

## WHAT DAN MORGAN TAUGHT THIS CONFIRMED INTROVERT ABOUT TEACHING

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### I. INTRODUCTION

Law professors (present and past) are not known for taking kindly to dissent or disagreement,<sup>1</sup> nor are we gracious when proven wrong. Yet after 30 years of listening to Daniel J. Morgan, Oklahoma City University School of Law's Norman & Edem Professor of Trial Advocacy,<sup>2</sup> mangle the English language,<sup>3</sup> I must admit that when it comes to teaching, the Pride of Wyoming was right, and this graduate of the Yale Law School was wrong. Even worse, in writing this admission of error, I realized that even Morgan's retirement itself is a lesson for me to remember.

So this essay is no tribute. Instead, it is a confession that Dan Morgan, a gregarious, outgoing, people-loving extravert, taught me, a

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1. See, for example, former University of Chicago law professor Antonin Scalia's opinion in *College Savings Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 687–88 (1999):

The principal thrust of Justice Breyer's dissent is an attack upon the very legitimacy of state sovereign immunity itself. . . . Accordingly, Justice Breyer reiterates (but only in outline form, thankfully) the now-fashionable revisionist accounts of the Eleventh Amendment set forth in other opinions in a degree[] of repetitive detail that has despoiled our northern woods.

2. I carefully state Professor Morgan's full title as a matter of self-defense. See Memorandum from Dean [Stuart] Strasner and Associate Dean [Dan] Morgan on Rate-A-Dean (Apr. 9, 1985) ("Beware, however, of Morgan. He is Welsh and by nature petulant and thin-skinned.").

3. See, e.g., Memorandum from Associate Dean Morgan on Finals and Other Insignificant Matter Which Are Forever Flitting Around Within My Thick Skull (Dec. 5, 1986) ("Please, Please, Please (God, I love emphasis and creative redundancy in memo writing)").

semi-reclusive, dyed-in-the-wool introvert, more than I care to admit about teaching. His two main lessons have helped me reach students who otherwise would have endured my classes without learning much more than how slowly a clock can seem to run. His third lesson will save some future students from a fate they do not deserve.

Much of what I learned from Dan Morgan came from the differences in how we perceive the world. I am an introvert. I revel in ideas and the inner world.<sup>4</sup> I'm happiest when my nose is in a book, and I'm learning something. Time with people, even people about whom I care deeply, tires me, and I need regular solitude to recharge my batteries.<sup>5</sup> When I encounter a new situation (or a room full of people), I instinctively step back, take a deep subconscious breath, and then slowly react.<sup>6</sup> I came to teaching because I love knowledge, and I conveniently overlooked a small fact: classrooms have people sitting on the other side of the podium, all staring at us. I suspect I spent many years at OCU leading proverbial horses to water, without paying much attention to whether they drank it or not.

On the other hand, Morgan fills to the brim four of Extraversion's six main facets:

- Affiliation (warm feelings toward people and a strong desire for close personal relationships);
- Positive affectivity (happiness, cheerfulness, optimism, and enthusiasm);
- Energy (a high level of energy, many interests, and a desire to stay busy); and
- Venturesomeness (constantly looking for excitement and change).<sup>7</sup>

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4. ROWAN BAYNE, *THE MYERS-BRIGGS TYPE INDICATOR: A CRITICAL REVIEW AND PRACTICAL GUIDE* 27–28 (1995) (citing ISABEL BRIGGS MYERS & MARY H. MCCAULLEY, *MANUAL: A GUIDE TO THE DEVELOPMENT AND USE OF THE MYERS-BRIGGS TYPE INDICATOR* 13 (1985)).

5. *Id.* at 28.

6. See C. G. JUNG, *PSYCHOLOGICAL TYPES* 533 (1931), *quoted in* BAYNE, *supra* note 4, at 28.

7. David Watson & Lee Anna Clark, *Extraversion and Its Positive Emotional Core*, in *HANDBOOK OF PERSONALITY PSYCHOLOGY* 775 fig.1, 776–77 (Robert Hogan, John Johnson & Stephen Briggs, eds., 1997). See also David C. Rowe, *Genetics, Temperament, and Personality*, in *HANDBOOK OF PERSONALITY PSYCHOLOGY*, *supra*, at

2014] *What Dan Morgan Taught This Confirmed Introvert* **341**

Meanwhile, his cup overflows on the fifth, ascendance (wanting to be the center of attention,<sup>8</sup> decisiveness, strong leadership abilities, and a preference for influencing other people). Like other extraverts, Morgan prefers the outer world and wants “to act on the environment [and] to affirm its importance.”<sup>9</sup> He gains energy from people and likes to be around them.<sup>10</sup>

I have not found any literature suggesting that the distinction between introvert and extravert in any way depends on intelligence. Introversion and extraversion are ways of perceiving the world,<sup>11</sup> not a measure of brainpower or scholarship.<sup>12</sup> Both the practicing bar and bench have many extraverts. A 1993 study of 3,014 practicing ABA members identified 43% as extraverts<sup>13</sup> (including 49% of female attorneys<sup>14</sup>). A study of 1,302 judges who had participated in judicial training programs revealed that 45% were extraverts.<sup>15</sup> That means many of our students are extraverts. They want to affect the world; they prefer action; and they depend on the outside environment for stimulation.<sup>16</sup> If we do not communicate with them in a manner they understand, they will disengage from our classes and ignore what we have to say.

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367, 378 & tbl.IV (explaining that extraverts tend to be talkative, active, outgoing, dominant, and enthusiastic). The sixth element is ambition. Watson & Clark, *supra*, at 8.

8. See, e.g., E-mail from Daniel J. Morgan to Oklahoma City University School of Law Faculty and Staff on The Big “R” (Apr. 9, 2014, 11:05 AM) (“[I]nvoke us to a few future shindigs[,] and I’ll be happy to impersonate any celebrity, administrator, or faculty member who deserves the honor of my attention.”).

9. MYERS & MCCAULLEY, *supra* note 4, at 13; BAYNE, *supra* note 4, at 27.

10. BAYNE, *supra* note 4, at 28.

11. *Id.* (stating that extraverts prefer the outer world while introverts prefer the inner); MYERS & MCCAULLEY, *supra* note 4, at 2 (stating that extraverts “are oriented primarily to the outer world” but introverts to the inner).

