Lee Burgess: Welcome back to the Law School Toolbox podcast. Today, we are excited to welcome Markus Funk – a partner at Perkins Coie and the co-author of the Law Review article *The Hidden Life of Law School Adjuncts: Teaching Temps, Indispensable Instructors, Underappreciated Cash Cows, or Something Else?* Your Law School Toolbox hosts are Alison Monahan and Lee Burgess, that's me. We're here to demystify the law school and early legal career experience, so you'll be the best law student and lawyer you can be. We're the co-creators of the Law School Toolbox, the Bar Exam Toolbox, and the career-related website CareerDicta. Alison also runs The Girl's Guide to Law School. If you enjoy the show, please leave a review or rating on your favorite listening app. And if you have any questions, don't hesitate to reach out to us. You can reach us via the contact form on LawSchoolToolBox.com, and we'd love to hear from you. And with that, let's get started.

Welcome back to the Law School Toolbox podcast. Today, we are excited to welcome Markus Funk – a partner at Perkins Coie and the co-author of the Law Review article *The Hidden Life of Law School Adjuncts: Teaching Temps, Indispensable Instructors, Underappreciated Cash Cows, or Something Else?* So Markus, thanks for joining us.

Markus Funk: You bet, Lee, great to be with you.

Lee Burgess: Well, to get things kicked off, can you just take a minute to introduce who you are, what you do as your day job, although I assume you must adjunct based on this article, but what do you do as your day legal job?

Markus Funk: Yeah, sure, my day legal job is partner at Perkins Coie in the Denver office. And you're right, I have adjuncted. I taught courses at the University of Chicago, Northwestern, Loyola, University of Arkansas Little Rock, Oxford University, and finally, the University of Colorado, where I've been teaching since 2013. I can't get enough of adjuncting, that's the bottom line.

Lee Burgess: Apparently you can't, I know. So I wonder what of the list of things in your Law Review article title you feel that you are. I can't wait to figure that out.

Markus Funk: A blending of all.

Lee Burgess: A blending, okay. A blending of all. I like that. What do you teach?

Markus Funk: So, I co-teach a class on the Foreign Corrupt Practices Act and Internal Investigations. And in the past I've taught a whole variety of courses, seminars

on the International Criminal Court. My first adjuncting position was teaching a Habeas Corpus class with Mike Waterstone, who is now the Dean of UCLA. So he's going on to great things and I'm just one of 500 partners at Perkins. So, obviously he's played his cards the right way.

Lee Burgess: Sounds good. Well, to get things kicked off, let's talk about what motivated you to take a deeper look into the role of adjunct professors in law school. Was there a particular experience or observation through your movement throughout these law schools that really sparked your interest?

Markus Funk: Probably like a lot of innovations... I was sitting around with my friend Andrew Boutros – he and I have co-authored a couple of books and we worked together, and he's at Dechert. And we were complaining, or I was complaining about having to pay $7 for parking every time I drive all the way out to the University of Colorado in Boulder and teach my class. For whatever reason, the $7 really got under my skin. And then we started complaining with one another about different parts of adjuncting. First of all, we thought we should really look into this, because there's nothing – we looked around – there was nothing on the economics of being an adjunct. I mean, virtually every aspect of being a law school instructor has been analyzed 50 different ways by 70 different attorneys or law professors. But for whatever reason, adjuncts, which play a rather important role, which I'm sure we'll talk about, within the law school environment, have received almost no attention. And so, when we realized that, we thought maybe this is an opportunity for us to both learn a little more and write a little bit about the topic.

Lee Burgess: Yes, I think almost every adjunct has something that gets them about the experience. For me, I was adjuncting when I first decided I wanted to leave my private practice and do more teaching. And I started working with my business partner, we created the Law School Toolbox. And I was super busy, because I had these adjuncting gigs and we were trying to build this business. And then Alison, my business partner, sits me down and says, "What do you make per hour as an adjunct? I think it's time to do the math." And I did the math and she goes, "How much money can we make if we are working together?" And I'm like, "Fair point." It was definitely one of those moments where you really realize that in some ways it feels a bit like a gift. I mean, I love teaching, I enjoyed those experiences. That's why you get angered by $7 of parking, is because in a lot of ways, many institutions treat this as a gift to the school.

