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(Updated versions and amendments will be issued through the course TWEN site.)

University of Florida Levin College of Law
Tools of Awareness for Lawyers
Law 6930, Section 6912.
Spring 2010
Mondays & Wednesdays 3:00-4:50 (Room 355 D)
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Syllabus

The goal of this course is to help students develop certain skills and perspectives that will enable them to provide better service to their clients and gain more satisfaction in professional practice. The course will involve two principal tracks, which we will frequently weave together.

Track 1: Tools for Handling Conflict and Disputes. This track focuses on developing theoretical and practical knowledge and skills for understanding and dealing with conflict and disputes. In the interests of efficiency, we will focus primarily on negotiation. But we will endeavor also to maintain awareness about other ways to address conflict, such as client interviewing and counseling, mediation, arbitration, and litigation.

Along this track, we will:

- learn about theories of conflict, especially the notion, described by Professor Bernard Mayer, that it is useful to understand (and try to resolve) conflict along three dimensions—behavioral, cognitive, and emotional.
- study basic theories about negotiation.
- read two books that set forth advanced approaches to negotiation:
 - Doug Stone, Bruce Patton & Sheila Heen, *Difficult Conversations: How to Discuss What Matters Most* (Viking hardcover 1999 or Penguin Paperback 2000).
 - Roger Fisher & Daniel Shapiro, *Beyond Reason: Using Emotions as You Negotiate* (Viking hardcover (2005) or Penguin paperback (2006)).

Track 2: Tools of Awareness

It is quite possible that you could learn everything on Track 1, that is, become a real expert on understanding conflict and how to negotiate, and yet not be very effective in actual negotiations. If this happens, it will likely result from problems in the awareness that you bring to situations of conflict: Even though you “know” how to understand conflict and to address it, you may fail to use that knowledge skillfully because of any of a number of obstacles, such as: strong emotions, cognitive or psychological traps, a wandering mind, or physical or mental exhaustion.

Along the Awareness track, we will study a number of ways to cultivate and employ a present-moment, non-judgmental awareness that will allow you to deal better with stress and function more effectively in a wide variety of settings. Although we will apply these Tools of Awareness primarily in the context of negotiation, they should help you in virtually any activity you perform as a lawyer—and in many other aspects of life.

Specifically, we will develop skills in

- Mindful awareness, principally through Mindfulness Meditation (a.k.a. Insight Meditation and Vipassana Meditation)—an ancient method of non-judgmental observation currently employed in the U.S. in a few law firms and law schools, corporations and government agencies, athletics, medicine and psychology.
- Loving-Kindness Meditation, which is closely related to mindfulness meditation and promotes, among other things, positive emotions.
- Chi Kung (sometimes spelled Qi Gong), an ancient energy art that resembles the better-known practice of T'ai Chi. Chi Kung helps develop energy and enhances mindfulness practices. The Chi Kung portion of the course will be presented by Anthony Korahais, a martial and energy arts instructor, whose work is explained on his website, www.flowingzen.com.
- Yoga. We will have a brief introduction to the practice of yoga, which also develops energy and awareness of mind and body. Both Yoga and Chi Kung enhance the ability to meditate.

Interweaving the Two Tracks

The two tracks can reinforce each other: The Tools of Awareness enhance our ability to negotiate well; and Tools for Managing Conflict foster our ability to develop and maintain present-moment, nonjudgmental awareness.

During the semester, we will frequently undertake exercises that combine dispute resolution and mindful awareness, principally as a way of learning to use mindful awareness in order to deal better with conflict.

Throughout the course, we also will frequently consider the following themes, expressed as pairs of apparent opposites:

- Separation and connection
- Self and other
- Winning and losing
- Adversarial and interest-based (or value-claiming and value-creating) approaches to negotiation.
- Theory and practice

Writing Skills

Finally, this course should provide an opportunity to improve your writing skills. In my experience, *most* law students could benefit from additional writing instruction and feedback, and from a greater familiarity with widely adopted methods of citation in the legal profession. Accordingly, I will ask you to: a. review brief readings about good writing; b. Learn several rules of citation from *The Blue Book: A Uniform System of Citation*¹; and c. Employ the lessons learned in your case studies and the examination, both of which are described below.