12. See JOHN R. MORRIS, PATRICIA W. HATAMYAR & DANIEL J. MORGAN, OKLAHOMA TRIAL PRACTICE (1997); JOHN R. MORRIS, PATRICIA W. HATAMYAR & DANIEL J. MORGAN, OKLAHOMA TRIAL PRACTICE (1999); FREDERICK H. MILLER, ALVIN C. HARRELL & DANIEL J. MORGAN, CONSUMER LAW: CASES, PROBLEMS, AND MATERIALS (1986); FREDERICK H. MILLER, ALVIN C. HARRELL & DANIEL J. MORGAN, CONSUMER LAW: CASES, PROBLEMS, AND MATERIALS (1998). See also *Williams v. Homestake Mortg. Co.*, 968 F.2d 1137, 1142 (11th Cir. 1992) (quoting Daniel J. Morgan, *Rescission Under the Simplification Act: What’s New (And Not So New) for Creditors*, 7 OKLA. CITY U. L. REV. 355, 395 n.265 (1982)).

13. Larry Richard, *The Lawyer Types: How Your Personality Affects Your Practice*, 79 A.B.A. J. 74, 75 (1993).

14. *Id.* at 76.

15. John W. Kennedy, Jr., *Personality Type and Judicial Decision Making*, JUDGES’ J., Summer 1998, at 4, 8 tbl.1.

16. See MYERS & MCCAULLEY, *supra* note 4, at 13.

That is why I want to share three lessons I learned from Morgan the Extravert. They did not come easily to me,<sup>17</sup> and only recently did research-based evidence persuade me (to my eternal mortification) that Dan had been right all along.<sup>18</sup>

## II. LESSON ONE: INTEGRATING SKILLS AND PRACTITIONERS INTO THE CLASSROOM

Morgan first urged me to integrate practical skills, practitioners, and experiential learning into my classrooms back when Ronald Reagan was president. He claimed that his Torts students did not really learn that subject until they took his Trial Practice class; he expounded on the need for clinics and externships; he urged me to include practical skills into my doctrinal classes. None of that made sense to me. Torts is a catalogue of causes of action, each with its own list of elements to remember and prove. Why did one need Trial Practice to remember them? As for clinics and externships, I thought learning happened when a professor walked up to the podium or when I sat down with my textbook at my electric typewriter to brief the cases for the next day's class.

Consequently, I did not pay much attention when Morgan helped to create the Litigation Practice Sequence at Oklahoma City University School of Law. In the fall, students take Pre-Trial Litigation, doing depositions, discovery, and pretrial motions for a single case. In the spring, they take Trial Practice, in which they try that same case, using *only* the evidence they discovered in the fall. Somehow, I did not realize that the prospect of standing before even a mock jury in a moot courtroom without the evidence needed to win was a wonderful way to concentrate a student's attention on preparing interrogatories and answering a motion *in limine*.<sup>19</sup>

Meanwhile, Morgan was bringing oral arguments, civil trials, and even a felony trial to the Homsey Family Moot Court Room.<sup>20</sup> He

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17. As one scholar has written, “[I]t is difficult, perhaps impossible,” for introverts and extraverts to understand what each other's world is like. BAYNE, *supra* note 4, at 28.

18. See *infra* notes 36–45 and 72–75 and accompanying text.

19. See JAMES BOSWELL, THE LIFE OF SAMUEL JOHNSON 285 (Electronics Classics Series Publ'n 2008–2012) (1791), available at <http://www2.hn.psu.edu/faculty/jmanis/bosjohn/bosjohn6x9.pdf> (“Depend upon it, Sir, when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully.”).

20. We are indebted to the U.S. Court of Appeals for the Tenth Circuit, the Oklahoma Court of Criminal Appeals (Oklahoma's highest court in criminal matters), the Oklahoma

2014] *What Dan Morgan Taught This Confirmed Introvert* 343

sweated blood during those visits, worrying that a student would forget to turn off a cellphone, interrupt a session, or unintentionally discuss the case in the presence of a juror. But his efforts let hundreds of students see what judges and litigators do. I remember a group of students clustered around Judge Niles Jackson one evening, asking him question after question, even as a blizzard howled outside, threatening to shut things down before the jury could return its verdict.

Eventually, Morgan began team-teaching Trial Practice and Consumer Law with practitioners who had earned his trust.<sup>21</sup> As a classic extravert, Dan returned from many of those classes full of energy, often planting himself in my office to relive a session's high points, which—to him—usually included most everything that had been said.<sup>22</sup> Last spring, he regaled me with tales from a new class, Forensic Science in the Courtroom. Thanks to him, Professor Tiffany Murphy, and the University of Central Oklahoma's (UCO) Forensic Science Institute, our law students studied with master's level forensic science students at UCO. In the second half of the semester, the two groups teamed up to prepare and present scientific evidence at mock *Daubert* hearings. As Morgan told me:

“It’s the best kind of teaching. You start passing around the stuff that you’re going to use in the courtroom, and after a while, we’re all asking questions of each other, like ‘After you’re dead,

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Court of Civil Appeals, and Oklahoma County District Court judges like Jerry Bass, '91, and Niles Jackson, '75.

21. Emmanuel Edem, '82; Eric Johnson, '94; Brad Norman, '00; John Norman; Leslie Lynch, '93; and Caleb Muckala, '04, spring to mind.

22. See Paula J. Dalley, For Dan on His 60th Birthday (Nov. 20, 2004) (unpublished limerick).

I once had a colleague named Dan  
Who would roam with his mug in his hand  
And ask if we'd heard  
Some tale quite absurd  
'Bout a moose in a blue moving van.

Alas, I moved off down the hall  
And out of the range of Dan's crawl.  
And I'm quite sad to say—  
Since this *is* his day—  
That I really don't miss him at all.

*Id.*

how long does it take a black fly to crawl up your nose and lay its eggs?,' so we can figure out when you died."<sup>23</sup>

And it was Morgan who spearheaded the development of our new Skills Integration program, which brings carefully selected young alumni to our first-year courses, where they help teach students how practicing lawyers use the material we discuss in the classroom.

