Tinfoil Hats and Powdered Wigs: Thoughts on Pseudolaw

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The theme "Law in a Post-Truth Era" implies that law is facing a new intrusion of irrational thinking. But irrationality is an inevitable, permanent feature of human systems, including law. The legal community is merely becoming more willing to openly acknowledge it.

I have taken this opportunity to call attention to "pseudolaw," the phenomenon of individuals and groups who deny that law as we know it exists. A complex ecosystem of pseudolawyers (such as sovereign citizens, tax deniers, neo-Moors, and many others) teaches laypeople to try to manage their legal affairs with diverse sets of elaborate and fictional rules. This Article considers what pseudolaw is, where it comes from, what it does to us, and what we might be able to do about it.

I draw much of my insight on this subject from personal experience, such as a week living among conspiracy theorists on the "ConspiraSea Cruise," a conference at sea for the kind of legal thinker who claims to be an interdimensional financier working with literal fairies to decertify the Federal Reserve by relocating the international date line. Such bizarre claims, discussed in more detail below, may make it tempting to disregard pseudolaw as a quirky and entertaining distraction from serious legal issues. But even such bizarre ideas have real and often severe impacts, ranging from diffuse costs on courts and the public to the destruction of individual lives.

Despite its harms, pseudolaw has attracted relatively little formal scholarship. I hope these observations encourage and contribute to a more robust conversation about pseudolaw among academics and practitioners.

I. DEFINING PSEUDOLAW

American courts oversee an enormous volume of disputes, and nonsense makes up a significant and growing share of their workload.[1] It

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1. A large majority of courts see such cases. *See* Terri A. March-Safbom, *Weapons of Mass Distraction: Strategies for Countering the Paper Terrorism of Sovereign Citizens* 90 (Sept. 2016)

flows from a hyperactive network of incompetent legal scholars generating futile strategies for navigating the legal system. Some of those strategies are commonly known, such as the risible claim that the gold fringe on a courtroom flag means that the court only has military or maritime jurisdiction.[2] Many others are far more obscure, such as the myth that all American lawyers swear treasonous secret oaths of allegiance to the British crown. Ideas like these attract little mainstream attention other than ridicule. But the public, the legal system, and even the people who advance such theories pay tremendous and poorly understood costs for them.

There have been relatively few attempts to seriously manage or even study the ecosystem of harmful, false legal beliefs. The failure of the legal community to develop a consistent vocabulary for it may contribute to that shortcoming and is certainly a consequence of it. Many observers casually dismiss these notions as "sovereign citizen" or "freemen" beliefs, an oversimplification that discourages further consideration. I suggest adopting instead the more useful and precise term "pseudolaw."[3]

To see why "pseudolaw" is a more accurate and useful label than more common terms like "sovereign citizen," consider the incredible scope of ideas that flourish when litigants flout consensus reality. Here are three real pseudolegal "gurus" whose ideas are successfully propagating among laypeople.[4] They illustrate the movement's florid diversity, which resists easy classification.

David-Wynn: Miller, a retired welder, developed a unique pseudolegal jargon he claimed his followers could use to win court cases, eliminate taxes, and disbar judges.[5] Miller taught this "quantum

(unpublished Master's Thesis, Naval Postgraduate School). One recent survey found a clear and strong upward trend in federal district courts; it almost certainly undercounts such cases, due to methodological limitations. *See* Brian S. Slater, *Sovereign Citizen Movement: An Empirical Study on the Rise in Activity, Explanations of Growth, and Policy Prescriptions* 6 (Sept. 2016) (unpublished Master's Thesis, Naval Postgraduate School).

2. This belief is common enough that popular culture references it freely, confident that audiences will understand the reference. *See, e.g.*, *Dale Gribble Admiralty Court,* YOUTUBE (Sept. 22, 2015), https://www.youtube.com/watch?v=OfSkBONbDwA [https://perma.cc/DNV4-E6TV] (incorporating pseudolegal beliefs about flags and jurisdiction in satire).

3. *See*, *e.g.*, Meads v. Meads, 2012 ABQB 571, ¶ 1 (2012) (defining a category of "Organized Pseudolegal Commercial Argument litigants").

4. "Guru" is a common term referring to "the people who come up with the movement's pseudo-legal theories—as well as its often-illegal tactics—and teach them to their followers." Mark Pitcavage, *Winston Shrout: The Rise and Fall of a Sovereign Citizen Guru*, ADL BLOG (Mar. 21, 2016), https://www.adl.org/blog/winston-shrout-the-rise-and-fall-of-a-sovereign-citizen-guru [https://perma.cc/JLX7-CCA5].

5. *See, e.g.*, AJ, *Judge David-Wynn: Miller - Interview Re Leighton Ward, Insurance & Mortgage Fraud*, INSURANCE MEMES, https://insurancememes.com/judge-david-wynn-miller-interview-re-leighton-ward-insurance-mortgage-fraud/ [https://perma.cc/HNQ8-BKQ4] (last visited Apr. 9, 2019); Meg Jones, *Milwaukee Man's Website Mirrors Suspect's Conspiracy Statements*, MILWAUKEE-WIS. J. SENTINEL (Jan. 9, 2011),

language" for years, as late as 2017, and his disciples are actively promoting it today.[6] It "purports to be based on mathematics and is characterized by the abundant use of prepositional phrases, the absence of action verbs (except in gerund form) and the overuse of hyphens and colons," and it supposedly abstains from "pronouns, adjectives and adverbs."[7] Miller and two associates once filed a complaint under the caption:

> For This Correct-Sentence-Structure-Communication-Parse-Syntax-Grammar of the Claimant is With This Writ of This Amicus-Curiea With Quo-Warranto-Complaint-Document Against the Vassalees'-Fraudulent-Parse-Syntax-Grammar-Communication-Document Against These Damaged-Persons: Freddie: Reyno and June: Reyno, With the Vassalees'-Fraudulent-Parse-Syntax-Grammar-Communication-Document-Case-Number~37-2008-00083493 in the *San-Diego-County-Superior Court-San-Diego-Hall of Justice*. For the Claimant's-Knowledge of the Fraud-Document-Evidence-Communications **are** With the False and: Misleading-Parse-Syntax-Grammar-Documents by These Vassalees.[8]

Miller claimed that language like this would rout lawyers and judges; he also claimed to be the King of Hawaii and a federal judge.[9] But as baffling, incomprehensible, and plainly false as his theories are, he sold them. His customers paid to take seminars on how to use proper "quantum" phrasing in court. He and his followers relied on his strategies to the detriment of all involved—including Miller himself.[10]

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http://archive.jsonline.com/news/milwaukee/113176989.html/ [https://perma.cc/L97Q-SFH9]. Note that Miller's name is more traditionally styled "David Wynn Miller." While various sources punctuate his name inconsistently, I have used the variation he seemed to prefer. *See, e.g.*, :David-Wynn: Miller, *David Wynn Miller Quantum Grammar Seminar September 2012 Full*, YOUTUBE (Jan. 14, 2013) [hereinafter *Quantum Grammar Seminar*], https://youtu.be/zgcW6Hzn46w [https://perma.cc/527X-WXMY]. Miller may be deceased; one of his former students claims that he passed away in 2018. Mark Christopher, *:David-wynn : Miller "Passed away on the 22nd June 2018 . . . his Legacy is alive"*., YOUTUBE (Sept. 14, 2018), https://www.youtube.com/watch?v=KjnYhKhE52M [https://perma.cc/8YU6-K76V].

6. *Quantum Grammar Seminar*, *supra* note 5; Christopher, *supra* note 5.

7. Krizan v. Farm Credit Serv. of North-Cent. Wis., No. 12-cv-798, 2012 U.S. Dist. LEXIS 173574 (W.D. Wis. Dec. 7, 2012) (dismissing complaint and sanctioning plaintiffs) (quoting United States v. Kriemelmeyer, No. 07-cr-52, 2007 WL 5479293, at *1 (W.D. Wis. July 26, 2007)).

8. Miller v. Michael Burnett Mathews LLP, No. 11-cv–2590, 2012 WL 909462, at *1 (S.D. Cal. Mar. 15, 2012). Note that Miller uses adjectives here; the rules of Quantum Legal Grammar are quite flexible and inconsistent, and it is not clear that Miller understood or agreed with conventional definitions of the parts of speech.

9. Debra Cassens Weiss, *Judge of Bogus 'Postal Court' Files Judgments, Claims Only Nouns Have Legal Meaning*, ABA J. (Mar. 22, 2016), http://www.abajournal.com/news/article/judge_of_bogus_postal_court_files_purported_judgments_claims_only_nouns_hav/; Mark Potok, *"Full Colon Miller,"* S. POVERTY L. CTR. (Apr. 15, 2003), https://www.splcenter.org/fighting-hate/intelligence-report/2003/full-colon-miller [https://perma.cc/ZP68-HK87].

10. *See, e.g.*, Marshall v. Citimortgage, Inc., No. 12-cv–00562, 2012 WL 6587527 (D. Haw. Dec. 17, 2012); *Krizan*, 2012 U.S. Dist. LEXIS 173574; *Miller*, 2012 WL 909462.

Winston Shrout is a prolific lecturer and self-declared Earth delegate to the interdimensional Galactic Round Table.[11] He is also a felon and currently a fugitive from justice.[12] Before his conviction, he spent twenty years injecting uniquely strange ideas into the pseudolegal community, using live seminars and an extensive back catalog of presentations for sale on his website. He taught his followers that "court orders" are the same thing as "money orders," that federal judges cash their own orders at the federal reserve, that the IRS is a privately-owned Puerto Rican corporation, and that he is a sixth-dimensional interplanetary diplomat who once relocated the prime meridian with the assistance of a literal fairy.[13]

Shrout put his ideas to the test. He refused to file tax returns, a fairly traditional pseudolegal practice, then raised the bar by mailing one quadrillion dollars in homemade securities to an out-of-state bank with "instructions on how the bank should process them and pledge[d] that they would be honored by the Treasury."[14] The bank did not process them and the Treasury did not honor them. Instead, and despite his creative application of pseudolegal strategies, he found himself indicted, tried, convicted, and sentenced to concurrent ten-year terms on more than a dozen counts.[15] By that time he had already seen his own followers, including his daughter, try and fail to implement his tactics (and suffer the consequences).[16] As with Miller, the sheer strangeness of Shrout's claims make it seem impossible that he could persuade others to

11. *See, e.g.,* Colin McRoberts, *Reverse the Constitutional Polarity of the Baryonic Trustee Matrix: Legal Gibberish on the ConspiraSea Cruise (Day 2)*, VIOLENT METAPHORS (Jan. 27, 2016), https://violentmetaphors.com/2016/01/27/reverse-the-constitutional-polarity-of-the-baryonic-trustee-matrix-legal-gibberish-on-the-conspirasea-cruise-day-2/ [https://perma.cc/R4T2-VDUY].

12. In March 2019, Shrout declined to report to prison to begin serving a 10-year sentence for tax and bank fraud related to his pseudolegal theories. Maxine Bernstein, *Prominent Tax Dodger Now Dodging Prison Sentence, Prosecutor Says,* OREGONIAN (Mar. 20, 2019), https://www.oregonlive.com/crime/2019/03/tax-dodger-now-dodging-prison-sentence-prosecutor-says.html [https://perma.cc/ZKS3-C69J].

13. *See* McRoberts, *supra* note 11; Colin McRoberts, *ConspiraSea Day 7: I failed.*, VIOLENT METAPHORS (February 9, 2016), https://violentmetaphors.com/2016/02/09/conspirasea-day-7-i-failed/ [https://perma.cc/7PJR-S97V].

14. Maxine Bernstein, *Man Charged with Issuing More than $100 Trillion in Fake Finance Documents Goes to Trial*, OREGONIAN (April 18, 2017), https://www.oregonlive.com/portland/2017/04/man_charged_with_issuing_more.html [https://perma.cc/MW4B-G8R3].

