Kramer Levin

PODCAST

Conversations With Women in IP

Transcript: Professor Molly Shaffer Van Houweling

Irena Royzman

Hello, everyone. Welcome to Conversations With Women in Intellectual Property. I'm your host, Irena Royzman, head of Life Sciences at Kramer Levin. Today I'm very excited to be sharing with you a conversation with Professor Molly Shaffer Van Houweling. Molly is a distinguished professor of patent law in intellectual property and an associate dean at Berkeley Law School, where she focuses on copyright law. She is also an American competitive cyclist who has won numerous championships and set a world record. Molly shares her history—from landing her dream job, clerking for Judge Boudin on the First Circuit and Justice Souter on the Supreme Court, cycling, and women in IP in academics. I hope you enjoy the conversation.

Hi, Molly; it's a pleasure to have you. I would like to start with your interest in law. What inspired you to attend law school and become a lawyer?

Molly Shaffer Van Houweling

A couple of things. And good morning, Irena. It's great to talk to you again, and I'm so pleased to be joining you. I took a great introduction to constitutional law class as an undergraduate at the University of Michigan, where I was, I think, at the time, just deciding to become a political science major, and it was a class offered in the political science department that I really enjoyed. It was a class where I found myself coming back to my apartment and talking to my roommates about what I'd learned in class that day. And it really made me think, huh, I must really like to think this way. And maybe it's something that I'd like to continue doing. Although I have to admit, I was choosing between being a biology major and being a political science major, and maybe thinking about law school. And I don't think at the time I didn't, I had one lawyer in the family, but I didn't have a lot of exposure to law careers. I wasn't yet thinking about intellectual property, and so I didn't know that studying biology and studying law were things that could be combined. If I'd known, I might have become an expert in law and the biosciences like you are, but instead I hit pause on the biology

and decided to go to law school.

Irena Royzman You became interested in information technologies and copyright law in particular. How did that happen?

Molly Shaffer Van Houweling So that was post-college. I took a year to work in DC and had been interested in college really in health care policy as a field of law and policy. And I thought maybe going to law school could help me work in that field. But I ended up in Washington, DC, working not on health care policy but on information technology policy. And this was during the Clinton administration. I had what was basically a souped-up internship at the Commerce Department. And this was really in the early days of thinking about what we then called the National Information Infrastructure, the information superhighway. Al Gore was vice president. And I got to be part of an interagency working group that was thinking about some of the emerging issues, and I enjoyed it a lot. Even though I wasn't a technologist, I found that there were many issues, for example, concern about universal access to the internet, that overlap with the things that I cared about in health care policy. And so after that, when I went to law school, I thought that maybe pursuing this interest in information technology is something that I could do. And that was, again, in the late '90s, when studying the internet as a field of law was in its infancy. And so that was an exciting time to be thinking about those issues as a law student.

Irena Royzman Did you have female or male mentors that influenced you and helped you direct your legal career?

Molly Shaffer Van Houweling I did. So my boss at the Commerce Department, Gary Bachula, was a Harvard Law School graduate, and he encouraged me to take that next step in my education and career. And then at Harvard, the folks who were involved in the launching at that time of the Berkman Center for Internet & Society, now the Berkman Klein Center, still one of the leading internet law centers really in the world, that was just getting launched then at Harvard; my mentors there were the founders of that, including Charlie Nesson and Larry Lessig and Jonathan Zittrain. And then when I started teaching, I discovered that the field of academic intellectual property study, some of the real leading lights happened to be women. And I was lucky enough to have among my mentors, and still do, Becky Eisenberg, my senior colleague at the University of Michigan, and Pamela Samuelson at UC Berkeley, where I teach now.

Irena Royzman Well, that's great. When did you realize that you wanted to

teach, that you wanted to be a professor at a law school?

Molly Shaffer Van Houweling

Well, while I was a law student, I was a teaching assistant for a class in the political science department that was a lot like the class that I took as a college student that got me interested in going to law school, and I really enjoyed that teaching experience and was impressed by the professor of that class, Keith Bybee, a political scientist who studies public law. So that was one ingredient I think in starting to sort of — at that point, I think — fantasize about a career in legal academia. I was a little bit starstruck by my professors. So the idea that I could do their jobs seemed a little far-fetched, and yet it seemed like a dream job. I also remember in particular a lunch with the late Dan Meltzer, who was my fed courts professor at Harvard. There's a tradition there of going out to lunch with professors, one that I try to continue with my own students. And he just told me and my classmate, Ken Bamberger — who is now my colleague at UC Berkeley Law School — he told us what a great job it was and how lucky he felt to have it. And I was just really struck by that and was a fan of his and took that seriously. And so again, this reconfirmed to me that this seemed like a dream job, one that still seemed remote as a possibility and a destination but something that I thought I would love to do someday.

