

THE (F)LAW OF KARMA:

In Light of Sedlock v. Baird, Would Meditation Classes in Public Schools Survive a First Amendment Establishment Clause Challenge?

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INTRODUCTION

This is a boom time for meditation classes in public schools.¹ The last fifteen years have seen a growing number of schools instructing K–12 students in various kinds of meditation techniques.² Educators in at least ninety-one schools across thirteen states have implemented meditation programs for students.³ Programs include Quiet Time,⁴ Inner Kids Program,⁵ Mindful Schools,⁶ and MindUP.⁷

The benefits of meditation are widely acknowledged in the United States.⁸ A nascent but equally promising body of literature shows that

¹ *Infographic: Meditation in Schools Across America: As a Growing Body of Research Points to Positive Outcomes from Meditation in Schools, Programs are Spreading Across the Country*, EDUTOPIA, <http://www.edutopia.org/stw-student-stress-meditation-schools-infographic> (last visited Nov. 11, 2013) [hereinafter *Infographic*] (noting that at least thirteen states currently implement meditation classes in schools).

² John Meiklejohn et al., *Integrating Mindfulness Training into K–12 Education: Fostering the Resilience of Teachers and Students*, 3 MINDFULNESS 291, 292 (2012).

³ *Infographic*, *supra* note 1.

⁴ *Schools*, DAVID LYNCH FOUND., <http://www.davidlynchfoundation.org/schools.html> (last visited Nov. 11, 2013); David L. Kirp, *Meditation Transforms Roughest San Francisco Schools*, SFGATE (Jan. 12, 2014, 6:37 PM), <http://www.sfgate.com/opinion/openforum/article/Meditation-transforms-roughest-San-Francisco-5136942.php>.

⁵ *Inner Kids*, SUSAN KAISER GREENLAND, <http://www.susankaisergreenland.com/inner-kids.html> (last visited Nov. 11, 2013).

⁶ *What is Mindfulness?*, MINDFUL SCHS., <http://www.mindfulschools.org/about-mindfulness/mindfulness/> (last visited Nov. 11, 2013).

⁷ *MindUP*, HAWN FOUND., <http://thehawnfoundation.org/mindup/> (last visited Oct. 4, 2013), (explaining that MindUP is currently in 1,000 schools across the United States). Mindfulness meditation classes also appear in the burgeoning area of curriculum development called Social and Emotional Learning (“SEL”), which some call the “missing piece” in education. Maurice J. Elias, *The Connection Between Academic and Social-Emotional Learning*, in *THE EDUCATOR’S GUIDE TO EMOTIONAL INTELLIGENCE AND ACADEMIC ACHIEVEMENT* 4, 6 (Maurice J. Elias & Harriett Arnold eds., 2006).

⁸ *Meditation: An Introduction*, NAT’L CTR. FOR COMPLEMENTARY AND ALT. MED. (June 2010), available at <http://nccam.nih.gov/health/meditation/overview.htm>; Richard J. Davidson et al., *Alterations in Brain and Immune Function Produced by Mindfulness Meditation*, PSYCHOSOMATIC MED., 564, 564, 569 (2003) (linking mindfulness meditation to significant positive changes in brain and immune function); Phillip M. Keune & Dora Perczel Forintos, *Mindfulness Meditation: A Preliminary Study on Meditation Practice During Everyday Life Activities and its Association with Well-Being*, 19 PSYCHOL. TOPICS 373, 374 (2010) (documenting the salutary effect of meditation on human health); *Research: Major Research Studies and Findings*, UNIV. OF MASS. MED.

meditation benefits children by reducing test anxiety, increasing attention span, and boosting academic performance.⁹ Other studies show that meditation programs in schools reduce misbehavior and aggression between students.¹⁰ Critics, however, claim that meditation and other allegedly spiritual practices are a modern-day Trojan Horse bringing religion past the schoolhouse gate.¹¹ Given the broad discretion of a school board to select its public school curriculum,¹² what framework should guide educators considering the legality of starting or continuing a state-sponsored meditation program? The timely question now facing public school districts is whether teaching meditation techniques is a violation of the First Amendment Establishment Clause.¹³

“Meditation” is a family of techniques that focus attention on the present moment.¹⁴ This paper will focus on mindfulness meditation (“MM”)¹⁵

SCH., <http://www.umassmed.edu/Content.aspx?id=42426> (last visited Dec. 31, 2013) (discussing the work of Dr. Jon Kabat-Zinn over the past thirty-four years).

⁹ Meiklejohn, *supra* note 2, at 298; Kimberly A. Schonert-Reichl & Molly Stewart Lawlor, *The Effects of a Mindfulness-Based Education Program on Pre- and Early Adolescents’ Well-Being and Social and Emotional Competence*, 1 MINDFULNESS 137–39 (2010); THE QUIET TIME BROCHURE, DAVID LYNCH FOUND. 20–21, available at <http://www.davidlynchfoundation.org/pdf/Quiet-Time-Brochure.pdf> [hereinafter *Brochure*] (collecting research findings on the Transcendental Meditation program in schools).

¹⁰ Vanessa Vega, *Promising Research on Meditation in Schools*, EDUTOPIA (Feb. 22, 2012), <http://www.edutopia.org/stw-student-stress-meditation-schools-research> (collecting research on meditation programs in schools).

¹¹ Charles C. Haynes, *In Public Schools, Religion by Any Other Name is Still Religion*, FIRST AMENDMENT CTR. (Apr. 26, 2009), <http://www.firstamendmentcenter.org/in-public-schools-religion-by-any-other-name-is-still-religion>.

¹² *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968).

¹³ See U.S. CONST. amend. I. This paper does not address meditation in the context of moment-of-silence statutes. By “meditation,” this paper means to address a stand-alone classroom activity apart from the typical moment of silence observed during morning announcements. For a discussion on the latter, see Debbie Kaminer, *Bringing Organized Prayer in Through the Back Door: How Moment-of-Silence Legislation for the Public Schools Violates the Establishment Clause*, 13 STAN. L. & POL’Y REV. 267 (2002).

¹⁴ Keune & Forintos, *supra* note 8, at 374; Betsy L. Wisner et al., *School-based Meditation Practices for Adolescents: A Resource for Strengthening Self-Regulation, Emotional Coping, and Self-Esteem*, 32 CHILD. & SCHS. 150, 152 (2010); Antoine Lutz et al., *Attention Regulation and Monitoring in Meditation*, 12 TRENDS IN COGNITIVE SCI. 163, 163 (2008).

¹⁵ JON KABAT-ZINN, MINDFULNESS FOR BEGINNERS: RECLAIMING THE PRESENT MOMENT — AND YOUR LIFE 135–52 (2012) (describing the basics of mindfulness meditation techniques).

and Transcendental Meditation (“TM”).¹⁶ In MM, the meditator directs her attention to an internal or external object, such as the breath, an emotion, or a bodily sensation.¹⁷ MM cultivates a nonjudgmental awareness of the present moment.¹⁸ The goal of MM is to experience clarity, acceptance, and relaxation.¹⁹ In TM, the practitioner does not focus, concentrate, or otherwise try to control the mind.²⁰ Instead, the meditator allows the mind to naturally settle inward through an effortless and automatic process called “self-transcending.”²¹ The goal of TM is to create an experience of restful alertness.²²

Meditation exists in both religious and secular contexts.²³ Various forms of meditation form the core of Zen, Hinduism, and Buddhism.²⁴

¹⁶ *What is TM: The Technique*, TRANSCENDENTAL MEDITATION, <http://www.tm.org/meditation-techniques> (last visited Nov. 11, 2013). See also HERBERT BENSON, *THE RELAXATION RESPONSE 10* (1975) (discussing mantra-based meditation not requiring a special Sanskrit mantra). See also *How NSR Works*, NAT. STRESS RELIEF/USA, <http://www.nsrusa.org/how-it-works.php> (last visited Oct. 5, 2013) (discussing mantra-based meditation technique similar to Transcendental Meditation).

¹⁷ See *What is Mindfulness?*, ASS’N FOR MINDFULNESS EDUC., <http://www.mindfuleducation.org/what-is-mindfulness/> (last visited Nov. 11, 2013) (describing mindfulness meditation techniques such as watching the breath, emotions, thoughts, physical sensations, and sound).

¹⁸ Lutz, *supra* note 14, at 163; Meiklejohn *supra* note 2, at 293; Wisner, *supra* note 14, at 151.

¹⁹ Meiklejohn *supra* note 2, at 293; Bhante Gunaratana, *Mindfulness Versus Concentration*, VIPASSANA FELLOWSHIP, http://www.vipassana.com/meditation/mindfulness_in_plain_english_16.php (last visited Dec. 31, 2013) (discussing the subtle difference between concentration and mindfulness).

²⁰ *How is Transcendental Meditation Different?*, TRANSCENDENTAL MEDITATION, <http://www.tm.org/tm-is-different> (last visited Jan. 30, 2014).

²¹ See Jonathan Shear, *State-Enlivening and Practice-Makes-Perfect Approaches to Meditation*, 39 *BIOFEEDBACK* 51, 53 (2011); *How is Transcendental Meditation Different?*, *supra* note 20.

²² See Shear, *supra* note 21, at 53.

²³ See Wisner, *supra* note 14, at 152; *Meditation: An Introduction*, *supra* note 8.

²⁴ Wisner, *supra* note 14, at 151; *Hinduism Basics*, HINDU AM. FOUND., http://www.hafsite.org/resources/hinduism_101?q=resources/hinduism_101/hinduism_basics (last visited Nov. 11, 2013). Other religions also have associated meditative practices. ARYEH KAPLAN, *MEDITATION AND KABBALAH* 5–15 (1982) (discussing Kabbalistic meditations); Mark Link, *St. Ignacius’ Call of the King: A Prayerful Meditation*, in *PARTNERS* 22–23 (2011), available at http://bin.jesuits-chgdet.org/wp-content/uploads/2011/03/Partners_SP04_page22-23_IgSpiritlty.pdf (discussing Christian meditations); Kelly

Secular meditation techniques, on the other hand, seem not to contain any spiritual or religious teachings.²⁵ An example is the Mindfulness-based Stress Reduction program (MSBR) at the University of Massachusetts.²⁶ The clinic offers treatment for a wide range of physical and psychiatric diagnoses.²⁷ But is it truly possible to secularize meditation? Is meditation inherently religious? These questions are at the heart of whether or not teaching meditation in public schools is a violation of the First Amendment Establishment Clause.²⁸

Although no court has squarely addressed whether meditation in public schools violates the Establishment Clause, some courts have spoken to the issue tangentially.²⁹ In 1979, the Third Circuit, in *Malnak v. Yogi*, addressed the constitutionality of TM in combination with a course called Science of Creative Intelligence (SCI).³⁰ The court held that SCI/TM, as a unit, violated the Establishment Clause.³¹ Though *Malnak* is instructive, the holding does not reach the constitutionality of the TM technique apart from its association with SCI.³² There is no comparable case for MM, though a recent San Diego County Superior Court decision concerning yoga, *Sedlock v. Baird*, may provide some guidance.³³ The court held that yoga, in general, was religious, but that the yoga as-taught did not violate the Establishment Clause.³⁴ The comparison of MM to yoga is apt for two reasons. First, both have historical roots in Hinduism, Buddhism, and

Cramer, *Sufi Meditation*, PROJECT MEDITATION, http://www.project-meditation.org/a_mtl/sufi_meditation.html (last visited Dec. 31, 2013) (discussing Sufi meditations).

²⁵ Wisner, *supra* note 14, at 152; FAQ, CTR. FOR CONTEMPLATIVE MIND IN SOC'Y, <http://www.contemplativemind.org/about/faq> (last visited Oct. 5, 2013) (disclaiming affiliation with any religion).

²⁶ *Stress Reduction Program*, UNIV. OF MASS. MED. SCH., <http://www.umassmed.edu/cfm/index.aspx> (last visited Dec. 31, 2013) (discussing MBSR).

²⁷ *Id.*

²⁸ See U.S. CONST. amend. I.

²⁹ See, e.g., *Malnak v. Yogi*, 592 F.2d 197, 200 (3d Cir. 1979) (discussing TM in the context of more comprehensive school elective course).

³⁰ *Id.* at 213.

³¹ *Id.* at 197–98.

³² *Id.*

³³ *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL, 2013 WL 6063439, at *1 (Cal. Super. Ct. C.D. July 1, 2013).

³⁴ Statement of Decision at 27, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. Sep. 23, 2013).