15. *See, e.g.*, Bernstein, *supra* note 12 (reporting on Shrout's fugitive status). Shrout's creative tactics included invoicing the district court for $1 billion for the time he spent defending the matter. Jaro, *Winston Shrout 2016 Indictment*, FOREST QUEEN (Mar. 20, 2016), https://forestqueen2020.wordpress.com/2016/03/29/winston-shrout-2016-indictment/ [https://perma.cc/NT22-KSSM]

16. Government's Sentencing Memorandum at 26, United States v. Shrout, No. 15-cr-00438-JO, 2017 U.S. Dist. LEXIS 50156 (D. Or. Oct. 17, 2018) (No. 15-cr-00438-JO) [hereinafter Shrout Sentencing Memorandum].

rely on his ideas, but in fact he did spread them to other enterprising pseudolawyers.[17]

Other pseudolegal gurus promote less bizarre but potentially even more harmful notions. The broadcaster Marc Stevens stands in stark contrast to the riotous strangeness and quasi-spirituality of Miller and Shrout. While this gives Stevens a smaller profile in the pseudolegal community, it has also helped him work undisturbed for more than a decade, apparently influencing far more people and cases. Stevens sells form motions, courtroom scripts to follow, and "consultations" to clients who are typically attempting to defend themselves in municipal court or other relatively minor matters.[18] The chief argument he peddles to his customers, marketed through a self-published book and a long-running bi-weekly broadcast, is that the government must prove that its laws apply to defendants using evidence, which it cannot or will not produce.[19] Unsurprisingly, his arguments fail when tested in court.[20] There is no way to tell how many victims Stevens has reached over the years, but the sheer quantity of "success stories" he touts suggests the number is easily in the thousands.[21] Stevens has managed to avoid the kind of criminal charges more prominent pseudolawyers draw, possibly because he primarily targets low-profile litigants in minor matters. Nevertheless, his scheme impairs his clients' ability to adequately defend themselves with legitimate legal theories. He harms victims directly and places a needless burden on the legal system.

Stevens, Shrout, and Miller illustrate the broad spread of ideologies growing in the shadow of legitimate courts and legal processes. We could lay them on a spectrum, from Stevens's relatively mundane scripts and motions (which to a layperson would resemble serious legal arguments)

17. Shrout Sentencing Memorandum, *supra* note 16.

18. Marc Stevens, *marcstevens@mail.com*, SELZ STORE, https://marcstevens.selz.com/ [https://perma.cc/MTL4-KZ8U].

19. *See* Marc Stevens, *No Rational Basis For Applicability of Laws - Interview with Law Professor - [UPDATE: AUDIO]*, MARCSTEVENS.NET (Dec. 12, 2015), http://marcstevens.net/articles/no-rational-basis-for-applicability-of-laws-interview-with-law-professor.html [https://perma.cc/SHA9-R3XE].

20. *See, e.g.,* United States v. Edwards, No. 05-CV-141-D (D. Wy. 2015); United States v. Edwards, 172 F. App'x 844, 847 (10th Cir. 2006) (affirming district court's enforcement of summons and sanctioning defendant for making frivolous arguments).

21. Stevens's "successes" seem to be cases in which one of his customers prevailed for reasons unrelated to his theories, such as cases that were dismissed because the citing officer failed to appear for trial. *See, e.g.*, Marc Stevens, *Corey Gets Dismissal in California - Cop Blows off Summons to Appear*, MARCSTEVENS.NET (June 22, 2017), http://marcstevens.net/featured/corey-gets-dismissal-california-cop-blows-off-summons-appear.html [https://perma.cc/J246-76F6]; Marc Stevens, *Success Stories Archives*, MARCSTEVENS.NET, http://marcstevens.net/successes [https://perma.cc/M68Q-R6EB]. Stevens's arguments inevitably fail when analyzed on their merits. *See, e.g.*, *Edwards*, 172 F. App'x at 847 (United States 10th Cir. 2006) (affirming conviction and sanctioning defendant $6,000 for making frivolous arguments).

to Miller's indescribable linguistic fantasies, with Shrout's strange but comprehensible lessons in between. Each of them is a notable "guru," promoting their own particular and peculiar ideas to laypeople, many of whom creatively reinterpret, rebrand, repackage, and remarket new species of those beliefs in turn. These acolytes and customers fill in the space between the gurus who victimize them. Each pseudolawyer is effectively a node in a network of individuals and small communities trying to navigate the legal system with nonsensical ideas, each with a unique ideological fingerprint and drawing from a diverse, if overlapping, set of worthless tactics.

And yet, while the spectrum of such beliefs is broad, the overall set of people who hold them is relatively coherent and definable. While individuals with different beliefs in that set might disagree on matters of doctrine and tactics, the people in this loose network typically align more closely with one another than with mainstream legal thinking.[22] Typically, at least in the United States, these individuals and communities would be slapped with the label "sovereign citizen."[23] But that term does both too much and too little work to be an appropriate general term for the overall set of people with pseudolegal beliefs.

"Sovereign citizen" as a broad, categorical label overspecifies in many cases. It carries specific implications that are often unnecessary, controversial, and misleading. For example, Stevens vehemently denies being a sovereign citizen and rejects some of that group's typical beliefs.[24] While such denials are common and not particularly credible—Stevens agrees with many other core beliefs that are characteristic of sovereign citizens, and may simply reject the label because it is bad for business—there is no point in quibbling over whether he and other marginal thinkers can be saddled with a label that is an uncomfortable fit at best.

In other cases, when used broadly, terms like "sovereign citizen" underspecify. One leading expert in the field proposed a simple definition: "a sovereign citizen is someone who believes that he or she is

22. One scholar cited the occupation of the Malheur Wildlife Refuge as an example of this cohesion, as individuals with distinct ideologies responded to a call for assistance against the government. Slater, *supra* note 1, at 16.

23. There are many other catch-all labels, from the relatively descriptive ("freemen on the land" and "detaxer" are common in Canada) to the pointedly pejorative ("paper terrorist" has gained ground in the United States). The relatively descriptive labels suffer from the same drawbacks as "sovereign citizen." The pejorative labels actively impair outreach, encouraging pseudolawyers to withdraw deeper into their refusal to engage productively with the real legal system and its representatives.

24. *See, e.g.*, *About*, MARCSTEVENS.NET, http://marcstevens.net/about [https://perma.cc/8PHW-54AP] ("Also, due to recent events, it's necessary to again point out I am not a Sovereign Citizen, Freeman on the Land or Common Law type.").

above all laws."[25] Encompassing Stevens's anarchism and Shrout's galactic space opera alike, this is a useful colloquial definition. But to use it so broadly in scholarship would deprive us of a useful term that describes a relatively well-delineated set of people and ideas.[26] Sovereign citizens occupy a definable niche, alongside neo-Moors, tax protesters and detaxers, freemen on the land, the Posse Comitatus, and other loose communities. While those groups often overlap, such as in their opposition to lawful authority, each has a distinct character.

"Pseudolaw" is a more accurate and more useful term because we can define it in such a way that it captures the overall set of nonsense legal beliefs while preserving our understanding of definable subtypes such as the "sovereign citizen" movement. Of course, as a term it is only accurate and useful if we can give it an accurate and useful definition. I adopt the definition proposed by another expert in this field: "Pseudolaw is a collection of legal-sounding but false rules that purport to be law."[27] This catches one of the unique characteristics of pseudolaw, which is that it almost invariably proposes not just an alternative legal rule, but an alternative legal universe where the rules deviate from the real world in just one or two material ways (Stevens) or are completely unrecognizable (Miller).

This definition helps distinguish pseudolaw from legitimate arguments in edge cases, such as when a lawyer makes a good-faith case for creating new law or a layperson is simply unaware of the legal consensus. "Lawyers argue not-law all the time, and [*pro se* litigants] even more so."[28] For example, I once encountered the argument that a court should read a scienter requirement into a state securities fraud statute that lacked any such language, because other states had adopted such requirements in their own statutes.[29] This was an enterprising argument without a strong basis; the courts that had considered the question had already uniformly rejected it. But while we could say that opposing counsel's proposed reading of the statute was a "legal-sounding but false rule that purports to be law," no one would call it as pseudolaw.

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25. JJ MacNab, *What is a Sovereign Citizen?*, FORBES (Feb. 13, 2012), https://www.forbes.com/sites/jjmacnab/2012/02/13/what-is-a-sovereign-citizen/ [https://perma.cc/8D7F-LT8B].

26. *See, e.g.*, *Sovereign Citizens Movement*, S. POVERTY L. CTR., https://www.splcenter.org/fighting-hate/extremist-files/ideology/sovereign-citizens-movement [https://perma.cc/GBY5-6CBR] (articulating a set of beliefs common to this specific community).

27. Donald Netolitzky, *A Rebellion of Furious Paper: Pseudolaw As a Revolutionary Legal System* (May 3, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3177484 [https://perma.cc/5EBG-VK2T].

28. Donald Netolitzky, *Lawyers and Court Representation of Organized Pseudolegal Commercial Argument [OPCA] Litigants in Canada*, 51 U.B.C.L. REV. 419, 420 (2018).

29. This is, of course, a simplified version of the argument.

It articulated a vision of existing law that they found convenient, rather than denying that law altogether.

Pseudolaw, unlike good-faith arguments based in a consensual understand of law, is inherently oppositional. Rather than arguing that precedent favors a particular decision, pseudolaw denies the existence of the question or distorts it beyond recognition, or simply rejects the authority of courts completely. It is "replacement law," designed to subvert legal process; it cannot coexist with the mainstream, consensus understanding of law.[30]

II. HARMS

Relatively little work has been done to analyze the cost of pseudolaw to the public or its practitioners.[31] Some of them are relatively clear, such as the value of the resources courts spend handling pseudolegal arguments. Others are vague to the point of abstraction, such as the loss of personal empowerment that pseudolawyers suffer when they rely on futile tactics to manage their own affairs.

What follows is a general outline of the costs pseudolaw imposes on various parties. It is not a complete catalog. Instead, I intend to illustrate the magnitude of the harm pseudolaw does. Showing the wide scope of pseudolaw's impacts is the most effective way to demonstrate how serious and underappreciated the problem is.

A. Costs in Time and Money

1. Judicial Resources Spent Managing Pseudolegal Arguments

The vast majority of court personnel in the United States report that their courts encounter pseudolegal claims and that the number of such cases has risen sharply.[32] The most significant cost to the judicial system would be the opportunity cost of time spent handling those cases, but

30. Netolitzky, *supra* note 28, at 421.

31. *See supra* note 1 and accompanying text.

32. March-Safbom, *supra* note 1 (finding that 85% of court personnel surveyed reported that their court "had interactions with sovereign citizens"); Slater, *supra* note 1 (finding an increase of over 1000% in the number of "Sovereign Citizen related cases" in the 2006-2015 timeframe). Note that both analyses are subject to methodological limitations, including, *inter alia*, a focus on "sovereign citizens" rather than pseudolaw generally. The Slater study searched the Lexis database for variations on the phrase "Sovereign Citizen," which would have missed many of the cases discussed in this article. Slater, *supra* note 1, at 22. In addition to demonstrating the size of the problem, these studies show how important it is to establish a common and accurate vocabulary in order to study it.

there are other harms as well, such as the cost of marginal security measures.[33] These costs are plainly substantial, if unquantifiable.

The judicial system recoups a tiny fraction of these costs through fines used to discourage frivolous arguments such as pseudolegal tactics. For example, taxpayers relying on frivolous positions face direct fines of up to $25,000.[34] But courts are reluctant to impose these fines.[35] A recent internal IRS survey found "many" cases in which taxpayers received only a warning, and less than two dozen in which fines were applied.[36]

2. Costs of Crimes and Torts Arising from Pseudolaw

Many pseudolegal theories are elaborate justifications for committing fraud, tax evasion, or other crimes of greed and convenience. Pseudolaw's costs include the harms attributable to bad acts that would not have happened but for the pseudolegal justification. That includes direct harm to the victims as well as the costs of detecting and investigating the offense, ameliorating harm, and trying and punishing the offender. Like the loss of judicial resources, this is an unquantifiable loss, but plainly a significant one. One guru estimates that his followers alone have directly cost the federal government more than $13 million in lost tax revenue.[37]

Fraudulent liens are particularly noteworthy. A wide variety of pseudolawyers have adopted this tactic over the years, filing bogus liens (as well as deeds and other instruments) to harass lawyers, judges, politicians, neighbors, and anyone else they see as an enemy.[38] This

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33. At least two-thirds of the surveyed court staff took additional security measures when encountering "sovereign citizen behavior." March-Safbom, *supra* note 1, at 95.