Irena Royzman

After law school and working for a year, you clerked on the First Circuit. Can you tell us about that and what you see as the most valuable lessons from that experience?

Molly Shaffer Van Houweling

Sure. I found that one of the most rewarding years still of my career and memorable. We've had a couple of Zoom reunions with Judge Boudin over the last year, and those have been really meaningful and sparked a lot of fun memories for me of that year. And Judge Boudin is a very enthusiastic and capable arguer, and a notoriously tough questioner. I was warned by my predecessors about how challenging it could be to go in his office and try to defend something that one had written — a memo or a draft opinion, and so forth. And it was intimidating to talk through a case with him. But I found it the best kind of challenge, where it's very satisfying when you survive it and get to the other side.

And it really taught me a lesson, I think, one that I continue to try to convey to my own students, about the importance of following your own intellectual curiosity. The quality of the briefs, even in the First Circuit, varied. They didn't always really put their finger on the things that were the most important issues in the case. And so sometimes they left me scratching my head and wanting to know more about some issue. And I invariably found

that when I kind of followed that curiosity to try to track something down and figure it out, well, Judge Boudin would ask me about that, because he was curious about it, too, because it really was some unsettled thing. And so the most rewarding experiences were those where I could answer his tough questions because I'd had those questions and didn't set them aside, but instead pursued them because I was curious, and then it turned out he was curious, and that made for a really satisfying exchange and was a nice reward for me to show that it can pay off to follow your own intellectual curiosity.

Irena Royzman After that you clerked for Justice David Souter in the Supreme Court. How did that experience shape you, and what was that like?

Molly Shaffer Van Houweling It was another of the most memorable and rewarding years of my career. Justice Souter is a model of discipline, and hard work, and modesty, and humor. And because he's not, he doesn't take pleasure in being a public persona, I feel so grateful to have, for having had the insight into his humor and humanity that not everyone has the privilege of seeing. And I would tend to come into the office seven days a week, not because that was a demand of the position, but I tended to like every day to take time out to get exercise and do other things. So instead of working really long days every day, I would come into the office most days, and Justice Souter did too. And that's some of the most memorable, just showing up into the office on Saturdays making sure, among other things, that the coffee was brewing and we had what we needed to get in a solid partial day's work typically. And again, he was just a role model for discipline and hard work but also for living a balanced life.

He also signed off of work in order to go running every evening and reported on that. We liked to share our stories of our athletic pursuits. So really, more than anything that I learned about the law, getting to know him as a role model for a good life is the most meaningful thing to me.

Irena Royzman What was the most challenging about being a clerk for Justice Souter?

Molly Shaffer Van Houweling For me, the most challenging thing about clerking at the Supreme Court was working on death penalty matters, which I had not done before, I hadn't had exposure to in law school or on the First Circuit, and it's a necessary part of clerking on the Supreme Court is dealing with, especially, emergency stays of execution on the eve of an execution. And I found it traumatic to read the facts of the relevant cases, to read the claims of the

petitioners. And at first everyone was really monumental in my mind. And so I found it difficult to tackle that work. Now, making every single one monumental could stop you from making progress and giving the Justices the advice that they need. So I had to become more efficient about it. But of course, it gave me no pleasure to become efficient at sorting emergency stays of execution. And so I never relished that work. And that was the one thing, the one part of it that I genuinely didn't like to do.

Irena Royzman After clerking for the Supreme Court, you were a research fellow at the Center of Internet and Society at Stanford Law School. What was your focus, and what exposure to new information technology did the center provide?

Molly Shaffer Van Houweling Yeah, my focus at the time was the continuation of an obsession that started in law school, and a little bit while clerking. And that was the state action doctrine, the notion that the Bill of Rights limits the behavior of the government, but not of private actors. And I was especially interested in the First Amendment, and the question of whether non-state actors should ever be considered to be so much like the government that they too should be subject to the limitations of the First Amendment. And I had in mind in particular platforms for internet-based speech and whether they were really on the cusp of operating like a town square in a way that would make us think that they should be subject to the limitations of the First Amendment. I gave talks on this topic. I was simultaneously interviewing for academic jobs, and no one took this theory very seriously and thought it was a little kooky to suggest that private companies, on the basis of their hosting of internet speech, might be subject to the limitations of the First Amendment.