Course work will include reading, demonstrations and experiential exercises in negotiation, meditation, and Chi Kung. In addition, students will submit a number of reports and journals on their experiences with mindfulness or other awareness exercises and prepare a book review, the requirements for which appear below.

Mechanics

Please register for the course TWEN site as soon as possible.

I will periodically distribute readings in class and through the course TWEN site.

Class sessions

You will notice that, although the course is three credits, it is scheduled to meet twice each week for two fifty-minute sessions. This is because we will do extensive awareness and other activities in class. Often, we will not use the entire scheduled time. At least one class will be cancelled—Wed., April 7.

In the classroom, we will try to maintain an environment that minimizes distractions. So, **please do not turn on lap top computers in the classroom, even during breaks.** (I also *suggest* that, during the breaks, you avoid using these devices even outside the classroom.) The same applies to cell phones and pagers. If you have an unusual or emergency situation that requires you to keep on your cell phone, please put it in the “vibrate” mode.

¹ THE BLUE BOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 18th ed. 2005) (Hereinafter, “THE BLUE BOOK.”)

Grading will be based upon

1. *A book review. 40%.*
2. *An examination 40.%.*
3. *Participation. 20%.*

Here are details:

1. *The book review*

This should be an analytical review of a book that relates principally to Track 2 of the course: Tools/Skills of Awareness. Subjects could include, for instance: contemplative practices, such as meditation, Chi Kung, and Yoga; emotional intelligence; emotions, or awareness, in negotiation or lawyering; and depression among lawyers and law students. Most of the books listed below, under Readings and Other Resources, are good candidates for reviewing, but do not feel limited to this list. As discussed below, I will want you to submit your choice for my approval.

Write the review as if it were to be published in an academic law review. It should be approximately 15 pages, but not more than 20 pages double-spaced. It should look like a book review published in a law review, you should cite relevant authorities in *footnotes*, and the format should comply with the latest edition of the “Blue Book”—the *Uniform System of Citation*. In addition, you should write it for the kind of audience that might read a law review—e.g., lawyers, law students, judges, mediators, or students of the legal profession from other disciplines, such as psychology, sociology, or organizational behavior. The review should address, implicitly or explicitly, the issue of whether or how the book—or its messages, which you should set forth in the review—might be useful to this audience. If you select a book that does not focus at all on lawyers, it should be one that you think has some value for lawyers—or law students or judges or people who study the legal profession. If you select a book that pays significant attention to lawyers, you should discuss what value it actually has. The review should include some references to related literature, including, if appropriate (which it probably will be), materials we read in this class. Remember, however, to write this as if the reader has not taken this course and is not familiar with the ideas in it.

Additional Guidelines for the Book Review

-The beginning of the book review should capture a reader's attention. Start with something interesting. Remember that, outside of educational environments, people tend to read only what they enjoy reading or think will help them in some way. Your task includes keeping the reader's attention throughout. It is ideal to include something in the last paragraph that connects with the first paragraph.

-Every paragraph, or almost every paragraph, should begin with a topic sentence, and everything in the paragraph should support the topic sentence. It is not always possible to do this, but this should be your goal.

-Avoid passive voice. Try to use interesting, lively, active verbs. Later, I will distribute handouts on writing that will address this issue.

-Use headings to help guide the reader's attention.

-Describe the content and style of the book.

-Give your own opinion about the content and style of the book, and support any assertions you make. For instance, if you say that the style is stiff, include one or more quotations to illustrate the point. If you say it is poorly organized, demonstrate exactly how it is organized, and explain what is wrong with the organization. Details are important.

-Compare the book to other writings on the same or related topic. These could, but need not, include books we have read this course.

-If you have the space, feel free to go beyond the book to explore an issue that the book suggests to you.

-Write in the first person. I would rather you say, "I believe" than "It is submitted."

Finally, a friend who regularly writes more than 50 book reviews each year for newspapers and magazines tells me he has never read anything useful about how to write a book review. He says that the basic idea is to "write in an interesting way about the substance and style, and to use clear writing and clear thinking."