I don't recall when I started to understand Morgan's efforts, but I remember exactly where I was. I was walking back to my office after a 75-minute Contracts class, feeling quite pleased with myself. I had called on three or four students. Another five or six had asked questions; a few more had volunteered comments. I was infinitely proud for connecting with 15 students. Then a terrible question hit me: what about the other 60?<sup>24</sup>

I'm sure I had connected with some of the silent ones. Every class has talented, diligent, quiet students. But students come to us after 15 years of sitting in classrooms listening to teachers talk, and after 15 years of doing homework, much of which has no obvious, immediate value. To us, our classrooms are about learning to read and think like lawyers, but to students, our classes can smell much like what they have endured for years: *school*.<sup>25</sup> They want to be *lawyers*, and lawyers don't sit in classrooms, recite the facts of the case, or prepare outlines for exams. Lawyers *do* things, and according to television and movies, nearly all of those things occur in courtrooms: examining witnesses, making objections, and presenting closing arguments.<sup>26</sup> To add to the problem, some students have short attention spans; some believe education is rote memorization; some think Google can answer all questions; some instinctively resist us as authority figures.

So they tune us out. Even when *we* know that the elements of a doctrine provide a nice list of the facts that a lawyer must put in the complaint, prove at trial, and discuss in closing arguments, students have difficulty translating knowledge presented in one context into knowledge

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23. Michael Gibson, *Forensic Science in the Courtroom 101*, LAW MAG., Autumn 2014, at 65, 65.

24. Cf. *Proverbs* 16:18 ("Pride goeth before destruction, and a haughty spirit before a fall.")

25. See PINK FLOYD, ANOTHER BRICK IN THE WALL (Columbia Records 1979) ("We don't need no education. / We don't need no thought control. / No dark sarcasm in the classroom. / Teacher leave them kids alone. / Hey! Teacher! Leave them kids alone!").

26. I plead guilty to such tunnel vision when I was a law student.

2014] *What Dan Morgan Taught This Confirmed Introvert* 345

that can be used in another.<sup>27</sup> Our audiences probably do not hear us nearly as much as we like to think.

I am not aware of any studies that show the extent to which law students pay attention in class.<sup>28</sup> But many have looked at how much time students spend preparing for class, which probably is a good proxy for determining their level of interest and attentiveness. The results in upper class courses are discouraging:

- in 1998, a study at 11 law schools showed that 66.9% of third-year students spent less than 20 hours a week studying, while only 44% reported completing “all,” “nearly all,” or “most” of their reading assignments;<sup>29</sup>
- the 2005 *Law School Survey of Student Engagement* (which involved more than 10,000 students) found only 49% of full-time third-year students said they spent 20 or more hours per week preparing for class;<sup>30</sup>
- the 2006 *Survey* reported that third-year students said they studied for a mean of only 21 hours a week;<sup>31</sup>
- the 2009 *Survey* found only 54% of third-year students reported studying more than 20 hours a week;<sup>32</sup>
- the 2011 *Survey* reported that 3L non-transfer students said they spent a mean of about 23 hours a week preparing for class, clinical courses, *and* trials;<sup>33</sup> and, worst of all,

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27. Again, a guilty plea.

28. When I visit a class to evaluate a colleague’s teaching abilities, I try to record, every five or ten minutes, how many laptops display something other than the notes they should be taking.

29. Mitu Gulati, Richard Sander & Robert Sockloskie, *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235, 242, 245 & tbls.2, 3 (2001).

30. LSSSE ADVISORY BD., *THE LAW SCHOOL YEARS: PROBING QUESTIONS, ACTIONABLE DATA* 8 fig.3 (2005).

31. LSSSE ADVISORY BD., *ENGAGING LEGAL EDUCATION: MOVING BEYOND THE STATUS QUO* 14 fig.6 (2006).

32. LSSSE ADVISORY BD., *STUDENT ENGAGEMENT IN LAW SCHOOL: ENHANCING STUDENT LEARNING* 7 (2009).

33. LSSSE ADVISORY BD., *NAVIGATING LAW SCHOOL: PATHS IN LEGAL EDUCATION* 13 fig.5 (2011).

- the 2013 *Survey* said 3Ls reported spending only 13 hours per week “reading assigned material.”<sup>34</sup>

When 3Ls admit to spending less time reading for class than they are supposed to spend *in* class, I suspect they do not greatly care what you and I say there.

How does this concern Morgan?<sup>35</sup> In 2004, an astounding study of university professors determined that his idea—integrating practical skills, practitioners, and experiential learning into the classroom—was a key way to motivate students to learn. Ken Bain’s research team spent years seeking faculty who satisfied two criteria: (1) was there “strong evidence of helping and encouraging their students to learn in ways that would usually win praise and respect from both disciplinary colleagues and the broader academic community”? and (2) did students use phrases like “‘transformed their lives,’ ‘changed everything,’ and even ‘messed with their heads’” to describe their courses?<sup>36</sup> The team found about 70 such teachers, from a Rio Grande Valley community college to Harvard Law School,<sup>37</sup> interviewed them and their students, videotaped their classes, and studied their syllabi, reading materials, and lesson plans.<sup>38</sup> The result was published by Harvard University Press; the study’s book jacket notes that it won that institution’s Virginia and Warren Stone Prize for outstanding contributions to learning.<sup>39</sup>

Bain repeatedly says that the great university teachers in the study gave their students “authentic tasks,”<sup>40</sup> i.e., “questions, issues, and problems . . . [that] seem important to students and are similar to those that professionals in the field might undertake.”<sup>41</sup> Unfortunately, Bain’s examples involve a tremendous amount of work:

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34. LSSSE ADVISORY BD., RESULTS, EVALUATING THE VALUE OF LAW SCHOOL: STUDENT PERSPECTIVES 8 (2013).

35. See 3 DANIEL J. MORGAN, THE ENGLISH LANGUAGE ACCORDING TO DANIEL J. MORGAN 357 (Michael T. Gibson, ed., 2018) (“Gibson, it’s all about *me!*”).

