

Robert D. Baird  
*University of Iowa*

## Religious or Non-Religious : TM in American Courts

The Transcendental Meditation movement is one among numerous movements in the U. S. today that is firmly rooted in Indian religio-philosophical traditions. However, TM consistently seeks to be understood simply as a technique and its spokesmen strongly deny that it is a religion. It is the credibility of this disavowal that has enabled TM to get support for its programmes from correctional institutions run by the state, state legislatures, departments of the federal government and local school officials.

It is the purpose of this paper to show that in the mind of Maharishi the proper understanding of TM is uniformly linked with a theoretical or metaphysical explanation which has been variously called "The Science of Being" or the "Science of Creative Intelligence", and that this linkage is found in Maharishi's writings and has been recently uncovered in the courts.

There are two contentions which stand out in introductory lectures on TM and in the promotional literature which is offered to potential meditators: (1) TM is not a religion; and (2) TM has many benefits which are scientifically verifiable.

As for the benefits, TM is supposed to improve one's reaction time, make one more stable, make one a better athlete, a better student, more productive in one's work, improve one's relationships with co-workers and supervisors, decrease anxiety, improve one's mental health, decrease blood pressure, reduce dependence on alcohol, cigarettes or drugs, improve one's resistance to disease, help cure insomnia, and assist in the normalization of weight. All these effects are scientifically verifiable, according to TM, and can be verified in one's own experience. One is counselled that he or she does not have to believe anything in particular in order to practise TM. Having been given a *mantra* specifically chosen for the indivi-

dual, its repetition will refine the nervous system and one can easily experience the effects to which I have just referred. One does not have to understand the workings of this any more than one has to understand the workings of electricity in order to turn on the light.

### Understanding TM: Necessity of a Theoretical Explanation

Although one does not have to understand metaphysics in order to *practise* TM, Maharishi makes it clear that one cannot *understand* the workings of TM without understanding its underlying philosophy. In his *The Science of Being and the Art of Living*, later available in paperback as *Transcendental Meditation: Serenity Without Drugs*, Maharishi begins with metaphysics and a discussion of the nature of the reality on which TM is based.

To those who have never had an interest in metaphysical study, the section on "Science of Being" may at first appear to be highly abstract, but once they have stepped into "Life" and "Art of Living" and have completed the section on "Fulfilment", they will find that without dwelling on the abstract features of the science of Being, the whole wisdom of the book would have no practical basis.<sup>1</sup>

In TM, as one progresses beyond the introductory and promotional level, it becomes more important to learn something about the philosophy on which the practice is based. Maharishi sees the two as inseparable. He is willing to divorce the two temporarily in order that persons will begin the practice of TM believing that later they will learn about its philosophy when they have found its practice beneficial. This temporary divorce is based on a principle which is commonly found in Indian religious traditions, a principle that Buddhists called *upāya* or skill in means. It means that the *guru* or spiritual leader knows the truth and is able to approach any person on his or her respective level of ignorance or insight. If people were generally receptive to religion, TM could be presented as religion, but because the mass consciousness is not favourable to religion, TM will not be so designated.

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1. Maharishi Mahesh Yogi. *Transcendental Meditation* (New York: New American Library, 1968), p. xvi.

Whenever and wherever religion dominates the mass consciousness, transcendental deep meditation should be taught in terms of religion. Whenever and wherever metaphysical thinking dominates the consciousness of society, transcendental deep meditation should be taught in metaphysical terms, openly aiming at the fulfilment of the current metaphysical thought. . .<sup>2</sup>

In the present time politics and economics dominate the consciousness and so TM should be approached from this perspective.<sup>3</sup> Hence the emphasis on happiness as the end of life, improved physical and psychological benefits, and improved job performance. One finds what people see as their most profound and pressing needs, and then TM is presented as meeting that need.

The technique of imparting transcendental deep meditation to the people is to find out what they are aspiring for in life, find out what they want to accomplish, what their desires are, and then tell them of the gains of transcendental deep meditation in terms of their desires and needs and aspirations in life.<sup>4</sup>

Metaphysical ideas are pushed aside until a later stage when practitioners will be more open to them.