And I've got to say, I think it was an idea that was ahead of its time, because being concerned about the potential about both the speech-limiting responsibilities of platforms and also concerns about their censorial power is, of course, very relevant today, as the power of these platforms has grown over the intervening decades. And so I've been returning a little bit to think about that topic that I started thinking about there. And in terms of exposure to technology at Stanford, the first thing that comes to mind is sharing an office with Jennifer Granick, who was also a fellow at Stanford at the time and is now at the ACLU and had had a history already as a lawyer who had defended hackers against various types of legal claims. And that really got me thinking about the role of hackers and other technology experts in potentially preserving civil liberties by working around the limitations that the architecture of the internet might impose on them. And so I'm really grateful for having had that opportunity

to meet Jennifer and hear about her work.

Irena Royzman At the same time, you were also the executive director of Creative Commons. What is Creative Commons and what did that involve?

Molly Shaffer Van Houweling Sure, Creative Commons is a nonprofit still based in the United States but now with a really global reach, that is determined to help people who want to share their works of knowledge and creativity with other people. Which sounds like the easiest thing in the world, especially given the power of the internet, but in fact, the default of copyright in particular makes it not that simple to announce to the world that you want your works to be shared as opposed to totally proprietary. And Creative Commons is best known for promulgating a suite of licenses that people can attach to their works to announce to the world that this may be shared under certain terms, like give me attribution, or ensure that you also share the works based upon my work.

And over the 20 years since I started, as I had the grand title of executive director, I was also the janitor and the payroll specialist because I was the only employee at the time. So I was both the top and the bottom of the heap. In the over 20 years since then, over 2 million works have been licensed with Creative Commons licenses, which are applied to Wikipedia, to the Public Library of Science, to countless open educational resources, photographs, all kinds of creative things. And I now serve as chair of the board of directors of Creative Commons. And so that's been very gratifying for that to come full circle over the 20 years of its life and really my career.

Irena Royzman That's great. So you mentioned you were interviewing for academic jobs. And you started at Michigan Law School and were there for a few years and then joined Berkeley in 2005. What do you enjoy about teaching IP law? Is it the dream job?

Molly Shaffer Van Houweling It is the dream job, as it turns out. And I teach not only intellectual property classes, but also basic first-year property. Although at Berkeley recently, we've changed property to be an elective that students can take at any time in their law school careers, but it has many of the same basic features as the required property class that I took as a 1-L. And I love teaching any subject really, because it's so unpredictable. Although I teach the same topics from year to year, the students are different, and I never know what they're going to say. And although it takes a lot of work, preparing, and especially I think in intellectual property, there are always new cutting-edge cases, Supreme Court decisions that I have to incorporate. So there's

plenty of work. But I often say it's like a perpetual motion machine because I always come out of the classroom more energized than I went in because of the surprising, thought-provoking things that my students say.

And as for IP, in particular, I really enjoy teaching something that has such a firm statutory foundation in the Lanham Act, and the Copyright Act, and the Patent Act. Many of my students, if they're, say, first semester 2-L students have had a lot more exposure to common-law reasoning than they have to statutory interpretation. And so showing them that structure and the intricacies and how you fit the puzzle pieces of a statute together, I find that rewarding and also important to impart on students that important skill.

Irena Royzman You're the co-director of the Berkeley Center for Law and Technology. What's that? And what does that involve?

Molly Shaffer Van Houweling So BCLT, as we call it, is really the hub for all things related to law and technology at Berkeley Law. It hosts countless events, some focused on students and exposing them to different practice areas by bringing in practicing lawyers to give lunchtime talks, for example. We also have all kinds of workshops and symposia for practicing lawyers, for academics to talk about cutting-edge issues. We have a lot of interaction with alums and other practitioners. We have a number of law firms that are our sponsors and advisers to help us really stay in contact with the cutting edge of practice and to help our students identify potential career paths and to stay up to date with the curricular needs for the law school.

I also serve as the associate dean for J.D. curriculum and teaching. So part of my responsibility is to schedule our law school classes and to make sure that we have the right mix of classes. And so I work with the rest of the faculty directors of BCLT and our executive director. We've recently celebrated the retirement of Jim Dempsey, our outgoing executive director, and Wayne Stacy is our brand-new executive director. And I've long worked with Jim and actually have a meeting scheduled next week with Wayne to talk about, and this is relevant to your career, we're going to be talking about potential new offerings at the intersection of biosciences and the law, to make sure that we are at the cutting edge of practice and what we're offering to our students.

Irena Royzman Excellent subject. You're also the founding director of Authors Alliance. What's Authors Alliance?

Molly Shaffer Van Houweling

So, Authors Alliance is another nonprofit. It has a philosophy that overlaps with that of Creative Commons. Insofar as it really tries to empower authors who are motivated primarily by wanting to reach as many readers for as long as possible. So this includes, for example, academic authors like me. I write not to sell books or law review articles, for which there's not, I think, a big paying audience, but instead to make an impact on the world with my ideas. And that, again, is something that seems like it, well, it really should be easy, but it's not as easy as we think it should be. So Authors Alliance in part does advocacy on behalf of authors who want to make sure that they can reach readers and also a lot of education to help authors understand how to do that.