Vedic teachings.³⁵ Second, secular American culture has assimilated both practices to some degree.³⁶

This paper will provide an analytical framework for judges, school district administrators, and other educational stakeholders to examine the constitutionality of meditation programs in public schools. Part I will provide a summary of the relevant legal background of the Establishment Clause.³⁷ Part II will summarize and analyze *Sedlock v. Baird* — not for precedential value, but as an example of how a modern court might deal with a similar question about meditation.³⁸ Part III draws on the background principles of Part I as well as the rationale in *Sedlock v. Baird* to discuss the probable outcome of a First Amendment challenge to meditation classes in public schools.³⁹ This paper argues that schools can offer both MM and TM in a way that does not violate the First Amendment Establishment Clause.⁴⁰

I. BACKGROUND

The Establishment Clause of the First Amendment states, “Congress shall make no law respecting an establishment of religion”⁴¹ The Fourteenth Amendment Due Process clause incorporates the Establishment Clause against the states.⁴² State constitutions contain analogous provisions protecting religious freedom.⁴³

³⁵ *Yoga and Meditation*, SANATAN SOC’Y, http://www.sanatansociety.org/yoga_and_meditation.htm#UIB7_Ra6KsY (last visited Oct. 5, 2013) (discussing the main yogic traditions and their connection to Vedic and Hindu philosophy and religion).

³⁶ Declaration of Mark Singleton at 4, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. May 20, 2013).

³⁷ See discussion *infra* Part I (explaining the relevant Establishment Clause jurisprudence).

³⁸ See discussion *infra* Part II (discussing *Sedlock v. Baird* in detail).

³⁹ See discussion *infra* Part III (applying the legal principles in Parts I and II to determine whether MM and TM classes in public schools would survive an Establishment Clause challenge).

⁴⁰ See discussion *infra* Parts III A.2, B.2.

⁴¹ U.S. CONST. amend. I.

⁴² *Id.*; U.S. CONST. amend. XIV, § 1.

⁴³ *E.g.*, CAL. CONST. art. I, § 4 (“The Legislature shall make no law respecting an establishment of religion.”); N.J. CONST. art. I, ¶ 4 (“There shall be no establishment of one religious sect in preference to another”).

A. DEFINING “RELIGION”

The threshold issue in Establishment Clause violations is whether the challenged governmental activity is “religious.”⁴⁴ The Constitution does not contain a definition of “religion.”⁴⁵ The Supreme Court has assiduously avoided the formulation of a definition of religion.⁴⁶ Some have argued that the very act of defining religion would be unconstitutional because it would limit religious protection for new or unusual belief systems.⁴⁷

Courts have thus approached the notorious question of “what is religion?” with trepidation.⁴⁸ James Madison called religion “the duty which we owe to our Creator and the manner of discharging it.”⁴⁹ This definition of religion in relation to the Creator persisted through the turn of the twentieth century.⁵⁰ Courts routinely recognized religion in the form of formal, mainstream monotheistic belief system such as Christianity, Judaism, or Islam.⁵¹ Courts have struggled, however, to define religion beyond the original theistic understanding of a Supreme Being.⁵²

In 1961, the Supreme Court signaled that the definition of religion was not limited to those solely founded on beliefs of a Supreme Being.⁵³ In dictum, the Court recognized non-theistic religions such as Buddhism, Taoism, Ethical Culture, and Secular Humanism.⁵⁴ In *United States v. Seeger* and *Welsh v. United States*, the Supreme Court upheld a broad interpretation of the definition of religious belief in the context of a provision of the Universal Military Training and Service Act.⁵⁵ The Court examined whether

⁴⁴ *Alvarado v. City of San Jose*, 94 F.3d 1223, 1226–27 (9th Cir. 1996).

⁴⁵ See generally U.S. CONST. (containing no definition of religion).

⁴⁶ *Malnak*, 592 F.2d 197, 200 (3d Cir. 1979).

⁴⁷ Joel Incorvaia, *Teaching Transcendental Meditation in Public Schools: Defining Religion for Establishment Purposes*, 16 SAN DIEGO L. REV. 325, 331 (1979).

⁴⁸ *Alvarado*, 94 F.3d at 1227.

⁴⁹ JAMES MADISON, SELECTED WRITINGS OF JAMES MADISON 22 (Ralph Ketcham ed., 2006).

⁵⁰ *Malnak*, 592 F.2d at 201.

⁵¹ See e.g., *Davis v. Beason*, 133 U.S. 333, 342 (1890).

⁵² See *Malnak*, 592 F.2d at 201.

⁵³ *Torcaso v. Watkins*, 367 U.S. 488, 495 n.11 (1961).

⁵⁴ *Id.* See also *Fellowship of Humanity v. Cnty. of Alameda*, 153 Cal. App. 2d 673, 684 (1st Dist. 1957).

⁵⁵ See *United States v. Seeger*, 380 U.S. 163, 187–88 (1965); *Welsh v. United States* 398 U.S. 333, 341–45 (1970).

a conscientious objector could claim religious belief status.⁵⁶ The test was whether the personal conviction was sincere and meaningful, and had a place in the person's life that paralleled that of traditionally recognized religions.⁵⁷ Some commentators feared this definition of religion would be so broad that certain secular ideals, such as the provision for the general health and welfare of society, would lead to invalidation of government programs.⁵⁸

This expansive view of religion was reined in somewhat in *Wisconsin v. Yoder*, where the Supreme Court held that deep and sincere adherence to a secular way of life, by itself, would qualify merely as a philosophical or personal choice, not a religious one.⁵⁹ By way of example, the Court mentioned that Henry David Thoreau's rejection of modern society at Walden Pond was not religious.⁶⁰ Thoreau's beliefs were personal and meaningful, but not based on religious views.⁶¹ Courts have continued to grapple with how and when to recognize a deeply held set of personal beliefs as religion for the purposes of the Constitution.⁶²

The most influential case addressing whether a set of beliefs is a religion is *Malnak v. Yogi*.⁶³ Judge Adams, in a widely cited concurrence,

⁵⁶ *Seeger*, 380 U.S. at 164–65; *Welsh*, 398 U.S. at 335.

⁵⁷ *Seeger*, 380 U.S. at 165–66; *Welsh*, 398 U.S. at 339–40.

⁵⁸ *Incorvaia*, *supra* note 47, at 331.

⁵⁹ *Wisconsin v. Yoder* 406 U.S. 205, 215–16 (1972). The Court held that the Amish were exempt from the general requirement that children attend public schools. *Id.* The Court focused on how the Amish way of life is inseparable from their religious faith, is practiced in an organized group, and provides prescriptions for daily living found in the Bible that permeate virtually their entire daily life. *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *PLANS, Inc. v. Sacramento City Unified Sch. Dist.*, 752 F. Supp. 2d 1136, 1145–46 (E.D. Cal. 2010) (finding that anthroposophy, also known as Waldorf education, is not a religion); *United States v. Meyers*, 95 F.3d 1475, 1485 (10th Cir. 1996) (finding that Church of Marijuana is not a religion); *United States v. DeWitt*, 95 F.3d 1374, 1376 (8th Cir. 1996) (finding that out-of-body travel through use of psychedelic drugs is not a religion); *Wiggins v. Sargent*, 753 F.2d 663, 666 (8th Cir. 1985) (finding that White supremacy group might be a religion); *Africa v. Com. of Pa.* 662 F.2d 1025, 1033–34 (3d Cir. 1981) (finding that raw foods diet is not a religion); *Friedman v. S. Cal. Permanente Med. Grp.*, 102 Cal. App. 4th 39, 70 (2d Dist. 2002) (finding that veganism is not a religion); *Strayhorn v. Ethical Soc. of Austin*, 110 S.W.3d 458 (Tex. App. 2003) (finding that Ethical Culture is a religion).

⁶³ See *Friedman*, 102 Cal. App. 4th at 60–61 (discussing the wide acceptance of the *Malnak* test); *Malnak*, 592 F.2d 197, 207–08 (3d Cir. 1979).

proposed a modern definition of religion later incorporated by the Second, Fifth, Eighth, Ninth, Tenth, and Eleventh Circuits.⁶⁴ The “*Malnak* test” provides three useful indicia courts can use to decide when a belief system is religious.⁶⁵ This next Section addresses the *Malnak* opinions from the trial court and court of appeals in turn.⁶⁶

1. *Malnak* I

In *Malnak I*, the District Court for the District of New Jersey examined whether a novel set of beliefs was a religion, where the defendants themselves denied the religiousness of their beliefs.⁶⁷ The plaintiffs were a group of parents who sued a New Jersey public high school for an alleged violation of the Establishment Clause.⁶⁸ The parents objected to an elective course that combined TM with substantive instruction in a body of knowledge called SCI.⁶⁹ The companion textbook contained 225 pages describing the field of “creative intelligence.”⁷⁰ The textbook defined “creative intelligence” as an omnipresent, omnipotent, unmanifest, eternal, and unseen universal force that spontaneously gives rise to all that is, and forms the basis of all knowledge.⁷¹

⁶⁴ *Watts v. Fla. Int’l Univ.*, 495 F.3d 1289, 1304 (11th Cir. 2007) (adopting *Malnak* test); *Friedman*, 102 Cal. App. 4th at 6061 (collecting cases adopting the *Malnak* test from Third, Eighth, Ninth, and Tenth Circuits); *Strayhorn*, 110 S.W.3d at 469 (adopting the *Malnak* test for the Fifth circuit). The Tenth Circuit slightly reorganized and tweaked the *Malnak* test. *Meyers*, 95 F.3d 1475, at 1482–83 (factors included ultimate ideas, metaphysical beliefs, moral or ethical system, comprehensiveness of beliefs, and accoutrements of religion); *Altman v. Bedford Cent. Sch. Dist.*, 45 F. Supp. 2d 368, 285 (S.D.N.Y. 1999), 245 F.3d 49 (2d Cir. 2001) (using *Malnak* test in the Second Circuit).

⁶⁵ *Malnak*, 592 F.2d at 207–08.

⁶⁶ See discussion Part I.A.1–2.

⁶⁷ *Malnak v. Yogi*, 440 F. Supp. 1284, 1327 (D.N.J. 1977).

⁶⁸ *Id.* at 1287.

⁶⁹ *Id.* at 1289–1306 (discussing the SCI textbook in exacting detail).

⁷⁰ *Id.* at 1290.

⁷¹ *Id.* at 1290, 1294–96. The SCI textbook explained that creative intelligence is the source of everything in the universe. *Id.* at 1291. The textbook stated that during regular practice of meditation, the meditator becomes suffused with the fifty qualities of creative intelligence, such as happiness, kindness, universality, and insight. *Id.* at 1290. The textbook teaches that the purpose of life is to establish contact with this pure and perfect field in order to attain bliss-consciousness. *Id.* at 1296.

The school district defendants argued that the key criterion should be the group's subjective characterization of their own beliefs.⁷² The district court, however, rejected a subjective test because it would not let courts apply a fair and uniform standard.⁷³ The court stated that merely renaming similar beliefs as philosophy or science did not cause the beliefs to shed their religiosity.⁷⁴ The court likened the concept of creative intelligence to Christian, Buddhist, and Hindu conceptions of God.⁷⁵ The district court opted not to offer a new legal definition of religion.⁷⁶ The court instead analogized to existing Supreme Court cases.⁷⁷ Although the SCI teachings "wear novel labels," the court explained, the teachings fall well within the concepts covered in earlier cases.⁷⁸

Besides the textbook, the court examined the instruction ceremony for TM called the "puja."⁷⁹ The puja was a mandatory one-on-one teaching ceremony where upon its completion the student received an individualized TM mantra from the TM teacher.⁸⁰ Attendance at a puja was a requirement to receive a mantra.⁸¹ The teacher performed a ceremony in front of a picture of Guru Dev, the teacher who charged Maharishi Mahesh Yogi with bringing TM to the West.⁸² At the end of a Sanskrit chant,⁸³

⁷² *Id.* at 1310–11, 1316–21.

⁷³ *Id.* at 1318.

⁷⁴ *Id.* at 1322.

⁷⁵ *Id.* at 1321–22.

⁷⁶ *Id.* at 1320.

⁷⁷ *Id.* at 1315 (collecting cases). See also Incorvaia, *supra* note 47, at 331 (noting that courts try to avoid defining religion because it necessarily limits the flexibility of future courts to decide whether a novel set of beliefs constitutes a religion).

⁷⁸ *Malnak*, 440 F. Supp. at 1325.

⁷⁹ *Id.* at 1305–1312.

⁸⁰ *Id.* at 1305, 1323 n.25.

