary Entry on July 11, 1934, *supra* note 29.

CONCLUSION

This Article does not seek to label Roscoe Pound as a committed supporter of National Socialism or its goals. It does, however, raise serious questions concerning Pound's conduct during the 1930s and early 1940s.

First, why did Pound attend a meeting with Hans Frank, Josef Bühler, Edmund Mezger, and Walter Luetgebrune on July 12, 1934?²⁰² The evidence suggests that this meeting may have taken place as part of the propaganda activities of the German government, through the ADR.²⁰³ The Academy sought to gain support for the National Socialist agenda by courting prominent legal theorists from other countries.²⁰⁴ In this context, the meeting, and Pound's lecture at the University of Munich, though perhaps ill-advised, do not seem extraordinary. It is not hard to imagine that other legal scholars from outside Germany may have accepted similar invitations on academic principles, rather than with an intention to support the NSDAP.

Pound's actions after the meeting, however, suggest that it was less a trap that he had accidentally fallen into, and more a connection that he embraced. This suggestion, therefore, leads to another important question. Why did Pound appear sympathetic toward National Socialism at a time when most informed observers were warning against this?²⁰⁵ To borrow a phrase from Felix Frankfurter, why did Pound appear to fix himself to "a tail to a Nazi kite?"²⁰⁶ The meeting on July 12th was one of a series of incidents in which Pound either defended the NSDAP or associated himself with it.²⁰⁷ The following month, August 1934, while still in Europe, Pound

²⁰² See *supra* notes 31–62 and accompanying text.

²⁰³ See, e.g., ANDERSON, *supra* note 41, at 398–99, 435 (explaining that, in order to build support for the NSDAP, the ADR sought to establish relationships with foreign legal scholars, particularly in countries like the United Kingdom and United States where the government was suspicious of the Nazi Party).

²⁰⁴ See e.g., Adlberger, *supra* note 66, at 416–17 (describing events that the ADR hosted to impress visiting legal scholars).

²⁰⁵ Pound was not the only Harvard University staff member to support the NSDAP at this time. Scholars have identified a broad range of opinions across the student body, the academic staff, and the senior leadership. See NORWOOD, *supra* note 90, at 36–74 (describing Nazi sympathies among members of the Harvard University community). On the occasion of the visit of the Nazi warship the *Karlsruhe* to Boston in May 1934, for example, a number of Harvard University professors and the *Harvard Crimson* played an active role in its welcome and reception. *Id.* at 42.

²⁰⁶ Frankfurter Memorandum, *supra* note 88. In his memorandum of September 14, 1934, Frankfurter describes telling Conant "that whatever the particular purpose of the ceremony, it was a tail to a Nazi kite . . ." *Id.*

²⁰⁷ See, e.g., *Austro-Reich Border Quiet, Dean Pound Says After Tour*, *supra* note 80 (recounting an interview where Pound spoke optimistically about Hitler and the NSDAP); Pound, Diary Entry on Sept. 17, 1934, *supra* note 77 (recording Pound's acceptance of an honorary degree from the University of Berlin); see also Frankfurter Memorandum, *supra* note 88 (recalling Pound expressing Nazi sympathies).

gave an interview to the *Paris Herald* praising the party's emergence.²⁰⁸ On his return to the United States, Pound defended the NSDAP to his colleagues at Harvard, Frankfurter and President Conant.²⁰⁹ Pound also willingly accepted an honorary degree from the German Ambassador to the United States; he was both aware of the symbolism and unbothered by the controversy of the event.²¹⁰

The final question is perhaps the most intriguing and difficult to answer. Why did Pound go to great lengths to defend and support the young German legal scholar, and suspected Nazi agent, Anton-Hermann Chroust? Although Pound's public support for the NSDAP appears to have ended in 1934, his support for Chroust was just beginning at this time. Were the two related? Analysis of the available materials—Pound's diary entries, Pound's correspondence with and about Chroust, and the diverse documents found in Chroust's FBI files—reveal the true extent of this support. Pound not only sought to find employment for Chroust, but he also actively campaigned against Chroust's imprisonment to senior political figures and the Attorney General.²¹¹ In this campaign, Pound not only misled the Attorney General about Chroust's links to the NSDAP, but also appears to have lied by providing the young German with a false alibi.²¹²

²⁰⁸ See *supra* notes 78–84 and accompanying text.

²⁰⁹ See *supra* notes 98–113 and accompanying text.

²¹⁰ See *supra* notes 85–97 and accompanying text.

²¹¹ See *supra* notes 137–201 and accompanying text.

²¹² See *supra* notes 156–201 and accompanying text.