So to give one example, we have a number of educational resources to help authors figure out how they might be able to reclaim their copyrights if they've, say, assigned a copyright to a publisher for a book that then goes out of print. In many cases, publishers might be willing to renegotiate to give the copyright back because they've lost interest in exploiting the work. In many cases, there are clauses in contracts that allow for that, but authors might need help understanding how they can make use of those. There is also in the Copyright Act determination of transfer provision that allows under certain circumstances for authors to reclaim copyrights that they have transferred.

And we have lots of success stories of authors who've been able to get back the copyrights in out-of-print works and bring them back into circulation, sometimes including using a Creative Commons license to put them in the widest possible circulation because they, like their publisher, might share the judgment that they're not going to be selling a lot more copies of this thing, but still want it out there for posterity to lay the foundation for future works. And so we help authors navigate by sharing educational materials, by making sure that their voices are heard through amicus briefs and testimony in Washington, DC, through our excellent staff. So that's the kind of thing we do at Authors Alliance.

Irena Royzman

Interesting. You are an associate reporter on the American Law Institute's restatement of the law of copyright. Is there a particular aspect of the restatement that you focus on?

Molly Shaffer Van Houweling

Our work on the restatement is probably surprisingly collaborative. And for many American Law Institute projects, I'm an adviser on the restatement of property. For example, my impression is that reporters do often divide up different chapters people are expert on and they write those chapters. Our work tends to be much more collaborative. So every one of the

reporters has had a role in every single section that we've written. However, we do often assign primary responsibility for doing the initial drafting of sections. And so I've done a lot of work on sections on derivative works and compilations on the written instrument requirement and other formalities attached to transfer of copyright ownership. And this summer, I'm focused on sections having to do with other formal requirements about notice, deposit, registration and so forth.

Irena Royzman What do you see as the hot issues in copyright law these days?

Molly Shaffer Van Houweling Well, I think it's hard to deny that fair use remains a hot issue. Of course, the Supreme Court decided *Google v. Oracle* on fair use grounds. And there have been a lot of fascinating cases recently coming out of the courts of appeals as well, really seeming to and fro between enthusiasm and skepticism, about fair use. And so for example, a recent controversial and to me somewhat surprising case, the *Warhol v. Goldsmith* case coming out of the Second Circuit, in which fair use was denied on behalf of the estate of Andy Warhol for the use, the unauthorized use, of a copyrighted photograph as a reference for his work depicting prints. It'll be really fascinating to see what happens to cases like that in the aftermath of *Google v. Oracle*. There is a petition for rehearing pending in the Second Circuit, and the *Warhol* case, regardless of how that turns out, I wouldn't be surprised to see a cert petition in that case.

And there are many things about the *Google* decision that are arguably software specific. So it's possible that courts like the Second Circuit will say this doesn't have anything to tell us about cases about copyrighted photographs like the *Warhol* case. But you could stretch it to be more generally applicable. And I'm really looking forward to seeing what courts do with it.

Irena Royzman The Supreme Court just granted cert in another copyright case, *Unicolors v. H&M*, does that case present an important issue?

Molly Shaffer Van Houweling So on the face of it, to be honest, it seems a little less important and fascinating than fair use and copyrightability of programming interfaces, which is what was at issue in *Google v. Oracle*. It's a more technical issue about how courts should review claims that there are inaccuracies in copyright registrations and what the standard should be for whether it has to be bad faith, intentional, misleading error, or whether something more minor could invalidate a copyright registration. It is important, I think, for a couple of reasons. One, the petitioners, I think, convinced the Court that there was a split among the circuits that made for lack of uniformity on

predictability, the potential for forum shopping, and the other bad things that come from having circuit splits, which is often quite persuasive to the Court that that's part of their job, to clear up circuit splits. So I think it's important for that reason.

I also think, and this reflects my teaching at the intersection of intellectual property and tangible property law, that having a well-functioning registration system, and just more generally record-keeping system for intellectual property rights is important. That the health of that is important, that the work that the Copyright Office has been doing to try to modernize its registration system is important. And so it might be a relatively, I don't know, as these things go, some people might find it not the most interesting copyright topic. But I do, in fact, think that it's pretty important.

Irena Royzman Why do you think the keen interest by the Supreme Court in copyright?

