Good morning, my name is Lisa Tahk. I'm here with the University of Pennsylvania Law School's Oral Legal History Project. It's 10:30 on Monday, November 13, the year 2000, and we're here at Berger & Montague to interview Sherrie Savett.

LT: Good morning, 

SS: Good Morning

LT: I know that you grew up in Philadelphia

SS: Yes

LT: We're your parents also from Philadelphia

SS: Yes they were, they are

LT: What did they do for a living

SS: My father was a lawyer, and my mother is a housewife. My father actually has an interesting story. He went to Law School when he was 36 having four children and a business. Went to Temple at night. And put out a shingle when he was 40.

LT: Do you know what prompted him to do that later in life

SS: Yes, he was a butcher and had a small food market in north Philadelphia and it was quite dangerous, and the neighborhood, and hard work long hours. And so he decided to go to law school. It was fewer years than medical school. He had gone to the Wharton School, and he was very smart. And he did very well, even though he went at night and ran a business

LT: Did that influence your decision to go into the law?

SS: I think it did. Yes

LT: Was there anything about. How old were you when he went back to law school?

SS: Well, I was in 8th grade when he graduated, because I remember going to his graduation so I guess he was in fourth grade when he started. It took four years at night.
LT: So, when you went to the University Pennsylvania for your undergraduate work did you already have in mind that you were going to be at the law school.

SS: I think I thought I'd like to become a lawyer. I didn't know that I'd end up at Penn Law School, but I'm glad I did.

LT: What path led you to Penn Law School

SS: I guess I could have gone to NYU, I think Columbia as well. But I love Penn, and I stayed.

LT: How was the admissions process for you.

SS: It's so long ago, but I don't remember it being painful.

LT: So just the same, LSATs, personal statements, no interviewing

SS: I don't think so.

LT: Okay. At the law school, in the 70, in the early 70's it was a really exciting time. Vietnam War, Roe v. Wade all these things going on. What kind of atmosphere was at the Law school? Were people really interested in what was going on around them? Did that affect you in any way?

SS: I think it was the hippie era, and um lots of protesting about Vietnam. People were really afraid about getting drafted into the army. And it was kind of not de rigueur to be interested in business or in business law or making money. People in those days saw the law as an instrument for social change. And I was always surprised how hard people really were studying. Even though they kind of on the surface, wanted to act like they were social activists, but they cared a great deal about how well they did in school.

LT: That didn't seem to match

SS: No, but these people were all such excellent students and always had been. And I think the competitive drive was in them, so it was a little confusing to see people seeming not to care about the careers in big firms or making a lot of money who were really so concerned about their grades the whole time. I thought there was a bit of an inconsistency, and in the end very few people ended up really going into socially active things. Most people still did end up in fairly traditional law jobs.

LT: So, during your three years at the law school you yourself knew that you were going to do some type of business law or did that develop around the three years.
SS: I just loved the idea of class actions. I had heard David Berger come to speak at the law school and I liked the idea of these highly intellectual cases involving big business either in anti-trust or securities litigation where the plaintiff represented the underdog, the public investor the small business. So to me that was the perfect combination of doing something highly challenging in the big time business world, but being on the right side of the issue. I was very attracted to the class action device, because I thought it somewhat equalized the power between the small investor or the small business against the big corporation because you had the power of the whole class behind you.

LT: What kind of courses did the law school offer that helped you to develop your interest.

SS: I don't think any. I think, hearing David Berger speak that one time really made a big impression on me. I always knew that I wanted litigation. I think it kind of suited my personality, I like public speaking, I like drama, I like writing, I liked advocacy, I always loved the moot courts in school.

LT: How was the job search process for you. You mentioned that you had already heard of David Berger. Did you know that you wanted to work for him? How did the whole real-life, I guess, process of being an attorney start.

SS: Well, I was not on the law review, when I was in the Law School. So I didn't have necessarily my pick of every job that I wanted. But I did get interviewed by some of the large firms and I was competing against people in my class that had probably a higher standing than I, but I knew that I had real litigation skills and instincts and judgement. I even knew that at a young age. And I did go with a more traditional firm originally it was then known as Goodis Greenfield, but I within a year came to David Berger, and so I've really been doing this class action, complex litigation my whole career. For about 25 years. and it really suits me.