36. KEN BAIN, WHAT THE BEST COLLEGE TEACHERS DO 9–10 (2004).

37. *Id.* at 5–10, 182–90.

38. *Id.* at 182–90.

39. BAIN, *supra* note 36.

40. *Id.* at 18, 47, 100.

41. *Id.* at 100. Put another way, great teachers ask their students “to do whatever the most accomplished scholars, practitioners, and artists in the field might do outside the course.” *Id.* at 74.



2014] *What Dan Morgan Taught This Confirmed Introvert* 347

- a University of Pennsylvania art historian developed a multimedia program that requires students to determine if particular paintings are forgeries;<sup>42</sup>
- a Northwestern University physics professor requires students to design and build an elevator;<sup>43</sup>
- a professor at NYU School of Law creates detailed case studies, for which some students present oral arguments, while other students portray U.S. Supreme Court justices, deliberating and writing the opinions;<sup>44</sup> and
- a Vanderbilt medical professor presents her classes with actual clinical cases.<sup>45</sup>

But authenticity does not have to be time-consuming. It can be just using the right words. My self-developed Contracts reading materials include these examples; the bold, italicized headings are intentional.<sup>46</sup>

***What Real Lawyers Really Do: Finding and Advising Clients.*** After we study the elements of an offer, I have students write them on an IRAC chart.<sup>47</sup> Understandably, students use the court's exact language. Then I pass out two newspaper articles in which alumni at major law firms generated free publicity (and clients) by answering, in layperson's language, a reporter's legal questions. My students' next task: to write out, in lay language, what each element of an offer really means and to explain why all of that is important to a typical businessperson.<sup>48</sup>

***What Real Lawyers Really Do as Litigators: Counseling a Would-Be Client.*** After we study promissory estoppel, again I have students list and define that doctrine's elements on an IRAC chart. Then I give them a realistic set of handwritten notes from a client intake interview and have them use the chart's elements to determine the strengths of the would-be client's case.<sup>49</sup> I make sure that the would-be client's case has a fatal weakness. Students need to learn that sometimes the most sympathetic

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42. *Id.* at 104.

43. *Id.* at 105.

44. *Id.* at 145–49.

45. *Id.* at 106.

46. I'm trying to break through two decades of boring textbooks.

47. See Michael T. Gibson, Contracts I, at III-30 (2014) (unpublished manuscript) (on file with author).

48. *Id.* at III-30 to -31, III-39 to -42.

49. *Id.* at III-151 to -155.

underdogs lose, and real lawyers sometimes have to tell would-be clients that they should *not* file a lawsuit.

***What Real Lawyers Really Do as Practitioners: Agreeing to Take Someone as Your Client.*** How better to show the relevance of Contracts than by teaching students how practitioners create attorney–client relationships (which are not always contracts)<sup>50</sup> and to show them an attorney–client retainer agreement?<sup>51</sup>

***What Real Lawyers Really Do as Litigators: Invoking the Statute of Frauds in a Motion to Dismiss.*** To a first-year student, making sense of the Statute of Frauds can feel like slogging through *Beowulf* in the original Old English,<sup>52</sup> and not much more relevant to practicing law than that poem’s first monster.<sup>53</sup> I show students a motion for summary judgment based on the Texas Statute of Frauds<sup>54</sup> to help them understand that the failure to satisfy the Statute will terminate their opponent’s lawsuit.

***What Real Lawyers Really Do as Litigators: Investigating the Facts and Preparing for Trial.*** Most judicial opinions in textbooks come after the appellate court has distilled the facts down from the facts the trial judge distilled from the evidence presented by the lawyers, which the lawyers in turn had distilled down from a stack of depositions, interrogatories, interviews, and documents. As Deborah Rhode has written: “[A]ppellate cases . . . present disputes in highly selective and neatly digested formats. Under this approach, students never encounter a ‘fact in the wild,’ buried in documents or obscured by conflicting recollections. The standard casebook approach offers no sense of how

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50. See *Togstad v. Vesely, Otto, Miller & Keefe*, 291 N.W.2d 686 (Minn. 1980) (using promissory estoppel to create an attorney–client relationship even when both the plaintiff and the defendant attorney testified that the attorney said he would *not* take the plaintiff’s case). See also MODEL RULES OF PROF’L CONDUCT R. 1.18(a)–(b) (1983) (stating that an attorney has a duty of confidentiality to a “prospective client,” i.e., “a person who consults with a lawyer . . . the possibility of forming a client–lawyer relationship with respect to a matter”).

51. Gibson, *supra* note 47, at III-164 to -179.

52. See *BEOWULF: A NEW VERSE TRANSLATION* (Seamus Heaney, trans., W. W. Norton Co. ed. 2000).

53. *But see* *Larkin v. Grendel’s Den, Inc.*, 459 U.S. 116, 127 (1982) (holding that the statute allowing churches and schools to veto liquor license applications violated the Establishment Clause).

54. Defendant’s Motion for Summary Judgment, *NEPC, Inc. v. MEI, LLC*, No. 4:12-CV-00706 (S.D. Tex., May 10, 2013).

2014] *What Dan Morgan Taught This Confirmed Introvert* 349

problems unfolded for the lawyers . . . .”<sup>55</sup> To a student, the rules we expect them to derive from appellate opinions can seem no more connected with the practice of law than logging into ExamSoft.

To address this, I have students expressly connect Contracts doctrines with the way practitioners investigate facts, draft complaints and answers, prepare for trial, examine witnesses, and even draft proposed jury instructions. At the start of Contracts II, I have students read a wonderful, short article by Don G. Holladay and Timothy D. DeGiusti.<sup>56</sup> These two accomplished litigators<sup>57</sup> make clear that the rules in legal textbooks are not idle theory: “The importance of knowing the law at the start, and being fully aware of the elements of proof throughout, cannot be overstated. The necessary elements of proof should be the fundamental guide for the casting of the pleadings, the conduct of discovery, and the preparation of witnesses.”<sup>58</sup>

We then read a contract modification case involving a garbage collector who signed a five-year contract to handle a city’s garbage for a flat fee: when the city suddenly grew, he persuaded the city to increase his fee.<sup>59</sup> The court quotes the elements of *Restatement (Second) of Contracts* § 89, as well as § 89’s illustrations.<sup>60</sup> We put the elements in another IRAC chart, but when I ask students to use the court’s opinion to fill in the facts for each element, they discover that the court has given very few.<sup>61</sup> Then I ask a simple question: “To prove the second element (that the modification was fair and equitable), what witnesses should the plaintiff’s attorney have interviewed?” Even though that question is in

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55. DEBORAH L. RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION 197–98 (2000).