34. I.R.C. §§ 6702(a), 6673(a)(1)(B) (2012). The IRS maintains lists of frivolous positions, which are essentially all founded in various kinds of pseudolaw. *See The Truth About Frivolous Tax Arguments*, INTERNAL REVENUE SERV. (2018), https://www.irs.gov/privacy-disclosure/the-truth-about-frivolous-tax-arguments-introduction [https://perma.cc/8GB4-4M8U] (listing and refuting several dozen common frivolous positions taken in tax returns); 1 NINA E. OLSON, NAT'L TAXPAYER ADVOCATE, ANNUAL REPORT TO CONGRESS 547–50, https://taxpayeradvocate.irs.gov/Media/Default/Documents/2018-ARC/ARC18_Volume1.pdf [https://perma.cc/M6JT-9YHD].

35. *See, e.g.*, OLSON, *supra* note 34, at 549.

36. *Id.* at 547 (citing Fleming v. Comm'r, 113 T.C.M. (CCH) 1535 (2017)). The fines ranged from $500 (in the only case in which the taxpayer was not *pro se*) to the statutory maximum of $25,000. *Id.* at 617.

37. Peter Hendrickson, *The Lost Horizons Bulletin Board*, LOST HORIZONS, http://losthorizons.com/BulletinBoard.htm [https://perma.cc/6E4F-GBRF] (last visited Apr. 5, 2019). The government has recouped some of this money, but on the other hand, Hendrickson's estimate does not include the cost of such enforcement actions. *See infra* Section III.D.

38. *See, e.g.*, Erica Goode, *In Paper War, Flood of Liens Is the Weapon*, N.Y. TIMES (Aug. 23, 2013), https://www.nytimes.com/2013/08/24/us/citizens-without-a-country-wage-battle-with-liens.html [https://perma.cc/J6GX-5FDW] (noting that in recent years, the movement "has drawn from a much wider demographic, including blacks, members of Moorish sects and young Occupy protesters");

"paper terrorism" is relatively well understood, and the actual liens themselves (often in absurd, multi-billion dollar amounts) do not survive challenges.[39] Even so, handling them can be very expensive for victims and the government. States have moved to respond by amending UCC provisions and default lien procedures, trading efficiency for marginally stronger defenses against such abuse of process.[40] That loss of efficiency, while small in comparison to the larger explicit costs of pseudolaw, is yet another example of the sometimes hidden harm that it does.

3. Development Costs for Pseudolegal Theories

Pseudolawyers rarely create their beliefs out of whole cloth. They often develop their ideas slowly, working with like-minded communities to research, study, combine, update, and eventually implement pseudolegal strategies. These efforts can be enormously expensive in time and money.

Little of that expense goes to legitimate legal education. I have never observed any pseudolawyer investing time or money in classes (even free, online offerings) or up-to-date law books.[41] Most of it goes to the gurus. Pseudolegal advisors who sell advice or access to secret knowledge typically target other pseudolawyers, cannibalizing their fellow travelers.[42]

Miller and Shrout, discussed above, both ran for-profit seminars teaching their unique ideas—a fairly common practice.[43] One of Miller's seminars is available to the public online.[44] Attendees at the time paid to attend, but now anyone can invest over nine hours trying to learn the

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NAT'L ASS'N OF SEC. OF STATE, STATE STRATEGIES TO SUBVERT FRAUDULENT UNIFORM COMMERCIAL CODE (UCC) FILINGS: A REPORT FOR STATE BUSINESS FILING AGENCIES 4 (2014).

39. *See, e.g.*, Murakush Caliphate of Amexem Inc. v. New Jersey, 790 F. Supp. 2d 241, 243 (D. N.J. 2011) (citing *Sovereign Citizens Movement*, *supra* note 26).

40. *See, e.g.*, NAT'L ASS'N OF SEC. OF STATE, *supra* note 38; Paul Hodnefield, *States Ring in the New Year by Amending UCC Article 9*, ABA SEC. ON BUS. L., http://apps.americanbar.org/buslaw/committees/CL190000pub/newsletter/200901/subcommittees/foosl.pdf [https://perma.cc/45HM-XUEC] (last visited May 9, 2019).

41. Anecdotally, when I have suggested such classes to pseudolegal correspondents, the reaction has been uniformly and vehemently negative. I attribute this to the oppositional nature of pseudolaw; trying to understand how mainstream lawyers and judges see the law would be tacitly admitting that the mainstream has a perspective worth understanding.

42. Attendees at the ConspiraSea Conference, a weeklong seminar at sea for conspiracy theorists, paid thousands of dollars to hear from speakers discussing pseudolaw (among other topics, such as anti-vaccine conspiracy theories). Lecturers included Winston Shrout and another pseudolegal guru, both of whom explicitly focused their sales efforts on conspiracy theorists, couching their theories in that group's jargon and worldview. Colin McRoberts, *The Truths Are Out There*, GOFUNDME (Sept. 1, 2015), https://www.gofundme.com/ss29jrfk [https://perma.cc/VT8B-A9D3].

43. Shrout "made hundreds of thousands of dollars peddling . . . seminars, videos, and materials." Shrout Sentencing Memorandum, *supra* note 16, at 2.

44. *Quantum Grammar Seminar*, *supra* note 5.

tactics he claimed would devastate their opponents in court. For example, he described a case he supposedly handled personally, in which a police officer testified that the defendant drove "through the stop sign." Miller (according to Miller) pointed out that cars cannot drive through stop signs, because two objects cannot occupy the same physical space. He then (again, according to Miller) asked for the "correct sentence structure communication parse syntax grammar for the avoidance of the perjury," which caused the judge to hold the officer liable for "fictitious conveyance of grammar" under the Fair Debt Collection Practices Act.[45]

The time and money aspiring pseudolawyers invest in learning such tactics is obviously wasted. Many do derive some value from such studies, whether because they find it entertaining or because it satisfies some philosophical, political, or spiritual urge. But most people who invest in learning pseudolaw are doing it to win real or anticipated court cases. They are buying magic beans. There will never be a beanstalk; they have squandered their investment.

B. Soft Costs

There are other subtler, even less studied costs that should also be considered. I lump these together as "soft costs" to distinguish them from the relatively obvious harms measurable in time and money. Particularly regarding these costs, remember that this is not an exhaustive list, but an illustration of the wide variety of harm that pseudolaw does.

1. Increased Confrontation with Law Enforcement

Pseudolegal beliefs contribute to the incidence of violent interactions between the public and law enforcement. Pseudolawyers are most often nonviolent, but the movement is large enough that a minority of violent adherents are responsible for a large number of tragic incidents.[46] Law enforcement officers have responded by identifying pseudolegal groups as some of the most dangerous threats they face.[47] A

45. *Id.* at 04:23:40, https://www.youtube.com/watch?v=zgcW6Hzn46w&feature=youtu.be&t=15820 [https://perma.cc/BV6Z-HXTT] (citing 15 U.S.C. § 1692, 18 U.S.C. § 1001).

46. J.J. MacNab, a leading expert, tracks violent actions and plots by anti-government extremists. She found that tax protesters and sovereign citizens, both pseudolegal movements, accounted for a large percentage of such crimes and constituted the fastest-growing segments from 2000 to 2018. J.J. MACNAB, ANTI-GOVERNMENT EXTREMISM IN AMERICA: VIOLENT ACTS AND PLOTS IN THE UNITED STATES, 2000 TO 2018 (2018), http://www.seditionists.com/AGEreport.pdf [https://perma.cc/Q4A5-PSW2].

47. Michelle M. Mallek, *Uncommon Law: Understanding and Quantifying the Sovereign Citizen Movement* 17 (Dec. 2016) (unpublished Master's Thesis, Naval Postgraduate School), https://calhoun.nps.edu/handle/10945/51576 [https://perma.cc/6X7Y-Z4XT].

2014 survey found that law enforcement officers ranked "sovereign citizens" as the most threatening extremist group, significantly above Islamic extremists.[48] I do not consider the violence and tension attributable to pseudolaw further in this Article, because they have been documented elsewhere.[49] They are perhaps the most serious and tragic consequences of pseudolaw. Pseudolaw has cost lives and will continue to do so for as long as it provides a perceived authority supporting violent action.

2. Degraded Trust in Legitimate Law and Legal Institutions

Pseudolawyers demonstrate remarkably little trust in courts, lawyers, government institutions, and mainstream law generally, and they discourage others from seeing those actors as legitimate. Obviously, such distrust contributes to pseudolaw in many cases; there are reasons to believe that it can be both a cause and an effect. Pseudolegal thinking overlaps strongly with conspiracy theories, which have been shown to reduce trust in experts.[50] While there is no research specifically on how pseudolegal beliefs affect trust in lawyers and courts, there is no reason to believe they would be immune to this effect. In fact, it would be reasonable to presume that the effect is more significant, as pseudolegal beliefs are more inherently oppositional to lawyers and courts than conspiracy theories in general are oppositional to scientists and other experts.

3. Pseudolawyers' Reduced Autonomy

Because relying on pseudolaw is a choice, believers may seem to be fully autonomous. But pseudolawyers often lack the information or perspective necessary to make that choice effectively. They rely on their guru or the pseudolegal community at large to help them understand the

48. NAT'L CONSORTIUM FOR THE STUDY OF TERRORISM AND RESPONSES TO TERRORISM, UNDERSTANDING LAW ENFORCEMENT INTELLIGENCE PROCESSES: REPORT TO THE OFFICE OF UNIVERSITY PROGRAMS, SCIENCE AND TECHNOLOGY DIRECTORATE, U.S. DEP'T HOMELAND SECURITY 7 (July 2014), https://www.start.umd.edu/pubs/START_UnderstandingLawEnforcementIntelligenceProcesses_July2014.pdf [https://perma.cc/HCV8-YP58].

49. *See, e.g.*, MACNAB, *supra* note 46; FBI Counterterrorism Analysis Section, *Sovereign Citizens: A Growing Domestic Threat to Law Enforcement*, FBI L. ENFORCEMENT BULL. (Sept. 1, 2011), https://leb.fbi.gov/articles/featured-articles/sovereign-citizens-a-growing-domestic-threat-to-law-enforcement [https://perma.cc/UJY7-QYEG]; *Sovereign Citizens Movement*, *supra* note 26.

50. Karen M. Douglas et al., *The Psychology of Conspiracy Theories*, 26 CURRENT DIRECTIONS PSYCHOL. SCI. 538, 540 (2017) (citing Katherine Levine Einstein & David M. Glick, *Do I Think BLS Data Are BS? The Consequences of Conspiracy Theories*, 37 POL. BEHAV. 679 (2015); Daniel Jolley & Karen M. Douglas, *The Effects of Anti-Vaccine Conspiracy Theories on Vaccination Intentions*, 9 PLOS ONE (2014)).

legal system, and that perspective prevents them from accurately understanding the options before them or the consequences of their actions. Like a fraud victim acting on the lies of a scammer, their misplaced trust distorts their ability to make effective decisions in their own interest.

For example, in 2013, the IRS summoned a delinquent taxpayer named John Thornton to appear with his records. Thornton could have complied or resisted with the assistance of an attorney, but he chose a third way. He apparently retained Marc Stevens, one of the gurus described at the beginning of this article and appeared with him rather than a lawyer. Stevens, an anarchist, teaches his followers that the government cannot prove that they are subject to the law.[51] Thornton therefore "insisted the revenue officer prove constitution and tax code applied to him" rather than producing the requested records.[52]

Five years of litigation followed. Thornton relied on Stevens's theories in and out of court, repeatedly demanding evidence that laws apply to him.[53] He managed to delay the proceedings through a variety of incompetent maneuvers and frivolous arguments, including six motions to dismiss, five motions to clarify, and several attempted interlocutory appeals (including petitions for *en banc* review and *certiorari*). All these tactics failed. Facing civil contempt charges in 2018, he narrowly avoided penalties by retaining competent counsel, providing testimony and documents in response to the original subpoena, and making payments on his tax deficiencies.[54] In other words, Thornton wound up exactly where he would have been had he complied with the summons in the first place, but for the considerable time, money, and effort he wasted.[55]

The resources Thornton wasted are clearly a cost of pseudolaw. But so is his lost opportunity to articulate whatever legitimate arguments he might have had in response to the subpoena, or simply to choose to comply and spare himself years of pointless litigation. Pseudolawyers'

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51. *See, e.g.*, Marc Stevens, *Debunking the Claim the Applicability of the Constitution is a Matter of Law, Not Evidence*, MARCSTEVENS.NET (Sept. 9, 2016), http://marcstevens.net/articles/debunking-the-claim-the-applicability-of-the-constitution-is-a-matter-of-law-not-evidence.html [https://perma.cc/HDR6-4NE2]; Stevens, *supra* note 19.