Markus Funk: Depending on where you teach. I've got to say, I've had different experiences in different places, and the University of Colorado has been great. And I say that not just because that's the place I'm teaching now. By our calculations, by the

way, Lee, it's $35 to $50 an hour is what we get paid. But that's what we get paid. When you look at the opportunity cost, we lose about $30,000 per class, so we actually pay tens of thousands of dollars – if you're at a BigLaw firm, for example – for the privilege of teaching, which is a privilege, and I'm sure we'll talk about that too. What I didn't realize at all is that 40 some percent of all classes are taught by adjuncts. I had no idea. I typically would go into the school, teach my class and leave. I had no institutional involvement. It seemed to me quite intentional by the institutions at which I taught over the years. And I think that's unique not just to me; that's the feeling a lot of people have. So, that was really the genesis of the whole thing, was looking around at sort of the realities of teaching. And then we were lucky to get Eugene Volokh, formerly of UCLA, now at Stanford, involved. And Eugene is an incredibly prolific author and thoughtful guy, and he and I have collaborated on a couple of other things. And I thought, "Heck, I should reach out to one of the most prominent law professors in the country to see if he has thoughts on it." He might just say, "You guys are just completely full of it. You should be thankful every day" – which some of the feedback we got from professors at top-tier law schools was, "Hey, there are five of you for everyone we hire, so you guys should be happy you get the job." The response – as you may have read in the article – of course is, that's true for law professors too – there are five people who want to teach for every position that's open. There are 20 candidates for every associate position that's open. That's never been viewed as an argument to treat people badly. But Eugene was nice enough to get involved, and so we had the benefit of two practitioners. And Andrew teaches at the University of Chicago, and has been doing so for a decade or so, maybe a little longer. And Eugene. So it was a perfect combo, I thought, of folks to start thinking about the topic and ultimately writing about it.

Lee Burgess: Well, and I think the point you make is interesting, about the opportunity cost – that it's not just the time that you're volunteering, but it's the time that you're taking away from other work that's typically billable work for lawyers. I remember one of the adjunct classes that I took was in ADR. And our professor was active in ADR and had a very prolific practice, and he missed a number of classes. And I remember being a law student and thinking, "How could he miss class? It is so important." And then when I was hired as an adjunct, I thought, "Wow, he must have made so much money by missing that class, because of what he had to do during that class time." And then I had another adjunct who was a semi-retired BigLaw partner who loved to come teach Professional Responsibility. That was kind of one of his passions. And I ended up working at his law firm. And he would come and he would bring scones for every class, and he just really loved it, you could see it. He just came because he loved it. And he was semi-retired, there was no opportunity cost for him, really. He would have maybe not been practicing for those hours, and he just loved it. He was thrilled

to be there. And so, I think that the experience really varies, but I think what's interesting to me is then the experience of the student is really going to vary. Not that everyone who takes these roles is going to try to show up the best that they can. But of course, depending on how complicated your life is outside that adjunct role, the students aren't always going to win out.

Markus Funk: No, I agree. Look, it's not like all adjuncts are great. All of our calculations by necessity in this Texas Law Review article are a little bit back of the envelope. But based on what we see, we have about 12,000 adjuncts at the 197 or so American law schools that are ABA-approved. And you're going to have great adjuncts and not so great adjuncts. And one of the things we have heard from administrators is that adjuncts unfortunately cause some problems on occasion, where they may not understand what the proper lines are between student and adjunct, they may not articulate themselves in a way that's particularly sensitive. Now, mind you, all of that's true for law professors too. I do remember a disproportionate number of law professors were married to former students, which I thought was very strange when I was a law student. So, from the sort of the supply and demand side of things, you're right – if you're not teaching because you love it, then what are you in it for? Because you're certainly not in it for the money, unless you really are in dire straits. And you're not doing it because you want to become a tenured professor someday. This is not like a track to tenureship, or to becoming an associate professor for that matter. So, you do it because you love it. And I think that does statistically probably come through with the majority of adjuncts – that they're doing it because they love it. In full disclosure, I started as a law professor. That was my job, prior to then thinking, "I'll become a federal prosecutor – that'll make me a better law professor." And ultimately never going back full-time to teaching. But I started in that world and I know that, number one, a lot of the people who were in scholarship did not necessarily like teaching. In Oxford, there's a university or college called All Souls, where you don't have to teach. And that was like the dream come true, right? You get paid to do scholarship. You can teach if you want to, but you don't have to. That was always the ultimate experience to get a position there. So I think a lot of the professors, certainly, I had were great teachers, great instructors, but there were also a lot that were just dreadful. I mean, really bad. And if you look at reviews and other things you're not going to find anywhere online, or any kind of a statistical... Now you have statistics about every aspect of law school, but not about reviews of professors. You'll find that law adjuncts do much better than tenured professors do, in terms of the student feedback, and I understand why. I mean, you teach the same class year after year, it just gets a little old after a while. Again, not to say all adjuncts are great and all professors are bad; quite the opposite. There are incredible professors out there who are dedicated to teaching and to furthering knowledge. But I do think adjuncts, for good reason, play a big role in