⁸¹ *Id.* at 1305. The TM teacher met the student off-premises on a Sunday. *Id.* The student brought a white handkerchief, flowers and fruit. *Id.*

⁸² *Id.* The student joined the teacher in a small, closed room in front of an eight-by-twelve color picture of Guru Dev, the deceased teacher who had been the preserver and disseminator of TM prior to Maharishi Mahesh Yogi. *Id.* A small table covered with a white cloth held a brass candleholder, a brass incense holder, and three brass dishes, containing water, rice and sandal paste. *Id.*

⁸³ *Id.* at 1306–07.

the teacher imparted the TM mantra to the student.⁸⁴ Teachers told the students that the ceremony was a secular expression of gratitude and not a religious exercise or prayer.⁸⁵

After an in-depth textual analysis of the puja, the district court concluded that the puja was religious.⁸⁶ The court observed that the chant included an invocation to Hindu deities.⁸⁷ The defendants' attempts to compare the chant to the Hippocratic oath were unavailing.⁸⁸ The court reasoned that the gods invoked in the Hippocratic oath (Apollo, Asclepius, Hygeia, and Panacea) belonged to a dead religion.⁸⁹ By comparison, the court noted that present-day believers in Hinduism number in the millions of people.⁹⁰ The defendants appealed the district court's ruling to the Third Circuit.⁹¹

2. Malnak II

On appeal, the Court of Appeals for the Third Circuit affirmed.⁹² The majority, in a per curiam opinion, deferred to the lower court's finding that the SCI/TM course was religious.⁹³ Judge Adams, however, was uncomfortable disposing of the case simply by analogizing the novel set of beliefs to past precedent.⁹⁴ Adams' concurrence sets forth three indicia — not as a definitive test — but as a useful guide in determining whether a set of beliefs is a religion.⁹⁵ The first factor is whether the nature of the ideas concerns fundamental or imponderable issues such as humankind's ultimate place in the world.⁹⁶ The second factor is the degree of comprehensiveness

⁸⁴ *Id.* at 1305. The student observed the teacher singing a Sanskrit chant that offered thanks to Hindu deities. *Id.*

⁸⁵ *Id.* at 1306, 1310–11.

⁸⁶ *Id.* at 1305–12, 1327.

⁸⁷ *Id.* at 1311.

⁸⁸ *Id.*

⁸⁹ *Id.* at 1311–12.

⁹⁰ *Id.*

⁹¹ Malnak, 592 F.2d 197, 200 (3d Cir. 1979).

⁹² *Id.*

⁹³ *Id.* at 197–200.

⁹⁴ *Id.* at 200.

⁹⁵ *Id.* at 207–10.

⁹⁶ *Id.* at 208 (citing PAUL TILLICH, DYNAMICS OF FAITH 1–2 (1958)).

of the belief system.⁹⁷ For example, an isolated teaching is not part of a comprehensive system.⁹⁸ The third factor looks at formal signs or symbols normally associated with organized religions, such as ceremonies, sacred objects, holidays, or an organized clergy.⁹⁹ Adams urged courts to be sensitive and flexible, and to use these guidelines to avoid ad hoc justice.¹⁰⁰

To Adams, SCI/TM met all three factors.¹⁰¹ SCI/TM met the first factor because the nature of the ideas of SCI discussed the basis of life itself.¹⁰² Second, SCI was sufficiently comprehensive because it claimed to chart a way through the world toward ultimate truth.¹⁰³ SCI was more than an isolated teaching, such as the Big Bang theory or a patriotic view.¹⁰⁴ Third, SCI/TM had enough signs of formality to overcome its lack of traditional rites.¹⁰⁵ SCI/TM had trained teachers, an organization that actively sought to expand the teaching, and a formal ceremony in the puja.¹⁰⁶

Notably, Adams put less emphasis on the puja than did the majority.¹⁰⁷ For Adams, the puja, by itself, was not dispositive of SCI/TM's religiousness.¹⁰⁸ In a footnote, he considered the puja to have less force as an indicator of religiousness than did the majority.¹⁰⁹ As opposed to the majority, Adams found reasons that the puja might not be religious.¹¹⁰ The puja was performed only once for each student, without understanding by

⁹⁷ *Id.* at 208–09.

⁹⁸ *Id.*

⁹⁹ *Id.* at 207–10. For more discussion on this factor, see Steven Chananie, *Belief in God and Transcendental Meditation: The Problem of Defining Religion in the First Amendment*, 3 PACE L. REV. 147, 159–60 (1983), and Marjorie Gilman Baker, *Constitutional Law — Establishment Clause — Teaching of Science of Creative Intelligence/Transcendental Meditation in Public Schools Violates Establishment Clause*, 10 SETON HALL L. REV. 614, 627 (1980).

¹⁰⁰ *Malnak*, 592 F.2d at 210.

¹⁰¹ *Id.* at 214.

¹⁰² *Id.* at 213.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 209, 213.

¹⁰⁵ *Id.* at 214.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 203 n.14.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 202–04.

the student or teacher, entirely in Sanskrit, off-premises, not during school hours, on a Sunday, and as an elective.¹¹¹

Courts today continue to rely on the three indicia of the *Malnak* test to determine whether a novel belief system is a religion.¹¹² In a challenge to meditation classes in public schools, a court would likely invoke the *Malnak* test as a preliminary matter to decide the threshold question of whether or not the activity was religious.¹¹³ If the activity is not religious, that is the end of the matter.¹¹⁴ If the activity is religious, courts next address whether the activity violates the Establishment Clause.¹¹⁵

B. LEMON TEST

The Supreme Court has distilled its Establishment Clause jurisprudence in the three-part *Lemon* test.¹¹⁶ To be valid, the challenged governmental practice must have a valid secular purpose, must have a principal or primary effect that does not advance or inhibit religion, and must not foster excessive entanglement by the state in its surveillance, administration, or maintenance of the activity.¹¹⁷ While various courts have criticized and tweaked the *Lemon* test over the years, no court has overruled it.¹¹⁸

In *Lemon*, the Court examined a state statute providing state financial support to private Catholic schoolteachers on the condition that they used only secular class materials, taught secular subjects, and refrained

¹¹¹ *Id.* at 203. Student affidavits stated that the students believed that the chant had no religious meaning. *Id.*

¹¹² See *supra* note 64 and accompanying text (detailing which circuits have adopted the *Malnak* test).

¹¹³ *Malnak*, 592 F.2d at 207–10. See, e.g., *Alvarado v. City of San Jose*, 94 F.3d 1223, 1226–27 (9th Cir. 1996) (using the *Malnak* test to determine if New Age beliefs form a religion).

¹¹⁴ See *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373, 1378 (9th Cir. 1994) (assuming, without deciding, that Wicca is a religion, and then proceeding to the *Lemon* test); *Alvarado*, 94 F.3d at 1226–27 (same).

¹¹⁵ *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971); *Brown*, 27 F.3d at 1378; *Alvarado*, 94 F.3d at 1226–27.

¹¹⁶ *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

¹¹⁷ *Id.*

¹¹⁸ See e.g., *Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1017 (9th Cir. 2010) (reaffirming that the *Lemon* test is the benchmark for Establishment Clause violations); *Freedom from Religion Found. v. Hanover Sch. Dist.*, 626 F.3d 19 n.16 (1st Cir. 2010) (noting that the Supreme Court has never expressly rejected the *Lemon* test).

from teaching religion.¹¹⁹ The *Lemon* court decided it would be impossible to police the arrangement properly because it would require continuing surveillance to make sure that the teachers in private religious schools were not infusing their classes with religion.¹²⁰ The Court acknowledged that despite the best efforts of the nuns, everything about the teaching environment added to the likelihood that there would be some religious instruction.¹²¹ Besides the proximity to nearby churches, and the school buildings containing crucifixes and religious paintings, religious organizations ultimately controlled employment decisions.¹²² The Supreme Court recognized that total separation of church and state is not possible or required.¹²³ The fact that the very purpose of the sectarian school was to commingle religious teachings with other instruction, however, made impossible the assumption that no religious teaching would make its way through.¹²⁴

The first prong of the *Lemon* test assesses government's actual purpose in promulgating the challenged activity.¹²⁵ Usually this prong is easy to meet as long as the stated purpose is not a total sham.¹²⁶ The second prong asks whether a reasonable, objective observer would find that the challenged government activity had the primary effect of endorsing religion.¹²⁷ In the second prong, the government's intent is irrelevant.¹²⁸ The court must ask if the government-sponsored activity actually endorses religion.¹²⁹ For schoolchildren, the proper test is whether a reasonable, objective observer in the position of an elementary school student would think

¹¹⁹ *Lemon*, 403 U.S. at 606–11.

¹²⁰ *Id.* at 619–21.

¹²¹ *Id.* at 618–20.

¹²² *Id.* at 615.

¹²³ *Id.* at 614.

¹²⁴ *Id.* at 636–37.

¹²⁵ *Id.* at 612.

¹²⁶ See *Edwards v. Aguillard*, 482 U.S. 578, 587–88 (1987) (holding that state legislature's pretext of "academic freedom" was a sham, where the Act prohibited the teaching of evolution in public schools).

¹²⁷ *Lemon*, 403 U.S. at 612; *Altman v. Bedford Cent. Sch. Dist.*, 245 F.3d 49, 75 (2d Cir. 2001).

¹²⁸ *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373, 1378 (9th Cir. 1994).

¹²⁹ *Id.*

that the school is approving of or disapproving of religion.¹³⁰ A court will not apply a subjective standard for elementary school children.¹³¹ Although schools cannot inculcate religion, they can teach about it from a historical, literary, or cultural standpoint.¹³² A government does not have to be hostile to religion, merely neutral.¹³³ Lastly, the third prong of the *Lemon* test asks whether there is excessive government entanglement.¹³⁴

C. *ALVARADO v. CITY OF SAN JOSE*

In *Alvarado v. City of San Jose*, the Ninth Circuit used the *Malnak* and *Lemon* tests to address the issue of whether a novel set of beliefs was religious.¹³⁵ The court held that a city-sponsored statue of the “Plumed Serpent” — the ancient Aztec deity, Quetzalcoatl — was not an Establishment Clause violation.¹³⁶ The court’s analysis in *Alvarado* is a model of how a future court might address the question of meditation in public schools.¹³⁷

In relevant part, the court considered whether “New Age” is a religion.¹³⁸ The plaintiff’s evidence was a limited collection of New Age writings that

¹³⁰ *Id.* at 1379. In *Brown*, 27 F.3d at 1384, the Ninth Circuit held that a school district did not violate the establishment clause for teaching elementary school students from a book series that included stories about witchcraft. In *Brown*, parents challenged thirty-two selections (“Selections”) from a book series that contained references to witchcraft, which the parents claimed refers to the religion of Wicca. *Id.* at 1377. The Selections asked students to discuss witchcraft, create spells, or role-play as witches or sorcerers. *Id.* In response to the complaint, the school district appointed a curriculum review committee, which included a Christian minister. *Id.* The review committee concluded it did not have the evidence or expertise to establish a connection between the Selections and Wicca. *Id.* For the purposes of defining “religion,” the *Brown* court assumed, without deciding, that witchcraft (a.k.a. “Wicca”) was a religion. *Id.* at 1378. *But see* *Fleischfresser v. Dir. of Sch. Dist. 200*, 15 F.3d 680, 688 (7th Cir. 1994) (finding no pagan “religion” in elementary school book series which included make-believe and fantasy characters such as wizards and giants).

¹³¹ *Brown*, 27 F.3d at 1379 (recognizing that following a subjective standard would make each child a roving curriculum review committee).

¹³² *Altman*, 245 F.3d at 76.

¹³³ *Welsh v. United States*, 398 U.S. 333, 372 (1970).

¹³⁴ *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971); *Agostini v. Felton*, 521 U.S. 203, 233 (1997).

¹³⁵ *Alvarado v. City of San Jose*, 94 F.3d 1223, 1227, 1231 (9th Cir. 1996).

¹³⁶ *Id.* at 1232.

¹³⁷ *See id.* at 1226–32.

¹³⁸ *Id.* at 1229–32.

included general definitions of New Age beliefs.¹³⁹ New Age concepts met the first *Malnak* factor, “ultimate concern,” because New Age beliefs pull liberally from various spiritual and religious traditions that seek to answer the imponderable questions of life.¹⁴⁰ New Age failed the second factor, “comprehensiveness,” because New Age is an unorganized patchwork of beliefs without a central doctrine that purports to answer all of one’s questions.¹⁴¹ To the contrary, it appeared to the court that since “anyone’s in, and ‘anything goes,’” there is no shared belief system among adherents.¹⁴² Similarly, New Age failed the third Adams factor because New Age does not have any comprehensive set of signs or symbols.¹⁴³ New Age has no formal or informal organization, no agreed-upon central text or creed, and no common rituals or objects of worship.¹⁴⁴ Thus, in finding that New Age was not a religion, the *Alvarado* court’s inquiry ended without the need to proceed to the *Lemon* test.¹⁴⁵ If the court had found New Age to be a religion, however, the *Alvarado* court would have used the *Lemon* test in the same way that it did for the other challenged activity in the case.¹⁴⁶

In sum, the *Alvarado* court gives a practical illustration of how a modern court would approach the question of meditation in public schools.¹⁴⁷ The court first asks whether the challenged governmental activity is religious.¹⁴⁸ If the activity is not religious, that is end of the matter.¹⁴⁹ If the activity is religious, the court applies the *Lemon* test.¹⁵⁰ With this framework in mind, Part II examines how a recent San Diego County Superior Court

¹³⁹ *Id.* at 1229–30.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* at 1230.