The theoretical basis for TM is termed the Science of Creative Intelligence (SCI). The same theory was earlier expounded as "The Science of Being". "Science", there, was defined as "systematized knowledge". The "Science of Being" meant "systematized knowledge of the Being — systematized knowledge of existence or the actuality of life".<sup>5</sup> In 1963 the "Science of Being" functioned as the theoretical explanation for TM much as its terminological equivalent SCI does today. Within the earlier terminology, the theoretical explanation might be condensed as follows.

The ultimate and essential aspect of all is Being. Being permeates everything. Sometimes this is called "God", but ultimately it is not personal. Being exists in its absolute state as unchanging, and in its relative state as changing.<sup>6</sup> All of reality is Being either in its

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2. *Ibid.*, p. 299

3. *Ibid.*, pp. 299-300

4. *Ibid.*, p. 296

5. *Ibid.*, p. xvi

6. *Ibid.*, p. 31

absolute or its relative state. Being is like a vast ocean, silent and ever the same, while the waves which are part of the ocean, though different, represent the phenomenal phases of daily life. The imperishable Being lies beyond all the relative existence of mental and material life.

Human beings are essentially one with the Being.<sup>7</sup> That is, the ultimate reality which is at the base of nature is also at the base of human nature. On the surface there is change and suffering and hypertension. But at the base of human nature is "the Being"—the infinite reality which is none other than man himself. That which is ultimately real is not to be found by looking without, but within.

All suffering is due to not knowing the way to unfold the divine glory within oneself. If one only had the knowledge to "dive" within oneself, the root of all ills and sufferings would be eliminated. Our inner being is the unmanifested absolute Being which manifests itself in the ego, intellect, senses and mind.<sup>8</sup> But we have lost contact with Being and hence identify ourselves with the surface manifestations. We mistake the waves, as it were, for the total ocean.

The solution is to contact the eternal Being lying deep within.<sup>9</sup> One then becomes one with the absolute eternal Being. For Maharishi, one can bring this experience into the plane of the relative through the technique of transcendental deep meditation.

The practice of transcendental deep meditation results in such a great impact of the nature of the Being on the nature of the mind that the mind begins to live the nature of the eternal Being and yet continues to behave and experience in the field of relative existence.<sup>10</sup>

In meditation the mind comes in contact with eternal Being, that state which lies beyond all seeing and hearing and touching, smelling and tasting.<sup>11</sup> One becomes able to live the Being through the practice of transcendental deep meditation and through engaging in activity after meditation. When in contact with Being, there is identity.

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7. *Ibid.*, p. 33

8. *Ibid.*, p. 36

9. *Ibid.*, pp. 44ff

10. *Ibid.*, p. 42

11. *Ibid.*, p. 46

The mind loses its individuality and becomes cosmic mind, it becomes omnipresent and gains pure eternal existence. In the transcendent it has no capacity for experience. Here the mind does not exist, it becomes existence.<sup>12</sup>

Meditation increases clarity of mind and all the other promised benefits because the mind has come in contact with Being and one is now living the Being.

### SCI/TM in District Court

In the fall of 1969 Jerry Jarvis, director of SIMS and IMS (branches of the TM movement), taught a course at Stanford University entitled "The Science of Creative Intelligence." The enrolment of over three hundred students generated interest on the part of the academic community and enthusiasm within the TM movement for presenting SCI/TM in educational institutions. Jerry Jarvis commented :

Since then there have been more SCI courses established and Maharishi has been working to prepare comprehensive courses for teaching SCI at all levels of education.<sup>13</sup>

This endeavour resulted in an attractively produced text-book, *Science of Creative Intelligence for Secondary Education*. During the 1975-76 academic year it was the basis for an elective course taught in five New Jersey public high schools, entitled "Science of Creative Intelligence-Transcendental Meditation." The course was taught four or five days a week by teachers trained by the world Plan Executive Council-United States, an organization whose objective it is to disseminate the teachings of SCI/TV throughout the U.S. Each student that elected the course, was required to attend a *Puja* ceremony as part of the course, at which time he or she received a *Mantra* and was trained in its use.

A suit was filed in the United States District Court, District of New Jersey, involving twelve plaintiffs and twenty defendants- Among the defendants was the United States Departments of Health, Educa-

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12. *Ibid.*, p. 54

13. Quoted in Jack Forem, *Transcendental Meditation* (New York: E.P. Dutton, 1974), p. 217

tion and Welfare through which WPEC-US had received a \$ 40,000 grant. Plaintiffs moved for a partial summary judgement to enjoin the teaching of the course on the ground that it violated the establishment clause of the first amendment. Their argument was based on the text book, *puja*, deposition testimony of the president of WPEC-US, Jarry Jarvis. and the deposition of two people who taught the SCI/TM course. It is pointed out that the facts of the case were agreed upon by both sides, the only issue being their interpretation.