the university environment and are a great investment. It's a 21 ROI, as far as we can tell when you look at what they get paid. I think I got paid like 1500 bucks or something like that for teaching a class. It's not even... My hourly rate is higher than that. Not to brag or anything, I'm just saying it's a weird...

Lee Burgess: But you're a BigLaw partner, we all know what those hours are.

Markus Funk: Yeah, it's not unique to me. It's not unique to me at all, which is one of the problems. I think you're pushing out people who are maybe in public interest law, who work for the government, who can't afford to say, "Oh, I'm going to do this business development. I'm going to teach and everyone thinks it's great. And I don't necessarily take a huge financial hit." I think that's not true for a lot of folks involved in different types of practice of law. So I also think by having these very low hourly rates, or I should say rates for the class, stipends, you're squeezing out a lot of really good people who just can't afford to teach. And so, you end up getting all BigLaw partners, or a lot of them at least are BigLaw partners.

Lee Burgess: And teaching is hard. Even if you are an experienced litigator and you're great in front of a crowd, prepping for a course, especially if it's a new course or something you haven't taught before – even if you're taking someone else's materials – if you really want to show up and do a great job, if you really want to have a three-hour seminar, which oftentimes these adjuncts are teaching a three-hour seminar once a week – that is not easy stuff, even for the most talented. So, to do it well, you're not just asking for the investment and the opportunity cost of showing up for that class. But to prep for that, you don't just walk in and do an amazing job. Just in the same way that no federal prosecutor – speaking as a daughter of a federal prosecutor – would go in and just not prep for trial and just say, "I'll just wing it because I'm familiar with the case." You're asking a lot, and there are these silent hours, these prep hours out there so you can be a great teacher, because just because you're brilliant and successful doesn't mean that you're a great teacher. They're different skills.

Markus Funk: Totally. And I think it's also interesting when people who are non-litigators... We're by nature a bit extroverted and like to chit chat in front of people, like the fact that I'm right here with you right now. Whereas a lot of my corporate colleagues are a little less likely to want to speak in front of people. And so, I think they also get something out of the adjunct job, because they frankly get exposed to public speaking and the feedback loop that you get. We get feedback from judges and jurors. They get feedback, not as much, maybe from a client. So there're some benefits there as well. But you're 100% right. And let's also remember grading finals, preparing for finals, mid-terms if you do them.

And then if you really care about what you're doing, you care about the students – that's the number one thing, really. The reason I like teaching is because when I was a student, I felt very much kind of adrift until I met one particular professor who really took me under his wing and made a huge difference for the rest of my life. I've always wanted to pay that one back or pay it forward. And so, when students want to ask you questions, they want to have coffee with you, they want to ask you about their careers or whatever might be going on in their lives – that's a big part of it. And making yourself available to students to have a genuine conversation about where they are and where they want to be and how to get there, is part of the adjunct role. I think they're much more comfortable, frankly, approaching someone who's a little bit outside of their day-to-day orbit than they are the eminent Constitutional Law professor at their law school.

Lee Burgess: I think that's very true. And I think a point that you brought up about it being very difficult for some folks who practice certain areas of the law or in public interest, financially, this just doesn't make sense to do some of this work. But it's one of the things that a law school wants to do, is have a variety of representation from their professors on campus, because it is the opportunity for mentoring in so many different ways. And on one hand, you don't just want all successful BigLaw partners doing these roles, because that's not going to create diversity in a lot of different ways. And you want to give your students the opportunity to build these relationships. I mean, I had... He was a full tenured professor, but there is one professor who there's one conversation that we had about life paths, that really was so meaningful to me that I could still recite what that conversation was, all these years later. And the school needs to, I think, see these adjuncts as an opportunity to bring in folks that students who maybe haven't found their person to be that mentor at the school, they can bring in this new pool of people, if they can attract them, that could allow for a lot more variety in mentors than maybe they can have with full tenured professors.