I have posted on TWEN an excellent book review of Robert M. Sapolsky, *Why Zebras Don't Get Ulcers* by Mary Zewalk, a student in the spring 2009 Tools of Awareness course. Another good example is Professor Stephen Goldberg's review of *Beyond Winning* at 6 *Harv. Negot. L. Rev.* 319 (2001), which you can find on HeinOnline or Westlaw. It is shorter than your reviews should be, but it is well-constructed and does much of what I want you to do--but I expect you to do more of it.

In writing the book review, you would likely benefit from reading any edition of Eugene Volokh, *Academic Legal Writing: Law Review Articles, Student Notes, and Seminar Papers* (Foundation Press). I will place a copy on reserve, but I highly recommend that you buy and study this splendid and lively book, not only for this course, but for any other academic legal writing you may do.

Timetable for the book reviews:

Written proposals for the book review or paper are due in class on Mon., Feb. 1.

Book review proposals should include the author, title, number of pages, date of publication, publisher, a brief description of the book, and an explanation of why you want to review that book.

I would be glad to discuss alternatives with you before proposals are due.

Optional draft of book review. **If you would like me to review and comment on a draft, so that you can change the paper before submitting the final version, submit the draft to me by Wed., Mar. 31.**

Final book reviews or papers are due in the final class, Wed., April 21.

Book review presentations. During roughly the last third of the semester, we will devote most class sessions to presentations and discussions of book reviews that students have prepared. By a specified time before your presentation, you will need to distribute through TWEN a summary of your review, for your classmates to read. If you have completed a plausible draft before your presentation, I suggest that you make that available, too. For such drafts, I will assign commentators. [Note: If several students choose to review the same book, I will ask them to do a joint presentation, and we will devote more time to that book.]

2. The final examination

This will be a closed book, “objective” examination—i.e., the questions will be multiple-choice and true-false. It is designed to test your knowledge and understanding of the major ideas covered in course. It likely will include a small number of questions dealing with grammar, active v. passive voice verbs, and the application of specific rules from *The Blue Book: A Uniform System of Citation*. (Such questions will be closely-tied to material we have specifically addressed in the course.)

3. Participation

Participation includes;

- a. Attending class. I will reduce grades for missing more than three class sessions. Students who miss more than four class sessions will be dropped from the course. (Note: This is my normal practice. However, I may have to make some adjustments in light of the H1N1 epidemic.)
- b. Carrying out course activities, participating in class discussions, journaling or other brief writing assignments, role-play and other activities. I expect students to get full credit for these brief writing assignments and other class activities. I will give less than full credit if it is clear that you have not participated in a role play or other class activity, or, in the case of brief writing assignments or reports on out-of-class awareness activities, if you have not made a serious effort. I will reduce grades for lateness on assignments.

I will not grade you on the development of actual negotiation skills or on mindfulness and other awareness skills and insights. I will be looking, instead, for diligence and promptness.

N.B: Everyone starts out with FULL CREDIT for the “class participation” component. You can lose points but you cannot get more than full credit. I anticipate that the vast majority (possibly all) of the students will wind up getting full credit for this component—because I expect that you will take it seriously and show diligence.

Readings

I will make assignments early in the semester from two principal works: *Difficult Conversations* and *Beyond Reason*, which are cited fully on p. 1 of this Syllabus.

In addition, I will ask you to read a number of articles and excerpts from other books, which I will either post on the TWEN site or make available for distribution in class or purchase.

For basic introductions to mindfulness, I recommend Jon Kabat-Zinn, *Wherever You Go, There You Are: Mindfulness Meditation in Everyday Life* (Paperback, 2005, Hyperion), and Henepola Gunaratana, *Mindfulness in Plain English* (Wisdom, 1991). I have not ordered these books, but they are widely available.

Additional readings.

The course TWEN site I will put additional basic readings (under Course Materials), including the following:

Don Ellinghausen Jr., *Venting or Vipassana? Mindfulness Meditation's Potential for Reducing Anger's Role in Mediation*, 8 *Cardozo J. Confl. Resol.* 63 (2006).

Clark Freshman, *After Basic Mindfulness Meditation: External Mindfulness, Emotional Truthfulness, and Lie Detection in Dispute Resolution*, 2006 *J. Disp. Resol.* 511 (2006).

Daniel Goleman, *Finding Happiness: Cajole Your Brain to Lean to the Left*, *New York Times*, Feb. 4, 2003

Walter Mischel & Aaron DeSmet, *Self-Regulation in the Service of Conflict Resolution*, in Morton Deutsch & Peter Coleman, *The Handbook of Conflict Resolution Theory & Practice* 256-75 (2000).