¹⁴³ *Id.* at 1229–30.

¹⁴⁴ *Id.*

¹⁴⁵ *See id.*

¹⁴⁶ *Id.* at 1232 (using the *Lemon* test to reject the claim that the resemblance of the Plumed Serpent to the Zapatista’s religious symbols had the primary effect of advancing religion).

¹⁴⁷ *See id.*

¹⁴⁸ *Id.* at 1226–27.

¹⁴⁹ *Id.*; *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373, 1378 (9th Cir. 1994).

¹⁵⁰ *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971); *Alvarado*, 94 F.3d at 1226–27; *Brown*, 27 F.3d at 1378.

case addressed whether teaching yoga in public schools violates the Establishment Clause.¹⁵¹

II. *SEDLOCK v. BAIRD*

Since the time of the *Malnak II* decision, no state or federal court has considered the issue of meditation classes in public schools.¹⁵² Without any cases directly on point, it is instructive to consider substantively analogous cases, such as those involving yoga instruction. Yoga is similar to meditation because both practices cultivate awareness and acceptance of the present moment.¹⁵³ Both practices derive from Eastern religion and philosophy.¹⁵⁴ Both practices also enjoy a certain amount of secular integration in our modern American society.¹⁵⁵ *Sedlock v. Baird* is the only case that has squarely addressed the issue of yoga in public schools.¹⁵⁶ In *Sedlock*, the court held that yoga, in general, is religious, but that the school

¹⁵¹ Statement of Decision at 27–28, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. July 1, 2013).

¹⁵² *Malnak*, 592 F.2d 197, 197 (3d Cir. 1979).

¹⁵³ CYNDI LEE, *YOGA BODY, BUDDHA MIND* 11–12 (2004) (discussing the union between yoga and meditation).

¹⁵⁴ CANDY GUNTHER BROWN, *THE HEALING GODS* 47 (2013); Matthew Moriarty et al., *Yoga and the First Amendment: Does Yoga Promote Religion?*, 60 *FED. LAW.* 68, 72–73 (2013).

¹⁵⁵ See Jill Lawson, *Romancing the Om: A Look Into Yoga in America*, *HUFFINGTON POST* (Aug. 30, 2012, 7:30 AM), http://www.huffingtonpost.com/jill-lawson/yoga-america_b_1830809.html; Robert Piper, *10 Reasons Why Meditation Is America's New Push-Up for the Brain*, *HUFFINGTON POST* (May 3, 2013, 8:20 AM), http://www.huffingtonpost.com/robert-piper/mindfulness-meditation-benefits_b_3158080.html.

¹⁵⁶ *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL, 2013 WL 6063439, at *1 (Cal. Super. Ct. C.D. July 1, 2013).. See also *Altman v. Bedford Cent. Sch. Dist.*, 245 F.3d 49, 60, 65–66, (2d Cir. 2001) (agreeing with district court that yoga exercises instructed by a Sikh minister did not advance religion because no religious concepts or ideas were advanced). In *Altman*, 245 F.3d at 65–66, 74–75, the Second Circuit dismissed the yoga claim on mootness grounds, but did not disturb the district court's finding. Although the district court cited to the *Malnak* and *Lemon* tests in its rule statement, the court did not fully analyze the yoga program under these frameworks. *Id.* at 378, 385. The court simply concluded that the yoga presentation did not advance any religious concepts and that it was just a breathing and relaxation exercise. *Id.* at 385.

district's yoga program did not violate the Establishment Clause.¹⁵⁷ As a mere state trial court decision, *Sedlock* has limited precedential value.¹⁵⁸ On appeal, however, it may develop into a significant case and serve as a bellwether for other yoga and meditation challenges.¹⁵⁹

A. FACTS

The parents of two elementary school students sued the Encinitas Unified School District (EUSD), alleging that the teaching of yoga violated the Establishment Clause.¹⁶⁰ The school had recently received a \$533,000 donation from the Pattabhi Jois Foundation, an Encinitas-based nonprofit¹⁶¹ founded by the late Ashtanga yoga teacher, K.P. Pattabhi Jois.¹⁶² The Jois Foundation's goal was to promote yoga as an alternative to traditional physical education classes.¹⁶³ The Sedlocks argued that the Jois Foundation

¹⁵⁷ Statement of Decision at 14, 28, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. July 1, 2013).

¹⁵⁸ See Sara B. Allman, *Stare Decisis in California State Court: The Decisions that Bind Us*, MARIN LAW., Apr. 2011, at 6, 19, available at http://www.saraballman.com/pdf/Marin_Lawyer_April_2011_-_Stare_Decisis.pdf (explaining that where intermediate appellate court opinions conflict, state trial courts can choose which one to follow).

¹⁵⁹ See Notice of Appeal at 1, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. Oct. 30, 2013); Mark Movsesian, *Yoga in Public Schools, American and Indian*, FIRST THOUGHTS (Dec. 9, 2013, 8:18 AM), <http://www.firstthings.com/blogs/firstthoughts/2013/12/09/yoga-in-public-schools-american-and-indian/>; Paul Brandeis Raushenbush, *Yoga as Religion Debate Reaches India as Court Considers Ancient Discipline in Physical Education*, HUFFINGTON POST (Oct. 29, 2013, 10:52 AM EDT), http://www.huffingtonpost.com/2013/10/29/yoga-religion-_n_4173701.html; Jared Whitlock, *Lawyer Appeals Judge's Ruling over Yoga in Schools*, THE RANCHO SANTA FE NEWS, Nov. 6, 2013, at A1 (noting a comment about the pending India Supreme Court decision made by Dean Broyles, the attorney for the *Sedlock* plaintiffs).

¹⁶⁰ Notice of Appeal, *supra* note 157, at 1–2. The court's analysis of the First Amendment of the United States Constitution was sufficient analysis for the comparable California constitutional provision. See *Barnes-Wallace v. City of San Diego* 704 F.3d 1067, 1082 (9th Cir. 2012).

¹⁶¹ *KP Jois USA Foundation Inc.*, GUIDESTAR, <http://www.guidestar.org/organizations/45-3182571/kp-jois-usa-foundation.aspx> (last visited Oct. 13, 2013).

¹⁶² Statement of Decision, *supra* note 157, at 7.

¹⁶³ *Id.* at 4–10 (describing the yoga program as a part of a comprehensive health and welfare program that included instruction in organic gardening, the culinary arts, and character-building).

had an agenda to advance religion.¹⁶⁴ Plaintiffs cited the following allegedly religious elements: a poster of Ashtanga poses, the phrase, “namaste,” the praying hands position, bowing, the Sun Salutation, the Warrior pose, Sanskrit names of poses, and the Lotus position.¹⁶⁵

The Sedlocks, together with other parents, complained that the yoga program in the school was religious because Ashtanga yoga is closely associated with Hinduism, Buddhism, and Jainism.¹⁶⁶ The plaintiffs’ expert described Ashtanga yoga’s roots in the classic Hindu religious texts: the *Upanishads*, the *Bhagavad Gita*, and Patanjali’s *Yoga Sutra*.¹⁶⁷ To the plaintiffs, even after the district stripped away the Sanskrit names of the yoga postures, the physical postures themselves remained inherently religious.¹⁶⁸

The district asserted that the yoga program was not religious.¹⁶⁹ The defendants’ expert did not dispute that yoga is an important feature of some religions.¹⁷⁰ He also pointed out that yoga as practiced in the United States is a “distinctly American cultural phenomenon.”¹⁷¹ Although defendants’ expert agreed that yoga had ancient roots, he asserted that yoga

¹⁶⁴ *Id.* at 3–4. EUSD and the Jois Foundation were collaborating with the University of Virginia’s Contemplative Sciences Center to provide research on how to integrate yoga into public schools. *Id.* at 4; *Encinitas Ashtanga Yoga Elementary School Curriculum Research*, CONTEMPLATIVE SCI. CTR., UNIV. OF VA., <http://www.uvacontemplation.org/content/encinitas-ashtanga-yoga-elementary-school-curriculum-research> (last visited Oct. 13, 2013).

¹⁶⁵ Verified Petition for Writ of Mandamus; Complaint for Injunctive and Declaratory Relief at 12–13, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. Feb. 20, 2013) 2013 WL 659082. The Sun Salutation is called Surya Namaskar, which plaintiffs claim worships the Hindu solar deity Surya. *Id.* at 12. The Warrior pose (Virabhadrasana) allegedly represents a Hindu god (Shiva) slicing off someone’s head. *Id.* The lotus flower is a religious symbol in Buddhism, Hinduism, and Jainism. *Id.* at 13.

¹⁶⁶ *Id.*

¹⁶⁷ Declaration of Candy Gunther Brown at 6–7, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. Feb. 20, 2013).

¹⁶⁸ See *Complaint*, *supra* note 165, at 15–17. The complaint quotes Jois as saying, “Don’t talk about the philosophy — 99% practice and 1% philosophy that’s what [Jois] meant. You just keep doing it, . . . then slowly it will start opening up inside of you, . . . [to] automatically . . . draw you into the spiritual path.”) *Id.* at 20.

¹⁶⁹ Statement of Decision, *supra* note 157, at 11.

¹⁷⁰ Declaration of Mark Singleton at 2, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. May 13, 2013).

¹⁷¹ *Id.* at 4.

today is a global phenomenon, culturally distinct from Indian traditions.¹⁷²

The district also argued that the kind of yoga actually taught at the time of trial — in the spring of 2013 — was not Ashtanga yoga, but “EUSD yoga.”¹⁷³ The district conceded that an earlier test program during the 2012–13 year had some references to the cultural roots of yoga and some Sanskrit words.¹⁷⁴ The district asserted, however, that the teachers did not refer to the underlying meaning of the words.¹⁷⁵ Furthermore, starting in January 2013, the yoga program eliminated all Sanskrit words, cultural references, chanting, and humming.¹⁷⁶ The district took the position that as of January 2013, the EUSD yoga program was free of any cultural and religious elements.¹⁷⁷

B. IS YOGA RELIGIOUS?

As a threshold question, the court asked if yoga is a religious activity.¹⁷⁸ Interestingly, the court did not apply the *Malnak* test — though the court cited to a number of cases that did use it.¹⁷⁹ The court merely concluded that yoga is religious because of its historic roots in Hinduism and Buddhism.¹⁸⁰ If any conclusion can be drawn from the *Sedlock* court’s sparse analysis, it is that having historic roots in an accepted religion is equivalent to being an activity of an already accepted religion.¹⁸¹ It is not clear from the case law, however, at what point a historical connection becomes so attenuated

¹⁷² *Id.*

¹⁷³ Statement of Decision, *supra* note 157, at 13. The current version of the EUSD yoga at trial was copyrighted. *Id.* at 11.

¹⁷⁴ Statement of Decision, *supra* note 157, at 13.

¹⁷⁵ Trial Brief In Support of Respondents/Defendants at 2, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. May 10, 2013).

¹⁷⁶ *Id.* at 3. The traditional names of the postures were changed to kid-friendly names such as “Mountain,” “Gorilla,” “Surfer,” “Bamboo,” “Cat,” and “Cow.” *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ See Statement of Decision, *supra* note 157, at 13.

¹⁷⁹ See *id.* at 13–14 (citing *Friedman v. S. Cal. Med. Grp.*, 102 Cal. App. 4th 39 (2d Dist. 2002), *Alvarado v. City of San Jose*, 94 F.3d 1223 (9th Cir. 1996), *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373 (9th Cir. 1993), and *Malnak*, F.2d 197 (3d Cir. 1979)).

¹⁸⁰ Statement of Decision, *supra* note 157, at 14.