Markus Funk: I totally agree. And one of the things I think schools can really do is... Schools are incredibly hierarchical, right? Law schools. You have your tenured professor, you have your associate professor, you have your clinical instructors, you've got your clinic employees. There's a strong hierarchy, and if you spend any amount of time around a law school and have the benefit, or maybe it's not always positive, but to understand sort of the dynamics – you quickly realize adjuncts are like at the bottom of the hierarchy in the minds of most of the people who are in the hierarchy. Most of us don't even think of ourselves being involved in a hierarchy. But that's one of the things that I think is also unfortunate, because I think professors who engage in deep scholarship could really benefit from

adjuncts and adjuncts could benefit from professors. One of the things that we write about in the article and something I've tried to do is, at every university at which I've taught, I try to get to know the other professors who teach the same topic. So typically I teach Criminal Law, broadly described. So I'll reach out to the other Criminal Law professors, the "full", the "real" professors, in quotes, and ask to have coffee with them, to introduce myself, to talk about shared interests, how I'd love to have them come to the class. Just to introduce myself to them. And I've got to say, my hit rate is like 20%. Out of 10 professors I email about getting together, maybe two of them make themselves available, ultimately. And that's at every institution I've ever taught at. And part of that is because they wonder, "Who is this nobody?" That's not the way all of them look at it, but there is a sort of condescension that's built into the system that again, most adjuncts don't even realize, right? And maybe they think of it the other way around – they think of these professors as being at the lower end, and that they are at the top because they make more money or whatever. But within the university environment, it's very clear where adjuncts sit, and I've always thought that is a real unfortunate aspect of it, because I write a lot, probably as much as any tenured law professor does, maybe a little more, and I always love hearing from them and getting their input, because they do deep, deep scholarship. I just wish there was a little more interchange, which is one of the things we've pushed for. You'll remember, Lee, at the bottom of our article, we have, whatever – 18, 17 proposals for universities to follow. And the really cool thing has been, as recently as yesterday, I got an email from a dean of a law school saying, "Hey, just so you know, we're giving away faculty awards, and we've now started to give awards to adjuncts as well. And that comes 100% from the article you guys wrote." And we've gotten dozens of emails, where faculty members reach out or deans reach out to let us know that they've adopted this, that, or the other aspect – in some cases, almost all aspects of the recommendations we make. So, again, the goal wasn't to beat up on professors and be like, "Oh, you guys are horrible and we're the greatest", but to try to say, "Look, we're over here" – wave our hands a little bit – "We're over here. We've got something to add, not just in terms of providing bodies to teach classes, but a vibrant law school community should have an active interchange between faculty, students, staff, adjuncts." The whole mix should be properly, I think... There should be cross-pollination. And unfortunately in a lot of places, that's the exception.

Lee Burgess: I think that's so true, and the adjuncts end up often being more of the boots on the ground in what's happening in the, quote unquote, "real world", right? The thing about tenured academics is, it has been oftentimes a very long time since they have practiced law. And the world is changing incredibly fast, and adjuncts provide an opportunity for interchange of how things are playing out in the day-to-day life of the, quote unquote, "real world" that an academic who's writing

more theoretical papers is not necessarily going to see. They might have professional contacts and still do some of that networking, but I think it does create a really rich opportunity for the schools, if they can capitalize on those relationships, to use adjuncts to inject some real world experience of what's happening boots on the ground right now, which you can't often get once you've been a professor for a long time. And I haven't practiced law in a long time. I'm rusty, I'll be honest. I'm a much better entrepreneur now than I would be a practicing litigator, because that's what I do now. That's fine, there's no criticism. I shouldn't teach a class on criminal law now, because I don't have a lot of practical experience. I never taught a class on criminal law, but that's not where my practical experience is. I can teach classes on exam taking and the bar exam and legal writing and the things that I do on my day-to-day life. But everyone can have their role. We can all learn from each other, as long as everyone's open, which isn't always a word that is often used to describe law school administrations, is "open" to feedback and change.

