

# SOVEREIGNS, FREEMEN, AND DESPERATE SOULS: TOWARDS A RIGOROUS UNDERSTANDING OF PSEUDOLITIGATION TACTICS IN UNITED STATES COURTS

*Though this be madness, yet there is method in 't.*

—Shakespeare, Hamlet

**Abstract:** In recent years, American courts have seen a significant increase in legal filings displaying unusual markings and arguing groundless legal theories. These so-called “pseudolegal” filings are the product of an organized network of amateur legal scholars and con artists who represent an ongoing threat to the justice system. They waste judicial time and resources and encourage abuse of Uniform Commercial Code financing statements for the purpose of harassing others. This Note argues that, in order to combat pseudolaw, courts should make more aggressive use of available gatekeeping tools to screen out these filings. To effectively accomplish this task, courts will need to avail themselves of academic resources that describe and categorize pseudolaw so that their personnel can quickly and accurately distinguish pseudolegal filings from those filed by honest, yet unsophisticated, pro se litigants.

## INTRODUCTION

On November 7, 2011, one David Wynn Miller filed a complaint in the Southern District of California.<sup>1</sup> Miller’s filing would have been unexceptional, but for its content:

*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-Par-se-Syntax-Grammar-Communication-Document-Case-Number~37-2008-00083493 in the San-Diego-County-Superior Court-San-Diego-Hall of Justice.*

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<sup>1</sup> Miller v. Michael Burnett & Matthews, LLP, No. 11cv2590, 2012 WL 909462, at \*1 (S.D. Cal. Mar. 15, 2012). This litigant’s legal name was David Wynn Miller, though he styled his name as David-Wynn:Miller or DAVID-WYNN:MILLER on his pseudolegal filings. Mark Hay, *American Fringes: The Bizarro English Used by Sovereign Citizens*, OZY.COM (July 28, 2020), <https://www.ozy.com/true-and-stories/american-fringes-the-bizarro-english-used-by-sovereign-citizens/312024/>.

For the *Claimant's–Knowledge of the Fraud–Document–Evidence–Communications are With the False and: Misleading–Parse–Syntax–Grammar–Documents by These Vassalees*.<sup>2</sup>

Although his incoherent filing bears no resemblance to a legal theory taught at any law school in America, it is not random nonsense.<sup>3</sup> Instead, it reflects a widespread practice among conspiracy theorists, anti-government extremists, and other fringe figures: the doctrine of pseudolaw.<sup>4</sup> *There are as many different types of pseudolaw as there are pseudolitigants themselves, but the phenomenon can broadly be defined as “a collection of legal-sounding but false rules that purport to be law.”*<sup>5</sup>

Part I of this Note describes the background of pseudolegal movements and some of their common tactics.<sup>6</sup> Part II then illustrates the ways in which pseudolitigation threatens the American justice system by wasting judicial time and resources.<sup>7</sup> It also reviews some of the solutions that have been proposed to address the problem of pseudolaw.<sup>8</sup> Part III concludes that an approach focused on empowering judges to employ the existing tools available to them to efficiently dispose of pseudolitigation is most likely to be successful, especially when supported by academic research to help them identify it when it appears.<sup>9</sup>

## I. THE PSEUDOLITIGANTS: WHO THEY ARE, WHAT THEY DO

Pro se litigants—that is, litigants representing themselves—form a large share of the docket in many courts.<sup>10</sup> Although many pro se litigants proceed in

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<sup>2</sup> *Id.* The remainder of the complaint was similarly unintelligible. *Id.* at \*2. The defendant attempted to have this complaint dismissed and the plaintiffs declared “vexatious litigant[s].” *Id.* Such a declaration would have required the plaintiffs to obtain the court’s leave before filing any future lawsuits. *Id.* The court dismissed the complaint, but declined to declare the plaintiffs vexatious litigants, citing a lack of prior filings in federal court. *Id.* at \*3.

<sup>3</sup> See Colin McRoberts, *Tinfoil Hats and Powdered Wigs: Thoughts on Pseudolaw*, 58 WASHBURN L.J. 637, 638–39 (2019) (describing the history and spread of the “quantum language” dialect in the excerpt above).

<sup>4</sup> See generally *id.* (using the term “pseudolaw” to refer to a wide variety of conceptually related beliefs and actions present among a diverse group of litigants).

<sup>5</sup> *Id.* at 643. Finding a definition of “pseudolaw” that covers the extensive and idiosyncratic field while excluding pro se litigants who are honestly mistaken about the law has proven challenging. See *id.* (describing potentially non-frivolous legal arguments that might fall under the above definition). For instance, a lawyer arguing in good faith for an expansion of the current law to cover a novel situation is effectively arguing in favor of a purported legal rule which may turn out to be false. *Id.*

<sup>6</sup> See *infra* notes 10–98 and accompanying text.

<sup>7</sup> See *infra* notes 99–142 and accompanying text.

<sup>8</sup> See *infra* notes 143–183 and accompanying text.

<sup>9</sup> See *infra* notes 184–252 and accompanying text.

<sup>10</sup> *Pro se*, BLACK’S LAW DICTIONARY (11th ed. 2019); Jessica K. Steinberg, *Demand Side Reform in the Poor People’s Court*, 47 CONN. L. REV. 741, 743 (2015) (noting the high percentage of petitioners in state court who proceed pro se). In matters concerning family law, domestic violence, landlord-tenant, and small claims, as many as 98% of cases involve at least one pro se litigant. *Id.*

good faith, doing their best to navigate a system they may not fully understand, some litigants advance legal theories reflecting a system of beliefs centered on the idea of a vast conspiracy to deprive them of their rights.<sup>11</sup> Such litigants call themselves sovereign citizens, detaxers, freemen-on-the-land, neo-Moors, and a wide variety of other terms, declaring their affiliation with one of several loose philosophical cohorts.<sup>12</sup> Their beliefs are diverse, as are the tactics they employ, but they are united by a common thread of resistance to legal authority and the belief that their own idiosyncratic filings and theories should prevail over the existing law.<sup>13</sup> This wide variety of beliefs, which remains remarkably consistent among ideologically distinct groups, can be collected under a single heading: the concept of “pseudolaw.”<sup>14</sup> Following the direction of “gurus,” figures who promote particular strategies that can supposedly defeat the laws and jurisdiction of their home countries, pseudolitigants march into court armed with a battery of phrases, forms, and rituals, none of which are remotely effective in achieving their stated ends.<sup>15</sup>

This Part discusses the social background from which pseudolitigation springs.<sup>16</sup> It describes common beliefs held by various pseudolitigant groups

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Some jurisdictions do not provide counsel to defendants in low-level misdemeanor cases, resulting in a high proportion of defendants appearing pro se. Sandra G. Mayson & Megan T. Stevenson, *Misdemeanors by the Numbers*, 61 B.C. L. REV. 971, 1031 (2020).

<sup>11</sup> See, e.g., *Henry v. Fernandez-Rundle*, 773 F. App'x 596, 596–97 (11th Cir. 2019) (per curiam) (describing a litigant's belief that as a “living m[a]n” he could not be made subject to a court's jurisdiction); *Bey v. Indiana*, 847 F.3d 559, 560–61 (7th Cir. 2017) (noting that Moorish Science Temple of America members believe that they are not subject to taxation); *El v. AmeriCredit Fin. Servs., Inc.*, 710 F.3d 748, 750 (7th Cir. 2013) (addressing a litigant's belief that the government was using him as collateral to avoid bankruptcy). Empirical data on the prevalence of such litigants are severely lacking, but a recent study suggests that the number of pseudolaw cases appearing in federal courts is increasing. See Brian S. Slater, *Sovereign Citizen Movement: An Empirical Study on the Rise in Activity, Explanations of Growth, and Policy Prescriptions* 6 (Sept. 2016) (B.S. thesis, Naval Postgraduate School), [https://calhoun.nps.edu/bitstream/handle/10945/50485/16Sep\\_Slater\\_Brian.pdf](https://calhoun.nps.edu/bitstream/handle/10945/50485/16Sep_Slater_Brian.pdf) [<https://perma.cc/QTZ5-2JN7>].

<sup>12</sup> Donald J. Netolitzky, *A Pathogen Astride the Minds of Men: The Epidemiological History of Pseudolaw* 3–9 (May 3, 2018) (unpublished manuscript), [https://papers.ssrn.com/sol3/papers.pcfm?abstract\\_id=3177472](https://papers.ssrn.com/sol3/papers.pcfm?abstract_id=3177472) [<https://perma.cc/3T4Y-EUPZ>].

<sup>13</sup> Donald J. Netolitzky, *A Rebellion of Furious Paper: Pseudolaw as a Revolutionary Legal System* 2–3 (May 3, 2018) (unpublished manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3177484](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3177484) [<https://perma.cc/L4PY-5H5P>]. Although no two pseudolegal practitioners are identical, they tend to share several common beliefs, including the view that state authority over them is somehow illegitimate or defective and that principles of contract law can be used to either escape punishment for offenses or to generate unlimited fiscal liability in others. See *id.* at 14–17 (describing pseudolitigants' resistance to authority and use of misconceived fiscal ideas).

<sup>14</sup> See McRoberts, *supra* note 3, at 643 (adopting the term “pseudolaw” to describe these behaviors). A single term is useful because it describes pseudolitigants' *behavior in court* rather than the ideological path a litigant took to arrive at the litigant's present position. See Netolitzky, *supra* note 12, at 3–9 (describing numerous different groups that all employ pseudolaw).

<sup>15</sup> See McRoberts, *supra* note 3, at 638–42 (describing several of these gurus and their theories).

<sup>16</sup> See *infra* notes 20–32 and accompanying text.

and what these groups seek to accomplish with their filings.<sup>17</sup> It lists several indicia that can be used to identify pseudolitigants and distinguish them from ordinary pro se filers.<sup>18</sup> Finally, it describes a sample pseudolegal group, providing a case study in the history and methods of pseudolitigants.<sup>19</sup>

### *A. Sovereigns and Militia Men: Pseudolitigants in Social Context*

Pseudolitigants are often confused with “sovereign citizens,” and although there is substantial overlap between the groups, they are not one and the same.<sup>20</sup> Sovereign citizens are merely one group of individuals who *employ* pseudolaw argumentation.<sup>21</sup> The social movements from which the practice owes its origin, however, are instructive to more fully understanding the phenomenon of pseudolaw.<sup>22</sup> The group known as “sovereign citizens” is perhaps the oldest pseudolegal group, as well as the most familiar to many writers and the broader public.<sup>23</sup> This wide recognition has led some pseudolegal practitioners, such as the YouTube personality Marc Stevens, to distance themselves from the sovereign citizen movement, perhaps due to the negative stigma associated with the group.<sup>24</sup>

The basic tenets of sovereign citizen belief, according to the Southern Poverty Law Center, are that at some point between the founding of America and today, the rightful government of the United States was usurped by a secret conspiracy intent on depriving Americans of their rights and wealth.<sup>25</sup> By understanding this conspiracy, sovereign citizens claim, one can liberate oneself

<sup>17</sup> See *infra* notes 33–62 and accompanying text.

<sup>18</sup> See *infra* notes 63–89 and accompanying text.

<sup>19</sup> See *infra* notes 90–98 and accompanying text.

<sup>20</sup> See, e.g., Susan P. Koniak, *The Chosen People in Our Wilderness*, 95 MICH. L. REV. 1761, 1765–66 (1997) (using the terms “sovereign citizen” and “freemen” interchangeably). Many sources use the term “sovereign citizen” to describe all pseudolitigants, even though the term carries specific connotations and is not always apropos. McRoberts, *supra* note 3, at 638.

<sup>21</sup> McRoberts, *supra* note 3, at 643.

<sup>22</sup> See Netolitzky, *supra* note 12, at 2–17 (charting the spread of pseudolaw ideas through various fringe groups, and the specific and distinct pseudolaw techniques advanced by each).

<sup>23</sup> See Koniak, *supra* note 20, at 1765–68 (describing beliefs of the sovereign citizen movement, including the belief that sovereign citizens can defeat judicial jurisdiction by filing “Quiet-Title Actions” and their suspicion that the government has been captured by foreign enemies); McRoberts, *supra* note 3, at 638 n.2 (noting the presence of pop culture references to the sovereign citizen movement as a sign of the movement’s cultural presence); Netolitzky, *supra* note 12, at 3–4 (describing the sovereign citizen movement as an “incubator” for pseudolegal ideas).

<sup>24</sup> McRoberts, *supra* note 3, at 642. Marc Stevens, a well-known pseudolitigant, denies any connection with the sovereign citizen movement, despite sharing many of the movement’s core beliefs. See About, MARCSTEVENS.NET, <http://marcstevens.net/about> [<https://web.archive.org/web/20191213095911/http://marcstevens.net/about>] (website no longer active) (describing himself as an anarchist and “not a Sovereign Citizen, Freeman on the Land or Common Law type”).

<sup>25</sup> *Sovereign Citizens Movement*, S. POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/ideology/sovereign-citizens-movement> [<https://perma.cc/NM36-VA5U>].

from this bondage, escape punishment for violating unjust laws, and even obtain vast wealth.<sup>26</sup>

Another of the largest subgroups of pseudolitigants active today is the Moorish Law group, largely comprised of African-Americans.<sup>27</sup> Moorish Law practitioners often claim that African-Americans have special rights not available to others, usually in connection with their supposed original habitation of the American continent.<sup>28</sup> Some Moorish Law practitioners instead argue that, based on supposed defects in the U.S. Constitution's Fourteenth Amendment, their members enjoy a special citizenship status.<sup>29</sup>

Although this Note focuses on American pseudolitigants, it is worth noting that foreign jurisdictions often have their own equivalents, such as Canada's "detaxers" and Ireland's "Tir na Saor."<sup>30</sup> The common belief in the supremacy of "common law" among pseudolitigants makes it unsurprising that they appear most frequently in common-law countries, but pseudolitigants adopting similar beliefs and strategies have appeared in civil-law countries such as Germany and Austria as well.<sup>31</sup> Moreover, many of the core animating beliefs held by pseudolitigants are shared among different countries, and many of the motifs and indicia in their filings are shared as well.<sup>32</sup>

### B. Pseudolitigant Beliefs and Goals

Pseudolitigant groups tend to be idiosyncratic and individualistic, but they still share several beliefs.<sup>33</sup> Common threads among such groups are a focus on

<sup>26</sup> See William P. Stork & Jordan Beumer, *Sovereign Citizens in South Carolina: Who Are They and How Do We Deal with Them?*, 30 S.C. LAW. 42, 44 (2019) (outlining goals of sovereign citizen litigants, including avoiding paying taxes and punishing their perceived enemies).

<sup>27</sup> Netolitzky, *supra* note 12, at 4–5. Within the United States, groups falling into this category may in fact represent a majority of all pseudolegal practitioners. *Id.* at 5.

<sup>28</sup> Netolitzky, *supra* note 13, at 14 (describing the Washitaw Moorish Law group, which claims special status based on their purported original occupation of American territory). Another commonly purported source of special immunity to U.S. law comes from an eighteenth century treaty between the United States and Moroccan pirate states. See *Murakush Caliphate of Amexem Inc. v. New Jersey*, 790 F. Supp. 2d 241, 269–70 (D.N.J. 2011) (explaining the petitioner's belief that the Treaty of Morocco grants him immunity to lawful search and arrest by U.S. law enforcement).

<sup>29</sup> Leah Nelson, 'Sovereigns' in Black, S. POVERTY L. CTR. (Aug. 24, 2011), <https://www.splcenter.org/fighting-hate/intelligence-report/2011/%E2%80%98sovereigns%E2%80%99-black> [https://perma.cc/YA64-87GS]. These groups believe that the Fourteenth Amendment to the U.S. Constitution, rather than extending citizenship to persons of African descent, instead created "artificial persons" with only legal, and not actual, existence. *Id.*

<sup>30</sup> Netolitzky, *supra* note 12, at 8–10.

<sup>31</sup> See Marco Müller, *Germany's Reichsbürger Movement Out to 'Delegitimize the State'*, DEUTSCHE WELLE (May 8, 2018), <https://www.dw.com/en/germanys-reichsb%C3%BCrger-movement-out-to-delegitimize-the-state/a-43703824> [https://perma.cc/P3ND-PM6B] (describing Germany's Reichsbürger movement, a local group that practices pseudolaw techniques).