Defendants argued that TM is a technique of meditation in which the meditator contemplates a meaningless sound (*Mantra*). This results in the many benefits which we have already enumerated. The "Science of Creative Intelligence" is a theory promulgated by Maharishi which purports to explain what occurs within a meditator's mind during meditation and intends to describe an entity or concept called creative intelligence. During TM, a meditator reverses the process through which thought develops until the meditator's mind reaches the field of pure creative intelligence which is at the source of thought.<sup>14</sup> District Court Judge Meanor's Opinion is seventy-eight pages in length and centres around the text book and the *puja*.

### The Text Book

The science of creative intelligence holds that during meditation the meditator's mind moves from conscious thought to the source of thought, where the mind comes in contact with the unmanifest and unbounded field of pure creative intelligence (T at 29) which is present everywhere in the universe and within every individual.<sup>15</sup> Attainment of contact with pure creative intelligence places the meditator in a "fourth state of consciousness" known as "restful alertness" or "trancendental consciousness" (T at 30). During TM the meditator experiences the field of pure creative intelligence directly (T at 29). This infuses the meditators' mind with creativity (T at 26), clarifies and strengthens the meditators' thoughts (T at 32), expands perceptions (T at 30), and refines the meditator's nervous system (Jarvis deposition at 866a). Regular practice of TM will further refine the nervous system so that the expanded perceptions experienced during TM will carry over into

14. "Pure creative intelligence" corresponds to the "Being" in its absolute state as expounded in *The Science of being and the Art of Living*.

15. The description is that of the court while the references given by the court are to the text book. Hence "T at 29" refers to page 29 of the text book

the meditator's conscious thought and activities. (T at 38, 86). Continued practice of TM may lead one's mind to be infused with "expanded awareness" with perceptions experienced during meditation carrying over to the waking, sleeping and dreaming states. This is called "cosmic consciousness" or "the fifth state of consciousness" (T at 86). Continued practice may lead to further refinement of the nervous system and increased faculties of perception until a state called "unity consciousness" is reached. This highest level of refinement of the nervous system is called "God consciousness" or "Brahman consciousness."<sup>16</sup> The teachers did not mention either "unity consciousness" or "Brahman consciousness" to their classes.

The field of pure creative intelligence is unmanifest and the home of all the qualities which constitute the universe. Creative intelligence is a force which springs from the field of pure creative intelligence which is the source of everything in the universe (T at 26, 40, 260). Creative intelligence, unlike pure creative intelligence, possesses all the qualities that can be conceived of. "Every quality that is ever expressed in creation is the expression of creative intelligence" (T at 40). The text book takes 255 pages to discuss fifty specific qualities of creative intelligence.

One should not seek to imitate the qualities of creative intelligence, but should allow them to be displayed spontaneously as a result of TM. TM is not only the automatic means of attaining all the qualities of creative intelligence, but also the exclusive manner of obtaining these qualities (T at 94, 132, 217, 262).

While the field of pure creative intelligence, is described as silent, non-changing, and immovable, the text book describes creative intelligence as perpetually active in all aspects of the universe.

The entire field of life, from the individual to the cosmos, is nothing but the expression of neverchanging pure creative intelligence in the relative ever-changing expressions of life. (T at 92)  
So, nothing occurs in random fashion.

16. These levels of consciousness are also enumerated in Maharishi Mahesh Yogi, *On the Bhagavad-Gita: A New Translation and Commentary with Sanskrit Text* (Penguin Books, 1969), p. 20

17. Malnak V. Maharishi, *Opinion*, p. 23

In addition to activity, creative intelligence possesses the anthropomorphic qualities of being thoughtful, loving and just, decisive and sweet, precise and truthful. Furthermore, creative intelligence is omnipotent since its power is unlimited (T at 108), and it is the basis of all knowledge (T at 189). It is also omnipresent (T at 23) and eternal. It "has existed for all times. It is, always has been, and always will be the non-changing basis of life, the fountainhead of all currents of creativity" (T at 242). The field of pure creative intelligence is the "field of unlimited happiness" (T at 32, 56), "the unbounded ocean of bliss" (T at 152), and "universal existence" (T at 292) or "perfection of existence" (T at 118).