Molly Shaffer Van Houweling So, I don't know. I don't have any inside scoop. And I hesitate to try to read their minds. But I do think that it's impossible for the Court to ignore the importance of information technology, in particular, among the other things that IP and copyright govern. It's impossible to ignore the impact of information technology on our daily lives. And so, you know, Supreme Court justices use Google. And they know that it's a big deal, cases that impact the business practices of companies like that, that are so essential to all of our lives. And so I'm sure that every year that becomes more obvious to the Court. And so that's pure speculation. But one of my theories for why, what might have at one time seemed cutting edge or niche just seems like one of the most important things in our lives and in the economy. So they can't ignore it, and they can't ignore their responsibility to settle some of the unsettled questions.

Irena Royzman And are there particular types of copyright issues that the Court seems to take up, or it seems very varied? What would you say?

Molly Shaffer Van Houweling Hmm, there, thinking just back over the last few years about cases about edicts of law, about sovereign immunity, about fair use, now a couple different things about registration. It really honestly does seem to run the gamut. So it's impressive their appetite for lots of different kinds of copyright issues. I do have to wonder a little bit also, of course, this comes on the heels of a big flurry of activity, as you know, in patent law at the Supreme Court, maybe they got a taste for IP.

Irena Royzman Let's talk about competitive cycling. So from copyright to cycling. Can you tell us when you began cycling and when you began doing it competitively?

Molly Shaffer Van Houweling Sure. Well, I've ridden my bike since childhood, as most people do. And used to bike for commuting and so forth in college. But I got more serious about riding soon after I graduated from law school and did a couple triathlons. I'd been, in college, I'd been a competitive synchronized swimmer. And during law school, I tried to stay active swimming, among other things. And also while I was going to Harvard, in my observation, folks around Boston are obsessed with the Boston Marathon and with running more generally, and it's a lovely place to run along the river. So I got into running a little bit too. So yeah, to do a triathlon, I needed to ride a bike, too. So I did a few triathlons, and it soon became clear that I was best at the cycling leg.

And in particular, once I started teaching is when I got serious about racing my bike. And it was in part because the demands of training for all the parts of triathlon were time-consuming as I was launching my teaching career. So I decided to, to focus both on, on teaching and on one sport, cycling, which also had been my husband's sport since he was a kid and a teenager. He trained at the Olympic Training Center. He was a very serious junior cyclist. So we started our teaching careers, as you mentioned, at the University of Michigan, in our hometown of Ann Arbor, and so we rejoined, well he rejoined, and I joined for the first time, the Ann Arbor Velo Club, which had been his racing club when he was a teenager. And some of the same veterans of the club were, were members when we rejoined as adults. So it was really a nice way to get reintroduced to a different aspect of the community in my hometown.

Irena Royzman So prior to COVID, since COVID has put a damper on certain things, how many races would you typically do each year?

Molly Shaffer Van Houweling It's varied a bit over the course of my cycling career; there have been years when I raced over 40 times in the year. In Northern California, there are lots of racing opportunities, and cyclists tend to race quite a bit. More recently, I've been more selective. My work life has become more multifaceted and time-consuming in some ways. And also I've just specialized in some aspects of cycling and race less frequently, maybe more like 10 to 20 times per year. And now, as you suggest, it has been a while. So February 2020 was my last race.

Irena Royzman What do you enjoy the most about cycling?

Molly Shaffer Van Houweling

I enjoy the athletic and competitive aspects of it. But I think what I enjoy the most is that it's a great way to see places. So my husband and I, when we travel, we almost always travel with our bikes. And I'm almost always training for something. But that merely gives me an excuse to ride my bike a lot around the mountains of beautiful places. And also both the traveling and the training and the racing means that we've met all kinds of fascinating people all over the world — coaches and officials and volunteers, the people that are Airbnb hosts around the world, and of course, my competitors as well. And we've been, I bet like a lot of people during this year, we've been doing a lot of reminiscing about past travels and friends that we've met and getting back in touch via Zoom and other means with friends that we've met around the world. And it's really made me appreciate, again, that aspect of it, the memories that we've made of places and people because of the excuse of training and racing and the joy that that's brought.

Irena Royzman

You set a world record from what I understand. How did it feel to set a world record in cycling?

Molly Shaffer Van Houweling

I did. Back in 2015, I set what is known as the hour record, which is a little-known record but famous among cyclists for the farthest distance that one can ride in an hour. It's since been broken — I should say multiple times — so I'm no longer the female world record holder. Although I do hold numerous records for my age category. But back in 2015, I could compete across age categories. And it was extremely rewarding. As you can imagine, it was a, it was a long-term goal and effort that had all kinds of components, from training to nutrition to equipment choices to travel logistics. I have had great coaches who helped me along the way. My coach at the time was Dave Jordan. My current coach, Colby Pearce, has helped me to subsequent world records. My husband, who's been cycling, as I said, since he was a kid, he is really a logistical mastermind and loves to get into the equipment choices and so forth. So it's been really a team effort with him as well. So that was all a really engaging — challenging, but engaging — journey. And I have to say, upon breaking the record, my initial emotion, it was, well, happiness, relief because nothing went wrong. I knew going into it that I could do it, but I could also totally mess it up. So I was relieved that nothing had gone wrong. But also almost immediately, it felt bittersweet because this journey that had been so engaging, all of a sudden was over. And I realized how much I had enjoyed being on it, not just the culmination of it. So that's probably why I keep trying to set records for middle-aged women, because I always like to be striving for something.