Markus Funk: No. One of the things you'll see is, there's a weird sort of inverse relationship between practical experience and ranking of law schools. And I've been lucky enough to get invited to guest lecture at Yale and Harvard and other places, and I'm always happy to do it. So please, universities, if you're hearing this, don't take me off of the Christmas card list or the holiday list. The higher up you go, first of all, the less they use adjuncts, but also the less they have anyone who's ever practiced in any case. So, when you say that they're rusty, they're not rusty because they were never forged, they never taught any kind of law. Most of them don't even have a bar exam passing. They never passed the bar exam. So, the higher up you get in the echelons, the more pure academics you see and the more they kind of eschew and almost find practitioners to be truly second or third-class citizens within the scholarly confines. As one of our people wrote us an email said that they were in the basement of the ivory tower, which I thought was a funny way to put it. Whereas if you go down the 197 ABA-approved law schools, if you go down the rank – not that ranking is everything – but you go down the rankings, you find they're populated almost exclusively by people who've been practitioners. One of the curious things, the ABA has a standard – Standard 403 – that says that you have to make sure that 50% or more of your students have been taught by full-time professors. Well, one way schools do that is they have all those big classes you may remember, like the big Con Law class or whatever with a hundred people in it. Those are almost always taught by full-time professors. Actually more than half of the classes in second and third year are taught by adjuncts, but they get around this 403, more than 50% number, by salting in a lot of the big classes early. Whereas the schools that are more practitioner-oriented, maybe, let's say, not as highly-ranked schools – most of their professors maybe have never written a Law Review article. I mean, they're full-time professors, so they, quote unquote, "count" for the ABA, but

they're not hardcore academicians. They're practitioners who quit practice and became professors. So, I agree with you – I think the mix is important. But that it's an interesting observation, again, no one's written about that I've ever seen – about how at the top there are so few practitioners, and at the bottom there are so many.

Lee Burgess: Yeah. That is really fascinating. And I have to share one of my favorite stories from one of my favorite students of all time, who I do not think listens to the podcast. So, if he does, he knows this is about him. But he was at an Ivy League school and he was prepping for his Criminal Law final, and he was being taught by a very famous and theoretical Criminal Law professor, but the exam was a straight up issue spotter. I mean, looks like a bar question. And so, he sends me his work to give him some feedback, we're doing practice exams and I get it. And he's written about theories of crime and punishment. And I was like, "That's not at all what this question's about." I said, "Where's the law? It's homicide, somebody died." And he just looked at me blankly on the Zoom screen and was like, "What do you mean?" And I had this moment where I was like, "Has nobody taught you homicide yet?" And he's like, "Um..." And I said, "Okay, well, here we go. I can teach you homicide." Maybe the theories of crime and punishment aren't my thing, but I can teach you the black-letter law for how all this stuff functions. But that's what you're being tested on. Maybe you'll have a policy question about crime and punishment, but that's what this question is testing on. This was very early in my career of working directly with students, and it was such an eye-opening thing for me to see. And I'd heard that about the elite Ivy League schools – if you don't have relationships with these adjunct professors or with individuals who have been out there and practicing law, you really can just go for quite a while and lose some of the practicality about how the law functions, and just live in this theory-based ivory tower. And if you want to practice law, you've got to know some black-letter law. I realize you can look it up, but you're at least going to have to pass the bar, which is all full of it. Maybe once they change over to the NextGen Bar, but you're still going to have to know something, so you're going to have to learn some of it.

Markus Funk: Yeah, I have to confess – secured transactions – I didn't even know what that was when I graduated from law school. Trusts and estates. I remember some of these terms very vividly, just because I remember sitting down in my Kaplan class and being like, "Holy crap, I've never taken these classes. I should have, but it's time to learn them now."

Lee Burgess: I know, right? I didn't take Trust and Estates either. I was cramming for that one as well. So, one of the other things that you mention in your article is that adjuncts, although they are at the whim of the law school, really don't have any

voice in any sort of institutional governance, how a law school is run. And so, why do you think it's important? Is it just the number of adjuncts that are floating around? But do you think that adjuncts need to have a voice in how a law school is being run?