Barry Nobel, *Meditation and Mediation*, 43 *Fam. Ct. Rev.* 295 (2005).

Scott R. Peppet, *Can Saints Negotiate? A Brief Introduction to Problems of Imperfect Ethics in Bargaining*, 7 *Harv. Negot. L. Rev.* 87 (2002).

Van M. Pounds, *Promoting Truthfulness in Negotiation: A Mindful Approach*, 40 *Willamette L. Rev.* 181 (2004).

Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and their Clients*, 7 *HARVARD NEGOTIATION LAW REVIEW* 1-66 (2002). [Note: This is my first writing on this subject and covers a lot of ground.]

Leonard L. Riskin, *Knowing Yourself: Mindfulness*, in *The Negotiator's Fieldbook* (Christopher Honeyman & Andrea K. Schneider, eds., ABA, forthcoming 2006).

Leonard L. Riskin, *The Place of Mindfulness in Healing and the Law, in Shifting the Field of Law & Justice* 99-120, Center for Law and Renewal (Linda Hager, Bonnie Allen & Renee Floyd Meyers, eds) (2007).

Leonard L. Riskin, *Awareness in Lawyering: A Primer on Paying Attention, in The Affective Assistance of Counsel: Practicing Law as a Healing Profession* 447-71 (Marjorie Silver, ed., Carolina Academic Press, 2007).

Leonard L. Riskin, *Further Beyond Reason: Emotions, the Core Concerns, and Mindfulness in Negotiation*, 10 *Nevada L. J.* _____(forthcoming 2010). [This is my most recent writing on this subject.]

Evan Rock, *Note: Mindfulness Meditation, the Cultivation of Awareness, Mediator Neutrality, and the Possibility of Justice*, 6 *Cardozo J. Conflict Resol.* 347 (2005)

Judith Warner, *Being and Mindfulness*, N.Y. Times Blog, Mar. 2009. (A cautionary tale about mindfulness practice.)

See Course Materials for the latest contents.

Other resources for background or for book review selection.

(Most of these—those books available from the UF libraries—are on reserve for this course.)

James Austin, *Zen Brain Reflections* (MIT Press, 2006).

Breath Sweeps Mind: A First Guide to Meditation Practice (Jean Smith, ed., Tricycle 1999).

Sharon Begley, *Train Your Mind, Change Your Brain* (Ballantine 2007).

Tal Ben-Shahar, *Happier: Learn the Secrets to Daily Joy and Lasting Fulfillment* (McGraw-Hill 2007).

Bringing Peace into the Room: How the Personal Qualities of the Mediator Impact the Process of Conflict Resolution (Daniel Bowling & David Hoffman, eds., Jossey-Bass, 2003).

Mihaly Csikszentmihalyi, *Flow: The Psychology of Optimal Experience* (HarperPerennial 1990).

Piero Ferrucci, *The Power of Kindness: The Unexpected Benefits of Leading a Compassionate Life* (Tarcher Penguin 2006) (Translation by Vivien Reid Ferruci).*

Roger Fisher & Daniel Shapiro, *Beyond Reason: Using Emotions as You Negotiate* (2005).

Daniel Gilbert, *Stumbling on Happiness* (Knopf 200_)

Joseph Goldstein, *Insight Meditation: The Practice of Freedom* (Shambhala, 1994).

Daniel Goleman, *Emotional Intelligence: Why it Can Matter More than IQ* (Bantam 1995).

Daniel Goleman, *Social Intelligence: The New Science of Human Relationships* (Bantam 2006)

Henepola Gunaratana, *Mindfulness in Plain English* (Wisdom, 1991).

Phil Jackson & Hugh Delehanty, *Sacred Hoops: Spiritual Lessons of a Hardwood Warrior* (Hyperion 1995).

Jon Kabat-Zinn, *Full Catastrophe Living* (1990 Delta paperback)

Jon Kabat-Zinn, *Wherever You Go, There You Are* (Hyperion 1994).

Jon Kabat-Zinn, *Coming to Our Senses* (Hyperion 2005)

Steven Keeva, *Transforming Practices: Finding Joy and Satisfaction in the Legal Life* (Contemporary Books, 1999).