<sup>32</sup> See *infra* notes 41–62 and accompanying text.

<sup>33</sup> McRoberts, *supra* note 3, at 642 (describing the overall coherency of pseudolitigant beliefs among a diversity of groups that employ them).

conspiracy theories and the belief that the only law an individual needs to obey is “common law,” with statutory laws and restrictions imposed by governments forming an illegitimate overlay.<sup>34</sup> The focus of much pseudolegal activity is on freeing the individual actor from this overlay.<sup>35</sup>

## 1. Common Goals of Pseudolitigants

Pseudolitigants appear in court for a variety of purposes, but their objectives tend to fall into several broad categories.<sup>36</sup> Some come to court reactively, hoping to escape incarceration or punishment for criminal offenses.<sup>37</sup> Others are more proactive, hoping to avoid paying income taxes, nullify their debts, or obtain free money.<sup>38</sup> Still others seem to be motivated by spite or grudge and seek to hamper government officials or prevent them from carrying out their duties.<sup>39</sup> It is sometimes difficult to tell which pseudolitigants are operating under the sincere but mistaken belief that their theories are efficacious, and which ones are maliciously seeking to harass and abuse their targets or escape just punishment.<sup>40</sup>

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<sup>34</sup> Koniak, *supra* note 20, at 1768–69 (describing pseudolitigant belief in a “[c]ommon [l]aw” system separate from the current “illegitimate” legal regime); see Michelle M. Mallek, *Uncommon Law: Understanding and Quantifying the Sovereign Citizen Movement* 27–30 (Dec. 2016) (M.A. thesis, Naval Postgraduate School), <https://calhoun.nps.edu/handle/10945/51576> [<https://perma.cc/E6JR-35PF>] (describing pseudolitigant belief in illegitimacy of federal authority).

<sup>35</sup> See Joshua P. Weir, *Sovereign Citizens: A Reasoned Response to the Madness*, 19 LEWIS & CLARK L. REV. 829, 837–38 (2015) (articulating pseudolitigants’ beliefs regarding the “opt-out” nature of governmental authority).

<sup>36</sup> See Netolitzky, *supra* note 13, at 6–7 (categorizing pseudolitigant activity based on goals). Dr. Netolitzky separates pseudolitigant activity into four major groupings: actions taken to escape criminal liability (often by contesting courts’ jurisdiction); actions taken to escape paying income tax; attempts to interfere with government actions; and attempts to gain money by force of law. *Id.* Brian S. Slater, in his thesis’s quantitative analysis of pseudolitigants, includes several additional categories. Slater, *supra* note 11, at 44–45. He asserts that the most common goal of pseudolitigant activity is to undermine the legitimacy of a court’s decision, usually via a jurisdictional challenge. *Id.*

<sup>37</sup> See Slater, *supra* note 11, at 44–45 (categorizing pseudolitigant activity by the criminal charge involved). Many of Slater’s categories correspond to specific criminal charges, in which the pseudolegal tactic presumably aimed to avoid criminal liability for the named charge. *Id.*

<sup>38</sup> *Id.* Both Slater and Dr. Netolitzky have set aside a category for pseudolaw-aided attempts at tax evasion, and Slater also includes a “fraud” category which encompasses many of these “money for nothing” schemes. Netolitzky, *supra* note 13, at 6–7; Slater, *supra* note 11, at 44–45.

<sup>39</sup> Netolitzky, *supra* note 13, at 6–7; Slater, *supra* note 11, at 44–45. Slater describes this behavior as “retaliation” and Dr. Netolitzky describes it as “attack or restrain” behavior. Netolitzky, *supra* note 13, at 6–7; Slater, *supra* note 11, at 44–45.

<sup>40</sup> Francis X. Sullivan, *The “Usurping Octopus of Jurisdictional/Authority”: The Legal Theories of the Sovereign Citizen Movement*, 1999 WIS. L. REV. 785, 812.

## 2. Common Beliefs of Pseudolitigants

Just like their goals, the beliefs of pseudolitigants vary wildly.<sup>41</sup> Still, they can broadly be categorized as falling into several categories—what Dr. Donald Netolitzky, Complex Litigation counsel at the Court of Queen’s Bench of Alberta, describes as “the Pseudolaw Memeplex.”<sup>42</sup>

### *a. Everything Is a Contract*

Pseudolitigants often believe that all legal relationships, including those between state and citizen, are a contract.<sup>43</sup> This mindset enables them to reject the “offer” of state authority and thus escape their legal obligations.<sup>44</sup> Many pseudolitigants believe that failure to object to a contractual offer constitutes acceptance of its terms, which leads them to obsessively reject what they perceive as offers directed at them, as well as to attempt to bind or trap others in unilaterally foisted agreements.<sup>45</sup>

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<sup>41</sup> Michael Mastrony, Note, *Common-Sense Responses to Radical Practices: Stifling Sovereign Citizens in Connecticut*, 48 CONN. L. REV. 1013, 1021 (2016); see McRoberts, *supra* note 3, at 638–42 (describing the broad spectrum of pseudoligant beliefs by examining three individual pseudoligant “gurus”). The studied gurus include David Wynn Miller, who invented his own language which he claims will allow his followers to win court cases; Winston Shrout, who created his own home-made securities which he mailed to a bank with instructions to honor them; and Marc Stevens, who argues that the government must produce evidence to prove that its laws apply to defendants. McRoberts, *supra* note 3, at 638–41.

<sup>42</sup> Netolitzky, *supra* note 13, at 1. Dr. Netolitzky’s role entails managing what the Court of Queen’s Bench of Alberta refers to as “complex litigants,” which usually means pseudolitigants. Email from Donald Netolitzky, Legal Couns., Alberta Ct. of Queen’s Bench, to author (Jan. 3, 2020, 21:00 EST) (on file with author). He has written several essays on the phenomenon of pseudolaw and spoken about the topic at conferences. See, e.g., Netolitzky, *supra* note 12; Netolitzky, *supra* note 13. Other authors have described in detail individual beliefs noted above, though others have not yet fully collated them. See Michael N. Colacci, *Sovereign Citizens: A Cult Movement That Demands Legislative Resistance*, 17 RUTGERS J.L. & RELIGION 153, 154–55 (2015) (describing the “strawman” duality theory, a theory that claims that government authority exists only over fictional strawmen that the government created in the names of its citizens); Mallek, *supra* note 34, at 12–13 (describing the strawman theory in connection with money for nothing schemes); Weir, *supra* note 35, at 837–38 (describing the belief in defective government authority).

<sup>43</sup> Netolitzky, *supra* note 13, at 10–11.

<sup>44</sup> See, e.g., *Gravatt v. United States*, 100 Fed. Cl. 279, 283 (2011) (describing a pseudoligant’s claim that obligations to follow laws derive from a secret “contract” with the United States); ROBERT ARTHUR MENARD, BURSTING BUBBLES OF GOVERNMENT DECEPTION 36 (2004) (describing this theory of “all law as contract”). Robert Arthur Menard, the author of *Bursting Bubbles of Government Deception*, claims that he does not have to follow the law if he has “constructively den[ie]d consent to be governed” via contract with the government. *Id.* at 5.

<sup>45</sup> See, e.g., *Oyer v. United States*, No. 18-903T, 2019 WL 6358035, at \*3–4 (Fed. Cl. Nov. 27, 2019) (describing one pseudoligant’s belief that a government agency’s non-response to her communication constituted acceptance of a binding contract between them).

*b. The Law May Only Act Where There Is an Injured Party*

Pseudolitigants in some jurisdictions have adopted the belief that the government lacks the legal authority to prosecute so-called “victimless” crimes, a theory they often advance to dispute prosecutions for failing to pay income tax or obey licensing authorities.<sup>46</sup> Pseudolitigants offer as examples of victimless crimes driving without a license or failing to pay one’s taxes.<sup>47</sup>

*c. State Authority Is Defective or Limited*

A core belief of pseudolitigants is that the ostensible authority of the state is, in fact, defective or incomplete.<sup>48</sup> Therefore, individuals can escape that authority through the proper application of pseudolegal techniques.<sup>49</sup> These techniques include declarations or special forms which can be used to free the pseudolitigant from the obligation to follow licensing laws, or even from court authority after they have been arrested.<sup>50</sup>

*d. The “Strawman” Duality*

Synthesizing the above beliefs, many pseudolitigants have concluded that the state’s purported authority is over a strawman, or fictional legal person bound to the litigant.<sup>51</sup> The precise details of this assertion vary with the pseu-

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<sup>46</sup> Caesar Kalinowski IV, *A Legal Response to the Sovereign Citizen Movement*, 80 MONT. L. REV. 153, 163 (2019) (describing the common pseudolitigant belief that government cannot enforce laws in the absence of an injured party); Weir, *supra* note 35, at 832 (describing a pseudolitigant’s claim in court that a case cannot proceed without an injured party).

<sup>47</sup> MENARD, *supra* note 44, at 5 (asserting that driving without a license does not cause harm to another and is therefore permissible); see Kalinowski, *supra* note 46, at 163 (describing pseudolitigants’ assertion that they cannot be prosecuted for tax fraud in the absence of an aggrieved party).

<sup>48</sup> Netolitzky, *supra* note 13, at 14–15.

<sup>49</sup> See Sullivan, *supra* note 40, at 797–801. This belief tends to be highly variant among jurisdictions and even among pseudolegal groups within the same jurisdiction. See, e.g., Koniak, *supra* note 20, at 1777–81 (describing narratives of abandoned government authority among various groups, who alternatively blame the 1933 state of emergency, Reconstruction, or *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), for the end of legitimate government authority); Netolitzky, *supra* note 13, at 14–15 (describing the German Reichsbürger community’s belief that the World War II-era German Reich persists in some form).

<sup>50</sup> See Bethany Lindsay, *Non-‘Person’ Loses Another Battle in War on Taxes*, CTV NEWS (Mar. 7, 2011), <https://bc.ctvnews.ca/non-person-loses-another-battle-in-war-on-taxes-1.615478> [<https://perma.cc/kZ84-8287>] (describing a pseudolitigant’s argument that a court had no authority over him because he was not a “person”); TENN. FUSION CTR. ET AL., INDICATORS OF SOVEREIGN IDEOLOGY, [http://www.ndsaa.org/image/cache/Indicators\\_of\\_Sovereign\\_Ideology.pdf](http://www.ndsaa.org/image/cache/Indicators_of_Sovereign_Ideology.pdf) [<https://perma.cc/4F42-36CM>] (depicting several homemade signs and license plates meant to allow pseudolitigants to avoid licensing fees).

<sup>51</sup> Weir, *supra* note 35, at 840. Severing this connection or removing the strawman, in a pseudolitigant’s view, destroys the state’s authority over the individual. *Id.*; see also *Monroe v. Beard*, 536 F.3d 198, 203 n.4 (3d Cir. 2008) (describing a pseudolitigant’s argument regarding the government’s authority over his strawman). In addition to using their strawmen to defeat government authority,



dolitigant's beliefs, which tend towards the conspiratorial.<sup>52</sup> For instance, some pseudolitigants assert that this strawman was deliberately created in order to perpetrate the hoax of government authority.<sup>53</sup> Others believe that the strawmen were created in order to secure some financial benefit to the government entity that created them.<sup>54</sup> Regardless of why the strawmen arose, pseudolitigants generally believe that they can sever their legal connection to their strawman and thereby escape a court's jurisdiction.<sup>55</sup>

### *e. A Variety of "Money for Nothing" Schemes*

The final common belief among pseudolitigants is that proper application of pseudolegal techniques can unlock vast wealth, either by negating the individual's debts or by providing access to secret reserves held in the individual's name.<sup>56</sup> Often this belief comes in connection with the strawman belief, caus-

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many pseudolitigants believe that the government holds money in trust on the strawman's behalf and the pseudolitigants can use the strawman as a tool to access that money. See Kalinowski, *supra* note 46, at 164 (describing the "[r]edemption [s]cheme" strategy by which citizens can earn money accrued by strawmen).

<sup>52</sup> Compare *Meet Your Strawman*, REDEMPTION SERV., <https://www.redemptionsservice.com/meet-your-strawman> [<https://perma.cc/A6LE-F5HM>] (asserting that the strawman conspiracy arose in 1933, after the purported "bankruptcy" of the U.S. government), with SOVEREIGNTY EDUC. & DEF. MINISTRY, PROOF THAT THERE IS A "STRAW MAN" (2015), <https://sedm.org/Forms/05-MemLaw/StrawMan.pdf> [<https://perma.cc/F999-ZTCM>] (asserting that the strawman conspiracy arose in connection with the Thirteenth Amendment to the U.S. Constitution's prohibition of involuntary servitude).

<sup>53</sup> SOVEREIGNTY EDUC. & DEF. MINISTRY, *supra* note 52.

<sup>54</sup> *Meet Your Strawman*, *supra* note 52. Schemes involving the use of the strawman to secure access to imagined vast wealth are often referred to as "redemption" schemes. Weir, *supra* note 35, at 840–41.

<sup>55</sup> See Donald Netolitzky, Organized Pseudolegal Commercial Argument ["OPCA"] Materials: A Bestiary of Questionable Documents 113 (Feb. 15, 2016) (unpublished manuscript), <https://www.bc.edu/content/dam/bc1/schools/law/pdf/law-review-content/BCLR/62-3/OPCA-Documents-Bestiary.pdf> [<https://perma.cc/82S8-F32F>] (citing a pseudolitigant scheme to escape legal authority using the strawman technique). In the case described, the pseudolitigant took the step of declaring his strawman "dead" and writing an obituary for it, thereby (supposedly) terminating any authority the court may have had over him. *Id.* at 115–19.

<sup>56</sup> See Mallek, *supra* note 34, at 13 (describing this money for nothing scheme). These are often deemed "redemption" schemes, reflecting a belief that debt obligations may be transferred to the U.S. Treasury ("redeemed") through one's strawman identity. See Terri A. March-Safbom, Weapons of Mass Distraction: Strategies for Countering the Paper Terrorism of Sovereign Citizens 27 (Mar. 2018) (M.A. thesis, Naval Postgraduate School), <https://calhoun.nps.edu/handle/10945/58335> [<https://perma.cc/8KN6-SRQP>] (describing details of a "redemption" scheme). The scheme described consists of a belief that each citizen has two identities, their actual person and a "government-controlled and enslaved strawman." *Id.* (quoting Michael Crowell, *A Quick Guide to Sovereign Citizens*, U.N.C. SCH. GOV'T ADMIN. JUST. BULL., Nov. 2015, at 2, <https://www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/aojb1504.pdf> [<https://perma.cc/Y9UG-HVTK>]). The purpose of this scheme, according to the pseudolitigants, is to collateralize its debt to foreign investors using its citizens, a move that they believe occurred after the end of the gold standard. *Id.* Those who believe in this scheme also believe that each strawman has a secret account at the U.S. Treasury with hundreds of thousands or even mil-

ing these pseudolitigants to demand the massive sums of money purportedly connected to the strawman.<sup>57</sup> Other pseudolitigants will frame the money to which they are entitled as a fund held in trust for them by some secretive bank or government entity.<sup>58</sup>

Beyond these beliefs, most pseudolegal groups are motivated by an underlying ideology.<sup>59</sup> Some retain the right-wing, anti-government ethos of the early militia movements, but others adopt belief structures that more closely resemble left-wing “counterculture” groups.<sup>60</sup> Pseudolitigants often stress the importance of “freedom,” by which they mean freedom from the laws of the nation in which they reside.<sup>61</sup> Regardless of how they come to hold their beliefs, this emphasis on “freedom” (to act, to make contracts, to travel, and so on) permeates their writings and filings.<sup>62</sup>

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lions of dollars in it, and that proper “redemption” using special forms and language can allow the person to claim this money. *Id.*

<sup>57</sup> *Monroe v. Beard*, 536 F.3d 198, 203 n.4 (3d Cir. 2008). Frequently this demand will take the form of a demand for payment to either use the pseudolitigant’s name or hold the pseudolitigant in custody in connection with criminal proceedings. *Id.*; see also *Fee Schedule for Basic Trespass to Be Considered by a Lawful Jury of the People/Freemen*, NATURALCOMMONLAW.ORG, [https://naturalcommonlaw.org/?page\\_id=40](https://naturalcommonlaw.org/?page_id=40) [<https://perma.cc/9RFS-HCVQ>] [hereinafter *Fee Schedule*] (treating the pseudolitigant’s name as a trademark and demanding payment for its use).