Markus Funk: Yes and no. I don't think the adjuncts necessarily should have a voice in how the school as a school is being run. But if you think about the various faculty meetings that exist, where they have student representatives, they have representatives of different parts of the student body – they have every kind of representation you could imagine, except as far as I know – and maybe there are some law schools out there, and I'm sure we'll find out that are different – but I'm not aware of any law schools that have adjuncts or an adjunct representative that has any voice. Given that we teach more than half the classes, it would be nice to have someone who at least could sit there. It shouldn't be me writing, or Volokh and Boutros and I writing an article that for the first time brings up these topics. This should be something that every law school... Because every law school is different. They have different interests, different student bodies, different professional ambitions. They should have conversations with adjuncts. Adjuncts typically don't get invited to graduation, they don't get invited to any faculty colloquia, they don't get invited to the brown bag lunches, they don't get invited to any kind of faculty meetings where they talk about the direction of the school, the curricula. I'm not saying that you've got to make an adjunct the Dean; I'm just saying it would be nice to have... And if I were running a law school, boy, I would think it would make some sense to have some adjunct representative speaking on behalf of the adjuncts to say, "Here's what's going well, here's what's going badly. Maybe we should give these guys a mug with the law school logo on it at the end of the year."

Lee Burgess: Or parking. A parking permit.

Markus Funk: Or the $7 permit. Or a T-shirt. It's funny, because almost every time I go to a guest lecture somewhere, I get a little trinket like that, a little memento, which I love. I've never taught at a single law school where they give you something at the end. I don't want a lot. I don't want like a gold bar; I'll be happy with just a T-shirt. But these are a little psychological, right? As we all know, psychological things matter, especially to strong or tightly-wound lawyers. And just getting a little love at the end is a nice touch. And the fact that this is not done is really surprising. It's being done now a little more, from what I hear. But yeah, it's not that personally concerned about the university knowing what my thoughts are. I wrote the article, so I'm somewhat concerned, but if I were the administrator in an administration, I'd want to know. I'd want to have some ear to the ground on

what's going on in the majority of my classes. And sometimes different law schools will have members of the administration of the faculty will sit in, unannounced typically, in the class, and kind of just sit there and stare at you. But beyond that... And maybe hearing from students if things go wrong – then they're quick to come along, and that's something that Volokh wrote about – they're quite quick to then also just kick you out. You don't have any sort of rights. "Oh, I've been teaching for 10 years." "It doesn't matter. You said this or that in a way that people didn't like, and so you're out." So you also have zero institutional support for when things go wrong. So it just seems to me that if I were running this law school, I'd want to hear from adjuncts. If I was an adjunct, I'd want the law school to understand what is going on in our world. And as far as I can tell, no law school does it. I'm sure there must be one or two, but I've never been involved in a law school that does that.

Lee Burgess: And you want those adjuncts, especially the good ones who are getting those great reviews from students, to stick around. And by building the relationship with those adjuncts, by giving them the $7 parking pass, or inviting them to a meeting, or making them feel more included in the institution, increases the likelihood that even for crummy money that they will stay because they will feel a loyalty to the institution as a whole, and the student pool. You don't want to lose the great adjuncts; you want to figure out how to keep them engaged. I think engagement would definitely be one of those ways. And again, like we were saying, they're out in the day-to-day legal world and they may have insights that the school doesn't have, because no one at the school is out in the day-to-day world. The deans definitely aren't. It's a very different thing.

Markus Funk: Yeah, to also give a compliment, University of Colorado Dean Weiser, now Attorney General for the State of Colorado, but he really made a point of having coffee with, inviting adjuncts to meet with him, and he would also recommend really strong students to adjuncts who are at law firms. And so, he'd do a good job of also his fiduciary obligation of trying to place his students. He did a really nice job of that and I think that can be kind of a role model, because after I'd have a 10-minute coffee with him, I'd feel really loyal to the university, it really jazzed me up to go back and teach. It doesn't take much, right? We're not saying we should be paid like law professors, which as you may remember from the article, by our calculation, to teach the exact same hour of class costs the university seven times less, or rather, law professors are seven times more expensive than adjuncts are. And that doesn't even account for sabbaticals, overhead, secretarial assistance, IT, all the stuff. The number is much, much higher. Again, not saying that adjuncts and law professors are the same, because I can already imagine a lot of my full-time law professor friends right now like hopping up and down in anger. We do different things and we bring

different things to the table. But recognizing, just recognizing that adjuncts are there, that they're an important part of the community, the fabric of the institution, and figuring out ways to get them more tightly integrated, which would be something if I were ever a dean of a law school, I would certainly really focus on.