The defendants argued that no matter what statements are to be found in the text-book, those statements are "not intended or understood as an (sic) religion, religious study of God" (Jarvis affidavit). The defendants sought to present the view that creative intelligence is merely a philosophic idea or a "philosophic concept" but the court responded that the text-book contradicted such claims: "Creative intelligence is not just an abstract concept or idea it is a concrete reality that can be practically applied to bring success and fulfilment to every phase of living" (T at 250).

The defendants also selected certain statements from the text-book in an attempt to show that they were only apparently religious. The court saw this as an attempt to "refute their obvious meanings" through "unpersuasive analogies" and "bald assertions of belief." Although Judge Meanor's Opinion offers numerous examples, the following will indicate the nature of the argument and the court's response.

(1) The analogy of gravity. The text-book states that creative intelligence "guides and sustains every aspect of the universe" (T at 174). But in his affidavit, Jarvis explains,

Creative intelligence is not understood or taught as sustainer of the universe in a religious sense. It "guides and sustains" in a scientific-philosophic sense, much in the same manner that gravity guides and sustains the path of the planets.

The court responded by pointing out that creative intelligence, unlike gravity, is the source of life-energy, the home of all knowledge and wisdom, and the origin of all power in the universe. Unlike creative intelligence, gravity is not kind, or an ocean of love



(2) The analogy from the principles of freedom, truth and justice. Defendants admit that creative intelligence is eternal and state that "purely secular ideas and principles, such as freedom and the concepts of truth and justice, are eternal and 'go on and on' devoid of religious connotations" (Jarvis, 42). But the court pointed out that the analogy was weak since freedom, truth and justice do not have the other characteristics attributed to creative intelligence. Neither is a "concrete reality" (T at 250) that "can be contacted" (T at 13), and which "accomplishes all things with no effort" (T at 108). Furthermore, the text-book states that freedom, truth and justice are only three of a multitude of qualities contained within the field of creative intelligence.

(3) The analogy of matter and energy. The court rejected the analogy of matter and energy since neither possess the tiniest fraction of the characteristics of creative intelligence. Neither matter nor energy is bliss-consciousness nor unbounded awareness nor a field of "unlimited power, energy, existence, peace and happiness", as is creative intelligence (T at 121, 262, 102).

The defendants also sought to have creative intelligence understood not as an objective metaphysical principle but as subjective qualities which develop in the practitioner as a result of meditation (Jarvis Affidavit, 41).

While the text-book attempts to describe certain qualities of creative intelligence, it contains nothing intended or understood as inherently religious. Thus, attributes such as loving, just, gentle, strong, efficient, kind, clean, purifying, "a person of full heart," self-sustaining and self-sufficient, are simply human qualities that develop as a result of personal growth.

The court replied that while it may be true that these qualities do develop in an individual as a result of personal growth, the text-book attributes these "simply human qualities" with the exception of "a person full heart," to a non-human, unmanifest, uncreated "concrete reality" (T at 250, 214-221, 100-107).

Depositions from three clergymen: a Catholic priest, a United Presbyterian minister, and a rabbi, were also presented. All of them testified that they did not consider SCI/TM a religion, nor did they consider their *pujas* a religious activity. None of the clergymen, however, had actually read the entire text-book and two of them saw it

first on the day of their depositions. The third said that he had the text for several weeks and had "looked over it kind of carefully." The latter indicated that he had studied portions of the text-book, but could not remember any reference to the term "bliss-consciousness" which occurs frequently throughout the book. In a footnote to the opinion, Judge Meanor states:

The same clergyman testified that there was no connection between the teachings embodied in the Science of Creative Intelligence and the technique of Transcendental Meditation. The clergyman was apparently oblivious to the fact that defendants teach that the Science of Creative Intelligence explains the mechanics of the practice of Transcendental Meditation, including the teaching that the alleged benefits of the practice of Transcendental Meditation, derive not from the contemplation of a meaningless sound but from contact with the unmanifest field of life known as the field of pure creative intelligence. (e.g. T at 23, 24, 26, 38).<sup>18</sup>

The defendants also submitted Affidavits from two SCI/TM teachers and eleven students in the courses who said they did not see the course as a study of religion. The judge indicated, however, that the issue was the content of the course and not how some people subjectively characterized it.