Irena Royzman What lessons have you learned through cycling that have helped you in your work at Berkeley?

Molly Shaffer Van Houweling One important lesson, I think, is — it's kind of mundane, but really important — is about time management and the importance of literally just scheduling the things that I want to have as part of my life. So I schedule my races and my training on my calendar just like I schedule my classes and my faculty meetings, and so forth. And I think this is important for various aspects of my life. Also, various aspects of my work — I have administrative tasks, I have teaching tasks, I have research tasks. Every one of them could take up 24/7 if I just let things, you know, expand to their natural limit. And so if I want to have a multifaceted life, including a multifaceted work life, where I get research done, and I get teaching done, and I get administration done, I have to actually block out time that symbolizes and effectuates my commitment to different aspects. Because otherwise, you know, my attention would get drawn to whatever seems like the immediate emergency, and then maybe I never stopped working on that.

Irena Royzman You taught a class at Berkeley called Satisfaction and Law in Life. Is cycling a big part of that satisfaction for you? And what did you teach your students about finding satisfaction and success?

Molly Shaffer Van Houweling So cycling is a big part of satisfaction in my life. Really the side effects of cycling in terms of the travel and the friendships and the memories and the goals and the journey to accomplish big goals, which I find very satisfying. Of course, I didn't tell my students that the key to satisfaction is cycling (laughs). Although we did talk a lot about the importance of having a multifaceted life. But I think the most recurring theme in that class, which I co-taught with my colleague Kristen Holmquist, who has continued — my attention has been drawn to some other teaching and administration — but she's kept the class going. The most recurring theme was the importance of finding goals that correspond to one's internal motivation as opposed to only corresponding to external signs of success. And there's been research on law students and lawyers that finds that quite a few of them tend to be motivated, maybe attracted to law school, by external signs of success. Like, how prestigious is the law school you got into? How fancy is the law firm where you work? And so forth. Those things certainly can be correlated with satisfaction through internal motivation, but they aren't necessarily. And so helping our students think about what actually motivates them and how they can find that in their careers, even if it means taking the path less traveled that your

colleagues maybe haven't heard of. Who don't, that don't think it's the most prestigious thing. That doesn't mean that it's not the right thing for you. And so that's what we tried to impart on our students.

Irena Royzman With California having opened up completely and life returning more to what it used to be prior to COVID, do you plan to race again this year?

Molly Shaffer Van Houweling I hope to do a few races actually outside of California, if it seems the conditions are such that it seems safe to travel. All of which I don't take for granted. And I think in particular about folks, well, folks around the world, many of those friends that we've made around the world through our cycling travels — life is not back to normal for them; life is very risky and challenging. So I keep that in mind and also the people who are vulnerable for a variety of reasons, even closer to home where the conditions seem better. So I don't want to jump the gun to normal. But if conditions are right, I do hope to race a race coming up in Utah and then the National Championships for Masters racers, the middle-aged women that I've raced against, that'll be taking place in August in New Mexico, and I hope to make it there. And then the World Championship for Masters racers will be in October in Sarajevo. So, that seems like a long shot, but it would be really exciting to be able to travel and race internationally again. So I have that tentatively on my calendar too.

Irena Royzman Nice to hear. How has COVID impacted your teaching and work at Berkeley over the past year?

Molly Shaffer Van Houweling Well, of course, dramatically. I was associate dean; I have been associate dean for several years now. So the first part was being part of the team that tried to prepare everyone to make an immediate switch to remote instruction in March of 2020. And then we did the planning for the next academic year and decided that we would be all remote for the academic year that we've just completed. I was very involved in training other faculty members to use Zoom and to be prepared to do the best remote teaching that we could do. And then, of course, my own teaching was entirely remote. And then my own faculty meetings and committee meetings and everything else, just like everyone has been experiencing. So I think I saw it from both an instructional perspective and also an administrative planning perspective. I have to say that both parts were challenging and rewarding. The exercise of planning for a future that is so difficult to predict, it was extremely challenging and also rewarding and a nice chance to work with wonderful members of the

administrative team and the instructional team at Berkeley Law.

Irena Royzman You received an award for extraordinary teaching in extraordinary times. That must have been really meaningful. What lessons has the past year and a half taught you?