<sup>58</sup> See *Bryant v. Wash. Mut. Bank*, 524 F. Supp. 2d 753, 758–59 (W.D. Va. 2007) (describing a pseudolitigant’s claim that she should have been able to pay a debt using a bill of exchange drawing on secret profits held in trust for her), *aff’d* 282 F. App’x 260 (4th Cir. 2008).

<sup>59</sup> Netolitzky, *supra* note 12, at 1.

<sup>60</sup> See generally Devon Bell, *The Sovereign Citizen Movement: The Shifting Ideological Winds* (Mar. 2016) (M.A. thesis, Naval Postgraduate School), <https://calhoun.nps.edu/handle/10945/48519> [<https://perma.cc/25FY-SX3N>] (describing a shift over time in sovereign citizen ideology); Andy Whitely, *The One People’s Public Trust: Your Frequently Asked Questions, Answered*, WAKE UP WORLD (Feb. 26, 2013), <https://wakeup-world.com/2013/02/26/the-one-peoples-public-trust-oppt-your-frequently-asked-questions-answered/> [<https://web.archive.org/web/20190628014115/https://wakeup-world.com/2013/02/26/the-one-peoples-public-trust-oppt-your-frequently-asked-questions-answered/>] (website no longer active). Many pseudolegal groups share the anti-government ethos of Randy Weaver, the instigator of a 1992 standoff at Ruby Ridge, Idaho. Michelle Theret, *Sovereign Citizens: A Homegrown Terrorist Threat and Its Negative Impact on South Carolina*, 63 S.C. L. REV. 853, 873 (2012). Weaver was involved in the far-right militia group known as the Aryan Nations. *Id.* Other groups, such as the One People’s Public Trust (OPPT), adopt a more cooperative and less combative stance in their documents and theories while using language reminiscent of New Age movements. See Brian Kelly, *Conversation with Heather and Brian*, ONE PEOPLE’S PUB. TR. (Jan. 3, 2013), <https://i-uv.com/oppt-absolute/conversation-with-heather-brian/> [<https://perma.cc/AM42-PGGD>] (claiming that the OPPT “all chose to be here at this time to experience the journey we all are embarking on right now, altogether as one people united” and that the group seeks to “pave the way into a new age for peace and prosperity”).

<sup>61</sup> See Whitely, *supra* note 60 (asserting a freedom not to cooperate with government).

<sup>62</sup> See *id.*; see also Netolitzky, *supra* note 55, at 16–34 (compiling pseudolitigant documents that frequently assert the primacy of “freedom”); *OPPT FAQ*, IUV, <https://i-uv.com/oppt-absolute/oppt-tools/oppt-faq/> [<https://perma.cc/28JA-Y8W8>] (claiming restoration of “freedom” through use of pseudolegal techniques).

### C. Pseudolitigation Gurus and Common Indicia

Understanding pseudolitigants requires understanding the nature of the pseudolaw phenomenon as a complex and highly developed parallel legal reality, rather than a series of isolated conspiracy theorists and desperate litigants.<sup>63</sup> Most pseudolitigants do not invent the techniques they employ in court; instead, they get them from “gurus,” who make a living selling pseudo-legal advice.<sup>64</sup> These gurus are idiosyncratic, each having developed their own technique, but they share certain strategies and beliefs.<sup>65</sup>

In 2012, Associate Chief Justice Rooke, Court of Queen’s Bench of Alberta, issued *Meads v. Meads* in which he attempted to document these strategies to identify what he called “Organized Pseudolegal Commercial Arguments” (OPCA).<sup>66</sup> The following subsections describe some of the indicia first catalogued by Justice Rooke.<sup>67</sup>

#### 1. Accepted for Value/Fee Schedules

A common belief among pseudolitigants is the power of their arguments to compel payment of imagined “fees” or to impose unilateral agreements upon the court.<sup>68</sup> One sign that a pseudolitigant is pursuing such a strategy is the

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<sup>63</sup> See Netolitzky, *supra* note 13, at 9–17 (describing the core concepts animating pseudolegal theories, which remain consistent among different pseudolegal practitioners).

<sup>64</sup> See Nathan J. Hochman, *Tax Defiers and the Tax Gap: Stopping “Frigorous Squared” Before It Spreads*, 20 STAN. L. & POL’Y REV. 69, 70 (2009) (describing the distribution network for “tax defier” pseudolitigants, including mass marketing of books and videotapes as well as social media presence); McRoberts, *supra* note 3, at 638–42 (identifying several prominent pseudolegal gurus); see also Mark Pitcavage, *Winston Shrout: The Rise and Fall of a Sovereign Citizen Guru*, ANTI-DEFAMATION LEAGUE: ADL BLOG (Mar. 21, 2016), <https://www.adl.org/blog/winston-shrout-the-rise-and-fall-of-a-sovereign-citizen-guru> [<https://perma.cc/XG87-Q6UL>] (describing one prominent pseudolegal guru who distributed his lessons for profit).

<sup>65</sup> McRoberts, *supra* note 3, at 642 (describing alignment among different pseudolegal gurus); see Slater, *supra* note 11, at 16 (describing the network of ideologically distinct anti-government actors cooperating during the Malheur Wildlife Refuge standoff). The Malheur Wildlife Refuge standoff began when a network of right-wing militia groups invaded and occupied a federal wildlife refuge building in Oregon in 2016. *Oregon Standoff Timeline: 41 Days of the Malheur Refuge Occupation and the Aftermath*, THE OREGONIAN (Jan. 9, 2019), [https://www.oregonlive.com/portland/2017/02/oregon\\_standoff\\_timeline\\_41\\_da.html](https://www.oregonlive.com/portland/2017/02/oregon_standoff_timeline_41_da.html) [<https://perma.cc/RW5C-FJXB>]. A number of organizations, some identified with sovereign citizen beliefs and some not, mobilized to support the occupiers in-person and online via dissemination of sovereign citizen propaganda. See Slater, *supra* note 11, at 15–16 (describing the mobilization of anti-government groups and support from sovereign citizen propagandist Pete Santilli).

<sup>66</sup> *Meads v. Meads*, 2012 ABQB 571 (Can.).

<sup>67</sup> See *id.* paras. 199–255 (listing indicia of OPCA litigants).

<sup>68</sup> *Id.* paras. 505–07; see Sharlene Music, *How to Make and File a Fee Schedule for Protection from Corporate Abuse*, MUSICIANS4FREEDOM, <https://musicians4freedom.com/2011/09/how-to-make-and-file-a-fee-schedule-for-protection-from-corporate-abuse/> [<https://perma.cc/5GVK-V2CY>] (explaining the process of creating a so-called “fee schedule” to charge law enforcement in the case of arrest).

use of a stamp to mark a filing, usually at a forty-five degree angle, which includes the phrase “accepted for value.”<sup>69</sup> Other pseudolitigants will present the court or other government actors with “fee schedules” demanding exorbitant sums as fines for conducting ordinary law enforcement business, such as arrest or incarceration.<sup>70</sup>

## 2. Unusual Typography

One common and characteristic sign of a pseudolitigant is the use of unusual and grammatically inapposite punctuation, capitalization, and spelling, especially regarding names.<sup>71</sup> The pseudolitigation guru David-Wynn: Miller popularized what he called a “quantum grammar” (also known as “In the Truth”), a dialect composed largely of prepositional phrases, lacking most action verbs and usually using excessive hyphenation.<sup>72</sup> Justice Rooke noted that incorporation of colons and dashes into a name is another common pseudolitigant practice, as exemplified by the guru David Kevin Lindsay, who typically styles his name as “David-Kevin:Lindsay.”<sup>73</sup> Another common tactic is to identify the litigant as “X of the family Y” or “X of the clan Y.”<sup>74</sup> Additionally, some pseudolitigants will append a trademark or copyright symbol to their name.<sup>75</sup> A frequent claim of pseudolitigants is that the fully capitalized version of their

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<sup>69</sup> *Meads*, 2012 ABQB 571, para. 218; *see, e.g.*, *El v. York Cnty. Gen. Sessions*, No. CV410–253, 2010 WL 5624651, at \*1 (S.D. Ga. Dec. 13, 2010) (noting filings stamped by litigant with a home-made stamp).

<sup>70</sup> *Meads*, 2012 ABQB 571, paras. 505–07; *see Fee Schedule, supra* note 57 (setting out cost per hour, payable only in gold, for detaining the bearer of the schedule).

<sup>71</sup> *Meads*, 2012 ABQB 571, paras. 206–13.

<sup>72</sup> *United States v. Kriemelmeyer*, No. 07-CR-052-C-01, 2007 WL 5479293, at \*1 (W.D. Wis. July 26, 2007) (describing characteristics of pseudolitigation guru David-Wynn: Miller’s language, including “abundant use of prepositional phrases, the absence of action verbs (except in gerund form) and the overuse of hyphens and colons”). Litigants from jurisdictions as varied as Hawaii, Indiana, and Kansas have attempted to use this grammar, without success. *See, e.g.*, *United States v. Pflum*, No. 04-40008-01, 2013 WL 4482706, at \*1 (D. Kan. Aug. 21, 2013); *Borkholder v. PNC Bank*, No. 12-CV-312, 2012 WL 3256888, at \*2 (N.D. Ind. Aug. 8, 2012); *Kaihana v. Dist. Ct. of the First Cir., Waianae*, No. 12-00041, 2012 WL 928705, at \*1 (D. Haw. Mar. 16, 2012). Despite the pseudolitigants’ belief in their power of this language, it has thus far failed to produce the outcomes they desire, and each pseudolitigant’s filing was dismissed. *Pflum*, 2013 WL 4482706, at \*3; *Borkholder*, 2012 WL 3256888, at \*2; *Kaihana*, 2012 WL 928705, at \*2.

<sup>73</sup> *Lindsay, supra* note 50; *see also Meads*, 2012 ABQB 571, paras. 206–07 (describing this typographical style, in which a pseudolitigant incorporates punctuation into their name in an unusual fashion, producing names such as “David-Kevin:Lindsay”).

<sup>74</sup> *Meads*, 2012 ABQB 571, para. 209; *TENN. FUSION CTR. ET AL., supra* note 50; *see, e.g.*, *Hawthorne v. Silverleaf Funding, LLC*, No. 16 CV 02934, 2017 WL 2573213, at \*1 (N.D. Ill. June 14, 2017).

<sup>75</sup> *See, e.g.*, *Gravatt v. United States*, 100 Fed. Cl. 279, 285 (2011) (featuring a pseudolitigant’s appendage of a copyright symbol to his name); *see also Meads*, 2012 ABQB 571, para. 213 (describing application of such symbols to a foisted unilateral agreement scheme).

names that appear on court filings does not refer to them, but to some fictional person or corporation.<sup>76</sup>

### 3. Characteristic Phraseology

Certain phrases recur often in pseudolegal filings.<sup>77</sup> Pseudolitigants will often describe themselves as “a flesh and blood [wo]man,” a “freeman,” a “free-man-on-the-land,” or a “sovereign man.”<sup>78</sup> Some pseudolitigants will deny being a “person” or a “corporation,” or will describe themselves as an “agent” or “secured party” for a similarly named person.<sup>79</sup> Others will claim to be an ambassador, or claim to be a member of an aboriginal group or tribe.<sup>80</sup> Pseudolitigants will often describe the state or federal government or the court as a “corporation” or as “de facto.”<sup>81</sup> Other common phrases found in pseudolitigants’ filings in-

<sup>76</sup> See *Bendeck v. U.S. Bank Nat’l Ass’n*, No. 17-00180, 2017 WL 2726692, at \*6 (D. Haw. June 23, 2017) (explaining one plaintiff’s claim that an all-caps rendering of her name refers to some fictional, corporate entity); see also *Paul v. New York*, No. 13-CV-5047, 2013 WL 5973138, at \*1 n.2 (E.D.N.Y. Nov. 5, 2013) (noting that the plaintiff had extended this concept to the state of New York, which he considers legally distinct from “THE STATE OF NEW YORK” (quoting Amended Complaint ¶ 6, *Paul*, 2013 WL 5973138 (No. 13-CV-5047) (formatting in original))).

<sup>77</sup> See *Meads*, 2012 ABQB 571, paras. 199–202 (describing commonality among pseudolegal indicia); Mallek, *supra* note 34, at 79 (describing stereotypical markers of sovereign citizen litigation). Though the exact phrasing may differ, pseudolitigants often refer to common law, the Uniform Commercial Code (UCC), and/or maritime or admiralty law as the controlling authority. *Id.* They will also frequently demand that judicial authorities, such as judges and officers of the court, provide identification or a copy of their oath of office. *Id.*

<sup>78</sup> See, e.g., *Lewis v. Ohio*, No. 17-mc-45, 2017 WL 5484329, at \*1 (S.D. Ohio July 31, 2017) (describing the defendant’s self-identification as a “Freeman on the land”); *Butler v. Cal. State Disbursement Unit*, 990 F. Supp. 2d 8, 8 (D.D.C. 2013) (recounting the defendant’s self-identification as a “sovereign man”); *United States v. Mitchell*, 405 F. Supp. 2d 602, 603 (D. Md. 2005) (explaining the defendant’s contention that court documents did not represent him as a “flesh and blood” man). Similar phrasing, such as “free will full liability person” and “private neutral non-belligerent” appeared in *Meads v. Meads*, a Court of Queen’s Bench of Alberta 2012 opinion. 2012 ABQB 571, para. 221.

<sup>79</sup> See *Thompson v. United States*, 145 Fed. Cl. 641, 645 n.4 (2019) (noting that the petitioner’s complaint seemed to indicate that she considered herself a trustee or agent of a party identified by an all capital letter rendition of her name); *Mells v. Loncon*, No. CV418-296, 2019 WL 1339618, at \*1 (S.D. Ga. Feb. 27, 2019) (excerpting a pseudolitigant’s filing in which he distinguished between his real personhood and a “corporate fiction”).

<sup>80</sup> See, e.g., *Lewis*, 2017 WL 5484329, at \*1 (featuring a litigant’s self-description as “Indigenous Aboriginal”); *McLaren v. United States Inc.*, 2 F. Supp. 2d 48, 49 (D.D.C. 1998) (describing a pseudolitigant’s self-identification as “Chief Ambassador and Consul General”); *TENN. FUSION CTR. ET AL.*, *supra* note 50, at 5 (describing pseudolitigants’ common use of the terms “indigenous,” “aboriginal” and “diplomat”).

<sup>81</sup> *Meads*, 2012 ABQB 571, paras. 222–24. See generally SOVEREIGNTY EDUC. & DEF. MINISTRY, DE FACTO GOVERNMENT SCAM (2016), <https://sedm.org/Forms/05-MemLaw/DeFactoGov.pdf> [<https://perma.cc/BEB4-KMSE>] (describing a conspiracy to transform “de jure” government into “de facto” corporate government). Pseudolitigants use the term “de facto” to refer to the government’s supposed lack of lawful authority. See SOVEREIGNTY EDUC. & DEF. MINISTRY, *supra*, at 83–86. They contrast this to a hypothetical “de jure” government which, they claim, pre-existed the current government and exercised a more limited authority. *Id.* Pseudolitigants who use the term “de facto” do so

clude the phrase “service to agent is service to principal” and/or “service to principal is service to agent.”<sup>82</sup> Pseudolitigants have also been known to cite to foreign laws or documents of questionable applicability, such as the Magna Carta or the International Institute for the Unification of Private Law.<sup>83</sup>

#### 4. Unusual Ornamentation of Documents

Pseudolitigants will often ornament or accessorize their filings in unusual ways.<sup>84</sup> Sometimes this ornamentation will take the form of excessive or unnecessary postage stamps.<sup>85</sup> On other occasions, pseudolitigants will notarize documents that do not require it, or add thumb prints in blood or red ink.<sup>86</sup>

#### 5. Characteristic Behaviors

When pseudolitigants appear in court, they often display theatrical behavior, such as departing from the courtroom prematurely or refusing to enter.<sup>87</sup> Sometimes they will respond ritualistically to inquiries with phrases like “I

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in order to suggest that the government lacks authority to pass and enforce laws and does so in violation of its citizens’ rights. *See id.* at 86–87 (describing process by which “de jure” government was “transformed into corrupted de facto government[.]”).