56. Don G. Holladay & Timothy D. DeGiusti, *Working the Case*, 82 OKLA. B.J. 2903 (2011), available at <http://www.okbar.org/Portals/13/PDF/OBJ/2011/OBJ2011Dec10.pdf>.

57. DeGiusti is now a U.S. District Judge for the Western District of Oklahoma. *Id.* at 2908. Holladay recently helped to persuade the Northern District of Oklahoma and the U.S. Court of Appeals for the Tenth Circuit to strike down Oklahoma’s ban on same-sex marriage. *See* Bishop v. Smith, 760 F.3d 1070, 1073 (10th Cir. 2014).

58. Holladay & DeGiusti, *supra* note 56, at 2904.

59. Angel v. Murray, 322 A.2d 630, 636–38 (R.I. 1974).

60. *Id.* at 636.

61. For example, the court said that the city agreed to increase the garbage collector’s annual fee of \$137,000 by \$10,000 a year. *Id.* at 637. That’s a 7.3% increase. The court also said that the city grew by 400 new dwelling units. *Id.* Did those units increase the city’s trash by about 7%? Did handling those units increase the garbage collector’s costs by about 7%? The court later *admitted* that “the evidence does not indicate what proportion of the total [cost of performing the contract] this increase [of 400 units] comprised.” *Id.* at 637–38.

the reading materials, I often get nothing but stunned silence from the class. Only after we use § 89's illustrations to translate "fair and equitable" into "a modification increasing the price is fair and equitable if the higher price only covers the supplier's increased costs" does someone suggest "How do we figure out if the higher fee let the garbage collector make a profit?" Then someone will suggest we need to see the garbage collector's records of how much it cost to handle the garbage produced by the city's new homes, and someone else will wonder if the garbage collector has records on how much garbage the new homes produced. As students suggest these questions (and answers), I write them in the "Application" part of the IRAC chart. That means the digital projector screen shows, in letters several inches high, exactly how the elements of § 89 tell attorneys who they need to interview during their investigation of a case, what questions they need to ask, what documents they need to seek, what they need to allege in the complaint, what they need to prove at trial, and even what they need to include in their proposed jury instructions.

In addition, throughout the year, I tie whatever doctrine we're studying to an actual case. Thanks to Professor Judith Maute,<sup>62</sup> on the second day of class we examine the coal lease signed by two relatively uneducated Oklahomans, Willie and Lucille Peevyhouse, in what is best described as a "dirt-poor" part of this state.<sup>63</sup> I show Professor Maute's photos of Willie and his grandson (students tell me this simple act helps them realize the plaintiffs were real people, not just characters invented for a textbook) and their land after it was strip-mined. When we study formation, illusory promises, unconscionability, modification, interpretation, the parol evidence rule, and damages, I include exercises in which students must use those doctrines to advise the Peevyhouses about their legal rights.

These ideas required little imagination or time. None sacrifices academic rigor. It is not easy for first-year students to translate the elements of an offer into language that a layperson can understand.

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62. See Judith L. Maute, *Peevyhouse v. Garland Coal & Mining Co. Revisited: The Ballad of Willie and Lucille*, 89 NW. U. L. REV. 1341 (1995) (discussing *Peevyhouse v. Garland Coal & Mining Co.*, 382 P.2d 109 (Okla. 1962)).

63. Professor Maute reprints the lease in her article, *id.* at 1478–80, and it also appears in E. ALLAN FARNSWORTH ET AL., *SELECTIONS FOR CONTRACTS* 514–16 (2013). Through no fault of theirs, the lease has been shrunk to fit a law review-sized page. I've reconstructed a larger version on regular-sized paper that can be displayed on a digital projector, and I'm happy to share it.

2014] *What Dan Morgan Taught This Confirmed Introvert* 351

Expecting them merely to know and remember those elements is merely the first—and lowest—of Benjamin Bloom’s six stages of learning.<sup>64</sup> Requiring students to paraphrase a rule’s elements in lay language requires them to move to the second, more difficult stage of learning: Comprehension. When we have them use their paraphrasing to determine who a lawyer would need to interview and what documents she would need to discover, we move them up another level, to stage three: Application. The more we expect students to do, the more they will learn. And the more we show students how their reading assignments and our classroom discussions connect to the practice of law, the better they will be prepared to face real clients.

### III. LESSON TWO: ENGAGING WITH THE HUMAN SIDE OF STUDENTS

Karl Llewellyn was no slouch of a scholar. A protégé of Arthur Corbin,<sup>65</sup> he graduated from Yale; taught at Columbia, Harvard, and Chicago; and served as chief reporter for both U.C.C. Article 2 and the entire Code.<sup>66</sup> But even this great academic worried about the way law school necessarily turns people into “legal machine[s],” “sacrificing some humanity” in the process, and he warned “[i]t is not easy thus to turn human beings into lawyers. Neither is it safe.”<sup>67</sup> Llewellyn hoped that just as “we . . . first cut under all the attributes of *homo*, though the

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64. See 1 TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS 62–63, 89–94, 97–118, 120–25, 144–61, 162–83, 185–87 (Benjamin S. Bloom ed. 1956). In ascending order of difficulty, those stages are:

- (1) Knowledge (knowing and remembering information);
- (2) Comprehension (putting information in one’s own words and using it in situations in which it clearly is relevant);
- (3) Application (identifying which information is relevant to a new problem and using it to resolve that problem);
- (4) Analysis;
- (5) Synthesis; and
- (6) Evaluation.