52. Petition to Enforce Internal Revenue Service Summons at ¶ 9, United States v. Thornton, No. 0:13-mc-00087, 2014 WL 4364261 (D. Minn. Apr. 9, 2014) (No. 0:13-mc-00087) [hereinafter Thornton Petition to Enforce].

53. Motion to Dismiss and Sanction Wilhelm at 1–2, United States v. Thornton, No. 0:13-mc-00087, 2014 WL 4364261 (D. Minn. Apr. 9, 2014) (No. 0:13-mc-00087).

54. Stipulation and Joint Request to Quash Bench Warrant, United States v. Thornton, No. 0:13-mc-00087, 2014 WL 4364261 (D. Minn. Apr. 9, 2014) (No. 0:13-mc-00087).

55. It is unlikely that the five-year delay was of any real benefit to Thornton, given that interest on the unpaid amounts continued to run during that period. I.R.C. § 6601(a).

faith in nonexistent rules limits their ability to apply the real ones to their own advantage, because their futile tactics crowd out legitimate methods that are more likely to achieve their goals. This is a cost to their autonomy, because while they are theoretically free to reject pseudolaw, its false promises of easy victories and easy money distort that choice. They would presumably not choose to employ futile and self-destructive tactics if they saw the choice objectively, after all.

This is consistent with research on the consequences of conspiracy theories generally, which has found that subjects who believe in conspiracy theories are less likely to exercise their own autonomy effectively.[56] "Specifically, they are less inclined to commit to their organizations and to engage in mainstream political processes such as voting and party politics."[57] The belief that a conspiracy is responsible for one's adverse circumstances discourages actions that would actually improve those circumstances, because they do not address the fantasy conspiracy. The same effect would discourage believers from engaging in effective legal advocacy in their own interests; there is no point in researching bases for a motion to dismiss if your legal strategy assumes the court is an illegitimate fiction.

III. CAUSES

As with the discussion of the costs of pseudolaw, a complete exploration of all the paths that lead to it is beyond the scope of this article and probably impossible. I discuss here four factors that are particularly significant: ignorance of law, belief that the mainstream legal system is intractable, preexisting opposition to legal and governmental authorities, and the impact of pseudolegal communities.

These four factors interrelate. Ignorance of actual law is a predicate condition, the absence of a defense against developing counterfactual beliefs. Feelings of powerlessness in the face of mainstream authority and hostility to such authority push people to accept pseudolegal beliefs that an understanding of real law would otherwise preclude. Believers have an incentive to accept false legal theories when they satisfy one or both feelings. The existence of self-reinforcing pseudolegal communities has a similar effect, as members' beliefs trend towards the group's

56. Douglas et al., *supra* note 50 (citing Karen M. Douglas & Ana C. Leite, *Suspicion in the Workplace: Organizational Conspiracy Theories and Work-Related Outcomes*, 108 BRIT. J. PSYCHOL. 486 (2017); Daniel Jolley & Karen M. Douglas, *The Social Consequences of Conspiracism: Exposure to Conspiracy Theories Decreases Intentions to Engage in Politics and to Reduce One's Carbon Footprint*, 105 BRIT. J. PSYCHOL. 35 (2014)).

57. *Id.* at 539.

convictions; they also help generate more complex and persuasive pseudolegal beliefs than individuals can generate.

No two pseudolawyers will share the exact same etiology, but generally they are rationally responding to these four predictable factors.

For the purposes of this article, I disregard true irrationality and mental infirmity as causes of pseudolaw. While some pseudolawyers' beliefs arise out of serious mental defects, most do not.[58] The most common and significant pseudolegal theories are the product of misguided, but clinically sane people. Understanding how that happens helps us design solutions that are targeted at pseudolawyers who can understand the real world but have failed to do so.[59]

A. Ignorance and Misinformation

Ignorance of actual law is an obvious factor in much pseudolegal ideology, but in a nonintuitive way. Pseudolawyers often show a surprising if incomplete familiarity with complex legal principles. Compared to laypeople, pseudolawyers are relatively likely to understand isolated concepts such as the elements of a contract.[60]

But that understanding is typically deeply flawed, because pseudolawyers do not integrate the concepts they study into an accurate understanding of law as a system. This is partly because they study those concepts in isolation, without placing them in context. In that sense, pseudolaw is to law as alchemy is to chemistry: a few partially-understood principles that lack predictive or explanatory power in the absence of an overarching, coherent, and accurate theory. It is also partly a consequence of motivated reasoning, as pseudolawyers study legal concepts in order to justify their beliefs rather than to determine whether those beliefs are true.

For example, pseudolawyers of various stripes believe that the federal government can only exert jurisdiction over its own employees

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58. The economist Bryan Caplan's work on "rational irrationality" helps explain how otherwise rational actors become mired in deeply irrational pseudolegal ideas. *See, e.g.*, Bryan Caplan, *Rational Ignorance Versus Rational Irrationality*, 54 KYKLOS 3 (2001); Bryan Caplan, *Rational Irrationality: A Framework for the Neoclassical-Behavioral Debate*, 26 EASTERN ECON. J. 191 (2000).

59. There are steps that can be taken to support the minority of pseudolawyers who are acting out of mental illness or other psychological distress. *See, e.g.*, March-Safbom, *supra* note 1, at 114 (discussing the role of competency evaluations, social services, and financial counseling in responding to pseudolaw).

60. One "Moorish" guru demonstrated this with a teaching guide to contracts and the Uniform Commercial Code. It outlines twelve supposed elements of a contract, including both the actual elements of a contract and some superfluous requirements (such as signatures). Taj Tarik Bey, "*How to Live Within Contracts*" *(Understanding Their Essence and Nature)* 3 (2009), http://rvbeypublications.com/sitebuildercontent/sitebuilderfiles/webexpandedcontracts.pdf [https://perma.cc/N89M-UAS4].

and residents of federal enclaves like the District of Columbia.[61] They sometimes defend this belief by pointing to a federal statute that defines participants in federal retirement programs as "[f]ederal personnel," arguing that this makes anyone who participates in Social Security an employee or property of the federal government and subject to its power.[62] But the people who advocate this theory inevitably have not read it completely or in context; most notably, they overlook the fact that Section 552a's definitions explicitly apply only for the purposes of that section, which is about database privacy.[63] They also assume that Social Security is a "federal retirement program," which is ideologically convenient but otherwise insupportable—social security benefits are, after all, available even to people who have not retired. Their limited reading of the definition in isolation supports their beliefs, while reading it in context would threaten them. Consequently, they deny the context.

Gurus collect bits and pieces of information like magpies, shuffling through misunderstood cases, excerpts from statutes they have not read, definitions from out-of-date legal dictionaries, legal maxims they found online, and other snippets to assemble fragile frameworks around their beliefs.[64] These frameworks can be extremely complex, or simply be long and incoherent enough to appear complex, and laypeople may mistake that for legitimate depth. Laypeople approaching an inscrutable treatise are likely to use convenient heuristics to determine whether it is valid, which can lead to inaccurate judgments. For example, the more work they put into trying to understand a complicated explanation, the more inclined they are to validate their sunk costs by accepting what they read—especially when it supports their preferred beliefs. Pseudolawyers who uncritically accept that a guru's sophisticated patter is the mark of an expert are therefore more likely to invest their time and effort in those ideas, and more likely to accept them as possibly true. This deepens the divide between their beliefs and actual legal rules.

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61. *See, e.g.*, *Two Political Jurisdictions: "National" Government v. "Federal/General" Government*, FAM. GUARDIAN, https://famguardian.org/subjects/taxes/Remedies/USvUSA.htm (last visited Apr. 5, 2019) (claiming jurisdiction of federal government is "[r]estricted by the Constitution to the 10 mile square area called Washington D.C., U.S. possessions, such as Puerto Rico, Guam, and its enclaves for forts and arsenals").

62. 5 U.S.C. § 552a(a)(13) (2012).

63. 5 U.S.C. § 552a(a) ("Definitions.—For purposes of this section—").

64. Examples could fill a large and strange library. For an example relying on legal maxims as "the eternal and unchanging principle of the law" (as well as a jumble of Bible verses, federal statutes, and IRS regulations), see *Instructions: 0.5. Commercial Law and the Uniform Commercial Code (UCC)*, FAM. GUARDIAN, https://famguardian.org/taxfreedom/instructions/0.5commerciallaw.htm (last visited Apr. 5, 2019). For an example relying on misrepresented judicial opinions, see Jeffrey Phillips, *U.S. Supreme Court Says No License Necessary To Drive Automobile On Public Roads*, WEARECHANGE (July 21, 2015), https://wearechange.org/u-s-supreme-court-says-no-license-necessary-to-drive-automobile-on-public-highwaysstreets/ [https://perma.cc/7PAM-R36E].

Such ignorance is a critical part of pseudolaw. Concluding that the federal government's powers stop at the borders of Washington, D.C., or that the income tax is unconstitutional, or that the Supreme Court has held that it is unconstitutional to require drivers to be licensed, requires an almost aggressive ignorance of the relevant facts.[65] Whether consciously or not, pseudolawyers protect that systematic ignorance by eschewing legitimate legal education (whether through formal law schools or informal methods, such as online courses) for pseudolegal alternatives. These alternatives include social media communities, seminars, private correspondence, informational websites, and personal relationships.[66] When pseudolawyers turn to law books, they strongly prefer wide-ranging, easily available, and impressive-sounding tomes like free editions of *Blackstone's Commentaries on the Laws of England* to up-to-date authoritative sources.[67] Gurus use these trappings of legitimacy to maintain ignorance of mainstream legal interpretations and defend pseudolegal ideas.

B. Feelings That the Legal System is Intractable

The "replacement law" that pseudolegal gurus offer is typically much easier to understand than real law, in the same way that a fairy tale is easier to understand than a comprehensive history of medieval Europe. Genuine law has the advantage of being actually useful, at least in theory, but to pseudolawyers that may be a distinction without a difference. Any actor who intuits that accessing the mainstream legal system is prohibitively expensive, or that is hopelessly biased in favor of large and wealthy actors, will see few reasons to prefer it to a convenient fantasy. The fantasy, at least, offers the hope of total victory. Gurus accordingly

65. *See* Thornton Petition to Enforce, *supra* note 52 (arguing federal jurisdiction is limited to federal territory); Waltner v. Comm'r, 107 T.C.M. (CCH) 1189 (2014) (income tax is unconstitutional); Phillips, *supra* note 64 (showing the Supreme Court has barred licensing requirements for drivers).

66. For example, at the time of writing, there is a closed Facebook group called "*TAXE PERCUE*: Send Mail through U.S. Post Office nOt [*sic*] U.S. Postal Service!" With nearly one thousand members, it explores various pseudolegal tactics for sending mail through the postal service without paying postage. *See *TAXE PERCUE* Send Mail Through U.S. Post Office nOt U.S. Postal Service!*, FACEBOOK, https://www.facebook.com/groups/696691393873750/974626752746878/ [https://perma.cc/PG2J-DMPA] (last visited May 1, 2019). Members actively experiment with different approaches, such as mailing notices to government officials declaring themselves postmasters and using blood-red thumbprints in lieu of stamps. For examples of pseudolaw seminars, see Pete Hendrickson, *The 2019 Dallas CtC Seminar, Part I*, YOUTUBE (Mar. 3, 2019), https://www.youtube.com/watch?v=pUO4Fd1jPgc [https://perma.cc/F73C-L86P] (promoting pseudolegal tax strategies); *Quantum Grammar Seminar*, *supra* note 5. For an example of the spreading of pseudolegal theories via personal relationships, see Shrout Sentencing Memorandum, *supra* note 16, at 36 (documenting Shrout's mentorship of a client who implemented his theories, resulting in his own conviction and 15-year sentence).