<sup>82</sup> *Meads*, 2012 ABQB 571, para. 225; *The Devil and the DVLA*, FREEMEN-ON-THE-LAND F. (Jan. 15, 2010), <http://www.fmotl.com/forum/viewtopic.php?f=25&t=4085> [<https://perma.cc/4ZYZ-QZ8R>] (demonstrating the use of this phrasing by a pseudolitigant attempting to file a commercial lien).

<sup>83</sup> *Williams v. U.S. Bank Ass’n*, No. 14-cv-281-J-25, 2014 WL 12618699, at \*1 (M.D. Fla. June 19, 2014) (describing a pseudolitigant’s inappropriate reliance on the International Institute for the Unification of Private Law (UNIDROIT)); Mallek, *supra* note 34, at 23 (describing the Posse Comitatus pseudolegal group’s reliance on the Magna Carta); Netolitzky, *supra* note 13, at 7 (describing spurious reliance on the Magna Carta by United States and United Kingdom based sovereign citizens). UNIDROIT is an independent and international organization whose purpose is to encourage uniformity in commercial law among different countries. *History and Overview*, UNIDROIT (Oct. 30, 2020), <https://www.unidroit.org/about-unidroit/overview> [<https://perma.cc/CMC5-XQSY>]. Pseudolitigants also frequently reference the Bible and Founding-era American documents as legal authority. *See* March-Safbom, *supra* note 56, at 92–93 (noting that 67.1% of courts dealing with sovereign citizen filings reported references to “the Bible, the Magna Carta, the Bill of Rights, or the original articles of the U.S. Constitution”).

<sup>84</sup> *Meads*, 2012 ABQB 571, para. 214. Justice Rooke hypothesizes that the true purpose of these markings is to impress pseudolitigation gurus’ customers, rather than to achieve any legal effect. *Id.*

<sup>85</sup> *Id.* at para. 215; TENN. FUSION CTR. ET AL., *supra* note 50, at 3. According to one scholar, the use of excessive stamps derives, in some cases, from a mistaken belief that this behavior guarantees resolution of disputes by a “common law jury” under the U.S. Constitution’s Seventh Amendment. March-Safbom, *supra* note 56, at 26–27; *see* U.S. CONST. amend. VII (providing for jury trials in enumerated circumstances).

<sup>86</sup> *Meads*, 2012 ABQB 571, para. 215; *C.C. v. J.M.*, 2010 SKQB 79, para. 10 (Can.); *see* Masirony, *supra* note 41, at 1015 n.1 (describing one pseudolegal filing featuring a red-ink thumb print).

<sup>87</sup> *Meads*, 2012 ABQB 571, para. 249 (describing pseudolitigants’ tendency to leave court early or not enter the courtroom at all); Weir, *supra* note 35, at 832–33 (describing in-court behavior of sovereign citizens).

accept that for value and honor.”<sup>88</sup> Pseudolitigants will sometimes refuse to declare that they “understand” statements made by court officials, and usually deny that the court has jurisdiction over them.<sup>89</sup>

### *D. One People’s Public Trust (OPPT): An Example Pseudolitigant Group*

The OPPT, a pseudolitigant group organized by and around guru Heather Tucci-Jarraf, provides an illuminating example of pseudolegal doctrines and tactics.<sup>90</sup> Tucci-Jarraf’s claims include that the Universal Commercial Code (UCC) applies to all nations around the world, and that by using the UCC, the OPPT “foreclosed” on the world’s banks and “cancelled” all the world’s “corporate governance charters.”<sup>91</sup> These beliefs demonstrate two of the tenets of pseudolaw: the supremacy of contract law and the limits on state authority.<sup>92</sup> Tucci-Jarraf claimed that, by filing a so-called “courtesy notice,” followers could receive vast wealth or have their debts cancelled, a classic money for nothing scheme.<sup>93</sup> Her writings included reference to the strawman legal theory and suggested sending “invoices” to their creditors, a variation on the “fee

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<sup>88</sup> *Meads*, 2012 ABQB 571, para. 249 (listing unusual phrases used by pseudolitigants in court). Other phrases include “Your Honour, I accept it for value and return it for value for settlement closure in this matter” and assertions that a litigant takes a certain action “without prejudice” or “without consent to restriction” to their rights. *Id.* paras. 248–49 (quoting *Mercedes-Benz Fin. v. Kovacevic*, [2009] O.J. No. 783 paras. 9, 51 (Can. Ont. Sup. Ct. J.) (QL)).

<sup>89</sup> *See* *United States v. Julison*, 635 F. App’x 342, 343 (9th Cir. 2015) (describing a pseudolitigant challenging a court’s authority and refusing to “understand” the judge’s words). Some pseudolitigants will refuse to admit that they “understand” the court’s instructions because they believe that to do so would be to accept the court’s jurisdiction—literally to “stand under” the court. *See* NAT’L LIBERTY ALL., COMMON LAW HANDBOOK FOR JURORS, SHERIFFS, BAILIFFS AND JUSTICES 11 (2014), <https://www.nationallibertyalliance.org/sites/default/files/Grand%20Jury%20Hand%20Book%20Final.pdf> [<https://perma.cc/5Y9Q-RALL>] (conflating “understand” with “stand under”).

<sup>90</sup> *See* *OPPT Absolute*, I UV, <https://i-uv.com/oppt-absolute/> [<https://perma.cc/5HCM-L4DH>] (describing the history of OPPT and outlining its followers’ beliefs). Their website claims that the OPPT was founded by three people, but names only Heather Tucci-Jarraf explicitly. *Id.* Other pseudolitigant sources identify Tucci-Jarraf as the organizer of the OPPT and the figure “encouraging” other pseudolitigants to use her tactics. Anna von Reitz, *OPPT Update: Heather Tucci-Jarraf and Randy Beane Arrests*, CLAIMS OF THE LIVING (July 29, 2017), <https://claimsoftheliving.blogspot.com/2017/07/oppt-update-heather-tucci-jarraf-and.html> [<https://perma.cc/S78E-PJ3N>]. The OPPT even ran a forum where pseudolitigants could compare notes on their tactics and the results of their cases. *See* Discussion Board for Pseudolitigant Legal Tactics, FREE F.: OPPT CT. CASES, <https://opptcourtcases.forumotion.com/> [<https://perma.cc/92K5-AKLA>] (hosting circa 2012–2013 discussions on the use of OPPT tactics to avoid debt).

<sup>91</sup> *See* *OPPT FAQ*, *supra* note 62 (describing the OPPT’s purported “foreclosure” on the world’s banks, a process which supposedly allows pseudolitigants to send a special notice to their creditors to have their debts forgiven).

<sup>92</sup> *See* *supra* notes 43–45, 48–50 and accompanying text.

<sup>93</sup> *OPPT FAQ*, *supra* note 62 (instructing readers to send a “courtesy notice,” or a special type of letter described by the OPPT, to their creditors and banks in order to achieve debt forgiveness).

schedule” tactic discussed above.<sup>94</sup> The OPPT operated internationally, with the German Reichsbürger pseudolegal group adopting some of their ideology and technique.<sup>95</sup> In 2018, Tucci-Jarraf and an associate were convicted in federal court of bank and wire fraud, as well as conspiracy to commit money laundering in connection with the use of OPPT techniques.<sup>96</sup> Although they are still incarcerated, the OPPT remains active, and continues to demonstrate classic manifestations of the pseudolegal beliefs and practices.<sup>97</sup> Like many other pseudolegal groups, the OPPT has encouraged criminal behavior among its adherents, and its followers have wasted judicial time expounding their nonsense theories.<sup>98</sup>

## II. THE PROBLEM OF PSEUDOLAW: HARMS AND SOLUTIONS

Though pseudolitigants have been active for decades, only recently has the legal establishment begun to seriously consider the problems these litigants pose and what solutions might be necessary.<sup>99</sup> The volume of scholarship that has emerged over the past six years—crossing disciplines from epidemiology to law enforcement to academic law—indicates this issue has begun to capture the attention of the mainstream legal community.<sup>100</sup> Section A of this Part enumerates and evaluates the harms caused by pseudolaw, both generally and as applied to a case study: the case of Heather Tucci-Jarraf of the OPPT and her associate Randall Beane, who used her advice to commit wire fraud.<sup>101</sup>

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<sup>94</sup> See *id.* at 7, 11 (acknowledging the strawman theory, while claiming that it is no longer effective or necessary and diagramming potential use of fictitious “invoices” to escape debt).

<sup>95</sup> See REINHARD KREISSL ET AL., D3.4 ANNUAL SOCIETAL SECURITY REPORT 1, at 43 (2018) [<https://perma.cc/2MFL-95CF>] (describing the spread of OPPT ideology among Austrian pseudolitigants and its resemblance to existing Reichsbürger pseudolitigants).

<sup>96</sup> See *United States v. Tucci-Jarraf*, 939 F.3d 790, 791–92 (6th Cir. 2019) (upholding convictions of Tucci-Jarraf and her associate). On appeal, both defendants claimed that their convictions should have been overturned because their beliefs meant that they should not have been allowed to proceed pro se. *Id.* The U.S. Court of Appeals for the Sixth Circuit rejected this argument and upheld their convictions. *Id.* at 798.

<sup>97</sup> See *United States v. Beane*, No. 17-CR-82, 2018 WL 493795, at \*2 (E.D. Tenn. Jan. 19, 2018) (describing Tucci-Jarraf’s legal filings, reflecting OPPT tactics), *aff’d sub nom.* *United States v. Tucci-Jarraf* 939 F.3d 790 (6th Cir. 2019). In her initial appearance before a trial judge, Tucci-Jarraf’s filings displayed red thumbprints and phrases such as “[d]uly rejected, without dishonor, for due cause.” *Id.*

<sup>98</sup> See *Tucci-Jarraf*, 939 F.3d at 792, 796 (describing how Tucci-Jarraf encouraged Randall Beane to commit wire fraud and further describing Tucci-Jarraf’s behavior in court as “[g]iving] plenty of airtime to implausible conspiracy theories”).

<sup>99</sup> See Netolitzky, *After the Hammer: Six Years of Meads v. Meads*, 56 ALTA. L. REV. 1167, 1189–92 (2019) (explaining the difficulty in identifying and gathering data on pseudolitigation).

<sup>100</sup> See, e.g., March-Safbom, *supra* note 56 (published in 2018); McRoberts, *supra* note 3 (published in 2019); Netolitzky, *supra* note 13 (published in 2018); Slater, *supra* note 11 (published in 2016); Weir, *supra* note 35 (published in 2015).

<sup>101</sup> See *infra* notes 103–142 and accompanying text.



Section B then reviews some proposed solutions to the pseudolaw problem both inside and outside the courtroom.<sup>102</sup>

### A. Harms of Pseudolaw

Though the bizarre and fanciful theories of pseudolitigants may make them seem like figures of bemusement, they are far from harmless.<sup>103</sup> Pseudolitigants can cause tremendous disruption inside the courtroom.<sup>104</sup> The judicial time wasted by their antics is only one aspect of their overall detrimental effect, but a significant one.<sup>105</sup> These litigants are also notorious for their use of fraudulent liens to harass their perceived opponents, a strategy that has become known as “paper terrorism.”<sup>106</sup> Furthermore, after pseudolitigants are frustrated in court, they often retaliate against those who they feel wronged them, using the very same court system that they believe failed them previously.<sup>107</sup>

Some pseudolitigants may have been able to put forth a legitimate and justifiable case, had they chosen to follow real legal advice instead of trying pseudolaw.<sup>108</sup> In other cases, the spread of pseudolaw undermines faith in the courts and in the institutions of law among its practitioners.<sup>109</sup> Pseudolegal “gurus” exact a societal cost by charging pseudolitigants for their worthless advice.<sup>110</sup> They also encourage criminality among their followers by claiming that they can help them avoid liability for those crimes.<sup>111</sup> The following sub-

<sup>102</sup> See *infra* notes 143–183 and accompanying text.

<sup>103</sup> See McRoberts, *supra* note 3, at 644–50 (listing direct costs in terms of wasted time and money, as well as so-called “soft costs” such as damaged trust in law enforcement and lost opportunities for pseudolitigants to pursue meritorious claims); see, e.g., Weir, *supra* note 35, at 830–33 (describing fraud perpetrated by pseudolitigant).

<sup>104</sup> See Weir, *supra* note 35, at 832–33 (describing the disruptive in-court behavior of one pseudolitigant). Some branches of pseudolitigants, particularly “sovereign citizens,” are also known to engage in violence and even terrorism outside of the courtroom. See Slater, *supra* note 11, at 1 (describing violent confrontation between pseudolitigant James M. Tesi and a police officer, which ended with an exchange of gunfire and Tesi’s face and foot injuries). This tendency towards violence has led to a steady increase in confrontations between law enforcement personnel and pseudolitigants. See *id.* at 3–4 (describing the rising trend of sovereign citizen-related law enforcement incidents). While the exact scale of the increase has yet to be determined scientifically, Slater’s study suggests an increase in sovereign citizen activity over the last ten years. *Id.* at 5.

<sup>105</sup> See McRoberts, *supra* note 3, at 644–45 (noting that time wasted handling pseudolegal filings is substantial, but so are more difficult-to-quantify costs, such as the need for increased security).

<sup>106</sup> Weir, *supra* note 35, at 856–57. These liens, though fraudulent, cause real harm to the people targeted, damaging their credit ratings and encumbering their property. *Id.* at 857. Further, removing the liens can be costly and time-consuming. *Id.*

<sup>107</sup> March-Safbom, *supra* note 56, at 93.

<sup>108</sup> *Id.* at 650.

<sup>109</sup> See McRoberts, *supra* note 3, at 648 (describing reduced trust in institutions among people who hold conspiratorial beliefs).

<sup>110</sup> See *id.* at 646 n.42 (noting the exorbitant cost to attend a pseudolaw educational conference).

<sup>111</sup> See *id.* at 645 (illustrating that pseudolegal theories are often used to justify crimes meant to enrich the perpetrator).

sections describe a few of the specific harms incurred by the spread of pseudolaw.<sup>112</sup>

## 1. Wasting Judicial Time

Judicial attention is a scarce resource, made ever scarcer by the intense pressure of large and rising caseloads in the federal courts.<sup>113</sup> This increase in caseload does more than increase judges' workplace stress—it has adverse effects on the quality of their work product, as reported by the judges themselves.<sup>114</sup> Scholars have noted that removing frivolous cases from the federal docket is the archetypical “low-hanging fruit” option for dealing with this case pressure—it would leave more time to deal with meritorious actions without depriving any good-faith litigants of their day in court.<sup>115</sup>

## 2. Paper Terrorism

The term “paper terrorism” is apt.<sup>116</sup> Those targeted by pseudolitigants find themselves subject to a barrage of fraudulent liens on their homes, land, and property.<sup>117</sup> The UCC allows anyone to file a “financing statement” indicating the presence of a lien covering some item of property belonging to a third party.<sup>118</sup> Pseudolitigants engaged in paper terrorism will file many such liens, often for enormous amounts that bear no relation to reality.<sup>119</sup> Although they cannot collect the sums claimed, the existence of these liens damages the credit of the persons targeted, and removing liens can be expensive and time-

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<sup>112</sup> See *infra* notes 113–131 and accompanying text.

<sup>113</sup> Lauren K. Robel, *Caseload and Judging: Judicial Adaptations to Caseload*, 1990 BYU L. REV. 3, 3. Caseloads have been rising steadily since the mid-twentieth century, and this rise has been largely driven by an increase in civil filings. Wolf Heydebrand & Carroll Seron, *The Rising Demand for Court Services: A Structural Explanation of the Caseload of U.S. District Courts*, 11 JUST. SYS. J. 303, 308 (1986). A 1986 empirical study suggests that the 1960s saw a 32% increase in civil filings and the 1970s saw a further 60.5% increase. *Id.* at 307.

<sup>114</sup> See Robel, *supra* note 113, at 9–10 (compiling judges' comments on how caseload pressure erodes the quality of their work).

<sup>115</sup> See Michael S. Oberman, *Coping with Rising Caseload II: Defining the Frivolous Civil Appeal*, 47 BROOK. L. REV. 1057, 1058 (1981) (discussing the potential benefits to the federal judicial system from identifying and eliminating frivolous filings at an early stage).