The subjective characterizations by individuals of teachings as religious or not religious in their systems of characterization cannot be determinative of whether or not the teachings are religious within the meaning of the first amendment.<sup>19</sup>

### The Puja

The second item around which discussion centred was the *puja*. Each student was required to attend a *puja* which was performed in a closed room by the teacher in the presence of the student. *Pujas* were conducted off the school premises and on Sundays. Each student was asked to bring a clean white handkerchief, a few flowers and some fruit. Each student removed his or her shoes before entering the room. Inside the room was a table covered with a white sheet on which were

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18. *Ibid.*, p. 35

19. *Ibid.*, p. 36

placed containers for candle and incense, camphor, and three dishes for water, rice and sandal-paste. At the back of the table was an eight by eleven inch colour picture of Guru Dev.<sup>20</sup> The handkerchief, fruit and flowers brought by the student were also placed on the table. The student stood or sat in front of the table while the teacher sang a chant in Sanskrit lasting three or four minutes.<sup>21</sup> At the conclusion of the chant the teacher gave the student a *mantra* and then instructed the student in the technique for using it. The student then meditated with the use of the *mantra* for some twenty minutes after which the teacher and student discussed the student's experience. The whole procedure took 1½ to 2 hours. A week or two prior to the *puja*, the student was required to sign a document in which the student promised never to reveal his or her *mantra*. The teachers told the students that the *puja* was not a religious exercise or prayer.

The court points out that the *puja* chant takes the form of expressions of reverence for "the Lord," other named entities or individuals, "the tradition of our Master," and Guru Dev, who is portrayed as a personification of a divine being or essence.

To the glory of the Lord I bow down again and again, at whose door the whole galaxy of gods pray (sic) for perfection day and night.

Commenting on this passage from the *puja*, the court indicates in a footnote :

The court is aware that defendant Jarvis, although not an expert in the culture, history or religions of India, (see Jarvis Deposition at 908, 1020), testified that it is his personal understanding that the use of the word "Lord" in the term "Lord Narayana" denotes "merely the highest possible human appreciation and esteem (for human beings), like we would say Lord Mountbatten or something like that." (Jarvis Deposition at 966). Ignoring for the moment the inaccuracies in this weak analogy and accepting the statement *arguendo*, Mr. Jarvis' understanding of the word "Lord" when the word is attached to a proper noun can have no application to the term "the Lord" standing alone. In addition, it is impossible to

20. Maharishi's teacher was Swami Brahmananda Saraswati, often referred to as Guru Dev.

21. An English translation of the *puja* was provided by the defendants.

22. *Ibid.*, p. 43

imagine that "the whole galaxy of gods pray for perfection" at the door of "Lord Mountbatten" or at the door of any other titled person.

Guru Dev is seen as the personification of "the essence of creation" and is referred to as "Him." The only other referent to "Him" with a capital "H" is "the Lord." The court points out that many of the epithets applied to Guru Dev are similar to those applied to the field of creative intelligence in the text book: Guru Dev is called "the unbounded," "the omnipresent in all creation," "bliss of the Absolute," "transcendental joy," "the self-sufficient," "the embodiment of pure knowledge which is beyond and above the universe like the sky," "the One," "the Eternal," "the Pure," "the Immovable," and "the true preceptor." The chant ends with another offering and two more obeisances to "Him," to Guru Dev.

Guru in the glory of Brahma, Guru in the glory of Vishnu, Guru in the glory of the great Lord Shiva, Guru in the glory of the personified transcendental fullness (sic) of Brahman, to Him. to Shri Guru Dev adorned with glory, I bow down.

The court concluded: "Manifestly, no one would apply all these epithets to a human being."<sup>23</sup> The court noted an inconsistency as to whether the *puja* is performed for the student or for the teacher, but agreed to accept the position that it is performed for the initiator with the student's participation limited to attendance and the contribution of certain offerings.