67. *See, e.g.*, Netolitzky, *supra* note 27, at 7.

target laypeople who feel that the legal system is intractable and offer them the illusion of a more accessible and effective alternative.[68]

This is particularly true when a person feels that external forces and actors have deprived them of a sense of control[69] or certainty.[70] Consequently, it is particularly common for people to start exploring pseudolaw after suffering a difficult and extremely personal upset, such as in family courts.[71] People who feel humiliated or victimized by the legal system may be particularly susceptible to developing beliefs that essentially negate its existence.[72] Perception matters more than reality here, because these feelings are deeply undesirable whether or not they are well-founded. Blaming a conspiracy creates a perceived solution, because "[s]eeing the plot behind the curtains helps to regain a sense of control."[73] Even if the conspiracy is not real, the feeling of relief is. Accordingly, "conspiracy belief is . . . reduced when [subjects'] sense of control is affirmed."[74]

Unfortunately, that sense of control is fleeting. As discussed above, loss of autonomy is one of the costs of relying on pseudolegal strategies, because they simply do not work. And the illusion of control may displace the real thing; people who placed greater faith in conspiracy theories were less likely to take actions that exerted positive control over their own circumstances.[75]

C. Oppositionalism

For people who feel the legal system is intractable, pseudolaw offers an attractive alternative. And, for people who believe the system is corrupt and broken, it offers a way to performatively oppose it. These

68. For example, gurus often offer sweeping maxims and intuitive rules that supposedly cut through red tape and technicalities. *See, e.g.*, Richard Anthony, *Maxims of Law*, FAM. GUARDIAN, https://famguardian.org/taxfreedom/legalref/MaximsOfLaw.htm (last visited April 5, 2019).

69. Martin Bruder et al., *Measuring Individual Differences in Generic Beliefs in Conspiracy Theories Across Cultures: Conspiracy Mentality Questionnaire*, 4 FRONTIERS PSYCHOL. 1, 11–12 (2013).

70. Douglas et al., *supra* note 50, at 539.

71. Miller, for example, described a divorce in which a judge "took away my children" as a formative experience. *Quantum Grammar Seminar*, *supra* note 5. His claim that he had that judge "disbarred" three times is characteristically dubious.

72. *See, e.g.*, March-Safbom, *supra* note 1, at 6.

73. Bruder et al., *supra* note 69, at 11.

74. Douglas et al., *supra* note 50, at 539 (citing Jan-Willem van Prooijen & Michele Acker, *The Influence of Control on Belief in Conspiracy Theories: Conceptual and Applied Extensions*, 29 APPLIED COGNITIVE PSYCHOL. 753 (2015)). This implies a kind of equilibrium point may exist, as conspiracy theorists radicalize or moderate their beliefs until they find the point at which they feel comfortable. Bryan Caplan's work on rational irrationality suggests that such a balance exists for "bliss belief[s]," the point at which more radical versions of an idea will no longer reward the believer. Bryan Caplan, *Rational Ignorance Versus Rational Irrationality*, 54 KYKLOS 3, 8–9 (2001).

75. Douglas et al., *supra* note 50, at 539.

are related impulses and often overlap, but they are not identical. Oppositionalist pseudolawyers use their pseudolegal beliefs as a marker of and outlet for their hostility to the mainstream legal system and its privileged actors.

Pseudolawyers may be predisposed to hostility to the legal system. Research has found that people with a relatively low degree of "agreeableness" are somewhat more susceptible to conspiracy theory thinking generally.[76] Pseudolaw is inherently a conspiracy theory, presupposing that the mainstream legal system is illegitimate in whole or in part. This is evident in their actual practice; the most common legal argument pseudolawyers make in court is that the legal system "has no legitimate authority over them."[77] Less commonly, pseudolawyers may arrogate specific functions of the state to themselves, because they believe the state's exercise of such powers is part of some scheme against them.[78]

Many pseudolawyers exhibit preexisting ideological hostility to state power, often arising from political or religious ideologies. Marc Stevens, the guru discussed above, identifies as an anarchist.[79] He opposes the very concept of a legal system empowered to punish people for breaking traffic regulations and other laws.[80] Other pseudolawyers are responding to their own perceived powerlessness.[81] Research on conspiracy theories generally shows that a "lack of sociopolitical control or lack of psychological empowerment" correlates generally with "conspiracy belief," as does being a member of an out-group.[82] Inmates, who are especially powerless, have a particular affinity for pseudolegal beliefs; jailhouse conversions are common, and many pseudolegal theories develop and spread in prison.[83]

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76. Bruder et al., *supra* note 69, at 9.

77. March-Safbom, *supra* note 1, at 91. Note that this figure comes from a survey of "court professionals most likely to have direct knowledge of interactions with sovereign citizens, such as judges, court administrators, court executive officers, and court operation managers," and relies on their characterization of the behaviors they observe. *Id.* at 83.

78. For example, some pseudolawyers rely on false, homemade identification rather than state-issued drivers licenses. *Id.* at 91. For instructions on making your own "common law ID" see Corey Eib & Todd McGreevy, *How To Create a Common Law ID*, AGENDA 31 (Apr. 26, 2015), https://www.agenda31.org/how-to-create-a-common-law-id/ [https://perma.cc/BKB6-6KG5]. Note that the value of such identification closely approximates that of the paper on which it is printed. *Id.*

79. *About*, *supra* note 24.

80. *Id.*

81. This is obviously similar to a more specific feeling that the legal system is intractable, discussed above.

82. Douglas et al., supra note 50, at 539 (citing Martin Bruder et al., *Measuring Individual Differences in Generic Beliefs in Conspiracy Theories Across Cultures: Conspiracy Mentality Questionnaire*, 4 FRONT. PSYCHOL. 1 (2013)).

83. *See, e.g.*, March-Safbom, *supra* note 1, at 55.

As with a feeling of powerlessness, someone who believes that they have suffered because the system is corrupt may turn to conspiracy theories for a sense of relief. Such beliefs can "promise to make people feel safer as a form of cheater detection, in which dangerous and untrustworthy individuals are recognized and the threat they posed is reduced or neutralized."[84] Pseudolaw, like other conspiracy theories, supplies a justification for identifying and stigmatizing real or imagined enemies.

This polarizing effect is one of the most important consequences of oppositionalism. Pseudolawyers who are motivated primarily by antagonism to the mainstream legal system, as opposed to those who are motivated by an attempt to reclaim power for themselves, have a heavier incentive to distrust, disregard, and even attack state representatives of that system. That antagonism expresses itself in conspiracy theories that otherize and discredit courts, judges, and attorneys in general. Such theories include the claim that the original, "lost" Thirteenth Amendment would have made lawyers ineligible for American citizenship,[85] that American bar associations are secretly loyal to the "Crown of England,"[86] and that lawyers exist only to steal property and rights from the people.[87] These beliefs come with a clear, if usually implicit, call to action: "Fire your BAR Attorney. Refuse to acknowledge their corrupt inner-bar courts of thievery."[88] Laypeople who accept these ideas make it even more difficult to reconsider their own position because they demonize the voices of the legal system.

D. Community Building

Organized communities are particularly effective engines for generating and spreading irrational ideas about law. Close-knit groups of believers accrete around influential pseudolegal ideas, developing,

84. Douglas et al., *supra* note 50, at 539 (citing Preston R. Bost & Stephen G. Prunier, *Rationality in Conspiracy Beliefs: The Role of Perceived Motive*, 113 PSYCHOL. REP. 118 (2013)).

85. *See, e.g.*, Corey Eib & Todd McGreevy, *A31-080 – Chess, Not Checkers*, AGENDA 31 (May 5, 2016), https://www.agenda31.org/a31-080-chess-not-checkers/ [https://perma.cc/K3QY-6B5P].

86. *See, e.g.*, Augustus Blackstone, *American Bar Association*, HEALTH FREEDOM INFO, https://www.healthfreedom.info/bar%20association.htm [https://perma.cc/GRE4-F8ZE] (last visited May 1, 2019)("The term 'BAR' is an acronym for British Accredited Registry . . . [t]hese snakes are in fact working for the Crown of England.").

87. *See, e.g.*, *Hiding Behind the Bar*, FAM. GUARDIAN (Aug. 16, 2009), https://famguardian.org/subjects/LawAndGovt/LegalEthics/HidingBehindTheBar.htm (the sworn duty of a "BAR Attorney . . . is to transfer what you have to the creator and authority of that court").

88. *Id.*

defending, and evangelizing them. They form an ecosystem of ideologies that spread and mutate in endless variations on common themes.[89]

Many pseudolegal communities are relatively flat, with many members having an active role in developing new theories. The social media boom has given such groups powerful tools that help them organize and communicate more effectively, allowing them to develop and spread ideas that would otherwise languish in obscurity.[90] Other communities are more hierarchical, organized around the ideas of prominent and charismatic gurus. For example, Shrout headed an active community based on his idiosyncratic theories. The "Gardening with Winston" program offered conference calls with fellow travelers, a member directory to facilitate networking among his acolytes, members-only events, and incentives for referring new members.[91]

Active communities help translate theories into actions. That is particularly true when groups provide examples of other people successfully implementing pseudolegal strategies—even if those examples are false or misleading. Peter Hendrickson, a prominent pseudolegal guru, has built a fervent and surprisingly large community around his theories about the income tax.[92] He publicly touts a list of "more than a thousand examples" of his followers applying his pseudolegal tactics to collect more than $13 million in tax refunds.[93] His followers contend that only income earned through the exercise of a "federal privilege" is taxed, so report zero taxable income on their tax

89. *See, e.g.*, Cass R. Sunstein & Adrian Vermeule, *Conspiracy Theories: Causes and Cures*, 17 J. POL. PHIL. 202 (2009) (discussing the role of "conspiracy cascades" in the spread of conspiracy theories from more to less credulous actors).

90. *See, e.g.*, **TAXE PERCUE* Send Mail Through U.S. Post Office nOt U.S. Postal Service!*, *supra* note 66.

91. *See Gardening with Winston*, WINSTON SHROUT SOLUTIONS IN COMMERCE (Feb. 19, 2016), https://web.archive.org/web/20160219115502/http://www.wssic.com/membership.html [https://perma.cc/JE6W-YKFN]; Shrout Sentencing Memorandum, *supra* note 16, at 4–5.

92. Hendrickson essentially claims that the income tax does not apply to his followers' wages and other income, so they can report zero taxable income to the IRS and claim a refund in the amount of their withholdings. *See* Peter J. Reilly, *Sometimes You Crack the Code and Sometimes the Code Cracks You*, FORBES (Feb. 13, 2019), https://www.forbes.com/sites/peterjreilly/2019/02/13/sometimes-you-crack-the-code-and-sometimes-the-code-cracks-you/#5fb62c632128 [https://perma.cc/3RX5-QZQ5] (reprinting correspondence with Hendrickson justifying his scheme); Waltner v. Comm'r, 107 T.C.M. (CCH) 1189 (2015) (analyzing Hendrickson's theories in detail). Courts and the IRS unsurprisingly consider this fraud, and Hendrickson and his disciples have lost numerous civil and criminal cases. *See, e.g.*, *id.*; United States v. Hendrickson, 2010 TNT 81-15, n. 5, No. 2:08-cr-20585, 2010 U.S. Dist. LEXIS 40439 (E.D. Mich. Apr. 26, 2010), *aff'd in part and rev'd in part*, United States v. Hendrickson, 460 F. App'x 516 (6th Cir. 2012) (per curiam) (affirming conviction and remanding for re-sentencing).