Dacher Keltner, *Born to Be Good: The Science of a Meaningful Life* (2009).

Ellen Langer, *Mindfulness* (Addison-Wesley paperback 1990).

Ellen Langer, *The Power of Mindful Learning* (Addison-Wesley 1997).

Ellen Langer, *On Becoming an Artist: Reinventing Yourself Through Mindful Creativity* (Ballantine 2005)

The *Mind and Life Institute* has published a series of books dealing with formal dialogues between the Dalai Lama and other Buddhist thinkers, on one side, and Western scientists, on the other, addressing the relationship between Western science and Buddhist philosophy and psychology. <http://www.mindandlife.org>.

Barry Nobel, *Meditation and Mediation*, 43 Fam. Ct. Rev. 295 (2005).

Scott Rogers, *Mindfulness for Law Students* (IMS Press 2009).

Robert Sapolsky, *Why Zebras Don't Get Ulcers* (3d ed., Henry Holt & Co., 2004).

Zindel V. Segal, et al., *Mindfulness-Based Cognitive Therapy for Depression: A New Approach to Preventing Relapse* (Guilford Press 2002; on order).

Daniel J. Siegel, *The Mindful Brain: Reflection and Attunement in the Cultivation of Well-Being* (W.W. Norton 2007)

Daniel J. Siegel, *Mindsight: Change Your Brain and Your Life* (Paperback, Scribe 2005). (Scribe is an Australian publisher. A hardcover American edition will appear in 2010.)

Eckhardt Tolle, *The Power of Now* (New World Library 1999).

Arthur Zajonc, *Meditation as Contemplative Inquiry* (Lindisfarne, 2009).

Audio and Video Resources

- *Mindfulness in the Law and ADR*, webcast of a live symposium sponsored by the Program on Negotiation at Harvard Law School in Mar. 2002.
<http://www.pon.harvard.edu/events/mindfulness-in-the-law-adr/>
(Note: As of Dec. 18, 2009, this link was not working properly, but I expect it to be restored shortly.)
- Charles Halpern, *Meditation and the Practice of Law*, a lecture at SUNY Buffalo School of Law (2009): http://www.youtube.com/watch?v=CFJp_CNTD5M
(This is an excellent overview of the value of meditation for lawyers.) About 1 hour and 49 minutes.
- Daniel J. Siegel, M.D., *Mindsight: The New Science of Personal Transformation*, <http://www.youtube.com/watch?v=Gr4Od7kqDT8>
(This is an excellent explanation—at Google University-- of how the brain works and how mindfulness can help improve the mind by changing the brain). About 1 hour & 10 minutes.
- Philippe Goldin, *Clinical Interventions Incorporating Buddhist Meditation*, a lecture at Google University,
<http://www.youtube.com/watch?v=sf6Q0G1iHBI&feature=channel>
- Meditation instructions that I have recorded (and which I will suggest that you use).
www.law.ufl.edu/faculty/riskin/multimedia

Sitting meditation (about 35 minutes).
Body Scan Meditation (about 30 minutes).
- University of Missouri Mindfulness Practice Center,
<http://www.umssystem.edu/ums/curators/wellness/mindfulness/index.htm>

(Click on *Mindfulness Practices*, *listen* or *download*)

BASIC MEDITATION & RELAXATION PRACTICES:

[3 Minute Breathing Space](#)

[Breathing and Relaxation Exercise](#)

[30 Minute Sitting Meditation](#)

FROM "EAT FOR LIFE" PROGRAM:

[Awareness of Breath Meditation \(9:41\)](#)

[Eating Meditation \(7:41\)](#)

[Body Scan Meditation \(16:08\)](#)

[Standing Yoga Sequence \(23:12\)](#)

[Body Loving-Kindness \(6:46\)](#)

- The Dharma Seed Tape Library, <http://www.dharmaseed.org/>, offers a variety of audiotapes and videotapes, including some intended for beginners.
- Mindfulness Meditation Practice Tapes with Jon Kabat-Zinn, Saki Santorelli, Melissa Blacker and others are available through <Http://www.umassmed.edu/cfm>

The Dispute Resolution & Lawyers Video Series (West 1990). These are four videos that colleagues and I made at the University of Missouri to introduce negotiation, mediation, and how to select a dispute resolution process to first year students at the University of Missouri School of Law. They are available for viewing through the course TWEN site, where they are listed on the Navigation Pane as D.R. & Lawyers Video Series, and at <http://law.missouri.edu/csdr/csdr-videos.html>

Organizations and Websites

Gainesville Vipassana Society, <http://www.floridavipassana.org/> (Meditation on Wednesday evenings; periodic retreats. Website has links to other meditation programs in Florida.)