Lee Burgess: Yeah. So, before we wind up with one of my last questions, which is, why you would want to take classes with an adjunct, I do have to share one of my favorite adjunct stories from my own experience, which was my favorite review from a student. So, I was teaching a class on bar exam preparation within a law school, and I had a very strict rule, having just come out of legal practice, that you could not turn in anything late. You could ask for an extension with a valid reason, but you couldn't turn in anything late, because that is not how the real world works, and if you're going to graduate, you need to appreciate that you can ask for extensions, but you cannot deliver anything late. And some student wrote this very scathing paragraph to me about how unfair that was and how that shouldn't be the requirement, they should be able to turn in work whenever they wanted, and my thought was, "Enjoy legal practice, because that has not been my experience." But one of the reasons why I always chuckle when I hear that story is, I think that there's a thread of that, which is one of the benefits that adjuncts can bring, which is they are possibly a little more connected to the real world. And I think that you can bring some lessons. They can show you what you're biting off when you enter the legal profession. For instance, you can't turn in stuff late to a lot of people. My BigLaw partners didn't want to see my work late, the judge definitely didn't want to see my work late. I did civil litigation; it could have really massive consequences. So, I think that there are some practical aspects of having the exposure to adjuncts that can be helpful. But what are some of the other benefits that you think law students can receive by engaging in some of these classes?

Markus Funk: Yeah, sure. And before I answer that direct question, I'll just respond to what you just said, Lee, on being prepared. And this is one of those examples, by the way, where if I were a tenured professor, I'd have a lot more examples I could share with you. But I'll leave them on the side for now. In our syllabus, we say in law school, like in life, being prepared and on time is half the game, right? And so, all we ask is that you participate and that you be prepared. Everything else, you'll do great. That's not asking too much, but at times you wonder if you've asked for more than some people can produce on a given day, right? And that also may be just a cultural law school concept. Back in the day – I'm an old man now – when I was a young person, I was probably also constantly trying to figure out the easiest way around work, whereas now we're all excited about our class and want the poor students to read a hundred pages for a one-hour class. But

why should students take classes from adjuncts? Depending on the adjunct, right? Really, again, I've heard horror stories as well, from administrators about how some things with adjuncts go off the rails. But I think you get a really good insight into what the real practice of law is. So if you're like, "I'm interested in criminal law, I like this idea of Foreign Corrupt Practices Act, international work" – by the time you're done with Chelsea Curfman and my class, you're either going to decide, "This is the greatest thing ever" or, "I never want to do this", because we're going to tell you what it really is like. I always do a little pitch at the end for being a prosecutor. Especially these days, prosecutors don't always have the best reputations. Unfortunately, some of that's well-earned bad reputation, some of it's unfair. But I think it's a great thing to do, so I always give a little pitch at the end. I think when you think about your career and where you want to be and where you see yourself, hearing from and working with people who are doing the very thing that you're interested in can really help you. I remember taking certain classes like International Law class. I thought I wanted to be an international lawyer until I realized it's contract review in a lot of cases, and that put me off of it. But it was an incredibly valuable class to take, because I think I was thinking more like international criminal court type work. And so, you get the practical experience, I think you get relationships. I'm very happy that I still have relationships with students many years ago, who've gone on to great things and different kinds of practices. And ideally, also get someone who can tell you law school can be very hard. For me, my first year in law school, I did pretty poorly. I was really not used to that. And then I got Dan Polsby, who then became the Dean of George Mason. But when he was still at Northwestern, he became my mentor. And he sat down with me and talked to me about how to take an exam and how to answer questions, which was very different from what I was used to, putting everything in and then just saying, "Here, there are five possible answers. Here's why four of them are wrong and one's more likely to be right than the other four." And just in my later life, having a person to talk with, if you don't have lawyers in your family, I think adjuncts can be more approachable in a lot of cases. Now, Polsby was a tenured professor, again, who I owe so much to. But adjuncts are approachable, by and large, and relatable, because they are doing what you think you're going to be doing in the rest of your life. And so, I think that's one of the biggest benefits from adjuncts, in addition to the war stories, which students, depending on what wars you're talking about, they tend to like to hear those.

Lee Burgess: True. As we wrap up, because we're just about out of time, I do enjoy asking guests who work with the current law school population – which you do in some of your roles – what are three things you wish law students would know or take to heart?

Markus Funk: This is so lame, but it's true – that there's no way around working hard, right? In other words, the hustle, the grind that has to be in your blood if you want to be successful. I wish you had told me this; now I'm like flat footed. This is good though.