¹⁸¹ *Id.*

that a set of beliefs defies easy categorization according to prior case law and therefore falls within the ambit of the *Malnak* test.¹⁸²

Although the question appears to be academic — since the issue will normally be disposed of using the *Lemon* test — avoiding a more rigorous analysis of the religiousness of an activity could have a chilling effect on a school district’s curriculum choices.¹⁸³ A risk-averse school administrator might deem a technically “religious” activity too risky despite the fact that it would easily pass the *Lemon* test.¹⁸⁴ While unsatisfying from a doctrinal standpoint, the *Sedlock* court’s conclusory analysis at least harmonizes with the rule that courts ignore a party’s subjective categorizations of the challenged activity’s religiousness.¹⁸⁵ Some courts simply assume, *arguendo*, that the activity is religious so that the court can dispose of the case on *Lemon* test grounds.¹⁸⁶ It may be that judges generally prefer applying the *Lemon* test as expeditiously as possible without having to get bogged down in the metaphysical morass of defining religion.¹⁸⁷ In this way, judges address the Establishment Clause violation without running the risk that a higher court will reverse the lower court’s decision on Free Exercise grounds.¹⁸⁸

C. DOES YOGA PASS THE LEMON TEST?

The *Sedlock* defendants easily met the *Lemon* test’s first prong because the plaintiffs conceded that the district’s purpose was to promote physical education, health, and wellness.¹⁸⁹ The second prong of the *Lemon* test was the crux of the *Sedlock* case.¹⁹⁰ The *Sedlock* court framed the issue as whether a reasonably informed student in the spring of 2013 would objectively

¹⁸² *Malnak*, 592 F.2d at 207–10.

¹⁸³ *See Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

¹⁸⁴ *See id.*

¹⁸⁵ *Malnak v. Yogi*, 440 F. Supp 1284, 1318 (D.N.J. 1977).

¹⁸⁶ *See cases cited supra* note 114.

¹⁸⁷ *Incorvaia, supra* note 47, at 353. *See Lemon*, 403 U.S. at 612–13.

¹⁸⁸ *Incorvaia, supra* note 47, at 353 (discussing how a court’s failure to recognize a set of beliefs as religious could qualify as religious discrimination under the Free Exercise Clause).

¹⁸⁹ Statement of Decision at 15, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. July 1, 2013).

¹⁹⁰ *See id.*; *Lemon*, 403 U.S. at 612.

perceive the yoga class at EUSD to advance or inhibit religion.¹⁹¹ The plaintiffs argued that the primary effect of the yoga program was to turn the students toward advanced yoga training and eventually toward conversion to Hinduism.¹⁹² The argument hypothesizes that even if yoga is just stretching and strengthening now, it acts like a “threshold drug.”¹⁹³ Under the primary effect test, however, courts only examine those effects that are direct and immediate.¹⁹⁴ The court thus rejected the plaintiffs’ argument because the possible effect was too distant in the future.¹⁹⁵

The plaintiffs also contended that Hinduism, as opposed to mainstream Western religions, focuses more on practices than beliefs.¹⁹⁶ That is, even when stripped of all religious content, the purely physical “EUSD yoga” promotes Hinduism.¹⁹⁷ The court disagreed, finding EUSD yoga to be a program of just breathing, stretching, and listening to character lessons — all in child-friendly terminology.¹⁹⁸ While the court accepted some quotes of the plaintiffs’ expert, the court found that after a while, her testimony lacked objectivity and credibility.¹⁹⁹ The court concluded that the defendants’ expert was the only person taking the view that the hypothetical student in the EUSD yoga class would think that the school was advancing religion.²⁰⁰ In the court’s opinion, the defendant’s expert was on a personal mission to eliminate yoga from schools.²⁰¹ The court also discounted the declarations of the parents who were against the yoga program.²⁰² The court believed the defendants and found their testimony

¹⁹¹ Statement of Decision, *supra* note 189, at 17.

¹⁹² *Id.* at 21.

¹⁹³ *Id.* (quoting Judge John S. Meyer).

¹⁹⁴ *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373, 1382 (9th Cir. 1994).

¹⁹⁵ Statement of Decision, *supra* note 189, at 17.

¹⁹⁶ Declaration of Candy Gunther Brown at 19, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. Feb. 20, 2013).

¹⁹⁷ Verified Petition for Writ of Mandamus; Complaint for Injunctive and Declaratory Relief at 19-20, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. Feb. 20, 2013) 2013 WL 659082; Statement of Decision, *supra* note 189, at 20.

¹⁹⁸ Statement of Decision, *supra* note 189, at 23.

¹⁹⁹ *Id.* at 20.

²⁰⁰ *Id.* at 23. The court had before it the written curriculum, which also showed no religious component. *Id.* at 22.

²⁰¹ *Id.* at 16.

²⁰² *Id.* at 18-19.

to corroborate the written curriculum.²⁰³ Thus, the defendants met the second *Lemon* test prong.²⁰⁴

Lastly, the court concluded that the defendants met the third *Lemon* test prong.²⁰⁵ The court distinguished EUSD yoga from the Catholic school scenario in *Lemon*.²⁰⁶ First, EUSD was a public school system as opposed to a private religious school.²⁰⁷ Second, there were no nearby houses of worship or religious artifacts creating confusion at EUSD.²⁰⁸ Third, control over the curriculum remained with the district — a public institution — rather than with a religious private school.²⁰⁹ EUSD hired the instructors and retained control over them through a third-party personnel management firm.²¹⁰ The court noted that if any problem arose, the district had the power to deal with it directly, unlike in *Lemon*, where the state would have had to deal with problems through the parochial school and the Catholic Church that supported it.²¹¹ The court also cited *Brown* to support the proposition that a one-time curriculum review by the school administration does not impermissibly entangle the school.²¹² Even if there had been some limited entanglement at the outset of *Sedlock*, there had ceased to be entanglement at the time of trial.²¹³

Regarding the third prong, the *Sedlock* court struggled with the influence of the Jois Foundation.²¹⁴ Evidence indicated that the Jois Foundation had a mission to introduce at least the physical aspects of yoga into schools.²¹⁵ Furthermore, there was some evidence that at least one teacher

²⁰³ *Id.* at 23.

²⁰⁴ *Id.* at 26.

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 26–27.

²⁰⁷ See *Lemon v. Kurtzman*, 403 U.S. 602, 616 (1971); Statement of Decision at 26, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. July 1, 2013).

²⁰⁸ See *Lemon*, 403 U.S. at 615; Statement of Decision, *supra* note 207, at 26.

²⁰⁹ See *Lemon*, 403 U.S. at 615; Statement of Decision, *supra* note 207, at 27.

²¹⁰ See *Lemon*, 403 U.S. at 618; Statement of Decision, *supra* note 207, at 5–6.

²¹¹ See *Lemon*, 403 U.S. at 619–21; Statement of Decision, *supra* note 207, at 27.

²¹² *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373, 1383–84 (9th Cir. 1994); Statement of Decision, *supra* note 207, at 26.

²¹³ Statement of Decision, *supra* note 207, at 26.

²¹⁴ *Id.* at 27.

²¹⁵ *Id.*

worked for the Jois Foundation.²¹⁶ The court concluded, however, that there was no excessive entanglement.²¹⁷ First, notwithstanding the Grant's one-time mention of "Ashtanga Yoga," the district was teaching "EUSD Yoga" by the time of the lawsuit.²¹⁸ Second, the court found that the district witnesses were credible in disclaiming any connection with the Jois Foundation.²¹⁹ Third, the Jois Foundation was not part of the curriculum writing process.²²⁰ Thus, the involvement by the Jois Foundation was minimal and did not excessively entangle the school.²²¹

In sum, despite the threshold determination that yoga was religious, EUSD yoga passed the *Lemon* test.²²² First, the valid secular purpose was to promote health and wellness.²²³ Second, a reasonable, hypothetical child observer would not have thought that the primary effect was to advance religion.²²⁴ Third, there was no excessive entanglement between the EUSD and a religious organization.²²⁵

As of the time of this writing, the *Sedlock* plaintiffs have filed their appeal.²²⁶ Meanwhile, observers will be watching the Supreme Court of India for its upcoming decision on a case that appears to be *Sedlock v. Baird* writ large.²²⁷ At issue in the Indian case is the constitutionality of a petition ordering compulsory yoga classes nationwide.²²⁸ The arguments for and against follow the same contours of the *Sedlock* case.²²⁹ Those in favor

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.* at 28.

²¹⁹ *Id.* at 27–28.

²²⁰ *Id.* at 8.

²²¹ *Id.* at 28.

²²² *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971); Statement of Decision, *supra* note 207, at 28.

²²³ *Lemon*, 403 U.S. at 612; Statement of Decision at 15, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. July 1, 2013).

²²⁴ *Lemon*, 403 U.S. at 612; Statement of Decision, *supra* note 223, at 26.

²²⁵ *Lemon*, 403 U.S. at 612–13; Statement of Decision, *supra* note 223, at 27–28.

²²⁶ Notice of Appeal at 1, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. Oct. 30, 2013).

²²⁷ Utkarsh Anand, *Supreme Court to Examine if Yoga Can Be Compulsory in Schools*, INDIAN EXPRESS (Oct. 19, 2013), <http://www.indianexpress.com/news/supreme-court-to-examine-if-yoga-can-be-compulsory-in-schools/1184494/0>.

²²⁸ *Id.*

²²⁹ *See id.*

cite the health benefits, while those against cite the religious roots of yoga.²³⁰ News of the India Supreme Court case came several months after the *Sedlock* trial, so it will be interesting to see on appeal to what use, if any, either party puts the eventual India Supreme Court decision.²³¹

III. MEDITATION CLASSES IN PUBLIC SCHOOLS

Like yoga, meditation is making inroads into the public school curriculum.²³² On one hand, some people understand meditation to be merely a secular technique that calms the mind and releases stress.²³³ On the other hand, critics say meditation is overtly religious.²³⁴ For example, parents in California, Connecticut, and North Carolina have challenged the presence of TM in the classroom.²³⁵ In April 2013, an Ohio parent-

²³⁰ *Id.*

²³¹ See Whitlock, *supra* note 159, at A1 (noting a comment about the pending India Supreme Court decision made by Dean Broyles, the attorney for the *Sedlock* plaintiffs).

²³² See Meiklejohn, *supra* note 2, at 302; Kelly Brewington, *Yoga, Meditation Program Helps City Youths Cope with Stress*, BALT. SUN (Feb. 23, 2011), http://articles.baltimoresun.com/2011-02-23/health/bs-hs-yoga-city-youth-20110223_1_yoga-chronic-stress-researchers; Nick Street, *Take a Breath*, L.A. TIMES (July 25, 2007), <http://articles.latimes.com/2007/jul/25/opinion/oe-street25> (discussing TM in public and charter schools).

²³³ *What Is Mindfulness?*, GREATER GOOD, <http://greatergood.berkeley.edu/topic/mindfulness/definition> (last visited Jan. 2, 2014).

²³⁴ See Carolyn Gregoire, *Warstler Elementary School In Ohio Shuts Down Mindfulness Program Due to Parent Complaints*, HUFFINGTON POST (Apr. 17, 2013, 7:38 PM EDT), http://www.huffingtonpost.com/2013/04/17/warstler-elementary-school-ohio-mindfulness-program_n_3101741.html.

²³⁵ Street, *supra* note 232; Gina Catena, *Letter to San Rafael School Board . . . or . . . How TM Lures the Young and Vulnerable*, TM-Free Blog (Jan. 13, 2007, 12:27 AM) <http://tmfree.blogspot.com/2007/01/letter-to-san-rafael-school-boardor-how.html> (protesting TM in Marin County schools); Marcus Wohlsen, *Affluent California High School Becomes the Site of a Flap over Transcendental Meditation*, ASSOCIATED PRESS ARCHIVE, Oct. 19, 2006, (discussing Quiet Time controversy in San Rafael, California). Compare Robert Varley, *Meditation Program Challenged in Branford; Mom Says Plan to Teach TM Puts Religion into Classroom*, NEW HAVEN REG., June 16, 2006, at A1 (discussing perception that TM brings religion into the classroom), and Christina Breen Bolling, *Board Tells Future School: Remove Religion from Lessons or Lose Charter — Transcendental Meditation, Natural Law Fuel Controversy*, THE CHARLOTTE OBSERVER, Apr. 9, 2004, at 1B (threatening to revoke charter school's charter if TM is

teacher organization forced a shutdown of their elementary school's MM program on the basis that MM is Buddhist.²³⁶ Most recently, in August 2013, parents challenged an MM program in the Albuquerque Public Schools.²³⁷ As further evidence that there are many people concerned about meditation in public schools, the Alabama Administrative Code actually contains an outright prohibition on teaching meditation techniques.²³⁸

Although there will always be close cases, in general, most MM and TM programs should pass constitutional muster.²³⁹ Despite pockets of current controversy and a seeming future headwind, this paper concludes that schools can teach MM and TM in a way that does not violate the Establishment Clause.²⁴⁰ *Sedlock* provides a modern look at how far a school program could push the boundary before crossing the line into an Establishment Clause violation.²⁴¹ Still, innovative meditation programs are at risk due to the combination of aggressive posturing by plaintiffs and a school district's desire to minimize the risk of litigation.²⁴² The analysis of MM and TM below provides a framework for school districts to consider in setting their curriculum.

not removed from curriculum), with *Letter to the Editor: Meditation an Opportunity to Have Happy Life*, NEW HAVEN REG., Aug. 4, 2006, A6 ("I understand the misconceptions and fears of some folks who confuse meditation with prayer. Transcendental [M]editation is not prayer. It is not a religion. It is practiced by individuals of all faiths, as well as those who reject religious ideas and beliefs.").