<sup>116</sup> See 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/B3K3-6RTS] (quoting a state official terrorized by false liens).

<sup>117</sup> Theret, *supra* note 60, at 868.

<sup>118</sup> John R. Goodwin, *Anatomy of the Financing Statement Article 9, U.C.C.—Secured Transactions*, 7 AM. BUS. L.J. 29, 35 (1969). Such a statement puts subsequent lenders on notice that a secured claim may exist relative to that item. *Id.*

<sup>119</sup> Goode, *supra* note 116. In the case cited by *The New York Times*, a single pseudolitigant couple filed \$250,000,000,000 in liens over three years. *Id.*

consuming.<sup>120</sup> Pseudolitigants usually target public officials, particularly law enforcement and court personnel, as a way of getting back at those who they feel wronged them.<sup>121</sup>

### 3. Indirect and Social Costs

Although pseudolitigants are more readily seen as wrongdoers, many of them are victims of the gurus who propagate pseudolaw techniques.<sup>122</sup> When evaluating the behavior of pseudolitigants, one must bear in mind that these litigants do not engage in their litigation techniques for entertainment; in their minds, they have real legal issues, and are seeking justice.<sup>123</sup> The fact that their theories cannot and will not succeed means only that they have been victimized by the snake-oil salesmen who set them down the path of pseudolaw.<sup>124</sup> It is impossible to know just how many pseudolitigants faced with charges of tax or licensing fraud would never have offended in the first place had they not been assured by gurus that they would escape consequences.<sup>125</sup> These gurus make their livings spreading lies.<sup>126</sup> The money they obtain from credulous

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<sup>120</sup> Mastrony, *supra* note 41, at 1027. The costs largely take the form of court fees, but targets of false liens also suffer damage to their credit rating, which could impact a victim's ability to buy a home, among other things. JEROME P. BJELOPERA, CONG. RSCH. SERV., R42536, THE DOMESTIC TERRORIST THREAT: BACKGROUND AND ISSUES FOR CONGRESS 47–48 (2013).

<sup>121</sup> Charles E. Loeser, *From Paper Terrorists to Cop Killers: The Sovereign Citizen Threat*, 93 N.C. L. REV. 1106, 1126–27 (2015). This is particularly true for incarcerated pseudolitigants, who use their techniques to retaliate against the officials responsible for their incarceration and teach other prisoners to do so as well. *Id.* at 1127.

<sup>122</sup> McRoberts, *supra* note 3, at 647. Pseudolitigants often develop their theories cooperatively with others who share their beliefs. *Id.* at 646. This period of development can be both lengthy and extremely costly for pseudolitigants, especially if they are paying for books, seminars, or lessons from gurus. *Id.*

<sup>123</sup> Sullivan, *supra* note 40, at 818–19. One common vector for the spread of pseudolegal ideas is the so-called “prison lawyer.” Lorelei Laird, *Paper Terrorists*, 100 A.B.A. J. 54, 58 (2014). After pseudolitigants are incarcerated, they teach their ideas to fellow prisoners, who then begin employing pseudolegal techniques. *Id.*

<sup>124</sup> See, e.g., Government’s Sentencing Memorandum at 2–3, United States v. ShROUT, No. 15-cr-00438, 2018 WL 7958126 (D. Or. Oct. 17, 2018) [hereinafter ShROUT Memorandum] (noting guru Winston ShROUT’s history of targeting financially distressed individuals). Most potential litigants studying pseudolaw are doing so in hopes of using these techniques to win a court case, which of course, they almost never accomplish. McRoberts, *supra* note 3, at 647.

<sup>125</sup> McRoberts, *supra* note 3, at 645. Although it is impossible to know post facto just how much an offender’s study of pseudolaw influenced the decision to commit crimes and torts, there are numerous examples demonstrating that some people are driven to commit fraud based on the erroneous belief that pseudolegal techniques will allow them to get away with it. See *infra* notes 132–136 and accompanying text.

<sup>126</sup> See ShROUT Memorandum, *supra* note 124, at 2 (estimating that guru ShROUT made hundreds of thousands of dollars by spreading his pseudolegal theories).

followers is functionally stolen, and should be considered a cost of pseudolaw just as readily as the costs incurred by victims of paper terrorism.<sup>127</sup>

Finally, the conspiratorial thinking that accompanies pseudolaw also has its own costs.<sup>128</sup> Studies have demonstrated that conspiratorial thinking reduces trust in experts and reduces engagement in traditional political activity.<sup>129</sup> Conspiracy-minded pseudolitigants are more likely to direct their energy towards frivolous and time-wasting theories rather than advancing their real, tangible legal interests.<sup>130</sup> Ultimately, their belief that the legal system is “rigged” against them becomes a self-fulfilling prophecy; their mindset steers them away from legal theories and tactics that have the potential to work, and towards the blind alley of pseudolaw.<sup>131</sup>

#### 4. Case Study: Heather Tucci-Jarraf and Randall Beane

The case of Heather Tucci-Jarraf and Randall Beane perfectly illustrates the type of costs—both direct and indirect—associated with pseudolitigation tactics.<sup>132</sup> Beane, facing numerous debts beyond his capacity to repay, could have turned to traditional legal methods such as debt consolidation or bankruptcy.<sup>133</sup> Instead, he turned to pseudolaw guru Heather Tucci-Jarraf, who told him that her OPPT techniques could help him erase his debts by accessing a secret trust account.<sup>134</sup> Following her advice, Beane paid off his debts, then purchased \$31 million in certificates of deposit—all with money fraudulently

<sup>127</sup> See McRoberts, *supra* note 3, at 647 (pointing out that pseudolitigants are wasting their money trying to win real court cases with fake law).

<sup>128</sup> See Karen M. Douglas et al., *The Psychology of Conspiracy Theories*, 26 CURRENT DIRECTIONS PSYCH. SCI. 538, 540 (2017) (examining the consequences of conspiratorial beliefs on the psyche of the believer).

<sup>129</sup> *Id.* at 539. Conspiratorial beliefs have been demonstrated to reduce trust in government, even where the government itself is not the subject of the belief. *Id.* at 540. Such beliefs have also been shown to reduce autonomy. *Id.* at 539. For example, people exposed to conspiratorial materials are sometimes persuaded without recognizing that their beliefs have been changed. *Id.*

<sup>130</sup> See McRoberts, *supra* note 3, at 648–49 (analogizing between conspiracy theorists’ loss of trust in government institutions and pseudolitigants’ loss of trust in traditional legal institutions). Some pseudolegal gurus explicitly warn their followers not to pursue traditional legal help. See *Do You Need a Lawyer?*, NAT.-PERS., <http://www.natural-person.ca/lawyer.html> [<https://perma.cc/J274-7EC6>] (urging followers not to engage the services of a lawyer because it will supposedly subject them to the government’s jurisdiction). This phenomenon has not been extensively studied, and more data may help determine the extent of the correlation between-pseudolegal beliefs and alienation from traditional legal representation. McRoberts, *supra* note 3, at 648.

<sup>131</sup> McRoberts, *supra* note 3, at 648–49. Research suggests that belief in conspiracy theories disinclines believers from engaging in behaviors that might, in the long run, increase their ability to control their own lives. Douglas et al., *supra* note 128, at 539. For instance, conspiracy theorists are less likely to engage in traditional politics and show less commitment to local organizations that might help them accomplish their goals. *Id.*

<sup>132</sup> *United States v. Tucci-Jarraf*, 939 F.3d 790, 798 (6th Cir. 2019).

<sup>133</sup> *Id.* at 791.

<sup>134</sup> *Id.* at 792.

obtained using pseudolegal techniques.<sup>135</sup> Inevitably, Beane was caught for his fraud, and Tucci-Jarraf helped him protect his illicitly obtained assets.<sup>136</sup> The two of them were charged with conspiracy to commit money laundering, and they insisted on defending themselves *pro se*, unleashing a familiar volley of frivolous pseudolegal filings.<sup>137</sup> Predictably, they failed to convince a jury of their innocence, and both were convicted and sentenced to years in prison.<sup>138</sup>

Beane had attempted his fraud after being convinced that a secret trust existed with which he could pay his debts.<sup>139</sup> He learned how to fraudulently wire millions of dollars from an anonymously-made pseudolaw video (though he was encouraged to make use of this technique by Tucci-Jarraf herself).<sup>140</sup> Even after they were caught and arrested, Beane and Tucci-Jarraf insisted on defending themselves, rather than accepting the help of counsel, which could have mitigated the long sentences they received via reasoned argumentation or a guilty plea.<sup>141</sup> Their pseudolaw-driven fraud depleted state resources, their frivolous arguments wasted the court's time, and the pseudolitigants themselves inevitably lost their court battle and faced stiff punishment.<sup>142</sup>

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<sup>135</sup> *Id.* at 792–93. Randall Beane first addressed his outstanding debts and initially did no more than make payments on those. *Id.* at 792. It was only later, during a separate internet session, that he began to fraudulently purchase certificates of deposit (CDs). *Id.* Although it is incontrovertible that his initial payments were criminal, the \$31 million in CDs that he fraudulently obtained enhanced the penalty to which he was subject. *Id.* at 792–93; U.S. SENT'G GUIDELINES MANUAL § 2B1.1(b)(1) (U.S. SENT'G COMM'N 2018).

<sup>136</sup> *Tucci-Jarraf*, 939 F.3d at 793.

<sup>137</sup> *United States v. Beane*, No. 17-CR-82, 2017 WL 9253561, at \*1–4 (E.D. Tenn. Nov. 16, 2017), *report and recommendation adopted by* Nos. 17-CR-82-1, 17-CR-82-2, 2017 WL 6025323 (E.D. Tenn. Dec. 5, 2017), *aff'd sub nom.* *United States v. Tucci-Jarraf*, 939 F.3d 790 (6th Cir. 2019). Beane was also charged with bank and wire fraud. *Id.* at \*1.

<sup>138</sup> *Tucci-Jarraf*, 939 F.3d at 793. Beane was sentenced to 155 months in prison, and Tucci-Jarraf was sentenced to 57 months. *Id.*

<sup>139</sup> *Id.* at 792–93.

<sup>140</sup> *Id.* at 792. Apparently, the video that taught Beane how to commit CD fraud was uploaded by a separate guru, who went by the pseudonym “Harvey Dent.” *Id.* Tucci-Jarraf, however, helped teach Beane how to engage in this particular type of fraud and offered him advice and encouragement throughout. *Id.*

<sup>141</sup> *Id.* at 793. After their convictions, Tucci-Jarraf and Beane appealed, arguing that their theories rendered them incapable of mounting an effective defense, and the trial court judge should not have allowed them to proceed *pro se*. *Id.* at 793–94. The U.S. Court of Appeals for the Sixth Circuit upheld their sentences, holding that both of them had knowingly waived their right to counsel and were mentally competent to manage their own defenses. *Id.* at 794. The Sixth Circuit did not make its determination based on the quality of their defense but based it on the high bar of “mental incompetence.” *Id.* at 795. The court, however, did note that experienced counsel would have performed better at trial. *Id.* at 796.

<sup>142</sup> *See generally id.* (describing fraud, process of trial, and sentences); *see also* Beane, 2017 WL 6025323, at \*1 (E.D. Tenn. Dec. 5, 2017) (listing numerous supplemental filings by the defendants and describing their frivolous content). Beane later fought with the agents who came to arrest him. Press Release, Dep't of Just., U.S. Att'y's Off., E. Dist. of Tennessee, Federal Jury Convicts Knoxville Man and Former Washington State Prosecutor Turned Leader of Sovereign Citizen Movement of Wire Fraud and Conspiracy to Commit Money Laundering (Feb. 1, 2018), <https://www.justice.gov/>

### B. Proposed Solutions

A problem as complex as pseudolaw has generated a wide variety of proposed reforms; the problem is too large for a one-size-fits-all solution.<sup>143</sup> For example, combatting paper terrorism and fraudulent liens requires a fundamentally different approach than confronting the issue of pseudolegal tactics deployed in a courtroom setting.<sup>144</sup> This section discusses specific solutions targeted at individual concerns.<sup>145</sup>

#### 1. Fraudulent Liens

Pseudolitigants can cause tremendous damage without ever setting foot in a courtroom.<sup>146</sup> A UCC-1 form, also known as a “financing statement,” is a form filed by a creditor providing notice to other potential creditors that an item of property held by a debtor may be encumbered by a lien.<sup>147</sup> Because most filing offices do not rigorously verify that incoming UCC-1 forms are connected to an actual lien, it is relatively simple for bad-faith actors to submit thousands of these forms.<sup>148</sup> A process exists to remove bad-faith financing statements, but it is lengthy, and the pseudolitigant can intervene during the process to make it more difficult.<sup>149</sup> To combat this, several states have adopted reforms aimed at making it easier for filing offices to either reject fraudu-

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usao-edtn/pr/federal-jury-convicts-knoxville-man-and-former-washington-state-prosecutor-turned [https://perma.cc/TUX7-A4MR].

<sup>143</sup> See Weir, *supra* note 35, at 858–68 (cataloguing various proposed solutions); Mastrony, *supra* note 41, at 1028–30 (describing proposed legislative solutions to the practice of pseudolaw).

<sup>144</sup> See Weir, *supra* note 35, at 858 (describing the broad-spectrum approach taken by Minnesota and Oregon in tackling the problem of pseudolitigants). Minnesota’s approach uses several different techniques to address all of the various harms of pseudolaw; it allows expedited post-filing judicial remedies to battle fraudulent liens and criminalizes any filing intended to “harass or defraud any other person.” See MINN. STAT. § 609.7475 (2020); Weir, *supra* note 35, at 862, 866.

<sup>145</sup> See *infra* notes 146–183 and accompanying text.

<sup>146</sup> See Loeser, *supra* note 121, at 1126 (noting that no special training or licensure is required to file false liens under the UCC, a common pseudolitigant tactic). These liens do not require pseudolitigants to schedule any kind of hearing before a judge or otherwise enter a court; they file the lien in a public filing office, and the clerk cannot refuse to accept a fraudulent filing. Mastrony, *supra* note 41, at 1025.

<sup>147</sup> Margit Livingston, *A Rose by Any Other Name Would Smell as Sweet (or Would It?): Filing and Searching in Article 9’s Public Records*, 2007 BYU L. REV. 111, 112.

<sup>148</sup> See Weir, *supra* note 35, at 859 (explaining that filing offices cannot verify the accuracy of submitted forms). The UCC, by default, does not permit the Secretary of State to reject even the most blatantly fraudulent liens. *Id.*

<sup>149</sup> Mastrony, *supra* note 41, at 1029; see Weir, *supra* note 35, at 861 (noting that due process hinders quick and easy removal of liens). The Fourteenth Amendment to the U.S. Constitution forbids the deprivation of property without due process of law, and a filed lien constitutes a property interest; therefore, the state must ordinarily provide notice and an opportunity to be heard before removing such a lien. U.S. CONST. amend. XIV, § 1; NAT’L ASS’N OF SEC’YS OF STATE, STATE STRATEGIES TO SUBVERT FRAUDULENT UNIFORM COMMERCIAL CODE (UCC) FILINGS 9 (2014) [hereinafter NASS REPORT].

lent financing statements, or for the targets of those statements to have them removed.<sup>150</sup> Some states have also adopted or enhanced criminal penalties targeting fraudulent UCC filings.<sup>151</sup>

Preventative programs focus on empowering filing offices to reject fraudulent forms before filing.<sup>152</sup> Such programs can be effective, but are also difficult to administer, requiring training in distinguishing fraudulent filings from legitimate ones.<sup>153</sup> Whatever technique the filing office employs, though, it must be careful; financing statements, even ones filed before any security interest has attached, are an essential part of the modern system of secured credit.<sup>154</sup> Wrongfully rejecting *valid* financing statements could wreak as much or more havoc as wrongfully accepting *invalid* ones.<sup>155</sup>

The National Association of Secretaries of State (NASS) has cited South Carolina's statute as the model.<sup>156</sup> This statute allows the Secretary of State's office to reject any financing statement that

is not created pursuant to the UCC or is otherwise intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person . . . [or] names the same person as both debtor and secured party, describes collateral not within the scope of applicable law, or is being filed for a purpose other than a transaction within the scope of the UCC.<sup>157</sup>

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<sup>150</sup> NASS REPORT, *supra* note 149, at 11–24.