93. Hendrickson, *supra* note 37. This number deceptively includes refunds the IRS has successfully challenged in court. *See United States Sues Nine in Nationwide Crackdown on Tax-Refund Scam*, DEP'T OF JUSTICE (Apr. 13, 2006), https://www.justice.gov/archive/opa/pr/2006/April/06_tax_219.html [https://perma.cc/T3PZ-U5RJ].

returns and claim their withholdings as a refund.[94] The IRS often issues a refund check before confirming whether the return is accurate.[95] Hendrickson then posts pictures of those checks and related correspondence to "prove" that his tactics work.[96] It is powerful, persuasive evidence to people who are wondering whether his tactics work. It is also deeply deceptive evidence, of course. Hendrickson does not address how many of his followers face audits, criminal investigation, prosecution, fines, or even imprisonment after they send him a picture of their check.[97] But by presenting this brave bluff to the world, his group manages to make a theory that has never prevailed in court appear to be a safe path to easy money. The presentation works; Hendrickson is an active guru, promoting this dangerous scheme via his website, a book, and regular live seminars.[98]

In addition to drawing in new members and reducing the barriers to action, communities built around pseudolegal ideas have a binding effect on their members. Community members who identify with the group have a heavy incentive to uncritically accept the ideas that tie it together, as skepticism would threaten their identity by implying a conceptual divide between the individual and the group (or simply result in their outright expulsion). Skepticism from outside the group may also encourage members to cleave more tightly to conspiracy theories, in order to "uphold the image of the self and the in-group as competent and moral but as sabotaged by powerful and unscrupulous others."[99] Through these and other mechanisms, the way people perceive their own communities and the groups they reject heavily influences how individuals evaluate pseudolegal concepts.[100]

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94. *See* Reilly, *supra* note 92.

95. The explanation for the scheme's apparent success, at least in the short run, is "that underfunding, aging technology and declining headcount have crippled the IRS enforcement capacity and that there is a lot that will get by that should not get by." *Id.*

96. Hendrickson, *supra* note 37.

97. For example, a 2006 crackdown caught a group of Hendrickson's disciples, who repaid the refunds they had claimed plus interest. Hendrickson nevertheless continues to list those refunds as proof that his tactics work. *See, e.g.*, *United States Sues Nine in Nationwide Crackdown on Tax-Refund Scam*, *infra* note 93. Other names on Hendrickson's list appear in contemporaneous bankruptcy dockets, suggesting that they escaped enforcement by virtue of prosecutorial discretion.

98. *See, e.g.,* Hendrickson, *supra* note 66; Peter Hendrickson, *Seminar Schedule*, LOST HORIZONS, http://losthorizons.com/SeminarSchedule.htm [https://perma.cc/5885-8MG2] (last visited May 9, 2019).

99. Douglas et al., *supra* note 50, at 540.

100. *See, e.g.*, March-Safbom, *supra* note 1, at 9 (applying social identity theory to analyze the sovereign citizen movement); Sunstein & Vermeule, *supra* note 89, at 13 (discussing group polarization effects).

IV. SOLUTIONS

Policy makers have paid too little attention to potential solutions to the creep of pseudolaw. Existing solutions are typically purely reactive and inadequate. More proactive solutions are necessary, along with more scholarship to evaluate their effectiveness.

I present here four general approaches for more active responses to pseudolaw: (1) a rules-based approach, automatically providing pseudolegal litigants with information about the failure of similar claims; (2) a judicial approach, by which courts respond to pseudolegal arguments in more detail and on the record; (3) a practitioner approach, in which lawyers take more responsibility for communicating law to the public; and (4) an academic approach, studying pseudolaw more actively and testing the efficacy of various solutions. Dividing these approaches by actors—court staff, judges, practitioners, and academics—shows how much room there is for complementary solutions to pseudolaw.

A. A Rules-Based Approach

Explicit penalties are probably the most effective response to pseudolaw currently in place in the United States. State and federal laws impose various penalties for pseudolegal practices such as filing false liens,[101] making frivolous arguments,[102] and frequent or vexatious litigation.[103] Courts fill in the gaps with local rules and *ad hoc* penalties, although not consistently.[104]

These penalties are rarely used. Pseudolegal tax offenses go chronically unpunished, likely as a result of limited resources at the IRS and a limited will to spend those resources on small-time frauds.[105] Courts are understandably reluctant to impose sanctions that could have due process implications and disfavor penalties that would keep marginally vexatious litigants from freely accessing the courts.[106] And in many cases, the relevant personnel simply do not know what tools are

101. *See, e.g.*, 18 U.S.C. § 1521 (2012) (making filing false liens against a federal judge or law enforcement officer a crime with a maximum sentence of ten years). Using bogus liens to harass judges and other representatives of the mainstream legal system is a relatively common tactic among more oppositionalist pseudolawyers. *See id.*

102. *See, e.g.*, 28 U.S.C. §§ 6702(a), 6673(a)(1)(B) (2012).

103. *See, e.g.*, 28 U.S.C. § 1915(g) (2012); Cal. Code Civ. P. § 391 (2019).

104. *See, e.g.*, Justice v. Koskinen, 109 F. Supp. 3d 142, 144 (D.D.C. 2015) (enforcing an order barring vexatious litigant "from filing any new civil actions in this or any other federal court of the United States without first obtaining leave of that court").

105. *See generally* Olson, *supra* note 34, at vii–xxiii (documenting chronic and acute shortages of personnel, funding, and modernized information systems at the IRS); Reilly, *supra* note 92.

106. March-Safbom, *supra* note 1, at 51–52; *see also* Slater, *supra* note 1, at 68 (finding that in a survey of 440 cases involving pseudolegal claims, courts applied sanctions in only two).

available. The 2016 March-Safbom survey found that just under half of the court professionals and judges surveyed knew what "measures to combat the tactics of sovereign citizens" their state had made available.[107] Significantly more respondents said that they "notify court security staff" when "encountering sovereign citizen behavior," meaning that some court personnel who do not know what tools are available to them turn to physical security measures as a first resort.[108]

Improving awareness and implementation of existing rules is the first step in a rules-based approach to combatting pseudolaw. If half of court personnel are unaware of what tools they have, then those tools are probably being underutilized. And while existing measures are ignored, it will be difficult to even determine whether crafting more or better rules would be an improvement. The expansion of existing tools, particularly better self-help resources for laypeople, would also be a valuable step.[109] There is no simple or easy solution here. Individual courts and agencies must train their personnel to utilize existing rules, both to get maximum mileage out of them and to identify where improvements are necessary to achieve better results. This will not happen if authorities ignore pseudolaw or write it off as a minor annoyance. Readers employed or practicing in courts burdened by pseudolaw—which is most courts—can help encourage a proper focus on this issue simply by spreading awareness of the scope of the problem and the availability of existing countermeasures.

Expanded use of existing rules is unlikely to be an adequate solution if courts are reluctant to exercise more muscular litigation management. Courts need tools that fit their hands more comfortably, such as rules that discourage pseudolegal arguments without punishing or unduly burdening litigants. Judges and their staff would likely use such measures more often and earlier than harsh sanctions, providing more signals to pseudolawyers that their tactics will fail. Sending those signals relatively early and often would likely drive more behavioral change than relying on post-hoc penalties.[110] It would also prevent more frivolous arguments than punitive sanctions, which can only take effect after such arguments have been made.

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107. March-Safbom, *supra* note 1, at 96. All states represented in the survey had "some form of legislation or court rules to combat sovereign citizen tactics." *Id.*

108. *Id.* at 95. Note, though, that this was a small survey, with only eighty respondents. *Id.* at 85.

109. *Id.* at 112.

110. This conclusion seems self-evident but is unproven. Empirical research on the relative effects of minor sanctions applied early in a matter, as opposed to drastic ones applied later on, would be valuable.

At least one court has implemented such a rule, apparently with positive results. The Court of Queen's Bench of Alberta, a Canadian superior court, has considerable expertise managing pseudolegal litigants. It decided *Meads v. Meads*,[111] a significant case discussed in the next section, and its Complex Litigant Management Counsel, Dr. Donald Netolitzky, is a leading expert in the etiology and management of pseudolaw.[112] The court's standing Master Order directs the clerk to "review the documents proposed to be filed by any suspected [pseudolegal] litigant" for one of a list of defects common to pseudolegal pleadings.[113] The list includes dozens of common indicia of pseudolaw, such as a litigant claiming to be "sovereign citizen" or demanding a remedy to be paid in gold or silver.[114] The clerk must refuse any defective document, "indicate on a copy of [the] Master Order the identified formal defects," and return the rejected document and annotated Master Order to the filer.[115] A rebuffed filer may correct the defects or challenge the clerk's action in a written application to the Associate Chief Justice.[116] As of 2017, four years after the Master Order was first issued, the court had received "some challenges" but denied them all.[117] Unpublished data suggests that "90% of the persons who had their documents rejected this way never returned."[118]

The Master Order's procedures could be similarly effective in curbing pseudolaw in American courts—if they were willing and able to implement them. But American courts, at least on the federal level, are generally reluctant to empower clerks to reject filings. The Federal Rules of Civil Procedure, for example, explicitly prohibit clerks from refusing filings for failure to follow the "form prescribed by these rules or by a local rule or practice."[119] Accordingly, a milder form of the same general rule might be more appropriate.

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111. 2012 ABQB 571 (Can.).

112. Meads v. Meads, 2012 ABQB 571, at ¶ 1 (Can.); s*ee, e.g.,* Netolitzky, *supra* note 27; Netolitzky, *supra* note 28.

113. Revised Master Order for Organized Pseudolegal Commercial Argument ("OPCA") Documents Pursuant to Meads v. Meads, 2012 ABQB 571 (Can.), Court of Queen's Bench of Alberta (Jan. 21, 2019), at 2 [hereinafter Revised Master Order].

114. *Id.* at 3–5.

115. *Id.* at 2; Re Gauthier, 2017 ABQB 555, at ¶¶ 3–5 (Can.). *Re Gauthier* illustrates the operation of the Master Order in detail, describing how it operated to bar documents determined to be defective for, *inter alia,* purporting to fine officials fifty ounces of silver per minute for detaining the filer. *Id.* at ¶ 18, Schedule A.

116. Revised Master Order, *supra* note 112, at 2.

117. *Re Gauthier,* 2017 ABQB 555, at ¶ 8.

118. Email from Donald Netolitzky, Pseudolaw papers (Mar. 1, 2019) (on file with author).

119. Fed. R. Civ. P. 5(d)(4). The comment to the rule explains:

> This is not a suitable role for the office of the clerk, and the practice exposes litigants to the hazards of time bars; for these reasons, such rules are proscribed by this revision. The enforcement of these rules and of the local rules is a role for a judicial officer.

One possibility would be to allow court staff to review filings for predetermined signs of pseudolegal activity, as per the Master Order, but respond with standardized informational documents rather than by refusing to accept the filing. These documents would inform the filer, in a non-argumentative manner, that such tactics have failed in the past and point them to legitimate resources for *pro se* litigants.

The Master Order's success shows that the detection step is simple. Pseudolegal filings often come with predictable trappings, most of which are extremely obvious and unmistakable. It hardly takes special training to recognize a literal bloody fingerprint.[120] Relying on predetermined lists of such indicators would make detection relatively objective rather than dependent on clerks' discretion, which would likely make the rule more palatable to judges. It would also allow some filings with novel or subtle signs of pseudolaw to go undetected, but that is inevitable.

Court staff would then provide pseudolegal filers with preapproved, standardized pamphlets designed to rebut underlying pseudolegal theories. For example, court staff might observe that a filing is making the traditional pseudolegal argument that the court lacks jurisdiction because it flies a gold-fringed flag.[121] They would then select an appropriate pamphlet from a library of pre-approved documents and provide it to all parties in the matter. In the given example, the pamphlet would explain, simply, that many people have made that argument in the past and that it has always failed. It would also give the reader guidance as to what resources are available to *pro se* litigants. The Alberta court had similar goals in mind for its Master Order:

> The Master Order is designed to intercept [pseudolegal] litigation at the earliest possible point so that persons attempting to file such are directed to [relevant precedent], given notice of the irregular and legally incorrect nature of [pseudolegal] schemes, and then have the opportunity to abandon pseudolegal concepts before those misconceptions lead to unnecessary, abusive, and futile litigation, and the expenditure of litigant and court resources.[122]

The success of the Master Order shows that these are achievable goals. Responding to pseudolawyers with information, rather than by barring their filings, will be a less effective tool but one more likely to be implemented.