²³⁶ Gregoire, *supra* note 234.

²³⁷ Laura Thoren, *Mother Upset Over School-wide Meditation Program: McKinley Middle School Has Plans to Offer Program, Created by Goldie Hawn*, KOAT 7 ALBUQUERQUE (Aug. 16, 2013, 8:20 AM MDT), <http://www.koat.com/news/new-mexico/albuquerque/mother-upset-over-schoolwide-meditation-program/-/9153728/21491014/-/6om0xbz/-/index.html#ixzz2iIIPVFMb>.

²³⁸ ALA. ADMIN. CODE r. 290-040-040-.02 (2013) (explicitly banning the teaching of hypnosis, guided imagery, meditation, TM and yoga).

²³⁹ See discussion *infra* Parts III.A–B.

²⁴⁰ See *id.*; *supra* notes 232–238 and accompanying text.

²⁴¹ Statement of Decision at 27–28, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. July 1, 2013).

²⁴² See discussion *infra* Parts III.A–B; *supra* notes 232–238 and accompanying text.

A. WILL MINDFULNESS MEDITATION CLASSES VIOLATE THE ESTABLISHMENT CLAUSE?

1. *Is MM Religious?*

Jon Kabat-Zinn calls MM the “heart” of Buddhist meditation.²⁴³ Mindfulness is the seventh step on the eight-fold path of Buddhism.²⁴⁴ Buddhists use MM as a tool to achieve liberation from suffering and to become enlightened.²⁴⁵ Because courts accept Buddhism as a religion,²⁴⁶ critics could equate the practice of MM to a religious practice such as the recitation of the Lord’s Prayer.²⁴⁷ Thus, if MM were a Buddhist practice, teaching MM in school would violate the Establishment Clause.²⁴⁸

The most vocal resistance to meditation in public schools comes from conservative Christian parents, conservative advocacy groups, and apolitical First Amendment watchdog groups.²⁴⁹ Evangelical Christians are particularly sensitive about meditation because they believe that techniques developing spiritual power invite demonic possession.²⁵⁰ Christians do not seek union with God but rather a proper relationship between God, as

²⁴³ Jon Kabat-Zinn, *Mindfulness-Based Interventions in Context: Past, Present, and Future*, 10 *CLINICAL PSYCHOL.: SCI. & PRAC.* 144, 145 (2003).

²⁴⁴ BROWN, *supra* note 154, at 37.

²⁴⁵ THUBTEN CHODRON, *BUDDHISM FOR BEGINNERS* 14, 24, 42, 76 (2001).

²⁴⁶ *Torcaso v. Watkins*, 367 U.S. 488, 495 n.11 (1961) (recognizing non-theistic religions such as Buddhism, Taoism, Ethical Culture, and Secular Humanism); *Malnak*, 592 F.2d 197, 207–08 (3d Cir. 1979).

²⁴⁷ See *Grove v. Mead Sch. Dist.* No. 354, 753 F.2d 1528, 1534 (9th Cir. 1985).

²⁴⁸ See *id.* (invalidating the recitation of the Lord’s Prayer in public school).

²⁴⁹ *News*, NAT’L CTR. FOR L. & POL’Y, <http://www.nclplaw.org/news/> (last visited Jan. 2, 2014) (listing NCLP’s recent legal involvements); *Key Issues*, ALLIANCE DEFENDING FREEDOM, <http://www.alliancedefendingfreedom.org/issues/church> (last visited Jan. 2, 2014) (same); *Index of Cults and Religions*, WATCHMAN, <http://www.watchman.org/index-of-cults-and-religions/> (last visited Jan. 2, 2014) (discussing cults and religions); *Religion in Public Schools and Universities*, AMS. UNITED FOR SEPARATION OF CHURCH AND ST., <https://www.au.org/issues/religion-public-schools-and-universities> (last visited Jan. 2, 2014) (listing Americans United’s recent activity with regard to religion and public schools); Archive for the ‘New Age/Occult Practices’ Category, *Who is Congressman Tim Ryan, and Why Is He Pushing New Age/Buddhist “Mindfulness” in Public Schools?*, CHRISTIANS UNITED AGAINST APOSTASY (last revised Nov. 30, 2013), <http://davemosher.wordpress.com/category/new-ageoccult-practices/>; Catena, *supra* note 235.

²⁵⁰ BROWN, *supra* note 154, at 70–76.

Creator, and man, as the created.²⁵¹ For these adherents, the Buddhist goal of trying to merge with God, therefore, is blasphemous.²⁵²

On the other hand, those in favor of MM in schools argue that the technique of MM is severable from its religious roots.²⁵³ Like the defendants in *Malnak*, the proponents of MM could assert their honest and subjective belief that MM is not a religious activity.²⁵⁴ Courts, however, do not give determinative weight to a party's subjective characterization of the challenged activity.²⁵⁵ The United States Supreme Court has noted that a person's earnest declaration that a belief is not religious is relevant to but not determinative of the question of whether the activity is legally "religious."²⁵⁶ Thus, on balance, MM is probably religious, and therefore invokes the *Lemon* test.²⁵⁷

2. Does MM Pass the Lemon Test?

MM meets the first prong, "secular purpose," because the stated goal of boosting performance and health is not a sham.²⁵⁸ The literature documenting the benefits of meditation is vast.²⁵⁹ The second prong, "primary effect," is a more difficult case.²⁶⁰ The main parental complaint about MM

²⁵¹ Reporter's Transcript at 20, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. May 21, 2013) (testimony of Dr. Candy Gunther Brown).

²⁵² *Id.*

²⁵³ See JON KABAT-ZINN, *supra* note 15, at 21 ("Mindfulness is often described as the heart of Buddhist meditation. Nevertheless, cultivating mindfulness is not a Buddhist activity.").

²⁵⁴ *Malnak v. Yogi* 440 F. Supp 1284, 1319 (D.N.J. 1977) (calling defendants' characterizations of their own beliefs unreliable).

²⁵⁵ *Id.*; *Malnak*, 592 F.2d 197, 210 n.45 (3d Cir. 1979) (noting that "the question of the definition of religion for [F]irst [A]mendment purposes is one for the courts, and is not controlled by the subjective perceptions of believers. Supporters of new belief systems may not 'choose' to be non-religious, particularly in the [E]stablishment [C]ause context").

²⁵⁶ *Welsh v. United States*, 398 U.S. 333, 341 (1970) (noting that although a person's subjective belief is highly relevant to question of religion it is an unreliable guide for courts).

²⁵⁷ *Malnak*, 592 F.2d at 207–10; *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

²⁵⁸ See *Lemon*, 403 U.S. at 612; *Edwards v. Aguillard*, 482 U.S. 578, 587–88 (1987).

²⁵⁹ See *Brochure*, *supra* note 9, at 20–21; *Promising Research on Meditation in Schools*, *supra* note 10.

²⁶⁰ *Lemon*, 403 U.S. at 612.

is that it looks like a Buddhist practice and therefore has the primary effect of advancing a religion — similar to the complaint in *Sedlock*.²⁶¹ A practice's mere consistency with or coincidental resemblance to a religious practice, however, does not have the primary effect of advancing religion.²⁶² For example, it is no matter that the Ten Commandments' prohibition of theft, adultery, and murder harmonize with state regulation of the same.²⁶³ Thus, concerned parents cannot invalidate MM in schools merely because MM also happens to be a Buddhist practice.²⁶⁴

Furthermore, the second prong of the *Lemon* test requires that a hypothetical school-age observer perceive the government activity as actually endorsing religion.²⁶⁵ *Sedlock* teaches that opponents of MM would have to show an ongoing use of Buddhist phrases, objects, and teachings in the classroom.²⁶⁶ The *Sedlock* court approved of how the district changed the allegedly religious name of "Lotus position" to "criss-cross applesauce."²⁶⁷ Thus, proponents of MM would do well to preempt Establishment Clause challenges by keeping the MM program content-free and terminology-neutral.²⁶⁸

Even in such a case, however, opponents of MM could still argue — as did the plaintiffs in *Sedlock* with respect to yoga — that the very practice of MM itself advances religion through "camouflage."²⁶⁹ Under this view, MM would set a child on a path of greater and greater dependency, which would eventually lead to a desire to convert to Buddhism.²⁷⁰ As *Brown* and *Sedlock* illustrate, however, speculation as to what children might do when they grow up is an effect too far into the future to count as having

²⁶¹ See Statement of Decision at 16–18, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. Feb. 20, 2013); Gregoire, *supra* note 234.

²⁶² *Alvarado v. City of San Jose*, 94 F.3d 1223, 1232 (9th Cir. 1996).

²⁶³ *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373, 1380–81 (9th Cir. 1994).

²⁶⁴ See *Alvarado*, 94 F.3d at 1232.

²⁶⁵ *Brown*, 27 F.3d at 1380–81.

²⁶⁶ See Statement of Decision, *supra* note 261 at 5–9.

²⁶⁷ *Id.* at 9.

²⁶⁸ See *id.* at 28.

²⁶⁹ *Id.* at 21.

²⁷⁰ *Id.*

the “primary effect” of advancing religion.²⁷¹ Thus, MM would meet the second prong of the *Lemon* test.²⁷²

Most public school MM programs would also satisfy the third prong of *Lemon*.²⁷³ School districts can proactively avoid a finding of entanglement by using regular classroom teachers instead of religiously affiliated ones, keeping the MM programs on campus, and supervising teachers regularly.²⁷⁴ Excessive entanglement could arise where an allegedly religious organization had an impermissible level of control over hiring, firing, and curriculum development.²⁷⁵ In *Sedlock*, for example, EUSD pushed against these limits by agreeing to hire Jois-certified teachers and giving several Jois-related people some access to the curriculum development.²⁷⁶ EUSD mitigated what could otherwise have been excessive entanglement both by maintaining control of employment decisions and by utilizing an independent curriculum specialist.²⁷⁷ Thus, most MM programs would likely meet the third prong of the *Lemon* test.²⁷⁸

In sum, MM is probably religious, but it will not violate the Establishment Clause where schools take care to avoid using religious phrases, objects, or teaching materials as part of the MM program.²⁷⁹ Despite MM’s historical roots, the reasonable, hypothetical schoolchild would not understand an MM program to have the primary, immediate, and direct effect of advancing religion.²⁸⁰ Districts must also remain independent in terms of curriculum development and employment decisions regarding MM program personnel.²⁸¹

²⁷¹ *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373, 1382 (9th Cir. 1994) (dismissing parental claim that neurolinguistic programming would cause schoolchild to seek out occult groups after coming of age); *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL, 2013 WL 6063439, at *1 (Cal. Super. Ct. C.D. July 1, 2013).

²⁷² *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

²⁷³ *Id.* at 613.

²⁷⁴ *Id.* at 618 (recognizing that it will always be extremely difficult for religiously affiliated teachers to remain religiously neutral).

²⁷⁵ Statement of Decision, *supra* note 261 at 5-26-28.

²⁷⁶ *Id.* at 7.

²⁷⁷ *Id.* at 8, 27.

²⁷⁸ *See Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

²⁷⁹ *See* Part III.A.1, and *supra* note 266 and accompanying text.

²⁸⁰ *See supra* Part III.A.2.

²⁸¹ *See supra* notes 275–277 and accompanying text (discussing how EUSD avoided excessive entanglement).