65. Michael Gibson, *Promissory Estoppel, Article 2 of the U.C.C., and the Restatement (Third) of Contracts*, 73 IOWA L. REV. 659, 672 (1988) (citing Arthur L. Corbin, *A Tribute to Karl Llewellyn*, 71 YALE L.J. 805, 805 (1962) (explaining how the two wrote half the contents of the 1918–1919 *Yale Law Journal*); K.N. Llewellyn, *The Rule of Law in Our Case-Law of Contract*, 47 YALE L.J. 1243, 1243 n.† (1938) (referring to Corbin as his “father in the law”).

66. E. ALLAN FARNSWORTH, *CONTRACTS* 834 (4th ed. 2004).

67. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 78 (2007) (quoting K.N. LLEWELLYN, *THE BRAMBLE BUSH: OUR LAW AND ITS STUDY* 116 (1960)).

*sapiens* we shall then duly endeavor to develop will, we hope, regain the *homo*.”<sup>68</sup> To him, students were not just brains that we can fill with ideas. Students are people, and as people they have emotions, feelings, beliefs, and values that affect the way they learn and how they will practice as lawyers.

Thus, Dan Morgan’s second lesson to me: remember that students are human beings, not just a sea of faces in a classroom, a set of names on a roll sheet, or a stack of exams. He constantly referred to students by name, whether he addressed them in the hallway or, while sitting in my office, recounted who had said what in the Torts class he had just finished. And he delighted in watching my puzzled looks whenever he told me “Gibson, it’s not what you say. It’s how you say it,” and “[t]hey don’t care how much you know until they know how much you care.”<sup>69</sup>

To an introvert like me, neither statement made sense. Since students were paying good money to attend my class, it was only logical that they would pay close attention to what I said, no matter what tone of voice I used, how well I knew their names, or how often I expressed interest in their lives. Students would care how much I knew because my title and my credentials supposedly made me an expert, and by definition, what an expert says is worth learning.

My own law school experience reinforced my conclusion: my professors at Yale were great thinkers who knew a great amount of information, asked us great questions, and challenged us to tackle the world’s great problems. I paid attention to them because they knew a lot more than I did, and whether they cared about me as a person made little difference in how much effort I invested in their classes. So when Morgan advised me to connect personally with students, I thought he was crazier than a peach-orchard boar.<sup>70</sup>

I was wrong. Recently, the *Wall Street Journal* reported that a national survey of 30,000 college graduates (of all ages) by Gallup and Purdue University had “found that highly selective schools don’t produce better workers or happier people, but inspiring professors—no matter

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68. *Id.* (quoting LLEWELLYN, *supra* note 67, at 116–17).

69. 2 MORGAN, *supra* note 35, at 128, 754. He also delighted in walking stealthily into my office, knowing that my attention would be focused on my computer monitor, shouting, “Top of the morning to you, Gibson!” and watching me levitate several inches into the air.

70. *See* 4 MORGAN, *supra* note 35, at 570 (explaining that hogs who eat fallen, fermented fruit lying on the ground in peach orchards become intoxicated, irrational, and a general nuisance).

2014] *What Dan Morgan Taught This Confirmed Introvert* **353**

where they teach—just might . . . . The strongest correlation for well-being [of university alumni] emerged from . . . questions delving into whether graduates felt ‘emotionally supported’ at school by a professor or mentor.’<sup>71</sup> Or, as the Gallup–Purdue University report itself said:

[W]here graduates went to college—public or private, small or large, very selective or not selective—hardly matters at all to their current well-being and their work lives in comparison to their experiences in college. For example, if graduates had a professor who cared about them as a person, made them excited about learning, and encouraged them to pursue their dreams, their odds of being engaged at work more than doubled, as did their odds of thriving in their well-being.<sup>72</sup>

Students need to feel “emotionally supported”? Students need professors who “care[] about them as a person”? I suspect I was not the only surprised legal educator. A 2012 study of 25,901 students at 81 law schools found that “[o]nly about a third of students describe their instructors as caring about them as individuals.”<sup>73</sup> Meanwhile, a 2006 study of about 24,000 law students found that when students did receive our attention, it made a difference: “Student-faculty interaction was more strongly related to students’ self-reported gains in analytical ability than

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71. Douglas Belkin, *Elite Colleges Don’t Buy Happiness for Graduates*, WALL ST. J. (May 6, 2014, 2:47 PM), <http://online.wsj.com/news/articles/SB10001424052702303417104579544161033770526> (citing GREAT JOBS, GREAT LIVES: THE 2014 GALLUP–PURDUE INDEX REPORT (2014), available at <http://www.gallup.com/strategicconsulting/168791/gallup-purdue-index-inaugural-national-report.aspx> [hereinafter GALLUP–PURDUE REPORT]).

72. GALLUP–PURDUE REPORT, *supra* note 71, at 6. The report also said that if graduates had an internship or job where they were able to apply what they were learning in the classroom, were actively involved in extracurricular activities and organizations, and worked on projects that took a semester or more to complete, their odds of being engaged at work doubled also. Feeling supported and having deep learning experiences means everything when it comes to long-term outcomes for college graduates.

*Id.* Unfortunately, the survey also found that “[o]nly 14% of graduates strongly agree[d] they were supported by professors who cared [about them], made them excited about learning, and encouraged their dreams.” *Id.*

73. Erwin Chemerinsky, *Foreword: The Benefits of Knowledge to LSSSE ADVISORY BD., LESSONS FROM LAW STUDENTS ON LEGAL EDUCATION* 4, 5 (2012).

time spent studying, cocurricular activities, or even the amount of academic effort they put forth.”<sup>74</sup>

I suspect there are many reasons for the Gallup–Purdue findings about the power of emotional support and caring. Some are obvious. People look forward to working with others who respect them, care about them, have their interests at heart, and are interested in their needs.<sup>75</sup> Other reasons are less obvious, perhaps because they concern the darker side of education.