Initiative on Mindfulness in Law and Dispute Resolution, <http://www.law.ufl.edu/imldr/>. This will be up by about January 7, 2010. It will include a wide variety of resources.

Center for Contemplative Mind in Society, 199 Main St., 3rd Floor, Northampton, MA 01060. The Center's law program has sponsored a series of insight meditation retreats for lawyers and law students. For information, contact Mirabai Bush, executive director, or Doug Chermak, law program director, at d_chermak@yahoo.com, 510-597-1650. [Http://contemplativemind.org](http://contemplativemind.org)

Idealawg: Contemplative Lawyers—Some Resources:
<http://www.contemplativelawyers.com>;
<http://westallen.typepad.com/idealawg/2008/09/contemplative-lawyers-some-mindfulness-resources.html>, or www.contemplativelawyer.com.

Center for Mindfulness in Medicine, Health Care, and Society at the University of Massachusetts Medical School provides training in mindfulness for a wide range of organizations, operates a stress reduction clinic, and conducts research on the effects of mindfulness practices. Saki Santorelli, Director, Center for Mindfulness in Medicine, Health Care, and Society, Department of Medicine, University of Massachusetts Medical School, 55 Lake Avenue North, Worcester, MA 01655; Tel: 508/856-5493; Fax: 508/856-1977. [Http://www.umassmed.edu/cfm](http://www.umassmed.edu/cfm)

Flowing Zen Studio. Local (Gainesville) and global resources on Chi Kung, T'ai Chi Chuan, and Kung Fu. Contact Anthony Korahais, principal teacher, at www.flowinglezen.com.

Forest Way Insight Meditation Center, P.O. Box 491, Ruckersville, VA 22968; Tel: 804/990-9300; Fax: 804/990-9301; Email: forestway@cstone.net. **Web site:** www.forestway.org

Insight Meditation Society, 1230 Pleasant Street, Barre, MA 01005; Tel: 978/355-4378. Offers insight meditation retreats. [Http://www.dharma.org](http://www.dharma.org)

Institute for Mindfulness Studies, Specializing in the Practice of Law. 4045 Sheridan Street, No. 196, Miami Beach, FL 33140. www.imslaw.com. Scott L. Rogers, M.S., J.D. Director. Tel: 786-239-9318 office; 860-239-9312 fax.

Mid-America Dharma Group, 717 Hilltop Drive, Columbia, MO 65201; Tel 573/817-9942; email: ginny@midamericadharmagroup.org. Includes information about retreats and sitting groups across the U.S. and Canada.

Mind and Life Institute, “an independent, not-for-profit organization devoted to establishing a mutually respectful working collaboration and research partnerships between modern science and Buddhism – two of the world's most fruitful traditions for understanding the nature of reality and promoting human well-being.” www.mindandlife.org.

Spirit Rock Meditation Center, 5000 Sir Francis Drake Blvd, P.O. Box 169 Woodacre, CA 94973; Tel: 415/488-0164; Fax: 415/488-017.

Unitarian-Universalist Fellowship of Gainesville, 4225 N.W. 34th St., hosts two Zen meditation groups. They meet on Saturdays, one at 10:00 a.m., the other at 1:45. See <http://uufg.org/>

Vipassana Meditation Centers operated by S.N. Goenka and his assistants around the world, <http://www.dhamma.org>.

Boundless Way Zen, affiliated Massachusetts Zen practice communities led by James Ford, Roshi, Melissa Blacker, Sensei and David Rynick, Sensei, <http://www.boundlesswayzen.com> and <http://www.worcesterzen.org>

Shinzen Young (insight meditation teacher), www.shinzen.org.

Inquiring Mind, the Quarterly Journal of the Vipassana Community, www.inquiringmind.org