B. WILL TRANSCENDENTAL MEDITATION CLASSES VIOLATE THE ESTABLISHMENT CLAUSE?

1. *Is TM in Quiet Time Religious?*

Malnak I and *II* examined the religiousness of TM in conjunction with SCI, but no court has decided whether TM, by itself, is a religion.²⁸² It is, therefore, an open question as to whether TM alone could survive an Establishment Clause challenge.²⁸³ In his *Malnak II* concurrence, Judge Adams alluded to the possibility that TM, by itself, might be able to pass constitutional muster.²⁸⁴ He noted that the degree to which TM answered matters of “ultimate concern” — the first prong of the *Malnak* test — might vary from course to course.²⁸⁵

In some ways, TM in the public school setting today is much different from the TM of thirty-five years ago.²⁸⁶ Importantly, TM is no longer packaged with SCI.²⁸⁷ TM is packaged in a program called Quiet Time.²⁸⁸ To avoid confusion with the *Malnak*-era version of TM, the author will refer to TM — as taught in Quiet Time — as “TM in Quiet Time.”²⁸⁹ Quiet Time is a fifteen-minute period of unpressured and peaceful rest at the beginning and end of each school day.²⁹⁰ The purpose of Quiet Time is to

²⁸² *Malnak*, 592 F.2d 197, 213, 213 n.54 (3d Cir. 1979).

²⁸³ *Id.* at 213 n.54.

²⁸⁴ *Id.* at 213 (noting that “[a]lthough [TM] by itself might be defended . . . as primarily a relaxation or concentration technique with no ‘ultimate’ significance, the . . . course at issue here was not a course in TM alone, but a course in [SCI].”).

²⁸⁵ *Id.* at 213 n.54.

²⁸⁶ Compare *Malnak v. Yogi*, 440 F. Supp. 1284, 1288–1312 (D.N.J. 1977) (describing TM in depth), with *Brochure*, *supra* note 9, at 7, and QUIET TIME PRIMER, EDUTOPIA 1–2 [hereinafter *Primer*], available at <http://www.edutopia.org/pdfs/stw/edutopia-stw-reducingstudentstress-visalvey-primer.pdf>.

²⁸⁷ See generally *Brochure*, *supra* note 9, at 2–7 (detailing the teaching of TM through the Quiet Time program).

²⁸⁸ *Id.*

²⁸⁹ The author’s reference to “TM in Quiet Time” is not to be confused with “TM/ Quiet Time,” the name of an earlier version of Quiet Time. See *Featured Past Events*, DAVID LYNCH FOUND., <http://www.davidlynchfoundation.org/featured-past-events.html> (last visited Jan. 2, 2014). Since Quiet Time comprises a set of meditation and non-meditation related activities, the use of the term, “TM in Quiet Time” refers specifically TM component of Quiet Time.

²⁹⁰ *Brochure*, *supra* note 9, at 7.

increase health and readiness-to-learn.²⁹¹ During Quiet Time, students are free to choose between meditation, sustained silent reading, or free painting or drawing.²⁹² Students who have learned TM are free to practice the technique during this time.²⁹³ Students who do not wish to learn TM can also practice other less structured forms of meditation such as quiet sitting or mindfulness.²⁹⁴ During Quiet Time, students are not discouraged from napping or praying.²⁹⁵

TM in Quiet Time is not a religion under the *Malnak* test.²⁹⁶ TM in Quiet Time does not meet the first *Malnak* test factor because Quiet Time does not answer any imponderable questions and does not address matters of ultimate concern.²⁹⁷ Quiet Time is devoid of any teaching about religion, metaphysics, or transcendent reality.²⁹⁸ Quiet Time does not teach about “creative intelligence.”²⁹⁹ The only content in the instructional process, aside from the training in the mechanical meditation technique itself, involves the biology and psychology of stress reduction.³⁰⁰ In one school, for example, a cardiologist and neurologist taught students how meditation affects the heart and brain.³⁰¹ Critics could point to the possibility of students’ Googling TM and making a connection to SCI, which does still exist as a stand-alone course.³⁰² This argument fails, however, because

²⁹¹ *Primer*, *supra* note 286, at 1.

²⁹² *Id.*

²⁹³ *Brochure*, *supra* note 9, at 7.

²⁹⁴ Telephone Interview with Laurent Valosek, Exec. Dir., Ctr. for Wellness and Achievement in Educ. (Nov. 6, 2013) (notes on file with author) [hereinafter *Telephone Interview*].

²⁹⁵ Eve Conant, *Can Meditation Help At-Risk Kids?*, NEWSWEEK (May 29, 2008, 8:00 PM), <http://www.newsweek.com/can-meditation-help-risk-kids-90387>. The Free Exercise Clause protects students’ freedom to pray in school. U.S. CONST. amend I. This paper does not discuss Free Exercise Clause challenges.

²⁹⁶ *Malnak*, 592 F.2d 197, 207–10 (3d Cir. 1979).

²⁹⁷ *Id.* at 208.

²⁹⁸ See generally *Brochure*, *supra* note 9 (not discussing religion); *Primer*, *supra* note 286 (same).

²⁹⁹ See generally *Brochure*, *supra* note 9 (discussing the scope of Quiet Time); *Primer*, *supra* note 286 (same).

³⁰⁰ *Telephone Interview*, *supra* note 294.

³⁰¹ *Id.*

³⁰² *The Science of Creative Intelligence Course*, MAHARISHI, <http://www.maharishi.org/sci/sci.html> (last visited Jan. 5, 2014) (calling TM the practical aspect of SCI).

such independent Internet research would only serve to distinguish the practical technique of TM as taught in Quiet Time from the separate metaphysical teaching of SCI.³⁰³

TM in Quiet Time does not meet the second *Malnak* test factor — comprehensiveness.³⁰⁴ In TM in Quiet Time, students learn only a mental technique, not an all-inclusive belief system.³⁰⁵ TM in Quiet Time is an isolated scientific method of reducing stress and increasing relaxation.³⁰⁶ Although it is true that courts sometimes recognize a science as a religion — as in Scientology — Quiet Time is completely devoid of religious content.³⁰⁷ Furthermore, even if an isolated teaching gives answers to ultimate questions, the teaching will not be broad enough to rise to the level of being religious.³⁰⁸

TM in Quiet Time probably does not meet the third *Malnak* test factor — extrinsic formal signs or symbols.³⁰⁹ There are no sacred objects, holy books, or formal clergy.³¹⁰ After the initial lesson, students meet with certified TM teachers only once or twice a semester for short, follow-up refresher classes.³¹¹ The rest of the time, regular classroom teachers oversee the twice-daily Quiet Time classes.³¹² Quiet Time does not use any SCI textbook.³¹³ And although there are TM centers around the world,³¹⁴ Quiet

³⁰³ See *Malnak*, 440 F. Supp. 1284, 1288–1312 (D.N.J. 1977) (detailing TM in depth); *The Science of Creative Intelligence Course*, *supra* note 302.

³⁰⁴ *Malnak*, 592 F.2d 197, 208–09 (3d Cir. 1979). See *Brochure*, *supra* note 9, at 3–7 (discussing scope of Quiet Time program).

³⁰⁵ See *generally Brochure*, *supra* note 9 (discussing the scope of the Quiet Time program).

³⁰⁶ *Brochure*, *supra* note 9, at 20–25.

³⁰⁷ *Founding Church of Scientology of Wash., D.C. v. United States*, 409 F.2d 1146, 1160 (D.C. Cir. 1969); *Brochure*, *supra* note 9 (discussing the scope of Quiet Time); *Primer*, *supra* note 286 (same).

³⁰⁸ *Malnak*, 592 F.2d at 208–09.

³⁰⁹ *Id.* at 209–10.

³¹⁰ *Id.* at 209; *Brochure*, *supra* note 9; *Primer*, *supra* note 286.

³¹¹ Email from Laurent Valosek, Exec. Dir., Ctr. for Wellness & Achievement in Educ., to author (Dec. 26, 2013, 6:40 PM PST) [hereinafter *Email*].

³¹² See *Primer*, *supra* note 286.

³¹³ *Id.*; *Brochure*, *supra* note 9.

³¹⁴ *Alphabetical Listing of Resource Websites Around the World*, GLOBAL COUNTRY OF WORLD PEACE, <http://www.globalcountry.org/wp/full-width/links/> (last visited Jan. 5, 2014).

Time teachers do not discuss them.³¹⁵ Furthermore, TM in Quiet Time lacks the rigid requirements of formal religious observances,³¹⁶ learning TM as part of Quiet Time is optional.³¹⁷ And even if a student does choose to learn TM, practicing the technique in the Quiet Time class period remains voluntary.³¹⁸

It is a closer case as to whether the instruction ceremony in TM in Quiet Time is a formal sign of religion.³¹⁹ Critics will point out that the *Malnak II* majority cited the puja as one of the factors determining the religiousness of SCI/TM.³²⁰ The highly influential Judge Adams concurrence, however, left more room for debate as to how much determinative weight to afford the puja.³²¹ For Adams, the textual analysis of the chant was far less important than was the purpose and context of the chant.³²² As was true in the *Malnak* era, the purpose of the puja in Quiet Time is still to ensure that the teacher imparts the technique correctly, by reminding the teacher to instruct in a precise manner without superimposing any changes to the standard instructional process.³²³ In addition, the context of the puja in Quiet Time includes many of the same mitigating features noted by Adams: the puja is performed only once, in Sanskrit, without translation, and without the students' knowledge of the meaning of the words.³²⁴ Also, students no longer bring the white handkerchief, fruit, and flowers to the ceremony — these objects are already present in the room.³²⁵

³¹⁵ *Telephone Interview*, *supra* note 294.

³¹⁶ *Malnak*, 592 F.2d 197, 209–10 (1979).

³¹⁷ Mariko Nobori, *How to Start a Meditation Program in Your School*, EDUTOPIA (Feb. 22, 2012), <http://www.edutopia.org/stw-student-stress-meditation-school-tips>.

³¹⁸ *See Primer*, *supra* note 286, at 1.

³¹⁹ *Malnak*, 592 F.2d at 209–10.

³²⁰ *Id.* at 199.

³²¹ *See id.* at 209 n.14 (discussing how the puja's ceremonial aspects are not determinative of the course's religiousness); *Friedman v. S. Cal. Permanente Med. Grp.*, 102 Cal. App. 4th 39, 60–62 (2d Dist. 2002) (collecting cases relying on the *Malnak* test, and noting that the Adams concurrence has been far more influential than the majority opinion in guiding contemporary jurisprudence on the question of religion).

³²² *Malnak*, 592 F.2d at 202 n.7.

³²³ *Telephone Interview*, *supra* note 294.

³²⁴ *Malnak*, 592 F.2d at 203; *Telephone Interview*, *supra* note 294.

³²⁵ *Telephone Interview*, *supra* note 294.

Lastly, anecdotal evidence suggests that out of the 5,000 students in Northern California who have learned TM in Quiet Time, no student who has chosen to learn TM has ever asked not to participate in the puja.³²⁶ Given the overall context of the puja within the Quiet Time program, therefore, a contemporary court would probably find that the third *Malnak* prong fails.³²⁷ In sum, TM in Quiet Time is probably not religious.³²⁸

2. Does TM in Quiet Time Pass the Lemon Test?

Even if a court did find TM in Quiet Time to be religious, TM in Quiet Time would still pass the *Lemon* test.³²⁹ TM in Quiet Time meets the first prong of *Lemon* because it has a valid secular purpose.³³⁰ The purpose of Quiet Time is to reduce stress, promote relaxation, improve health, reduce violence, and improve academic performance.³³¹ Over three hundred published studies show benefits, including recovery from PTSD, prevention of heart attacks, and decreased blood pressure.³³² Critics could argue, as did the plaintiffs in *Sedlock*, that Quiet Time is merely camouflage for a religious mission to embed TM in schools.³³³ Considering the well-documented benefits of TM in the peer-reviewed academic literature, however, there is a logical basis to conclude that the stated governmental purpose is not a sham.³³⁴

TM in Quiet Time meets the second prong of *Lemon* because its principal or primary effect neither advances nor inhibits religion.³³⁵ Because the TM technique as taught in Quiet Time lacks any religious content, a reasonable, hypothetical school-aged child would not think that TM is also

³²⁶ *Id.*

³²⁷ *Malnak*, 592 F.2d 197, 209 (3d Cir. 1979); *See supra* notes 309–326 and accompanying text (analyzing the TM in Quiet Time under the third prong of the *Malnak* test).

³²⁸ *See supra* Part III.B.1.

³²⁹ *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971); *See infra* Part III.B.2.

³³⁰ *Lemon*, 403 U.S. at 612. *See infra* Part III.B.2.

³³¹ *Brochure*, *supra* note 9, at 3, 5.

³³² *Id.* at 20–25 (collecting 112 research findings).

³³³ *See* Statement of Decision at 21, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. July 1, 2013).

³³⁴ *See* *Edwards v. Aguillard*, 482 U.S. 578, 587–88 (1987) (holding that state legislature’s pretext of “academic freedom” was a sham, where the Act prohibited the teaching of evolution in public schools); *Brochure*, *supra* note 9, at 20–25 (collecting research).