Molly Shaffer Van Houweling That was a meaningful award. In part, in large part really, because I think I won the award not for my own teaching, although I tried my best. And I think I really enjoyed actually the remote teaching in many aspects of it. And I did try to make the most of it. But I'm pretty sure the reward was for the training and facilitation that I did for other instructors to help them get up to speed and to encourage them to take on this challenge. And so it feels a little bit like winning the basketball award for the most assists, which is great. We don't give enough awards in this world, I think, for the most assists, as opposed to the most baskets scored. And so it was really meaningful. And it felt like a team effort. You can't win the assist award if your superstars don't score any baskets. So I think the superstar instructors scored by maintaining the excellence of our instruction. And so it was really meaningful to be recognized for that. And I think one thing I learned, honestly, I just learned how much I appreciate my colleagues and my students. They were my key source of human interaction over the last year. And so the joy that I always take from the unpredictability and spontaneity of the classroom, I valued it even more when it was such a large proportion of the human interaction that I had. And I really have to hand it to my students — they were not checked out, they were engaged, and it made it all the more rewarding for me.

Irena Royzman Are there changes that you made in your teaching or techniques that you employed that you plan to continue when the law school reopens in person, hopefully this fall?

Molly Shaffer Van Houweling Well, one thing that I tried to incorporate into my teaching was lots of different modalities. So, lecture, discussion, breakout rooms, polls, asynchronous participation via our learning management system. And I did that in part to fight Zoom fatigue, to break things up so that people wouldn't be bored just listening to me drone on for hours. But I think it was also effective in terms of letting students with different learning styles be engaged and shine, including in particular the asynchronous discussions that we had. I've always done those a little bit, but emphasized them more this year. And it really lets students come out of their shell who maybe didn't feel as comfortable speaking up in class conversation, although often I would pick up on the threads that they had started online, and that would prompt real-time conversation in which they would participate. So I

hope to continue to think hard about how to cater to lots of different students' learning styles and giving lots of students an opportunity to shine in different ways.

Irena Royzman In some ways, COVID gave us access to courts that we didn't have before. We could listen in on arguments, watch trials. For the Supreme Court, we not only heard the oral arguments, but Justice Roberts went from Justice to Justice giving each an opportunity to speak in a way that wasn't the case before. And so the Justices did speak up. And do you think COVID has changed our access to courts long term and do you see other long-term impact from COVID for the legal profession in particular?

Molly Shaffer Van Houweling I do. And what I'm going to say isn't really specific to courts or to the legal profession. But I think more generally, we were forced to do things, some of which we would have predicted were impossible, or very difficult or undesirable, to do. And I think we found, well, we just overcame the obstacles to doing some of those things. Some we discovered, I think, were easier than we anticipated; some needed a lot of infrastructure that we now have, that we didn't have before. And I think some turned out better than we anticipated. And so, you know, I think there were lots of forms of skepticism that are now just impossible to maintain because we've proven that it's not impossible to do those things. So I think it will be very difficult to turn back the clock on some of the innovations that we've seen because we needed a proof of concept and we had it. So, now the arguments in favor of access and transparency — you know, the arguments on the other side — some of them, I think, will just be very hard to maintain, and we've made lots of investments in infrastructure and technology. And we might as well extend the benefit of those. And I hope to be able to participate, to continue to participate, in more conferences than I might have been able to. We've done some great remote work at the American Law Institute that has been innovative for that long-standing and sometimes traditional institution. And I sure hope that we continue to capitalize on those investments and that proof of concept to shrink our carbon footprint to make it easier for people who might not have participated at all to participate. And so I'm looking forward to that.

Irena Royzman Let's talk about opportunities for women in IP and law more generally. About 60% of the students at Berkeley law school are women. Do you know why that is?

Molly Shaffer Van I honestly don't know. We don't engineer it that way. And so although I don't know, I have to think it has something to do with

Houweling the great tradition of women in leadership positions at Berkeley Law. I know that my late colleague Herma Hill Kay was proud of our statistics and how it demonstrated how Berkeley Law is a welcoming place for women. And I'm certainly proud to be at a place where she was the first female dean and such a mentor and role model for female professors and leaders. And so I hope that that's contagious. And that that suggests some of the success that we have with women who are interested in being lawyers.

Irena Royzman Is the experience of women law faculty different than that of men these days?

Molly Shaffer Van Houweling Honestly, I think the dramatic difference that I see is between the experience of women faculty now versus the experience that I hear about from colleagues, like Herma and even others who followed in her footsteps, who found that they were often the only woman hanging out in the faculty lounge, the only woman speaking up at a faculty meeting, the only woman serving on a committee, and I never find myself in any of those situations. So when I hear from my senior colleagues about some of their earlier experiences, it makes me so grateful for their bravery and perseverance for me to be in an atmosphere where I, it never occurs to me to question whether my voice is welcome and appreciated among my colleagues.