The defendants argued that the *puja* was not religious, but merely a ceremony of gratitude. This is supported with depositions by Jarvis, three clergymen, two professors of religion and two teachers who performed the ceremony. The court was not impressed with an argument which avoided an analysis of the text in favour of subjective interpretations. It pointed out that it is difficult to see the ceremony as one of gratitude since the chant did not reveal one word of gratefulness or thankfulness. The chant actually takes the form of a double invocation of Guru Dev. Jarvis stated that it was his personal understanding that the *puja* was merely a ceremony of gratitude to the tradition of past teachers and that similar ceremonies were performed

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23. *Ibid.*, p. 43

in secular contexts in India. The court pointed out that Jarvis was not an expert in Indian things and that when asked what the word *puja* meant, he was unable to say. When asked if he were familiar with any *puja* "other than the one that is performed by the teacher at the time a *mantra* is assigned," he answered "No." The court pointed out that none of the depositions analysed the text of the chant, but merely indicated that they did not see it as religious.

When asked to what the gratitude of the ceremony was expressed, the reply was to the tradition of teachers who have preserved the teaching, or "to the knowledge" which each teacher in the chant is purported to have had. The court argued that the problem with this was that none of the described recipients was capable of receiving the gratitude. In common English usage, when one performs a ceremony of gratitude, there must be a recipient. One may be grateful *for* a body of knowledge or *for* a tradition, while gratitude extends *to* the preservers of a tradition.

One would no more perform a ceremony of gratitude to a tradition or to a body of knowledge than one would perform a ceremony of gratitude to a chair or to a useful contrivance or to a machine or to any other inanimate object which would be entirely incapable of perceiving human communication.<sup>24</sup>

Most of the teachers addressed in the *puja* have been dead for thousands of years, and the most recent for nearly a quarter of a century.

Furthermore, the court pointed out that the *puja* was seen as indispensable to Maharishi.

Maharishi Mahesh Yogi places such emphasis on the singing of this chant prior to the imparting of a *mantra* to each individual student that no *mantras* are given except at *pujas* and no one is allowed to teach the Science of Creative Intelligence/Transcendental Meditation unless he or she performed the *puja* to the personal satisfaction of Maharishi Mahesh Yogi or one of his aids.<sup>25</sup>

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24. *Ibid.*, p. 45

25. *Ibid.*, p. 50

## SCI/TM and the First Amendment

Having analysed the text book and the *puja*, the court set out to determine whether SCI/TM was religious under the meaning of first amendment, and concluded that it was. It rejected the subjective criterion and indicated that it was particularly suspect in a case where the proponents "have enlisted the aid of governmental entities in the propagation of their beliefs, teachings, theories and activities"<sup>26</sup> To use subjective characterization by defendants to determine the religious extent of activities or beliefs "would be to inject a variable into the first amendment test which would preclude a fair and uniform standard."<sup>27</sup> Then the only inquiry left to the courts would be to determine the sincerity of the defendants,

"Religion" under the first amendment would take on a different meaning in each case, and similar or virtually identical practices would be religious or not religious under the first amendment depending on the classification system of a particular proponent.<sup>28</sup>

The defendants request that the court define religion was seen as unnecessary. Courts had not defined "press" either. It was important that such terms should not be rigidly defined so that as comparable items unforeseen by the founding fathers arose they could be included.

Owing to the variety of form and substance which religions may take, the courts have avoided the establishment of explicit criteria, the possession of which indelibly identifies an activity as religious for purposes of the first amendment. This court, therefore, must be guided by the type of activity that has been held to be religious under the first amendment by the courts.<sup>29</sup>

The only issue, then was what judicial precedent included in the designation "religion," and how that applied to the case at hand.

By ruling as unconstitutional the recitation of a non-denominational prayer (*Engel v. Vitale*, 370 U.S. 421-1962), the Supreme Court made it clear that an activity may be religious even if it is not derived

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26. *Ibid.*, p. 64

27. *Ibid.*, p. 61

28. *Ibid.*, p. 61

29. *Ibid.*, p. 52

from a "societally recognized religious sect."<sup>30</sup> When in *Torcasco v. Watkins* (367 U.S. 488 - 1961), the Supreme Court ruled as unconstitutional the Maryland requirement that appointees to state offices affirm their belief in the existence of God, it made it clear that "religion" under the first amendment was broader than theism. Indeed, it could include Buddhism, Taoism, Ethical Culture and Secular Humanism.