³³⁵ *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

endorsing SCI.³³⁶ Even if a child searched the websites promoting Quiet Time, they would not find any suggestion of religion.³³⁷ The tm.org website does briefly mention the Vedic origins of meditation, but only in a historical way.³³⁸ At the initial TM introductory lecture, the teacher mentions Maharishi only in passing in order to acknowledge him as the founder of TM.³³⁹ Additionally, the students do not understand the Sanskrit chant.³⁴⁰

Considering the overall time spent in Quiet Time throughout the school year, the one-time, three- to four-minute ceremony constitutes a minute part of a student's overall Quiet Time experience.³⁴¹ Understood in this light, the puja seems more akin to a one-time cultural enrichment program, such as an American Indian dance presentation that might tangentially present some religious elements.³⁴² Furthermore, the instructor explicitly informs the student that the purpose of the puja is a giving of thanks to the tradition of teachers and a reminder for the teacher to impart the technique correctly.³⁴³ Thus, the puja is a practical quality control measure that does not have the primary effect of advancing or inhibiting religion.³⁴⁴

Equally unavailing is the argument that exposure to TM advances religion because of its future effect.³⁴⁵ Although it is true that TM is the first

³³⁶ *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373, 1378–79 (9th Cir. 1994). See *Brochure*, *supra* note 9 (describing the content of Quiet Time).

³³⁷ See *Programs: Quiet Time Program*, CTR. FOR WELLNESS AND ACHIEVEMENT IN EDUC., http://cwae.org/quiet_time_program.php (last visited Jan. 5, 2014) (describing the scope and content of Quiet Time); *Schools*, *supra* note 4 (same).

³³⁸ *What Is TM?: The Technique*, *supra* note 16 (discussing the basis of TM in the ancient Vedic tradition of enlightenment in India).

³³⁹ *Telephone Interview*, *supra* note 294.

³⁴⁰ *Id.*

³⁴¹ See *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373, 1381 (9th Cir. 1994) (finding that a reasonable child observer would not find that the stories on witchcraft were religious, in part because they constituted a minute part of an otherwise clearly nonreligious set of teaching materials); *Malnak v. Yogi*, 440 F. Supp. 1284, 1305 (D.N.J. 1977).

³⁴² Barbara A. Hughes, *American Indian Dance: Steps to Cultural Preservation*, 21 *HIGH PLAINS APPLIED ANTHROPOLOGIST* 176, 176–77 (2001).

³⁴³ *Malnak*, 440 F. Supp. at 1309.

³⁴⁴ See *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971); *Telephone Interview*, *supra* note 294.

³⁴⁵ *Brown*, 27 F.3d at 1382.

step in advanced SCI courses such as the TM Siddhi program,³⁴⁶ *Brown v. Woodland Joint Unified School District* teaches that the challenged activity must have a direct or immediate effect of advancing religion.³⁴⁷ A similar argument failed in *Sedlock*.³⁴⁸ No evidence suggests that any Quiet Time students have changed their religion as a result of practicing TM.³⁴⁹ Over the last seven years, approximately 5,000 students learned TM in Northern California.³⁵⁰ Anecdotal evidence suggests that Quiet Time actually strengthens these students' commitments to their existing faiths.³⁵¹ Some student meditators say they have a more profound appreciation of their own religious heritage due to the physical and psychological benefits of practicing TM.³⁵²

Critics also argue that TM advances religion because the TM mantras themselves allegedly derive from Hindu and Tantric Buddhist "bija" mantras.³⁵³ However, academic authorities differ on whether the TM mantras refer to Hindu gods.³⁵⁴ TM proponents uniformly maintain that the mantras have no meaning.³⁵⁵ Notably, neither *Malnak I* nor *Malnak II* determined

³⁴⁶ *The TM-Sidhi Program*, PERMANENT PEACE, <http://www.permanentpeace.org/technology/sidhi.html> (last visited Jan. 7, 2014) (stating that the practitioners can continue to advanced programs after starting with TM).

³⁴⁷ 27 F.3d at 1382.

³⁴⁸ Statement of Decision at 27, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. July 1, 2013).

³⁴⁹ *Email*, *supra* note 311.

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *TranceNet: What's Your Mantra Mean?: Or When Is a Meaningless Sound Not Mean[ingless]? When It's a Tantric Name of a Hindu God*, MINET, <http://minet.org/www.trancenet.net/secrets/mantras.shtml> (last visited Jan. 5, 2014).

³⁵⁴ CAROL A. WILSON, HEALING POWER BEYOND MEDICINE 178 (2011) (noting that some advanced *bija* mantras used in TM invoke Hindu deities); Note, *Transcendental Meditation and The Meaning of Religion Under the Establishment Clause*, 62 MINN. L. REV. 887, 918–19, n.122 (1978) (noting that Hindu and Buddhist mantras customarily have meaning). *But see* SIR JOHN WOODROFFE, THE GARLAND OF LETTERS 261 (1998) (stating that *bija* mantras have no meaning).

³⁵⁵ *Aff. of Charles Berlitz at 2–3*, *Malnak v. Yogi*, No. 76–341 (D.N.J. Oct. 20, 1977) (finding no religious meanings in the TM mantras); *Aff. of K.L. Seshagiri Rao at 2–3*, *Malnak v. Yogi*, No. 76–341 (D.N.J. Oct. 20, 1977) (stating that TM mantras are not the names of Hindu gods); *Email from William Goldstein, Dean of Global Dev. & Gen. Counsel, Maharishi Univ. of Mgmt., to author* (Oct. 10, 2013, 9:46 AM PST) (stating

that the mantra was religious.³⁵⁶ In both opinions, the court merely referred to the mantra as a “sound aid.”³⁵⁷ Even if a mantra did have religious significance, the Adams concurrence suggests that no one consideration is dispositive of the third factor.³⁵⁸ Furthermore, some recent Pledge of Allegiance cases suggest that the religiousness of a phrase has less force where the school activity is a non-religious exercise.³⁵⁹ Thus, even if the mantra were religious, the overall non-religiousness of Quiet Time mitigates any advancement of religion.³⁶⁰

TM in Quiet Time does not foster an excessive government entanglement with religion.³⁶¹ As with MM, Quiet Time is curriculum-based and therefore easy to monitor.³⁶² District administrators can supervise Quiet Time directly without leaving the school grounds.³⁶³ Furthermore, the Quiet Time teachers are regular classroom teachers, as opposed to the overtly religious Catholic school nuns in *Lemon*.³⁶⁴ And any entanglement on the part of the school district with regard to the intermittent training provided by outside TM teachers would be minimal or non-existent.³⁶⁵ Certified TM

that TM students are told that the mantras have no meaning) (on file with author); Evan Finkelstein, *On TM Mantras: The Mantras Used in TM Are Some of the Most Fundamental Vibrations of Natural Law*, TRUTH ABOUT TM (last visited Jan. 13, 2014), <http://www.truthabouttm.org/truth/IndividualEffects/IsTMaReligion/TMMantras/index.cfm> (stating that TM mantras have no meaning).

³⁵⁶ See *Malnak v. Yogi*, 440 F. Supp 1284, 1289 n.3 (D.N.J. 1977); *Malnak*, 592 F.2d 197, 198 (3d Cir. 1979).

³⁵⁷ *Malnak*, 440 F. Supp at 1289 n.3; *Malnak*, 592 F.2d at 198.

³⁵⁸ See *Malnak*, 592 F.2d at 203 n.14.

³⁵⁹ See *Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1037 (9th Cir. 2010) (holding that the phrase “under God” in the Pledge of Allegiance did not violate the Establishment Clause); *Freedom from Relig. Found. v. Hanover Sch. Dist.*, 626 F.3d 1, 13 (1st Cir. 2010), *cert. denied*, 131 S.Ct. 2992 (2011) (finding that couching of religious phrase, “under God,” in the non-religious text of the Pledge of Allegiance, while not dispositive, is significant in mitigating an Establishment Clause violation).

³⁶⁰ See *Newdow*, *supra* note 359, at 1037.

³⁶¹ *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971).

³⁶² See *Primer*, *supra* note 286, at 1–2 (detailing classroom implementation of Quiet Time); *supra* text and accompanying notes 274–277.

³⁶³ See *Primer*, *supra* note 286, at 1.

³⁶⁴ *Id.*; *Lemon v. Kurtzman*, 403 U.S. 602, 615–16 (1971).

³⁶⁵ See *Lemon*, 403 U.S. at 615–16; *Primer*, *supra* note 286, at 1. Although not dispositive of the legal issue, it is telling that the United States government finds no excessive entanglement in sponsoring TM studies for cardiovascular disease and post-traumatic

instructors, though often present in the school during the day, have contact with students on an individual basis just once or twice a semester.³⁶⁶ Thus, TM in Quiet Time would meet the third prong of *Lemon*.³⁶⁷

In sum, TM in Quiet Time probably does not violate the Establishment Clause.³⁶⁸ If a court found that TM in Quiet Time was not religious, that would be the end of the matter.³⁶⁹ If a court found that the program was religious, TM in Quiet Time would probably pass the *Lemon* test.³⁷⁰ The valid secular purpose is to create relaxation, boost performance, and decrease violence.³⁷¹ Given the purpose and context of TM in Quiet Time, a reasonable, hypothetical schoolchild would not understand TM in Quiet Time to have the primary, immediate, and direct effect of advancing religion.³⁷² Quiet Time presents TM as a standalone, scientifically proven technique to increase health and well-being.³⁷³ Lastly, like in MM, there would be no excessive entanglement as long as the school took care to maintain its independence in monitoring the teachers and in developing the curriculum.³⁷⁴ At first glance, *Malnak v. Yogi* seems to cast a long shadow over any implementation of TM in schools.³⁷⁵ The above analysis illustrates, however, that

stress disorder (PTSD). For example, the National Institutes of Health has provided \$26 million in grants for TM cardiovascular health studies. *TM Research: NIH-funded Research on Transcendental Meditation*, DAVID LYNCH FOUND., <http://www.davidlynch-foundation.org/national-institutes-of-health.html> (last visited Jan. 5, 2014). Similarly, the Department of Defense recently awarded a multi-million dollar grant for TM training and research for veterans with PTSD. *Operation Warrior Wellness: Building Resilience and Healing the : Hidden Wounds of War*, DAVID LYNCH FOUND., <http://www.davidlynch-foundation.org/military.html> (last visited Jan. 5, 2014).

³⁶⁶ Telephone Interview, *supra* note 294.

³⁶⁷ See *Lemon*, 403 U.S. at 613.

³⁶⁸ See Part III.A.1, B.2.

³⁶⁹ See cases cited *supra* note 114.

³⁷⁰ See *Lemon*, 403 U.S. at 615–23; Part III.A.1, B.2.

³⁷¹ See *supra* notes 330–334 and accompanying text (discussing the secular benefits of Quiet Time).

³⁷² *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373, 1378–79 (9th Cir. 1994). See *supra* notes 335–340 and accompanying text (analyzing Quiet Time under the second prong of the *Lemon* test).

³⁷³ *Brochure*, *supra* note 9, at 20–25.

³⁷⁴ See *supra* notes 361–367 and accompanying text (applying the excessive entanglement prong of the *Lemon* test to Quiet Time).

³⁷⁵ 592 F.2d 197, 199 (3d Cir. 1979).

TM in Quiet Time presents a fact pattern much different from that of the *Malnak*-era SCI/TM.³⁷⁶

IV. CONCLUSION

There will always be activities in the ever-subtle twilight between church and state. Especially in the sensitive area of public education, courts must tread lightly, carefully, and correctly when addressing constitutional issues. The purpose of this paper is to bring into sharper focus both the definition of religion and the requirements for an Establishment Clause violation with respect to meditation classes. Despite the firm legal footing for yoga and meditation in public schools, some school districts may shy away from implementing such programs in order to avoid the distraction and expense of defending legal challenges. This uncertainty may have a chilling effect on experimentation with novel health and wellness programs. Even beyond what happens in the *Sedlock* case on appeal, the question of the constitutionality of meditation classes in public schools will still remain unanswered.³⁷⁷ Whether a school meditation program currently exists or is in the planning phase, it is the intent of this paper to provide a possible framework for how schools can offer meditation programs within the bounds of the law.

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³⁷⁶ *Malnak*, 440 F. Supp 1284, 1288–1312 (D.N.J. 1977); *Malnak*, 592 F.2d at 199–200. See Part III.B.2.

³⁷⁷ Notice of Appeal at 1, *Sedlock v. Baird*, No. 37201300035910-CU-MC-CTL (Cal. Super. Ct. C.D. Oct. 30, 2013).