Id.

120. *See* Revised Master Order, *supra* note 112, at 4.

121. This is perhaps the single most commonly cited example of pseudolegal beliefs. For a thorough examination and refutation of other common pseudolegal beliefs, see Caesar Kalinowski, *A Legal Response to the Sovereign Citizen Movement* (Aug. 24, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3238417 [https://perma.cc/7X62-HDFQ].

122. *Re Gauthier,* 2017 ABQB 555, at ¶ 6.

Courts will still be reluctant to implement this moderated approach, whether due to prudent concerns over the appearance of giving legal advice to litigants or a risk-averse adherence to the *status quo*. A few criteria would help. First, the responsive pamphlets should be written as purely informational documents, advising litigants of the existence of precedent relevant to the argument being made but without taking a position on its application in the present case. This would limit the impact of the tactic but is necessary to preserve the courts' impartiality. Second, they should be limited to responding to arguments that have repeatedly been found not simply wrong but frivolous—arguments that litigants have been fined for making. This conservative approach would exclude marginal or novel arguments, limiting the scope of this tactic, but also making it easier to apply. Third, they should be written as simply, clearly, and succinctly as possible. This would make the documents more useful to unsophisticated parties.

The first point is the most important. The pamphlet would have to be written to explain that a specific pseudolegal argument has not worked, not that it is wrong or will not work in the future. Obviously, this is necessary in part because courts will not act as lawyers for *pro se* litigants. But there is another, operational reason. Pseudolawyers, like everyone else, are psychologically resistant to arguments that challenge their beliefs.[123] Strongly opinionated people of any ideology tend to take such arguments as an invitation to fight, or simply an adverse position to be ignored. Courts taking such positions would be spending their perceived objectivity for little return. On the other hand, informing pseudolawyers of the state of the precedent is a more defensibly objective position, and likely more persuasive. The primary rationale behind this tactic is to communicate to pseudolawyers, "Your argument has failed every time it has been tried before, and here are some examples," rather than, "Your argument is wrong."[124]

Of course, such communication relies on the availability of cases clearly rejecting pseudolegal arguments and explaining why they were rejected. While these cases do exist, they are relatively uncommon. A second approach to the problem of pseudolaw is for judges to create a better record in response to it.

123. There are many psychological studies on this subject. Rather than cite examples, I will merely observe that they will likely be unpersuasive to readers who doubt this point, as people are generally psychologically resistant to arguments that challenge their beliefs.

124. This tactic will obviously fail in many cases. *See, e.g.*, *Re Gauthier*, 2017 ABQB 555, at ¶¶ 88–90 (describing a litigant who "wants a fight" and refused to abandon pseudolegal arguments). It would be an incremental, rather than revolutionary, improvement over current results. *Id.*

B. A Judicial Approach

Many courts prefer to dispose of pseudolegal arguments quickly and efficiently, simply dismissing them as frivolous without explaining why they are wrong. This is certainly a more efficient way to handle individual cases.[125] But emerging evidence shows that more thorough and explicit rejections of pseudolegal arguments can have a significant impact on the spread of pseudolaw generally.

The most significant opinion in this field is *Meads v. Meads*, a Canadian case from the Court of Queen's Bench of Alberta. *Meads* is "a very unusual, and arguably unprecedented, 736-paragraph decision in response to, of all things, an application to move a contentious divorce matter into case management."[126] Faced with a laundry list of pseudolegal arguments, the *Meads* court responded with a comprehensive, scholarly opinion that spends roughly 140 pages discussing "Organized Pseudolegal Commercial Argument litigants" generally, and 10 pages applying that analysis to the case before it.[127] The court gives a broad history of pseudolaw in Canada,[128] describes the work of nearly a dozen specific Canadian gurus and the role of gurus generally,[129] and patiently explains why a wide variety of pseudolegal theories are wrong.[130]

Meads has had significant impacts on pseudolaw in Canada by influencing courts, the public, and pseudolawyers. It created useful precedent and recommended specific procedural improvements that Canadian courts accepted, such as applying filing restrictions and show cause orders to weed out pseudolegal arguments more aggressively.[131] It also influenced the public by supplying a useful, practical, and highly readable treatise on pseudolaw. Academics have used it in the fields of "sociology, psychiatry, threat assessment, communications, and criminology to identify and describe pseudolaw concepts and communities."[132] Even laypeople have found it helpful in engaging pseudolaw, as "'hobbyist' pseudolaw critic communities" have begun

125. *See, e.g.*, Aldrich v. Comm'r, 106 T.C.M. (CCH) 192, at *8 (2013) (observing that spending time addressing pseudolegal arguments in detail "wastes the limited resources of the Court" and "delays the assessment of tax").

126. Donald J. Netolitzky, *After the Hammer: Five Years of* Meads v. Meads (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3179861 [https://perma.cc/7PYG-8MVS].

127. "OPCA" is, for most purposes, synonymous with "pseudolaw."

128. Meads v. Meads, 2012 ABQB 571, at ¶¶ 168–98 (Can.). Unsurprisingly, pseudolegal movements in Canada are much like movements in the United States. *See id.*

129. *Id.* at ¶¶ 85–158.

130. *Id.* at ¶¶ 267–550.

131. Netolitzky, *supra* note 126, at 24, 26.

132. *Id.* at 29.

using *Meads* to explain pseudolaw to their audiences and inform their critiques of pseudolaw.[133] And naturally, Canadian courts encourage pseudolawyers to read *Meads* to gain some perspective on their arguments.[134] It is regularly "amongst the most accessed court judgments on the CanLII database," suggesting an audience "broader than the legal profession."[135] Partly as a consequence of this effective outreach, the pseudolaw movement in Canada has suffered a significant setback.[136]

The aftermath of *Meads* shows that judges have the greatest impact on pseudolaw when they write opinions with an eye to the wider context. *Meads* created a resource that court staff, practitioners, laypeople, and academics use to study and engage pseudolegal communities. Such decisions may also directly persuade pseudolawyers that their tactics will not work and are not worth trying, but this is a secondary effect. The legal mainstream is much more likely than pseudolawyers to be aware of and understand cases like *Meads.*

Unfortunately, cases like *Meads* are relatively scarce in the United States.[137] American courts routinely dismiss pseudolegal arguments without discussion. A much-cited tax court opinion, *Wnuck v. Commissioner*,[138] set out a thorough list of good reasons for that:

- "The number of potential frivolous [pseudolegal] arguments is unlimited"[139];
- "A frivolous [pseudolegal] argument may be unimportant even to its proponent"[140];
- "Many frivolous [pseudolegal] arguments have already been answered"[141];
- "The litigant who presses the frivolous [pseudolegal] argument often fails to hear its refutation"[142];
- "Many frivolous anti-tax arguments are patently so"[143];

133. *Id.* at 38.

134. *Id.* at 29. Canadian gurus have responded to *Meads* with a variety of treatises, YouTube videos, and furious silences. *Id.* at 30–37.

135. *Id.* at 37.

136. *Id.*

137. Netolitzky, *supra* note 126, at 26 ("When one compares US vs Commonwealth OPCA jurisprudence, the latter tends to provide more detailed and specific replies to pseudolegal arguments.").

138. 136 T.C. 498, 501 (2011).

139. Wnuck v. Comm'r, 136 T.C. 498, 501 (2011).

140. *Id.* at 502–03 ("For all a court can tell, the litigant may not even have carefully read the arguments he submits.").

141. *Id.* at 503.

142. *Id.* at 504–05 (opining that refutations of pseudolegal arguments fall on deaf ears due to stubbornness, misunderstandings of the argument or the refutation, or for inscrutable reasons).

143. *Id.* at 505.

- "Addressing frivolous [pseudolegal] arguments wastes resources"[144]; and
- "Addressing frivolous [pseudolegal] arguments risks dignifying them."[145]

There are reasonable justifications here for summarily rejecting pseudolegal arguments, from the perspective of a court considering the costs and benefits in a single case. But *Meads* shows us that from a long-term perspective, there are systemic benefits to communicating the errors in pseudolegal thinking. The pseudolawyers before the court might be unable or unwilling to understand why their arguments fail, but they are not the only relevant audience. Depending on the opinion and the context, they can help the development of rules to control pseudolaw, aid academics in studying the phenomenon, give practitioners and other observers a platform for public engagement with pseudolawyers prior to litigation, and even help other would-be pseudolawyers see that their guru's promises of an easy victory are unreliable.

A recent tax court opinion, *Waltner v. Commissioner*,[146] illustrates a more thorough approach to handling pseudolegal arguments.[147] The petitioner in *Waltner* relied on Peter Hendrickson's widespread book, *Cracking the Code*, in preparing his tax returns and his arguments in court.[148] The court observed that Waltner's "returns and return information have been used to promote the frivolous arguments contained in that book," possibly referring to Hendrickson's habit of publicly posting spurious success stories.[149] Aware that the pseudolegal community outside the courtroom had influenced the petitioner, the author, Judge Buch, chose to exert his own influence in turn:

> Judicial opinions serve many purposes: they assist attorneys in advising clients and preparing cases; they provide the lower court's rationale when the appellate court must evaluate its decision; *they inform the public of the court's analysis; and they establish clear and articulate rules for the future.*[150]

144. *Id.* at 510.

145. *Wnuck*, 136 T.C. at 512.

146. 107 T.C.M. (CCH) 1189 (2015).

147. *See* Waltner v. Comm'r, 107 T.C.M. (CCH) 1189 (2015).

148. PETER ERIC HENDRICKSON, CRACKING THE CODE: THE FASCINATING TRUTH ABOUT TAXATION IN AMERICA (2003); *see also* Hendrickson, *supra* note 37; *supra* Section III.D.

149. *See Waltner,* 107 T.C.M. (CCH) 1189, at ¶ 23. The court "require[d] Mr. Waltner to respond to requests for admissions regarding certain tax materials posted on that Web site that appear to be the Waltners' return information." *Id.* at *28.

150. *Id.* at ¶ 24 (emphasis added); *see also id.* at ¶ 32 ("We address [these pseudolegal arguments in part] because one of the purposes of the Court's opinions is to guide future litigants (and in this instance, the same litigant in other proceedings before this Court).").

Much of the opinion itself is a brutally thorough and thoroughly brutal review of *Cracking the Code*.[151] Judge Buch's opinion examines each of Hendrickson's major arguments and cites conclusive authority refuting them. Additionally, he styled the opinion in a way that is relatively accessible to laypeople, such as by using footnotes rather than extensive inline citations.[152]

Judge Buch's *Waltner* opinion seems to be having the desired effect. Although it is narrower than *Meads*'s comprehensive treatise on pseudolaw, *Waltner* has attracted significant attention from practitioners, academics, and the public.[153] And its tight focus has a beneficial effect: anyone researching the specific pseudolegal ideas *Waltner* analyzes is more likely to run across that opinion, whether directly or by reference.

It is impossible to say for certain whether the *Waltner* opinion has helped retard the spread of pseudolaw, but anecdotally, I have found it an extremely helpful tool in engaging pseudolawyers in public debates and private conversations. Hendrickson himself seems to find the

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151. *Id.* at ¶¶ 32–62.

152. The *Waltner* opinion is not primarily written for laypeople, though. For example, it refers to Hendrickson's tactic of altering the jurat on his tax returns without ever explaining what a jurat is. That is perfectly proper for a judicial opinion, but it shows that there is room for explanations aimed specifically at laypeople, such as the pamphlets suggested above.