Irena Royzman Are there efforts to increase the number of women tenured law professors and law schools generally?

Molly Shaffer Van Houweling I think there are. There's lots of enthusiasm for diversifying along lots of dimensions. The makeup of both the pipeline and the student body and the makeup of our faculty. And some things that promote that are not specific to women, although they might have a differentially beneficial impact on women. And those are things like family-friendly policies of the type that we have at Berkeley that provide for both relief from some responsibilities for purposes of both childbearing and child care for both men and women, and also pausing the tenure clock, so one doesn't have to be scrambling during that child care to also be producing more in their academic portfolio. But instead, we have an official policy of enabling people to hit pause during that time. And so I hope that that makes the place friendly for parents, for men, for women, and perhaps remove some of the obstacles that have made it challenging traditionally, for women to be as successful as they'd hoped to be.

Irena Royzman The numbers of women in academia are higher than some of those when it comes to female partners at law firms and the

numbers at companies. Women make up only 20% of corporate boards. The numbers of women partners at law firms are similar, and they're lower in IP. Why do you think that is?

Molly Shaffer Van Houweling

So I'm sure some of that reflects outright discrimination and more subtle forms of discrimination that come from the type of implicit bias that encourages people to be more comfortable with other people who are like them, which means that disparities tend to be self-perpetuating. I also think it's possible that there are aspects of life in a corporate boardroom or in some law firms that don't correspond to everyone's internal motivation, including the internal motivation of prospective female board members or partners. And so some folks have chosen deliberately to pursue different dream jobs, like a dream job in academia as I have. So I am sure that it's a mix of factors, and it may be that there are some aspects of corporate practice, law firm practice, that have a ways to go in terms of aligning with people's internal motivations in a way that would make them attractive to everyone.

Irena Royzman

When you were clerking in the Supreme Court and now, most cases are argued by men. Even with a third of the Justices being women, a small percentage of IP cases are argued by women. And typically, when women argue it's on behalf of the government, not private parties. Do you see this changing?

Molly Shaffer Van Houweling

I sure hope so. I participated in a panel at Berkeley Law that must have been in, in 2019, with a panel of entirely female Supreme Court litigators — that was the point of the event — and from a range of seniority. So up-and-comers and very experienced Supreme Court litigators, including one who often found herself the only one of her cohort, but was observing that she was increasingly joined by other female litigators. So I was quite inspired by that event. And it left me optimistic, both because when I heard from those panelists and because, of course, of the enthusiasm of the female students who were there to be inspired, and hearing about the career paths of those litigators. If it's true that there are lots or an increasing number of women litigating on behalf of the government at the Supreme Court, well, that's one of the best training grounds for Supreme Court litigation practice in the Solicitor General's office, for example. And many Supreme Court litigators and private practice have had that experience. So if we're seeing more women litigate on behalf of the government, I think that's a good sign, more generally, of things to come in terms of diversifying people who are arguing on behalf of all kinds of parties.

Irena Royzman Let's talk about advice. If you could turn back time, what would you tell your younger self starting out as a new lawyer?

Molly Shaffer Van Houweling So, as I've said, I landed my dream job. And so I couldn't really be more grateful for the turns that my career has taken and the mentors that I have. So I guess one piece of advice, though, that I wish I had taken, is to keep a journal. So those memorable years clerking, clerking at the Supreme Court, where the cases that we worked on included *Bush v. Gore*. And more relevant to my professional interest, *Tasini v. New York Times*, a very important copyright case. And I have tons of memories. It was a memorable time, but I also wish I had some notes to myself to help me capture some of those moments.

My other piece of advice is the one that I've already mentioned too — and one that I tell my students every semester — and that's to follow your intellectual curiosity. Both because I think that's a way to be a good lawyer — to really get to the heart of the most important questions and what you're working on — it's also personally satisfying. So, this is a way to align your professional success with your internal motivation, that includes your internal intellectual motivation. So if you make a career of trying to answer questions that are interesting to you, that is going to be a career that is interesting to you. So both on the kind of micro level, like, what are you working on right now? What makes you curious? And also the macro level — what in life makes you curious? I advise my students to follow that.

Irena Royzman Great advice. Thank you so much, Molly.

Molly Shaffer Van Houweling Thank you so much for having me, and thanks to your listeners, and I hope we get to talk again soon.

Irena Royzman Thank you.

Irena Royzman I want to thank Professor Molly Shaffer Van Houweling for her time. I hope this discussion inspires all of you to follow your intellectual curiosity. Thank you all for joining us for Conversations With Women in IP. See you next time.

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