Higher education in general, and legal education in particular, often is stressful: the stakes are high (both in tuition and time), the materials are difficult, competition can be stiff, and one can fail in front of 80 classmates. That stress physically affects the body and mind, reducing the ability to learn. In a study at the University of Washington, scientists trained three groups of laboratory rats to run a maze 40 times in 30 minutes.<sup>76</sup> When the control group was left alone for a while, then returned to the maze, its members slowed only slightly, to 35 times in 30 minutes. The second group received unpredictable electric shocks for an hour. When they returned to the maze, their speed dropped by a third, to only 23 runs. A third group got the same shocks but then received muscimol, a drug that temporarily deactivates the area of the brain that handles fears. That artificially fearless group did as well as the control group.<sup>77</sup> In psychology, the Yerkes–Dodson Performance Curve shows how performance improves with increasing levels of anxiety and stress

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74. LSSSE ADVISORY BD., *supra* note 31, at 11. The survey “controlled for LSAT scores, grades, gender and racial or ethnic background . . . [S]tudent faculty interaction[] include[ed] discussing ideas, assignments or other plans with faculty members, feedback, and other work with faculty.” *Id.* at 20.

75. When Harvard statistician Richard Light and his team interviewed 1,600 Harvard University upperclass students and alumni, one said her advisor had asked her about her favorite book and five authors who had influenced her: “He was the first professor who was more interested in trying to understand what matters to *me* than in immediately discussing the strengths and weaknesses of the Rawls position on justice, with little sense of what this all means to me.” RICHARD J. LIGHT, MAKING THE MOST OF COLLEGE: STUDENTS SPEAK THEIR MINDS 82 (2001). Light quotes another student as saying: “You can’t imagine how excited I was. Here he not only asked me what I thought—I realized he was making a real effort to ‘climb into my head.’ That is what a call a super advising experience.” *Id.* at 83.

76. Joel Schwarz, *Stress Hinders Rats’ Decision-Making Abilities*, UNIV. WASH. (Nov. 18, 2008), <http://www.washington.edu/news/2008/11/18/stress-hinders-rats-decision-making-abilities/>.

77. *Id.*



2014] *What Dan Morgan Taught This Confirmed Introvert* 355

up to a point, after which more stress dramatically reduces quality.<sup>78</sup> Industrial researchers know stress that is not a necessary part of a job reduces employee productivity and performance.<sup>79</sup> When we show students that we care about them, we reduce the stress they feel, so they learn more.

Providing students emotional support also helps students overcome the painful aspects of education. We can't learn until we subconsciously admit that we do not know something or that what we know or believe is wrong.<sup>80</sup> Ken Bain even says that people do not learn unless they can "handle the emotional trauma that sometimes accompanies challenges to longstanding beliefs."<sup>81</sup> This pain (or a distrust of authority) can cause students to actively resist learning<sup>82</sup> or to subconsciously disengage. Showing students that we care about them as individuals can reduce that pain and motivate students to take an interest in what we have to say.

The first step in that process is to learn our students' names. If we do not take the time to learn that one simple fact about each student, we send a powerful, negative message: they are not important to us.<sup>83</sup> For a 70-person class, about three hours spread over a week or two of work with a photographic seating chart suffices, and if we take roll on such a chart, we constantly reinforce our mental connections between students' names and faces. Greeting students by name outside of class is more

78. See P. L. Broadhurst, *Emotionality and the Yerkes-Dodson Law*, 54 J. EXPERIMENTAL PSYCHOL. 345, 345, 346 fig.1, 348, 350 (1957).

79. See Loreleigh Keashly, *Some Things You Need to Know but May Have Been Afraid to Ask: A Researcher Speaks to Ombudsmen About Workplace Bullying*, 3 J. INT'L OMBUDSMAN ASS'N, 2010, at 10, 14 (discussing how workplace bullying increases use of sick leave, absenteeism, employee turnover, and symptoms associated with Post-Traumatic Stress Disorder).

80. BAIN, *supra* note 36, at 27–28.

81. *Id.* at 28. Since law is all about values and beliefs, learning law often involves criticisms of values that students hold dear.

82. A professor at the University of Louisville once recounted his own private war against his college instructors:

I was determined not to be made a fool. If I offered nothing—no comments, no ideas, and the bare minimum of writing—then I could only be judged on nothing. I knew I had more to say than I was divulging to the teacher, but I was prepared to seem average if it meant keeping my dignity intact. Each day of sitting quietly felt like a small victory.

Bronwyn T. Williams, *Metamorphosis Hurts: Resistant Students and Myths of Transformation*, 50 J. ADOLESCENT & ADULT LITERACY 148, 150 (2006).

83. What would we think of a dean who had to use a seating chart each time he or she addressed us at faculty meetings?

difficult, but just as important. I've often suspected that when we evaluate teaching for promotion or tenure review, we should test the reviewee's ability to match student names with student faces.

Other ways to show we care require less time than self-discipline. We should start and end class on time: arriving or ending late suggests we value our time more highly than we value theirs. We should refrain as much as possible from interrupting student comments and questions. We should recognize student successes, as when a student in the class makes law review or wins a moot court competition. In Contracts, when a student makes a point worth using in my self-developed materials, I'm careful to include his or her name and graduating class in next year's edition.

Talking with our students about our own struggles and frustrations also can help: by humanizing us, it helps bridge the divide between us and our students. I talk openly, both in my reading materials and in class, about my battles with chronic anxiety and depression.<sup>84</sup> I hope to reach first-year students who are dealing with far more than their fair share of pain and to get them professional help before they flunk out of school. But my duty is not to solve students' problems: my duty is to connect them with someone who has the proper training and skills. In serious cases, I've walked students to a professional counselor here on campus<sup>85</sup> and stayed until the student said he or she was comfortable talking with the counselor.

It's not easy to talk candidly about anxiety, depression, the dangers of self-medication, ADD, dyslexia, etc., especially for an introvert like me, and it's a long way from what I thought my job description was back when I was hired. Over the decades, Dan Morgan unintentionally persuaded me that I was wrong. So did a former student, again unintentionally. A few years ago, I turned a page in the *Daily Oklahoman* and saw his photograph—in the obituaries. After high school, he had pulled himself up by his bootstraps: he joined the Army, became an officer, went to college, earned a scholarship from us, made the Oklahoma City University Law Review, and made partner in a well-respected large firm in Oklahoma City, all while married and raising

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84. See Michael T. Gibson, Contracts Syllabus 27 n.16 (2014); Gibson, *supra* note 48, at IV-2 n.1. About halfway through the first semester, one of Oklahoma City University's licensed counselors, Brandi Gibson, visits my Contracts class to introduce herself and explain how she can help.