<sup>151</sup> Mastrony, *supra* note 41, at 1030. The National Association of Secretaries of State (NASS) in 2014 released a comprehensive analysis of these laws. NASS REPORT, *supra* note 149, at 25–29.

<sup>152</sup> See Weir, *supra* note 35, at 859 (describing pre-filing discretion programs giving offices the discretion to reject liens at filing). These programs typically set out a list of criteria for which a filing office may reject a financing statement. NASS REPORT, *supra* note 149, at 8–9.

<sup>153</sup> See Weir, *supra* note 35, at 859 (describing the increased costs for training and document review associated with pre-filing discretion programs); Mastrony, *supra* note 41, at 1032 (describing the legislative history of one bill written to allow for administrative response to fraudulent liens, in which a legislator notes the potential cost of such a response).

<sup>154</sup> Mark A. Gittleman & Earl T. Stamm, *The Dangers of Being a Secured Lender: Where Filing a Financing Statement May Not Be Enough*, 94 COM. L.J. 377, 384 (1989). The purpose of filing such a financing statement is to put other creditors “on notice” that an existing creditor may have a security interest in an item of property. Livingston, *supra* note 147, at 112. Without such a financing statement, a lender’s claim on a debtor’s assets may be overridden by a previous claim of which the lender had no knowledge. Gittleman & Stamm, *supra*, at 384. The financing statement system allows lenders to securely extend credit without needing to go through the difficult and disruptive process of physically holding loan collateral, which was historically one of the only ways to secure a loan. Livingston, *supra* note 147, at 111.

<sup>155</sup> See Livingston, *supra* note 147, at 148 n.206 (noting that an improperly rejected financing statement is still effective except against a purchaser for value). A valid lien whose accompanying financing statement has been improperly rejected serves as a “hidden lien,” which may cause severe disruption if it later appears when the debtor is in bankruptcy. Dwight W. Fawcett & Robert F. Hugl, *Hidden Liens: A Trap for the Unwary*, 106 BANKING L.J. 212, 212 (1989).

<sup>156</sup> NASS REPORT, *supra* note 149, at 8.

<sup>157</sup> *Id.* at 14–15 (quoting S.C. CODE ANN. § 36-9-516(b)(8)-(9) (2012)).

Other states have adopted similar statutes.<sup>158</sup> For instance, Alabama allows a filing office to reject a financing statement that “appears fraudulent on its face,” and California allows its Secretary of State to reject a filing “based on a reasonable belief that the . . . filing is being requested for an unlawful, false, or fraudulent purpose,” or if it is intended to harass.<sup>159</sup> Several states, including Nebraska and Idaho, allow a filing office to reject a financing statement if the same person is listed as debtor and secured party.<sup>160</sup>

For states that do not wish to impose the cost of a pre-filing check, there remains the option of an expedited post-filing remedy, either judicial or administrative.<sup>161</sup> Judicial remedies are the more traditional route to extinguish a fraudulent financing statement, whereas an administrative remedy allows the office itself to directly remove a fraudulent filing from the record.<sup>162</sup> On the one hand, several states have implemented a judicial remedy, which requires the victim to contest the financing statement in court.<sup>163</sup> Colorado, for instance, provides an expedited process in which the document’s filer has twenty days to assert its validity in court.<sup>164</sup> Kansas and Oregon merely allow for “expedited” judicial review.<sup>165</sup> On the other hand, states that have enacted administrative remedies include Michigan, which requires the victim to file an affidavit with its Secretary of State asserting the fraudulent nature of the filing, and Pennsylvania, which allows its Department of State to conduct an administrative hearing to determine whether a statement was fraudulently filed.<sup>166</sup>

Whether the pathway to resolution of a fraudulent lien is judicial or administrative, it still imposes a cost on the victim, who must first discover the fraudulent lien and then initiate the appropriate proceedings.<sup>167</sup> Due process

<sup>158</sup> See *infra* notes 159–160 and accompanying text.

<sup>159</sup> ALA. ADMIN. CODE r. 820-4-3.02(3)(b), (3)(c), (7) (2020); CAL. GOV’T. CODE § 12181 (West 2021).

<sup>160</sup> IDAHO CODE § 28-9-516A (2020); NEB. REV. STAT. § 9-516(8) (2012); NASS REPORT, *supra* note 149, at 12–15.

<sup>161</sup> Mastrony, *supra* note 41, at 1029–30; see Colacci, *supra* note 42, at 160 (describing a California law allowing targets of false liens to fast-track removal of those liens). “Expedited” in this context usually means both a quicker timeline for resolution and a fee-shifting or fee-waiving provision to reduce costs. Mastrony, *supra* note 41, at 1029–30.

<sup>162</sup> NASS REPORT, *supra* note 149, at 9–10. The chief difference between the judicial and administrative methods is the involvement of the courts in the latter. *Id.* The administrative approach is quicker than the judicial one but places the cost of compliance on the Secretary of State’s office, requiring more allocation of state resources. *Id.* at 10. Shifting the burden to the court system will drain its resources as well; the question of administrative versus judicial solutions is a burden-shifting one. *Id.*

<sup>163</sup> See *infra* notes 164–165 and accompanying text (describing statutes in Colorado and Kansas that provide expedited judicial remedies to victims of false filing statements).

<sup>164</sup> COLO. REV. STAT. § 38-35-204 (2021).

<sup>165</sup> KAN. STAT. ANN. § 58-4301 (2021); NASS REPORT, *supra* note 149, at 23.

<sup>166</sup> MICH. COMP. LAWS §§ 440.9501a, 440.9520 (2020); 13 PA. CONS. STAT. § 9518 (2021).

<sup>167</sup> Mastrony, *supra* note 41, at 1027. Affected parties often will not discover an illegitimate filing statement until they attempt to sell encumbered property or obtain a loan. Weir, *supra* note 35, at 861.



rights also require that the pseudolitigant is provided with notice and an opportunity to be heard before the fraudulent lien can be extinguished.<sup>168</sup>

Some states have chosen a more proactive solution to deal with paper terrorism: increased penalties for filing false liens.<sup>169</sup> These can take the form of civil penalties, including restitution of attorney's fees, court costs and damages, or even punitive fines.<sup>170</sup> Other states have elected to criminalize the filing of false liens, sometimes at the felony level.<sup>171</sup> Some states have done both; in Florida and Illinois, a person who files a fraudulent lien with the intent to defraud or harass another has committed a felony and is liable for civil damages as well.<sup>172</sup>

## 2. Courtroom Tactics

Unlike with paper terrorism, in which the solutions mostly focus on undoing or preventing the harm caused by fraudulent filings, solutions aimed at courtroom pseudolitigation are mostly focused on preserving the court's time by efficiently disposing of, or deterring, filings containing frivolous pseudolegal arguments.<sup>173</sup> These solutions can be broadly separated into three categories: legislative, judicial, and academic.<sup>174</sup>

Legislative solutions take the form of enhanced legal penalties for frivolous filings, often in the form of sanctions under Rule 11 of the Federal Rules of Civil Procedure or its state equivalent.<sup>175</sup> Although these methods do not

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<sup>168</sup> Mastrony, *supra* note 41, at 1029. Because the lien, false though it may be, is a property interest, before being able to terminate it, the filing office must give the property owner (in this case, the pseudolitigant) notice and an opportunity to be heard. Weir, *supra* note 35, at 861.

<sup>169</sup> NASS REPORT, *supra* note 149, at 10; Mastrony, *supra* note 41, at 1030.

<sup>170</sup> NASS REPORT, *supra* note 149, at 10.

<sup>171</sup> *Id.* In most cases, this behavior is punished as a misdemeanor for the first offense, but a felony for similar offenses committed thereafter. *Id.* In some states, however, harassment via fraudulent financing statement is a felony on the very first offense. *See, e.g.,* MINN. STAT. §§ 604.17, 609.7475 (2021); TEX. BUS. & COM. CODE ANN. § 9.5185 (West 2019); TEX. PENAL CODE ANN. § 37.101 (West 2019).

<sup>172</sup> FLA. STAT. § 817.535 (2020); NASS REPORT, *supra* note 149, at 25–26.

<sup>173</sup> *See* Stork & Beumer, *supra* note 26, at 46 (recommending the use of gatekeeper orders to prevent pseudolegal filings); Weir, *supra* note 35, at 868–70 (concluding that the best response to pseudolitigants is one that keeps them out of the courtroom entirely).

<sup>174</sup> *See* Netolitzky, *supra* note 99, at 1190–91 (noting a dearth of scholarship on the pseudolitigant phenomenon and recommending further investigation); Stork & Beumer, *supra* note 26, at 46 (recommending deployment of existing judicial tools to block filing of frivolous documents); Theret, *supra* note 117, at 882 (recommending legislation to enable sanctions against frivolous filers). These categories are not rigid, and some solutions combine elements from multiple approaches. *See* Theret, *supra* note 117, at 882 (recommending the passage of legislation to grant the judiciary new tools with which to combat pseudolitigation).

<sup>175</sup> Theret, *supra* note 60, at 881–82. Although Federal Rule of Civil Procedure 11(c)(1) permits the imposition of sanctions against frivolous pro se litigants, not every state's rules of civil procedure contain an equivalent clause. FED. R. CIV. P. 11(c)(1); Theret, *supra* note 117, at 881–82. For example, South Carolina Rule of Civil Procedure 11 does not allow the imposition of sanctions against pro se litigants, and thus cannot be employed against most pseudolitigants. S.C. R. CIV. P. 11.

directly address the issue of frivolous filings, they may have some deterrent effect, and thus prevent further time-wasting.<sup>176</sup> Criminal penalties targeted at gurus—usually in the nature of aiding and abetting charges—also help stem the tide of pseudolitigation by preventing dissemination of its tactics.<sup>177</sup>

Judicial solutions include pre-filing injunctions, which prevent pseudolitigants from filing new lawsuits or motions without the court's leave.<sup>178</sup> These injunctions—also known as gatekeeper orders—are effective at preventing pseudolegal filings from amassing, but they raise due process concerns and are consequently discouraged in most cases.<sup>179</sup>

Finally, academic solutions include research and education, targeted at both potential pseudolitigants and judges.<sup>180</sup> Outreach to individuals considering pseudolegal techniques can steer them towards traditional (and ultimately more helpful) methods.<sup>181</sup> There have been several cases of pseudolitigants abandoning their misguided stratagems in favor of a traditional legal approach, after initially having wasted large quantities of time and money pursuing baseless claims and producing nonsense filings.<sup>182</sup> At the same time, education of

<sup>176</sup> Theret, *supra* note 117, at 882.

<sup>177</sup> Sullivan, *supra* note 40, at 815. Several pseudolegal gurus have been successfully prosecuted in this manner; for example, Gordon Buttorff, a guru who taught his followers how to submit fraudulent tax forms, was convicted in 1978. *United States v. Buttorff*, 572 F.2d 619, 623 (8th Cir. 1978). Others have been convicted under conspiracy statutes. *See United States v. Fleschner*, 98 F.3d 155, 157 (4th Cir. 1996) (upholding a guru's conviction under a federal conspiracy statute for advising clients to hide income for tax purposes).

<sup>178</sup> Stork & Beumer, *supra* note 26, at 46.

<sup>179</sup> *See id.* (describing the use of gatekeeper orders to prevent frivolous legal filings); *see also* *Johns v. Town of Los Gatos*, 834 F. Supp. 1230, 1232 (N.D. Cal. 1993) (imposing a pre-filing review requirement on a litigant with a history of filing frivolous actions). Such a review requirement typically mandates that four conditions be met: (1) the plaintiff is notified of a prospective order before the court enters it; (2) the court provides a record of the filings and cases that contributed to the restriction; (3) the court finds that the litigant's actions were "frivolous or harassing"; and (4) "the Court order is narrowly tailored." *Johns*, 834 F. Supp. at 1232.

<sup>180</sup> *See* Loeser, *supra* note 121, at 1137–38 (recommending increased dissemination of information about the ineffectiveness of pseudolitigation tactics to dissuade potential pseudolitigants); *McRoberts*, *supra* note 3, at 671 (recommending increased academic study of pseudolaw).

<sup>181</sup> Sullivan, *supra* note 40, at 822–23. This approach would not be effective for career criminals, but might reach those who feel that they have no other alternative. *See id.* (describing individuals who turn to pseudolaw out of desperation). Sometimes, an individual facing a legal dilemma and unable to afford a lawyer will pay for a pseudolegal guru's advice under the mistaken impression that they are a legitimate legal professional. *See id.* at 822 (noting that many *Posse Comitatus* pseudolitigants were farmers seeking an alternative to foreclosure).

<sup>182</sup> *See* *McRoberts*, *supra* note 3, at 649 (describing the case of a pseudolitigant who abandoned pseudolaw and resolved his legal problems through traditional and legitimate legal methods). An instructive case is that of John Thornton, who turned to pseudolaw to escape liability for unpaid taxes and retained "guru" Marc Stevens as a legal advisor. *United States v. Thornton*, No. 13-mc-87, 2014 WL 4364261, at \*1–2 (D. Minn. Apr. 9, 2014), *report and recommendation adopted by* Nos. 13-mc-86, 13-mc-87, 2014 WL 3828215 (D. Minn. Aug. 1, 2014). After years of unsuccessful pseudolegal maneuvering, Thornton retained competent counsel and successfully resolved his outstanding legal issues by paying all applicable back taxes and fines. Stipulation and Joint Request to Quash Bench

judges and court personnel helps these individuals recognize pseudolitigation more readily, allowing them to respond swiftly and decisively.<sup>183</sup>

### III. PSEUDOLITIGANTS IN THE COURTROOM: BEST PRACTICES FOR HANDLING PSEUDOLAW

Protecting the legal system from pseudolitigants requires careful navigation to avoid infringing on their constitutional rights or discouraging good-faith but unsophisticated litigants.<sup>184</sup> This Part evaluates proposed solutions for the proliferation of paper terrorism.<sup>185</sup> It then compares and contrasts the three types of solutions—legislative, judicial, and academic—for the problem of pseudolaw in the courtroom.<sup>186</sup> Although each type of solution may be effective, this Part argues that judicial solutions are likely to produce the most desirable outcomes, particularly when academic analysis informs them.<sup>187</sup>

#### *A. Paper Terrorism: NASS and the Model Statute*

The above-discussed solutions for paper terrorism are straightforward in their operation.<sup>188</sup> Because paper terrorism typically occurs via a well-understood vector (namely fraudulent UCC filings), there exists a model statute lawmakers can copy to address it.<sup>189</sup> The NASS report provides some hope for a nationwide program to combat paper terrorism.<sup>190</sup> Other types of pseudolaw, particularly the kind practiced by courtroom litigants, may be more difficult to combat.<sup>191</sup>

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Warrant at 1–2, *Thornton*, 2014 WL 3828215 (D. Minn. Aug. 1, 2014) [hereinafter *Stipulation and Joint Request*].

<sup>183</sup> McRoberts, *supra* note 3, at 661.

<sup>184</sup> See Len Niehoff, *Here Comes the Pro Se Plaintiff*, 32 LITIG. 12, 14–16 (2006) (describing the difficulty faced by judges in balancing the rights of pro se litigants against the disruption these litigants can cause with unsophisticated or frivolous filings).

<sup>185</sup> See *infra* notes 188–191 and accompanying text.

<sup>186</sup> See *infra* notes 192–240 and accompanying text.

<sup>187</sup> See *infra* notes 226–240 and accompanying text.

<sup>188</sup> See generally NASS REPORT, *supra* note 149.

<sup>189</sup> *Id.* at 8.

<sup>190</sup> See *id.* at 12–29 (listing approaches tried by different states across the nation to combat paper terrorism). The NASS has embraced as a model South Carolina’s 2012 statute, which enables the secretary of state to reject financing statements intended for an improper purpose. See S.C. CODE ANN. § 36-9-516(b)(8)-(9) (2012).

<sup>191</sup> See Loeser, *supra* note 121, at 1129 (describing the difficulty of deterring pseudolegal filings); McRoberts, *supra* note 3, at 660 (noting the inadequacy of existing tools).