153. *See, e.g.*, Reilly, *supra* note 92; Internal Revenue Service, *supra* note 34; *Tales From the Tax Court: You Can't Do That. 'Frivolous' Tax Arguments Won't Stand Up to IRS Scrutiny*, H&R BLOCK TAX INST. (May 4, 2018), http://www.thetaxinstitute.com/tales-from-the-tax-court-you-cant-do-that-frivolous-tax-arguments-wont-stand-up-to-irs-scrutiny/ [https://perma.cc/QU7P-Q86Z]; Steven D. Hamilton, *Cincinnati Tax Guy: Not Cracking The Code*, CINCINNATI TAX GUY (Mar. 9, 2014), http://stevehamiltoncpa.blogspot.com/2014/03/not-cracking-code.html [https://perma.cc/AQ25-CR2J]; James Edward Maule, *Cracking the Tax Protest Movement*, MAULEDAGAIN (Mar. 7, 2014), http://mauledagain.blogspot.com/2014/03/ [https://perma.cc/G6DF-THBX] ("Anyone who thinks Hendrickson is sharing any sort of valuable tax information needs to read the case to learn why he simply is regurgitating the same, long-disproven, nonsensical arguments that analytical examination readily identifies as silly and dangerous."); Paul L. Caron, *Tax Court Issues 63-Page Opinion Debunking Cracking the Code Book*, TAXPROF BLOG (Mar. 3, 2014), https://taxprof.typepad.com/taxprof_blog/2014/03/tax-court-issues.html [https://perma.cc/SB43-RTWM]; *Tax Law Special Report: March 2014: Don't Do This*, DECONCINI MCDONALD YETWIN & LACY, P.C. (Mar. 2014), https://www.deconcinimcdonald.com/tax-law-special-report-march-2014dont-do-this/ [https://perma.cc/9EUV-AQBB]; *Tax Court Provides Chapter-By-Chapter Refutations Of Popular Tax Protester Book "Cracking the Code,"* L. OFF. WILLIAMS & ASSOCIATES, P.C. (Feb. 28, 2014), https://www.williamslawassociates.com/blog/2014/02/tax-court-provides-chapter-by-chapter-refutations-of-popular-tax-protester-book-cracking-the-code.shtml [https://perma.cc/EVY7-VHH7]; Lew Taishoff, *Cracking Up*, TAISHOFF L. (Feb. 27, 2014), https://taishofflaw.com/2014/02/27/cracking-up/ [https://perma.cc/UJU8-B2DQ] ("I wish all judges would read and heed Judge Buch's words. I know they're overloaded often, and hearing the same claptrap endlessly would wear down the stoutest, but . . . [a] decent respect for the opinions of the informed (and the still uninformed seeking enlightenment) requires an explanation."); Russ Fox, *He Cracked the Code (but Won't be Happy with the Result)*, TAXABLE TALK (Feb. 27, 2014), http://www.taxabletalk.com/2014/02/27/he-cracked-the-code-but-wont-be-happy-with-the-result/ [https://perma.cc/GTF7-UNMW] ("I also suspect that others are using arguments in Cracking the Code. They may want to rethink that."); *Cracking the Code Reviewed by Judge Buch*, QUATLOOS! (Feb. 27, 2014), http://quatloos.com/Q-Forum/viewtopic.php?f=51&t=9855&p=167427&hilit=waltner#p167427 [https://perma.cc/UD8J-ER5V].

opinion to be a significant threat to his credibility. He implores his followers to ignore the case, roaring that Judge Buch is "EITHER A MORON OR A SCOUNDREL," but fails to address the judge's criticisms.[154]

Despite its merits, Judge Buch's opinion in *Waltner* did not persuade Steven Waltner. Just as *Wnuck* observed, "[t]he litigant who presses the frivolous [pseudolegal] argument often fails to hear its refutation."[155] Waltner continued to raise frivolous arguments throughout the case, despite the court's warnings and explanations.[156] Judge Buch noted, "[h]is insistence on pressing a point that has been rejected is consistent with an admonition from Cracking the Code: It advises readers to follow its positions notwithstanding the consequences."[157] And indeed, Waltner has continued losing cases with absurd pseudolegal theories, with his most recent loss coming during the drafting of this Article.[158] He is not alone. Hendrickson has many followers still trying to employ fraudulent tax strategies, despite Judge Buch's patient dismantling of the reasoning behind them.

Both *Wnuck* and *Waltner* are correct. Thoroughly explaining why pseudolegal arguments fail is a worthwhile endeavor. It will often fail. Its successes will be invisible; when an opinion does persuade a nascent pseudolawyer to reconsider their beliefs, the outside world will not hear about it. And the effort can be costly, sapping scarce judicial resources for these uncertain returns. But there is a happy middle ground. Thorough opinions like *Waltner* and *Meads* are strong and welcome tools, but not every case needs to go into such detail. It is enough in most cases for judges to simply explain why the arguments before them are wrong in a few sentences, in language aimed at *pro se* litigants rather than legal professionals. When such explanations are available, judges can quote them rather than reinventing the wheel.[159]

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154. Peter Hendrickson, *Assertion: "The courts have ruled against CtC!"*, LOST HORIZONS, http://losthorizons.com/Trolleries/JudicialMyths.htm [https://perma.cc/ME73-N3KV].

155. Wnuck v. Comm'r, 136 T.C. 498, 504–05 (2011).

156. Waltner v. Comm'r, 107 T.C.M. (CCH) 1189, at ¶ 31 (2015).

157. *Id.* at ¶¶ 31–32 (citing HENDRICKSON, *supra* note 148, at 204).

158. *See*, *e.g.*, Waltner v. Comm'r, 748 F. App'x 162 (9th Cir. 2019); Waltner v. Comm'r, 659 F. App'x 440, 441 (9th Cir. 2016); Waltner v. United States, 98 Fed. Cl. 737, 761 (2011), *aff'd*, 679 F.3d 1329 (Fed. Cir. 2012).

159. Indeed, Judge Buch did just that in a recent case when Hendrickson himself came before him, citing to his *Waltner* opinion rather than rewriting it. *See* Hendrickson v. Comm'r, 117 T.C.M. (CCH) 1041, at ¶ 2, (citing Crain v. Comm'r, 737 F.2d 1417, 1417 (5th Cir. 1984) ("We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit.")). Note that quotations would be preferable to mere citations in most cases, as many readers will not follow the chain to read the original case. That makes it even more important that judges draft such opinions with an eye to simple, persuasive language.

Opinions like *Waltner* and *Meads* are what one expert called "weaponized judgments," and they have a key role to play in showing pseudolawyers that their arguments will fail in court.[160] But judges and courts cannot fully leverage such opinions on their own. They are most effective when communities of practitioners and the public can use them to engage pseudolawyers before litigation begins.

C. A Public Engagement Approach

There is a wide and deep network of lawyers, commentators, media figures, academics, and observers who are interested in the phenomenon of pseudolaw.[161] Their levels of interest, activity, and seriousness vary widely, but they are willing and able to take part in the public conversation. They can reach pseudolawyers as well.

Relatively few mainstream lawyers are willing to engage with pseudolawyers directly, though. Whether because they see such conversations as futile or simply because there is no money in it, the conversation about pseudolaw is often made up of pseudolawyers talking only amongst themselves, developing dangerous and facile theories without any input from people who know what they are talking about.

Compare this to the role scientists and their allies take in engaging pseudoscience.[162] They have raised their voices to oppose creationism, anti-vaccine conspiracy theories, miracle cancer cures, and other invidiously irrational notions.[163] Some of these voices are expert scientists, while others are laypeople with a strong interest and a reasonable amount of knowledge about the subject. Together, they practice a decentralized and vigorous form of "science communication," using their expertise and passion to shape the public conversation about the topics of their interest. They even lean in to pseudoscientific communities, opening conversations with creationists and anti-vaccine conspiracy theorists to question their beliefs and disseminate facts that contradict pseudoscientific teachings.

Cass Sunstein and Adrian Vermeule once proposed a version of this approach that they called "cognitive infiltration," and which they conceived as a tool for governments to use in responding to conspiracy theorists: "Government agents (and their allies) might enter chat rooms, online social networks, or even real-space groups and attempt to

160. Email from Donald Netolitzky, Pseudolaw papers (Mar. 1, 2019) (on file with author).

161. *See supra* note 153 and accompanying text.

162. *See, e.g.*, RANDY OLSON, DON'T BE SUCH A SCIENTIST: TALKING SUBSTANCE IN AN AGE OF STYLE (2009); Dan M. Kahan, *Fixing the Communications Failure*, 463 NATURE 296 (2010).

163. *See, e.g.*, OLSON, *supra* note 162; Kahan, *supra* note 162.

undermine percolating conspiracy theories by raising doubts about their factual premises, causal logic or implications for political action."[164] There are some obvious flaws with this model, beginning with the fact that simply publishing a paper proposing a government infiltration program of conspiracy theory groups was likely to inflame them.[165] But they clearly understood the benefits of engaging conspiracy theorists (and thus pseudolawyers) in their own communities.

Rather than clandestine infiltration, members of the legal community should emulate the members of the scientific community and seek open engagement with their skeptics. This includes both lawyers and laypeople, just as science communication is done by both scientists and laypeople. These law communicators need not be, and should not be, covert; they are more likely to have an impact by being open and honest about their background and motivations. By entering the conversation about law and pseudolaw at many points, they can maximize that impact.

As with science communication, law communication will not eliminate irrational thinking—the conversations they have with pseudolawyers will not result in quick or easy victories. But deeper and more consistent engagement between the pseudolegal and legal communities will have many benefits. Increased contact is likely to make nascent pseudolawyers less suspicious of actual legal experts, increase the legal community's understanding of new and developing pseudolegal ideas, discourage marginal pseudolawyers from deepening their commitment to irrational legal theories, and so on.

There are relatively few practical steps for achieving this greater engagement. Some commenters have proposed general models, such as positing that "a counter-narrative could be developed and promoted on the Internet and through social media offering legitimate online support to [pseudolawyers]."[166] But it may be just as effective (and almost certainly cheaper) to encourage lawyers and law students to feel responsibility for how laypeople understand the law.[167] Teaching people why they should care about this conversation, and how best to have it, is likely to have the biggest impact on this approach.

164. Sunstein & Vermeule, *supra* note 89, at 21–22.

165. To be fair, neither the infiltration nor any backlash seems to have happened.

166. March-Safbom, *supra* note 1, at 113.

167. There are already courses being taught that will have this effect. Harvard Law School offers "Writing about the Law for General Audiences" as a seminar, taught by a senior fellow of the Brookings Institute. *Writing About the Law for General Audiences*, COURSE CATALOG, https://web.archive.org/web/20190326055649/https://hls.harvard.edu/academics/curriculum/catalog/default.aspx?o=75191 [https://perma.cc/9S48-DU7Y].

This community-based approach would work well in concert with rule-based and judicially-based approaches. But all those approaches are necessarily based on assumptions about what will persuade pseudolawyers to reconsider their beliefs. The last approach, therefore, calls on academia to be more active in researching pseudolaw and how its believers change their minds.

D. An Academic Approach

This final approach is the simplest of all, because it is simply an appeal for more research. Our understanding of pseudolaw generally is less sophisticated than it should be, and the few people writing about it rely heavily on models and theories imported from other fields.[168] There is nothing wrong with that in principle—social science has many useful tools—but pseudolaw has unique features that may distort their conclusions. We need more and more specific research to answer questions about how believers evaluate pseudolegal claims for truth, whether moderate and early interventions from the court are more effective than harsh and punitive measures later, what share of pseudolaw is attributable to legitimate mental illness, and other open issues. Empirical research on the efficacy of interventions will be particularly critical to implementing more effective solutions.

V. CALL TO ACTION

There is no single, simple, or easy solution to pseudolaw. Law is a human endeavor, and humans are irrational; pseudolaw may be an inevitable byproduct of complex legal systems. But we need not, and should not, simply accept it without protest. Lawyers are custodians as well as beneficiaries of the legal system and we are obligated to protect it—and the people it serves—from this distortion of law itself.

The greatest advantage pseudolaw has may be that the mainstream wants to ignore it. We do not handle it as well as we should because we do not understand it as well as we should; we do not understand it because we do not study it as much as it deserves; we do not study it because it is seen as a sideshow rather than a serious problem. That means that the single most effective thing readers can do to help solve the problem is to bring more attention to it. Continue the conversation about pseudolaw by contributing research, proposing novel solutions, discussing the issue with other legal thinkers, or even debating the law with pseudolawyers.

168. *See, e.g.*, Mallek, *supra* note 47, at 41–49.

This problem crept up on the legal community while we were pretending to be rational and above such things; we can only solve it by acknowledging it openly and dragging it into the light.