85. Of course, I always first obtain the student's permission.

2014] *What Dan Morgan Taught This Confirmed Introvert* 357

several children. That afternoon, I sat at his funeral, listening to the minister candidly and respectfully address the causes of death: depression and suicide.

As I listened, I thought about a summer long ago, during which I spent six weeks in bed, sleeping 20 hours a day, my stomach so full of anxiety-produced acid that all I could eat was dry cereal. I was a thousand miles from family, with neither the common sense nor the courage to call them for help. What had saved me? An alumna (Debra Watts McCormick, '89) noticed I didn't return her call to my office; she called Dan Morgan; and Dan pounded on my apartment door, asking if he needed to get me to a hospital. Later, he set up my first meeting with a psychiatrist.

If preserving the sanity of a colleague or a student is not sufficient incentive for us introverts to connect with the human side of our students, there is also a duty. We introverts love The Law; we revel in studying and discussing its ideas, great and small. Our ability to do that depends, quite frankly, on the price our students pay. Some of that price is tuition, but some comes in the stress that legal education generates, whether from our teaching methods,<sup>86</sup> the difficulty and complexity of the material our students must master, the competition for legal jobs, or the fact that Law involves human beings in difficult and often painful situations that often have no good answer.<sup>87</sup> If we want to enjoy the fruits of our students' labors, we have a moral duty to notice when they are suffering unnecessarily and, when appropriate, to connect them with professional help.

#### IV. LESSON THREE: HELPING STUDENTS BY OMISSION

As I have thought about how Dan Morgan taught me to integrate legal practice in my courses and to address the human side of my students, I realized that he had taught me something else. By that, I most certainly do *not* include his attempts to teach me:

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86. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 111–12 (2007).

87. Michael T. Gibson, *A Critique of Best Practices in Legal Education: Five Things All Law Professors Should Know*, 42 U. BALT. L. REV. 1, 57–61 (2012).

- (a) how to don a white, open-chested jump suit and six-foot-long red scarf, walk into an Advanced Torts exam, and sing the first question;<sup>88</sup>
- (b) the finer points in the history of the nation's least populated state;<sup>89</sup>
- (c) highly effective ways of motivating procrastinators;<sup>90</sup> and
- (d) uses of the English language that will never appear in the *Oxford English Dictionary*.<sup>91</sup>

No, the biggest lesson came from him pulling me, a classic introvert, out of my comfort zone in ways that were not always fun. On my first day at OCU (and his as associate dean), he dumped his trial practice team on me, forgetting to mention that the competition would consume the first two days of spring break. He dragged me to receptions for alumni, dinners with the local bar, and swearing-in ceremonies for our graduates who passed the Oklahoma bar exam. He volunteered me to help develop Oklahoma City's first American Inn of Court<sup>92</sup> and to create our first bar preparation program. I more than suspect he had something to do with my selection to lead the faculty part of the capital campaign for our downtown building (a job for an extravert, if ever there was one).<sup>93</sup>

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88. See Michael Gibson, *Elvis Sings Advanced Torts Exam*, BRIEFCASE (Okla. Cnty. B. Ass'n), June 2003, at 6.

89. See Memorandum from Associate Dean [Dan] Morgan on Call for Agenda Items (Jan. 7, 1986) (on file with author) ("Author's note: On this date in [Wyoming] history, 'How to get fat from a skunk without smell' was the subject of a War Salvage lecture in Cheyenne, Wyoming (1944)."); Memorandum from Dan Morgan on Stephen Young's Visit (Nov. 2, 1987) ("On this date in Wymoing [sic] history, 221 people attended chicken culling demonstrations in my old home county." (Campbell County, if you're wondering, 1934)).

90. See, e.g., Memorandum from Associate Dean Morgan on Faculty Teaching Preferences (Feb. 14, 1985) (on file with author) ("PLUUUEASE!!! return [sic] your teaching preference forms to me immediately. Otherwise, seminars on the family law system in Serbo-Croatia are available to be taught Saturday and Sunday evenings from 9:30 to midnight.").

91. See 3 MORGAN, *supra* note 35, at 168 ("I'm going to see a man about a horse, so I'll be there in three shakes of a dead lamb's tail."). "You better come loaded for bear." *Id.* at 453. "He's so dumb, he doesn't know 'straight up' from 'sic 'em.'" *Id.* at 885.

92. Named in honor of the now-late William J. Holloway, Jr., former Chief Judge of the U.S. Court of Appeals for the Tenth Circuit. The *Oklahoma City University Law Review* will publish a tribute to Judge Holloway in spring 2015.

93. This is based on a personal conversation between Daniel J. Morgan and Michael T. Gibson on September 26, 2012 ("Gibson, God has a sense of whimsy!").

2014] *What Dan Morgan Taught This Confirmed Introvert* 359

Morgan's lessons about teaching have been equally unsettling. They made me rethink what I do in the classroom and doubt my cherished belief that students should learn for the inherent love of learning. They made me realize that many of my students—the extraverts—look at the world very differently than I do, and that I can reach them only by entering their world. None of that was in my comfort zone.

Of course, much of my job is pushing *my* students out of *their* comfort zones, challenging them to question what they think they know, asking them to do things they have never done before, and expecting them to master a new way of looking at the world. If I'm not willing to step out of my comfort zone, I have no right to ask them to step out of theirs. So Morgan's last lesson is simple: when I stop doing things that are not easy for me, it's time for me to leave. My students are not there to serve as my audience or to endure outdated teaching methods. They are not paying hefty tuition so that I can pop into their lives two or three times a week for 50 or 70 minutes and then disappear. When I find myself doing only what I want to do and only what I am comfortable doing, then it's time for me to turn my office and my salary over to someone who will make better use of it.

And if I don't, Dan can nail my heiniecaboo to a telephone pole.<sup>94</sup>

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94. See 5 MORGAN, *supra* note 35, at 999 (explaining that "heiniecaboo," though of uncertain derivation, probably combines American slang for the human posterior with a contraction of the name for what formerly was the last car on a freight train).



2014] *What Dan Morgan Taught This Confirmed Introvert*

361