### B. Legislative Solutions: Legal Sanctions for Pseudolitigants

The first-line approach for legislatures is to create new penalties for frivolous pseudolegal filings.<sup>192</sup> These statutes seek to deter pseudolitigants by punishing them for wasting the court's time.<sup>193</sup> This type of deterrence fits a familiar model; normally, the legal system seeks to discourage unwanted behavior by deploying criminal sanction against it.<sup>194</sup> One advantage of this model is that the legislature can be proactive, whereas courts are inherently reactive.<sup>195</sup> Another advantage is that the legislature may craft general solutions applicable to every court in its jurisdiction, providing uniformity of outcomes.<sup>196</sup> There are, however, three main problems with this approach.<sup>197</sup>

The first problem is intuitive; despite their diversity, pseudolitigants are united by the common belief that the law as commonly understood simply cannot touch them due to some defect or flaw.<sup>198</sup> Why would they obey a law targeted at frivolous filers?<sup>199</sup> Put more simply, because pseudolitigants *already* believe that they can escape the jurisdiction of the court or the authority of criminal law, it is unlikely that further laws will have a meaningfully dissua-

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<sup>192</sup> See, e.g., 26 U.S.C. § 6673(a)(1)(B) (authorizing courts to impose sanctions on frivolous filers); *id.* § 6702(a) (imposing penalties for filing frivolous tax submissions).

<sup>193</sup> See, e.g., *id.* § 6673(a)(1). The Tax Court is empowered by statute to impose sanctions in cases where the "proceedings before it have been instituted or maintained by the taxpayer primarily for delay" or "the taxpayer's position in such proceeding is frivolous or groundless." *Id.*

<sup>194</sup> Raymond Paternoster, *How Much Do We Really Know About Criminal Deterrence?*, 100 J. CRIM. L. & CRIMINOLOGY 765, 787 (2010). Sanctions by a court against a litigant are not the same as criminal penalties, but they serve the same purpose: to deter unwanted behavior and prevent waste of judicial resources. Jo-Ann W. Grace, *The Purpose of Sanctions*, 21 JUDGES J. 31, 31 (1982).

<sup>195</sup> See Stuart Minor Benjamin, *Proactive Legislation and the First Amendment*, 99 MICH. L. REV. 281, 285 (2000) (arguing that legislatures are better suited to take proactive measures than courts); Ralph Cavanagh & Austin Sarat, *Thinking About Courts: Toward and Beyond a Jurisprudence of Judicial Competence*, 14 LAW & SOC'Y REV. 371, 379 (1980) (noting the reactive nature of courts).

<sup>196</sup> See generally UNIF. L. COMM'N, GUIDE TO UNIFORM AND MODEL ACTS (2020) (describing various model acts passed by legislatures across the nation to standardize practices such as the formation of partnerships or the imposition of collateral consequences during sentencing). The Uniform Law Commission, also known as the National Conference of Commissioners on Uniform State Laws, drafts and advocates for model acts on a variety of topics. UNIF. L. COMM'N, ANNUAL REPORT 3, 11 (2019). In the context of pseudolitigation, a model act to allow courts to reject pseudolegal filings at an early stage would ensure that pseudolitigants could not evade punishment for frivolous filings merely by forum shopping. See generally Gita F. Rothschild, *Forum Shopping*, 24 LITIG. 40 (1998) (describing the practice of forum shopping by seeking the jurisdiction with the most amenable rules for one's complaint).

<sup>197</sup> See *infra* notes 198–209 and accompanying text.

<sup>198</sup> Netolitzky, *supra* note 13, at 14. The U.S. Court of Appeals for the Seventh Circuit noted this problem, admitting that sanctions lack deterrent capacity unless their targets can anticipate being sanctioned for disruptive behavior. *Coleman v. Comm'r*, 791 F.2d 68, 72 (7th Cir. 1986).

<sup>199</sup> See Loeser, *supra* note 121, at 1109–10 (indicating limited deterrent success of criminal penalties). Even individual pseudolitigants prosecuted under these statutes are not necessarily deterred, as many continue their pseudolegal filings from prison. See *id.* at 1110 n.23.

sive impact.<sup>200</sup> Laws targeting gurus could help reduce the spread of pseudolegal theories, but such strategies are impotent in the instances where gurus do not directly encourage their clients to violate any federal laws.<sup>201</sup>

The second problem is practical; if the harm caused by pseudolitigants takes the form of wasted court time, any solution that only applies retrospectively is too late.<sup>202</sup> The problem with pseudolitigants is not that they *win* their cases, but that the cases show up *at all*.<sup>203</sup> Laws penalizing paper terrorism do not directly address the problem of pseudolitigants in court (either as plaintiff or defendant) proffering senseless documents and wasting the court's time.<sup>204</sup> Nor do these laws provide a remedy for the actual victims of false liens, who must go through the trouble of having them removed.<sup>205</sup>

The third problem with the legislative approach is moral: it runs the risk of penalizing good-faith pro se litigants.<sup>206</sup> Many pro se litigants lose their cases, and their arguments are rarely sophisticated.<sup>207</sup> Nonetheless, the principle

<sup>200</sup> See *Coleman*, 791 F.2d at 72 (imposing sanctions but acknowledging their limited deterrent effect unless the litigant knows of and can anticipate them); Sullivan, *supra* note 40, at 821 (noting the ineffectiveness of sanctions against fanatic or judgment-proof litigants). Because pseudolitigants often continue their filings from prison (in the form of meritless habeas petitions and the like), criminal laws that lead to prison time can perversely *increase* the number of pseudolegal filings—with which a court must deal. Mastrony, *supra* note 41, at 1030. The sanctions available to officials against imprisoned pseudolitigants, however, are likely to be more effective than those deployed in court, because prison officials have substantial authority to restrict the pseudolitigant's movement and associations, and thus the spread of pseudolegal ideas. Loeser, *supra* note 121, at 1130.

<sup>201</sup> Sullivan, *supra* note 40, at 816 (noting the ineffectiveness of aiding and abetting charges against activity that does not result in breaking any federal laws).

<sup>202</sup> See *id.* at 819–20 (stating that judges must read through pseudolegal pleadings on the off-chance that they present a colorable argument).

<sup>203</sup> McRoberts, *supra* note 3, at 644–45. Courts can recapture some of these costs via fines and sanctions, but the amount raised is generally a fraction of the cost imposed by the pseudolitigant, and, in any case, courts are generally reluctant to levy heavy fines. *Id.* at 645.

<sup>204</sup> See NASS REPORT, *supra* note 149, at 12–29 (listing laws passed by various states to combat paper terrorism, none of which contain any provision for handling pseudolegal filings in court).

<sup>205</sup> See Mastrony, *supra* note 41, at 1030 (noting that, in the absence of a statute expediting administrative or judicial relief, victims of pseudolegal filings still suffer even if the pseudolitigants themselves are punished by statute).

<sup>206</sup> See McRoberts, *supra* note 3, at 643 (distinguishing between good-faith exposition of baseless legal claims and pseudolitigant claims). Due to their often unorthodox and unsophisticated approach, many pro se litigants already face discrimination. See Niehoff, *supra* note 184, at 12–13 (describing barriers faced by pro se plaintiffs). The renowned Judge Richard Posner retired abruptly in part because he felt that his colleagues were treating pro se litigants unfairly. See Adam Liptak, *An Exit Interview with Richard Posner, Judicial Provocateur*, N.Y. TIMES (Sept. 11, 2017), <https://www.nytimes.com/2017/09/11/us/politics/judge-richard-posner-retirement.html> [<https://perma.cc/7TK7-SCYD>] (discussing the unfair treatment of pro se litigants, whose claims are often dismissed for technical reasons even if they have legitimate complaints).

<sup>207</sup> Denise S. Owens, *The Reality of Pro Se Representation*, 82 SUPRA 147, 148–49 (2013). Pro se plaintiffs often make ineffective arguments, commit procedural errors, fail to object when warranted, and fail to meet their evidentiary burdens. *Id.* at 149. Lawyers who have dealt with pro se litigants find that such litigants often fail to meet pleading requirements or cooperate in discovery. Niehoff, *supra* note 184, at 16.

of due process is deeply rooted in the American justice system, and even unsophisticated pro se litigants deserve the opportunity to have their claims heard.<sup>208</sup> A legislative strategy that unintentionally criminalizes good-faith but poorly written pro se filings raises not only constitutional concerns but serious ethical and moral concerns as well.<sup>209</sup>

### C. Academic Solutions: Recognizing Pseudolaw Where It Appears

Among researchers of the pseudolaw phenomenon, the consensus is that further study is an essential step towards any kind of systematic solution.<sup>210</sup> The phenomenon of pseudolaw has thus far been studied only on a limited level, and often from a law enforcement or counter-terrorism perspective.<sup>211</sup> This has been changing slowly since *Meads v. Meads* was decided in 2012 by the Court of Queen's Bench of Alberta.<sup>212</sup> One American tax court judge in 2014 published an opinion, *Waltner v. Commissioner*, which thoroughly described and refuted many common pseudoligant arguments regarding the tax code.<sup>213</sup> Opinions like *Waltner* and articles in journals describing and categorizing

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<sup>208</sup> See Drew A. Swank, *The Pro Se Phenomenon*, 19 BYU J. PUB. L. 373, 374–75 (2005) (describing the history of pro se rights in America). The U.S. Supreme Court has held that courts must liberally construe the pleadings of pro se litigants. *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972). The pro se tradition is deeply rooted in the American ideals of egalitarianism, which suggest that access to justice and the courts should not be gated behind the ability to afford a lawyer. Swank, *supra*, at 374. It also allows citizens to avoid non-judicial self-help, which is often difficult and dangerous, and instead rely on the courts to solve their problems. *Id.* at 375.

<sup>209</sup> See David Goodnight, Greg Talbert & Jason Morgan, *The Pro Se Dilemma: Washington Courts and Vexatious Pro Se Litigation*, 63 WASH. STATE BAR NEWS 25, 30 (2009) (noting that not every pro se litigant with a flawed or legally non-operative claim deserves a sanction); Niehoff, *supra* note 184, at 14 (noting that some pro se plaintiffs arrive before the court with legitimate, meritorious cases).

<sup>210</sup> See, e.g., McRoberts, *supra* note 3, at 671 (calling for more academic study of the pseudolaw phenomenon); Netolitzky, *supra* note 99, at 1207 (pleading for courts and academics to study pseudolegal proceedings more closely).

<sup>211</sup> See Netolitzky, *supra* note 12, at 3 (noting the dearth of attention from media and government organizations on pseudolaw and emphasizing the questionable quality of much of the existing scholarship). See generally Slater, *supra* note 10 (studying pseudolaw from the law enforcement perspective). Seeing pseudolaw only as a type of crime obscures the distinction between ignorant but well-intentioned practitioners and those operating in bad faith. See Sullivan, *supra* note 40, at 822 (noting how many pseudoligants began as farmers seeking to avoid foreclosure and adopted pseudolegal techniques without realizing their significance).

<sup>212</sup> *Meads v. Meads*, 2012 ABQB 571 (Can.); see Netolitzky, *supra* note 99, at 1186 (describing judicial and scholarly responses to the Court of Queen's Bench of Alberta's 2012 *Meads v. Meads* decision). This decision described pseudolaw as an organized scheme with certain defined indicants, rather than as a scattered set of practices developed by lone litigants. Netolitzky, *supra* note 99, at 1168. In the wake of this decision, courts around the world have cited it approvingly and used it as a resource in identifying their own pseudoligants. *Id.* at 1186–87 (listing citations to *Meads* by courts in Austria, Ireland, Scotland and Australia, among others). *Meads* also described the guru-centric distribution network of pseudolegal ideas, generating sympathy in some courts for the pseudoligants thus fooled. *Id.* at 1188.

<sup>213</sup> *Waltner v. Comm'r*, 107 T.C.M. (CCH) 1189 at \*14–22 (2014).

pseudolaw have begun to knit together a framework by which practitioners can understand pseudolegal arguments and pseudolitigants themselves.<sup>214</sup>

One advantage that the legal profession has in this struggle is that, for all of their creativity, pseudolitigants tend to reuse certain motifs in their filings and arguments.<sup>215</sup> Certain phrases and behaviors—such as “accepted for value” or the forty-five degree stamp—are hallmarks of pseudolegal filings, and can be used for quick identification.<sup>216</sup> Once a pseudolitigant has been recognized, any lingering due process concerns disappear, and the judge can employ his or her full arsenal of techniques to end the litigation as quickly and finally as possible.<sup>217</sup> The Court of Queen’s Bench of Alberta’s standing “Master Order” for pseudolegal filings demonstrates the power of this academic/judicial synergy.<sup>218</sup> Specifically, this order instructs court personnel to watch for certain indicia of pseudolaw and refuse to file documents bearing those indicia.<sup>219</sup>

Academics and practitioners can also use their expertise to approach pseudolitigants directly.<sup>220</sup> Many people turn to pseudolaw out of desperation

<sup>214</sup> See McRoberts, *supra* note 3, at 669 (describing the network of professionals developing scholarship on pseudolaw). The opinion in *Waltner* noted that the role of the court includes “establish[ing] clear and articulate rules for the future.” *Waltner*, 107 T.C.M. (CCH) at \*22. As with *Meads*, academics and laypeople have cited *Waltner* approvingly and relied on it to identify and debunk pseudolegal ideas. McRoberts, *supra* note 3, at 667–68.

<sup>215</sup> Netolitzky, *supra* note 99, at 1182–83. It is unknown why new pseudolegal theories have not been created in the wake of *Meads* and other decisions that have laid out indicia for recognizing pseudolaw. *Id.* at 1184. One explanation is that pseudolaw does not spread when it consists of a scattered collection of “tricks,” but only when it is able to present itself as an organic, complete replacement for an entire legal schema. *Id.* at 1184–85. Thus, a new field of pseudolegal theories can only arise when it reaches a “critical threshold” of complexity and history. *Id.* at 1185.

<sup>216</sup> See *Scotia Mortg. Corp. v. Landry*, 2018 ABQB 951 para. 24 (Can.) (making use of the accepted for value scheme); *Bossé v. Farm Credit Can.*, 2014 NBCA 34 (Can.) (involving a pseudolitigant who attempted to use an accepted for value scheme to eliminate a debt); *Underworld Servs. Ltd. v. Money Stop Ltd.*, 2012 ABQB 327 paras. 5, 13 (featuring a 45° stamp); Netolitzky, *supra* note 55, at 54 (describing several cases that also featured such a stamp).

<sup>217</sup> See McRoberts, *supra* note 3, at 668 (suggesting that judges rely on existing opinions to explain faults in pseudolegal arguments rather than starting from scratch). This approach is highly effective; statistics from Canada indicate that a robust early-response mechanism effectively thwarted 95% of new cases by pseudolitigants. Netolitzky, *supra* note 99, at 1174.

<sup>218</sup> Revised Master Order for Organized Pseudolegal Commercial Arguments (OPCA) Documents, *Meads v. Meads*, 2012 ABQB 571 (2019) [hereinafter Master Order]. Half of all litigants employing pseudolaw at the Court of Queen’s Bench of Alberta cease their pseudolegal arguments after pre-emptive review and rejection of their filings. Netolitzky, *supra* note 99, at 1174.

<sup>219</sup> Master Order, *supra* note 218. The Federal Rules of Civil Procedure forbid clerks from rejecting filings in this manner. FED. R. CIV. P. 5(d)(4). Therefore, an American equivalent would require either a modification of the Federal Rules, or the judge in the case to issue a pre-filing injunction at an early stage. *Id.*; Stork & Beumer, *supra* note 26, at 46.

<sup>220</sup> See McRoberts, *supra* note 3, at 669–70 (suggesting direct engagement with pseudolitigants by legal professionals). Practitioners can take their cues from scientists fighting back against pseudo-scientific ideas such as creationism: direct engagement with pseudolitigants, distributing factual information, and encouraging them to question their beliefs. See *id.* at 669.

and a lack of understanding of the legal system.<sup>221</sup> It is unreasonable to expect that every pseudoligant can be convinced of the futility of their tactics, but there is reason to believe that some may be reachable.<sup>222</sup> Convincing these people to abandon their fruitless study of pseudolaw will reduce the amount of nonsense paperwork burdening the courts.<sup>223</sup> It may also push a needy person to seek out legitimate legal aid to resolve their legal dilemma.<sup>224</sup>

#### *D. Judicial Solutions: Disposing of Frivolous Filings*

Judicial solutions, focused on empowering judges to dispose of pseudolegal cases early in the judicial process, cut to the heart of the problem.<sup>225</sup> The core harm of pseudolaw in a courtroom comes from the judicial time it wastes.<sup>226</sup> Dismissing a pseudolegal case at an early stage spares the court the expense of discovery and extensive motion practice.<sup>227</sup> Declaring a litigant “frivolous” or enacting a “gatekeeper order” can choke off the flood of paper at its source.<sup>228</sup>

This solution does not depend for its efficacy on the pseudoligant’s accepting the court’s authority.<sup>229</sup> If the judge orders a case dismissed or an injunction issued, the pseudoligant is deprived of meaningful recourse to con-

<sup>221</sup> *Id.* at 653–54; Sullivan, *supra* note 40, at 822. Ordinary people, cognizant that access to the legal system can be unfeasibly expensive and their chance of victory minimal without assistance, may turn to pseudolaw as it at least offers the fantasy of success. McRoberts, *supra* note 3, at 653.