Lee Burgess: I'm so sorry.

Markus Funk: No, this is like an appellate argument.

Lee Burgess: I usually give this ahead of time, but then I realized I didn't put it in my notes to you. And then I'm like, "I'll just put him on the spot."

Markus Funk: No, that's good. I feel like I'm back in the Seventh Circuit in front of Posner or Easterbrook. So, that's one thing I wish law students would know. Is it know or do, or is it just know?

Lee Burgess: It's know or do.

Markus Funk: Yeah. Asking questions, right? Not being afraid to ask questions. I've had students who ask the funniest questions that are totally... Half the time, they almost reveal that they've not read a page. But they ask the questions, and being involved in class. And then being empathetic. The third one is empathy, because too many students... They are hierarchical, right? "I am going to be in the top of my class, that person's in the middle, I'm on Law Review, that person's not on Law Review." Having empathy towards one another, which is an incredibly valuable skill in life and as a lawyer – whether that's empathy to your staff or to your colleagues or towards your clients. Of course, being empathetic and trying to see things from other people's views is a huge one, especially today. I'm not going to get too political, but I will simply say that giving people a little grace and not always assuming that what they're doing, just because it sounds wrong to you or you don't agree with it, is done with malicious intent or with ill intent. But giving people a little grace and assuming the best, even if later you conclude that they really do have a view that's abhorrent to you, I think is probably the number one. I should have started with that one. That's probably the number one thing I wish more students did. I'm lucky to have had students that have – almost to a person, but not to a person – but almost to a person, have had all those characteristics and traits. But I've been around students and I've been around faculty members who've gotten their careers ruined because people just assume they mean things, they give them the worst possible interpretation, including sometimes on administration members. And so, I think being a little more empathetic is a big one for all of us, including for

professors – being empathetic towards students and the plight that they're going through. They've got other things in life, other than the final exam. They might have a parent who's sick or a loved one who's not doing well, or whatever else is going on in their life. I think empathy is a two-way street. That is a hugely important one, and something I frankly wrote about recently in a University of Cincinnati Law Review article about culpability and equal standing. So, that's my pitch for my most recent scholarly work.

Lee Burgess: I like that. I've talked about it on the podcast before, and it's sitting on my desk, so it makes me think of it – Adam Grant's *Hidden Potential*, his newer book. I really liked the part where he talks about how we judge folks for having potential. And I think that this idea of empathy and not necessarily focusing on the hierarchy, and really just taking people for this kind of whole package of who they are. You don't know what their background is, you don't know what they've overcome, you don't know what is really in their toolbox, possibly because of resilience or various other things. And to just have empathy, but also openness, I think goes along with that, is that everybody's hustle is real.

Markus Funk: Yep.

Lee Burgess: But there's no one way to hustle.

Markus Funk: Totally agree.

Lee Burgess: Yeah. Well, thank you, and sorry to put you on the spot.

Markus Funk: That's okay. It shows that my brain is not... I'm not attuned to the appellate practice anymore the way I once was. But it is always fun to think about that, because those are great questions, and frankly I think I'd stand by my answers even after time would pass if I'd prepared for it.

Lee Burgess: Nice. Excellent, excellent. I will link to the Law Review article in the show notes so folks can read it, review it. Maybe it's a good summertime reading, that they can then have a little more empathy for their adjunct faculty that they may be taking. If folks want to learn more about your authorship and the work that you do, or if they want to try and take one of your classes at a law school, how do they learn more about what you do?

Markus Funk: Yeah, they can...Obviously, the standard stuff – LinkedIn and X. I try to get my stuff out there. That's one of the things – I write a lot, probably write too much,

but I write a lot of books and articles – some popular, some scholarly. And so they can go on ResearchGate or SSRN or ORCID and look me up. And obviously, don't be shy and feel free to reach out. I'm always happy to engage.

Lee Burgess: Amazing. Well, thank you for engaging with us, for taking time out of your busy schedule to have this conversation. I think it's an important one. And next time you write about something, I hope you'll come back and talk about it.

Markus Funk: Hey, you got it. Thanks, Lee. Appreciate it.

Lee Burgess: If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to myself or Alison at lee@lawschooltoolbox.com or alison@lawschooltoolbox.com. Or you can always contact us via our website contact form at LawSchoolToolBox.com. Thanks for listening, and we'll talk soon!

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