Furthermore, the court found that Scientology was "religious" even though it "postulated the existence of no supreme essence or being and disavowed mysticism and supernaturalism."<sup>31</sup> Another important feature of the Scientology case was the fact that whether it was a religion under the first amendment was not dependent upon the representations of its proponents, but was a proper issue for the courts to determine.

Turning to TM, the court pointed out that the first organization in this country to offer instruction in TM (in 1959) was called the "Spiritual Regeneration Movement Foundation." One of the articles of the certificate of incorporation stated: "This corporation is a religious one." The court also found a remarkable similarity between the "Hindu" concept of the Supreme Being as Truth, Knowledge and Bliss and the qualities attributed to the field of pure creative intelligence. Regarding the contention that this has to do with philosophic concepts and not religion, the court explained.

A philosophy well may posit the existence of a supreme being without functioning as a religion in the sense of having clergy and houses of worship. For purposes of the first amendment, these philosophies are the functional equivalents of religions. Surely the prohibition of the establishment clause could not be avoided by governmental aid to the inculcation of a belief in a supreme being through philosophical instruction instead of through conventionally recognized religious instruction.<sup>32</sup>

The court found that the characteristics of creative intelligence in the text book were equivalents to the term "God" in common usage.

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30. *Ibid.*, p. 52

31. See *Founding Church of Scientology v. United States*, 499 F. 2nd 1146 (D.C. Cir. 1969).

32. *Malnak v. Maharishi*, Opinion, p. 69

Having determined that the SCI/TM course was religious, it remained for the court to decide if it was in violation of the first amendment. Under *Committee for Public Education V. Nyquist* (413 U.S. 756-1973), three tests were used to determine whether a religious activity constituted a violation of constitutional provision.

The activity first, must reflect a clearly secular legislative purpose, second, must have a primary effect that neither advances nor inhibits religion, and third, must avoid excessive government entanglement with religion.<sup>33</sup>

The court found that the SCI/TM course violated the constitutional provisions on all three counts. In the first place, the secular purpose of government in the SCI/TM course was to make available to students the alleged benefits of TM. But the simple technique was not all that was taught. Seventy percent of the time was devoted to teaching the theory of the Science of Creative Intelligence. Defendants did not teach merely that the use of a *mantra* will bring about certain beneficial physiological changes, but that a *mantra* is a vehicle which will bring a practitioner of TM into direct contact with an unmanifest, pure perfect, eternal and infinite field of life—the field of pure creative intelligence. Hence the government agencies have sought to effect a secular goal by the propagation of a religious concept, and this is prohibited by the establishment clause. In the case of the second test, the promulgation of a belief in the existence of a pure, perfect, infinite and unmanifest field of life clearly has primary effect of advancing religion and religious concepts. Under the third test, the aid given to the course in SCI/TM by the Federal Government and the State of New Jersey clearly constituted an “excessive government entanglement in religion.” The court concluded: “The teaching of the SCI/TM course in New Jersey public high schools violates the establishment clause of the first amendment, and its teaching must be enjoined.”<sup>34</sup>

### The Appeal Decision

The immediate reaction of TM spokesmen was to downplay the importance of the decision. Admittedly it was a judgement about a specific course taught in New Jersey. However, it had definite impli-

33. *Ibid.*, p. 71

34. *Ibid.*, p. 78



cations for other situations as well. What implications might it have for public support in teaching TM in penal institutions? The case was appealed before the U.S. Court of Appeals, Third Circuit, and was argued on December 11, 1978. The opinion of the appeal was filed on February 2, 1979. The Appeal Court agreed that the SCI/TM course was religious in nature and agreed with the application of the Nyquist test. It was no more impressed with the appellants' arguments that the text book and *puja* were not religious than was the District Court. All of the parties among the original plaintiffs were represented in the appeal. However, defendants before the lower court included the U.S. Department of Health, Education and Welfare; the New Jersey Department of Education; and the several local school boards. None of these governmental defendants joined the World Plan Executive Council-U.S. in its appeal.

While this case only deals with a specific course, its implications are broad. To the extent to which this opinion is followed, whenever SCI is a part of TM the endeavour is religious under the first amendment because SCI, is at least an equivalent of religious teaching. Even if TM were to be taught without the accompaniment of SCI, the necessity of the *puja* makes it religious as well. Moreover, this case raises serious questions about any use of public funds as a subsidy for TM.