<sup>222</sup> See Donald J. Netolitzky, *Lawyers and Court Representation of Organized Pseudolegal Commercial Argument [OPCA] Litigants in Canada*, 51 U.B.C. L. REV. 419, 487–88 (2018) (describing misguided practitioners of pseudolaw); Sullivan, *supra* note 40, at 822 (discussing the problem of how to handle sincere but misguided pseudoligants).

<sup>223</sup> See McRoberts, *supra* note 3, at 669–70 (suggesting that engagement with pseudoligants in their own communities may increase their trust of the legal establishment and discourage them from pursuing their frivolous legal theories).

<sup>224</sup> See *id.* (advocating for the public engagement approach as a way to channel pseudoligants towards more productive endeavors). There have been instances of pseudoligants abandoning pseudolaw after it has failed them and choosing to resolve their cases via traditional means. See Stipulation and Joint Request, *supra* note 182 (terminating one’s case via payment of all back taxes and fines).

<sup>225</sup> See Sullivan, *supra* note 40, at 820 (describing the use of the “frivolous litigant” rule to dismiss pseudolaw cases). These dismissals—permitted under 28 U.S.C. § 1915(e)(2)—allow a judge to dismiss a complaint that lacks an arguable basis in either law or fact. See *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (setting the standard for frivolousness).

<sup>226</sup> Stork & Beumer, *supra* note 26, at 46.

<sup>227</sup> McRoberts, *supra* note 3, at 666.

<sup>228</sup> See Stork & Beumer, *supra* note 26, at 46 (describing the use of a “Gatekeeper Order” to prevent pseudoligants from making further filings). These orders prevent the pseudoligant from making any further filings unless consented to by opposing counsel or approved by a judge or special master. *Id.* In order to enact these orders, however, the judge must describe the litigant’s history of frivolous or abusive filings—meaning these orders are only useful once a litigant has previously engaged in such conduct. Michael Crowell, *Gatekeeper Orders (Pre-Filing Injunctions)* 1 (Nov. 2012) (unpublished manuscript), <https://www.sog.unc.edu/resources/legal-summaries/gatekeeper-orders-pre-filing-injunctions> [<https://perma.cc/CD6C-LHUD>].

<sup>229</sup> See Sullivan, *supra* note 40, at 821 (noting that persistent pseudoligants not dissuaded by sanctions may be controlled by pre-filing injunctions).



tinue pursuing their bogus claims.<sup>230</sup> Furthermore, this solution comes into effect *before* the court has wasted weeks or months poring over incomprehensible pseudolegal filings.<sup>231</sup> It therefore addresses the actual problem of pseudolaw-caused delay directly, not just indirectly via deterrence.<sup>232</sup>

The risk of penalizing good-faith filers, however, also applies to judicial solutions.<sup>233</sup> In employing these tools (whose inherent effect is to deny a litigant the full due process to which other litigants are entitled), the court risks injustice when the litigant is *not* truly pseudolegal but merely pro se and unsophisticated.<sup>234</sup>

In order to prevent this potential injustice, courts must be sure that they are deploying their judicial tools only against appropriate targets.<sup>235</sup> There has, until relatively recently, been a dearth of research and writing on pseudolaw, and many courts are unfamiliar with the tools available to combat this phenomenon.<sup>236</sup> Even those who have encountered pseudolitigants before may struggle to distinguish between them and pro se litigants operating in good

<sup>230</sup> See, e.g., *Bryant v. Wash. Mut. Bank*, 524 F. Supp. 2d 753, 762–64 (W.D. Va. 2007) (dismissing a pseudolitigant’s case notwithstanding her pseudolegal theories), *aff’d* 282 F. App’x 260 (4th Cir. 2008). Any order of dismissal is appealable, but appeals (especially facially non-meritorious ones) can be disposed of with minimal ceremony. See *Bryant*, 282 F. App’x at 261 (upholding dismissal of pseudolitigant’s claim on appeal because it lacked merit).

<sup>231</sup> See *McRoberts*, *supra* note 3, at 660 (suggesting enhanced use of “litigation management” tools earlier in the course of litigation).

<sup>232</sup> Theret, *supra* note 117, at 882.

<sup>233</sup> See *id.* (noting that pseudolitigants may amend their claims in order to state a colorable claim). There are several alternatives that are less likely to result in a constitutional violation, including enjoining only specific claims, limiting the number of filings a litigant may make, and requiring the submission of affidavits to ensure the claims being raised are new. See *Procup v. Strickland*, 792 F.2d 1069, 1072–73 (11th Cir. 1986) (listing various alternatives courts have used to stem the tide of vexatious litigation).

<sup>234</sup> See *Procup*, 792 F.2d at 1072 (noting the importance of narrow-tailoring for gatekeeper orders to avoid violating the rights of a pseudolitigant); *McRoberts*, *supra* note 3, at 659 (acknowledging courts’ reluctance to impose sanctions that may threaten due process rights of litigants, especially when their filings are not particularly burdensome). Pro se litigants are also hampered by court rules prohibiting clerks from providing “legal advice.” Edward M. Holt, *How to Treat Fools: Exploring the Duties Owed to Pro Se Litigants in Civil Cases*, 2 J. LEGAL PRO. 167, 170 (2001). Different jurisdictions interpret these rules in different ways, and although some clerks are able to help pro se litigants fill out “routine forms,” others are not. *Id.* This ambiguity leads to inconsistent results across jurisdictions and sometimes denies pro se litigants access to courts, even when they raise legitimate claims. *Id.*

<sup>235</sup> *McRoberts*, *supra* note 3, at 663. One conservative approach would be to deploy these tools not just against any factually or legally incorrect arguments, but only against those arguments that have repeatedly been held to be frivolous—the lowest of the low hanging fruit. *Id.* Courts could also couple their injunctions with a response document for the pseudolitigant, explaining why their argument is meritless and why it is being rejected. *Id.*

<sup>236</sup> March-Safbom, *supra* note 56, at 96. More than half of respondents to a survey on pseudoligant behavior were unaware of what responsive measures their own state had taken, even when such measures were already in place. *Id.*

faith but without any legal knowledge or training.<sup>237</sup> In order for judicial solutions to be deployed fairly and equitably, courts resolving pseudoligant filings must educate themselves on the common factors and indicia shared by pseudo-legal filings.<sup>238</sup> Following the example of the Court of Queen's Bench of Alberta, American courts can keep lists of recurrent pseudoligant terminology.<sup>239</sup> Any filing presenting with these telltale signs could be flagged for a frivolous litigant designation, unless the filer can explain the purpose of these arguments to the satisfaction of the court.<sup>240</sup>

### *E. Case Study: Heather Tucci-Jarraf*

The U.S. Sixth Circuit Court of Appeals in *United States v. Tucci-Jarraf* was correct: Heather Tucci-Jarraf and Randall Beane advanced meaningless legal theories and deserved to lose.<sup>241</sup> Nevertheless, it is worth considering what might have occurred had the U.S. District Court for the Eastern District of Tennessee been more familiar with pseudolaw as a phenomenon.<sup>242</sup> Tucci-Jarraf and Beane's filings contained numerous clear indicia of pseudolaw.<sup>243</sup> The district court judge evaluated the competence of both defendants and appointed them standby counsel, who could step in should the court choose to end their self-representation.<sup>244</sup> Despite the baseless pseudolegal claims ad-

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<sup>237</sup> See Netolitzky, *supra* note 222, at 420 (noting that lawyers frequently make arguments not grounded in existing law, and pro se litigants do this even more often). Of course, distinguishing between pseudoligants and "pure" pro se litigants is not always as simple as it would seem, as some individuals engage in both pseudoligation and conventional litigation tactics at the same time. Netolitzky, *supra* note 99, at 1190–91.

<sup>238</sup> See McRoberts, *supra* note 3, at 664–65 (arguing that more thorough treatment of pseudolegal filings by courts sets useful precedents and helps spread awareness of pseudolaw).

<sup>239</sup> See Master Order, *supra* note 218 (articulating specific terminology which indicates the likely presence of pseudolegal arguments in a filing).

<sup>240</sup> See *id.* (establishing the procedure by which litigants whose filings bear hallmarks of pseudolegal activity can have those filings accepted).

<sup>241</sup> *United States v. Tucci-Jarraf*, 939 F.3d 790, 793–94 (6th Cir. 2019).

<sup>242</sup> See Netolitzky, *supra* note 99, at 1174 (describing the effectiveness of anti-pseudoligation orders in Canadian courts). When their initial pseudolegal filings are rejected, around half of litigants abandon pseudolaw as a tactic. *Id.* In the present case, Heather Tucci-Jarraf and Randall Beane were criminal defendants and could not have dropped their case, but they could have switched to a more traditional approach and obtained counsel, as they eventually did for their appeal. *Tucci-Jarraf*, 939 F.3d at 791.

<sup>243</sup> *United States v. Beane*, Nos. 17-CR-82-1, 17-CR-82-2, 2017 WL 6025323, at \*1–2 (E.D. Tenn. Dec. 5, 2017), *aff'd sub nom.* *United States v. Tucci-Jarraf*, 939 F.3d 790 (6th Cir. 2019). For instance, many pages were marked with a red fingerprint. *Id.* The filings also included phrasing characteristic of pseudolegal theories, such as "duly rejected, without dishonor, for due cause," and "without prejudice." *Id.*; Request for Due Identification and Verification of Authority and Jurisdiction at 5, *Beane*, 2017 WL 6025323 (Nos. 17-CR-82-1, 17-CR-2) [hereinafter Request for Due Identification]. Some of Beane's filings referenced a "factualized trust" with himself listed as the trustee, which appears to refer to the strawman theory. Request for Due Identification, *supra*, at 3; see *supra* notes 51–55 and accompanying text (discussing the strawman pseudolegal theory).

<sup>244</sup> *Tucci-Jarraf*, 939 F.3d at 793.

vanced by both defendants during trial, the court never activated the standby.<sup>245</sup>

If the district court judge was more familiar with pseudolaw, he might have chosen to reject the defendants' time-wasting pseudolegal practice by means of a pre-filing injunction, thereby giving them a chance for a meritorious legal defense (or a guilty plea that might have reduced their sentences).<sup>246</sup> Instead, the defendants were allowed to present their pseudolegal theories, with the expected result: an extended trial, guilty verdicts, and lengthy jail sentences.<sup>247</sup>

Perhaps by the time Tucci-Jarraf and Beane were haled into court, it was too late for their story to end any other way.<sup>248</sup> There were, however, many earlier opportunities for them to take a different path.<sup>249</sup> Had a competent and patient lawyer explained the deficiency of Tucci-Jarraf's theories to Beane and recommended other means of debt consolidation, he might have dealt with his financial problems in an appropriate way.<sup>250</sup> Moreover, during the two years it took this case to percolate through the legal system, the court might have handled a number of more pressing matters instead of dealing with frivolous ar-

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<sup>245</sup> *Id.* Even had the court not chosen to activate standby counsel, it could have enjoined the defendants from further filing without review, perhaps ending their use of pseudolegal arguments. *See* Netolitzky, *supra* note 99, at 1174 (noting that a large percentage of pseudolitigants facing rejection of pseudolegal documents from the court abandon their pursuit of these strategies).

<sup>246</sup> *See* Stork & Beumer, *supra* note 26, at 46 (suggesting the use of such injunctions). A pre-filing injunction, paired with an explanation of why the defendants' arguments are invalid and a demonstration of their past failures, would send a clear message that there is nothing to be gained by further pursuit of a pseudolegal solution. *See* McRoberts, *supra* note 3, at 663 (recommending this informative approach). Pseudolitigants facing rejection of their arguments in this manner have demonstrated openness to alternative strategies, including non-frivolous ones. Netolitzky, *supra* note 99, at 1174.

<sup>247</sup> *Tucci-Jarraf*, 939 F.3d at 793.

<sup>248</sup> *See id.* (noting that both defendants presented their legal theories and did their best to defend themselves, but were convicted nonetheless).

<sup>249</sup> *See id.* at 792–94 (discussing the history that led defendant Beane to commit fraud and the failure of his legal theories once in court). Notably, this case demonstrates how, on some occasions, the existence of pseudolaw actually increases incidence of crimes and torts. *See* McRoberts, *supra* note 3, at 645 (discussing how pseudolaw can motivate people to act illegally). Defendant Beane learned about the scheme he used to defraud his creditors from a pseudolitigant “guru.” *Tucci-Jarraf*, 939 F.3d at 792.

<sup>250</sup> *See* McRoberts, *supra* note 3, at 663 (describing a method of dissuading pseudolitigants by pointing out the history of failure of their arguments). This would not work in every case, as some pseudolitigants are simply immune to persuasion, or actively seek out confrontation with government authorities. *See* Re Gauthier, 2017 ABQB 555 paras. 88–90 (Can.) (noting that the pseudolitigant had refused to abandon defective legal arguments even after being warned of the arguments' defects). Some pseudolitigants, however, are willing to “listen to reason” and turn away from their frivolous theories. *See id.* para. 89 (describing a pseudolitigant who abandoned pseudolegal tactics and resolved his case with court assistance after being provided with explanation of why his theories were false).

guments from the defendants.<sup>251</sup> It is hard not to see the case of Tucci-Jarraf and Beane as a tragedy, and one that could have been avoided.<sup>252</sup>

### CONCLUSION

Despite the outlandish and at times comedic nature of pseudolaw litigants, the problems they present to the legal system are real. Victims of paper terrorism are unable to share in the comedy, nor are overworked judges and clerks who are forced to wade through mountains of meaningless paperwork. The profusion of pseudolaw threatens an already overtaxed legal system, and any long-term solution must include both methodical study of the problem and vigorous use of judicial tools. Hopefully, by taking a multi-pronged approach, the legal system can tackle the problem of pseudolaw while preserving important values of due process and fairness. Such an approach would involve comprehensive study and education, so that court personnel and judges can recognize pseudolaw when it appears, as well as the use of tools such as pre-filing injunctions and frivolous litigant designations to stem the tide of meaningless paperwork. By cutting off frivolous filings early, courts can both protect themselves from time-wasting arguments and divert the would-be pseudolitigants to more legitimate, traditional pathways.

SAMUEL BARROWS

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<sup>251</sup> See *Tucci-Jarraf*, 939 F.3d at 790 (affirming the district court's judgment in September 2019); *Beane*, 2017 WL 9253561 at \*1–4 (E.D. Tenn. Nov. 16, 2017), *report and recommendation accepted by* Nos. 17-CR-82-1, 17-CR-82-2, 2017 WL 6025323 (E.D. Tenn. Dec. 5, 2017), *aff'd sub nom.* United States v. Tucci-Jarraf, 939 F.3d 790 (6th Cir. 2019) (resolving pretrial motions in November 2017). This process, from resolution of pretrial motions to final affirmation of judgment, took 22 months, while the median time from filing to disposition of a federal criminal case during that same period was approximately 7 months. U.S. CTS., FEDERAL COURT MANAGEMENT STATISTICS-COMPARISON WITHIN CIRCUIT (Sept. 30 2020), [https://www.uscourts.gov/sites/default/files/data\\_tables/fcms\\_na\\_distcomparison0930.2020.pdf](https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distcomparison0930.2020.pdf) [<https://perma.cc/9F55-FHCQ>].

<sup>252</sup> See *Tucci-Jarraf*, 939 F.3d at 793 (noting that the defendants “knowingly and intelligently” waived their right to counsel); McRoberts, *supra* note 3, at 651–54 (describing the ignorance and desperation that drives people to pseudolaw).