LT: Can you talk about the training that you had early on what kinds of experiences formed your career early

SS: Well, I would give a lot of the credit to David Berger. He was totally unbiased in terms of whether you were a woman or whatever your religion was or your background. He was just looking for talent, and when he saw that I had some ability, he really let me perform in a really independent manner. One of our early cases together was the Magic Marker Securities litigation. And there were two critical motions in the case. One was the class certification motion and the other was the motion to dismiss. And I worked on the case with David Berger and I was a really a very young lawyer, and think I was only, maybe two years out of law school and he let me argue one of those major motions in the federal court. And we both won our motions, and in those days that was a really big case, and we ended up settling it, as I recall, for about 4 million dollars and it was one of the
largest cases in the Eastern District of Pennsylvania in those days. And that kind of launched me, that gave me a lot of confidence. That case was particularly interesting b/c there was no big corporate defendant there were a lot of participants in a stock manipulation scheme. So we had individual settlements with a lot of different entities, including individual brokerage houses, so I had to deal with a lot of difficult problems of partial settlements and having to indemnify the settling defendants against the non-settling defendants. Some really tough issues that are still tough issues today when you make a settlement with some but not all of the defendants.

LT: So for you, you had this very hands on training early on in your career. Do you find that now at this stage, 30 years from then, that there’s, young attorney’s are still getting the same kind of hands on experience or is there a difference in how people are trained

SS: In our firm it’s probably unlike some of the larger more traditional firms. We’re not as big. We have about 50 litigators. And our staffing tends to be more lean on each case. So we generally will have a senior partner, like myself, and I’m still a very hands on litigator, a junior partner and an associate. So I think they each really feel very much a part of the team. We have strategy meetings all the time. Another one of my early and very formative cases was a securities litigation that I had against the Franklin Mint. A lawyer from New York, Richard Danenberg, who was from the Yale Law School, brought the case to our firm. And I was assigned to it. And I worked with him and he was an absolutely great lawyer. And I remember examining hundreds and hundreds of documents with him in a hotel room where we didn’t even had a good desk and we had the documents spread out on this big bed and we were just highlighting them and throwing documents at each other and becoming so excited when we would see something interesting. And in that case, I recall, that we had the class certification motion denied on what I thought was an improper ground, but it was a big blow to us in the case. But we decided that we were going to. The case was really good on the merits, we were going to continue and litigate it even if we had to try it for one individual plaintiff and then appeal the class certification denial. We couldn’t appeal it then because it was an interlocutory decision. And we also were retained by another plaintiff, so we were going to renew the class certification motion. And on the 18th deposition we questioned a witness and we asked a very offbeat question and we got the smoking gun of the case. It turned out that there was a document that we hadn’t seen that actually had a doodle on it which was a cross with tears coming out of it. And I guess that was somebody’s reaction to what was happening at that time within the Franklin Mint. And we were able to, after that document came out and that testimony, even though we had had the class denied we were able to settle the case and agree to a settlement class. And that settlement was 6 million dollars and that settlement was the second largest settlement of that type in the Eastern District of Pennsylvania and that was around 1980.
LT: So it seem like the early part of your career was so active. Did you run into negative type prejudices b/c of your gender or

SS: By the way I just want to make another point. The cases that I've really litigated hard stick in my mind permanently. And I can actually remember the few smoking guns that I have come across in these cases, and they're like emblazoned like a xerox copy on my brain. Like I still remember where the important sentence was on the page. I think that's what happens to litigators. because you get so involved with your cases, and they mean so much to you they're practically like children. Um..did I experience. I don't think I've had much negative experience throughout my career for being a woman. Definitely not in the courts. I have, Almost my entire practice has been in the federal court. and I think almost no judges that I was ever before made a difference b/c I was a woman. I did have some trouble among counsel both on the plaintiffs side and on the defense side b/c I think some of them really did have kind of an old boys network and there were times that I felt a little out of that, but not so many. I mean, I've, pretty aggressive litigator and most of the time was able to get along w/ most of my, both adversaries and people on my own side, but I can't say its never been an issue.

LT: Going back to actually what you were talking about, the smoking guns and those cases that really stand out in your mind. Did you know before you took those cases you were going to have an emotional attachment? Can you sense beforehand, this is going to really be a case that's going to grab me?

SS: Sometimes I could. Like we had a case against what was then the largest bank in Seattle, Washington. C-first Bank. And we got, toward the beginning, a witness who was a former employee came to me and told me some of the facts of what really occurred, and I knew that this was going to be a case that I would be totally involved in. And some of them are like that. I'm trying to think of some of the other ones that from the beginning I knew that I was incredibly involved, sometimes it happened as they went along. But sometimes it arose b/c a witness came and talked to you. Sometimes b/c the nature of the wrong was so egregious and complicated and you unraveled it and you felt so good about that.

LT: What about cases where the class is sort of gathered. I don't know if Berger & Montague does class formation like that. Where you find a securities irregularity and then you build a class, is that a type of litigation you do.

SS: I really don't understand your question.

LT: I know that in some instances with securities class actions the attorneys find some kind of irregularity and then they sort of put out a notice and they ask people to join the class Do you find that you have less attachment to those types of cases. Have you ever been involved in that kind of case.

SS: We don’t put out a notice when we haven’t been retained.
LT: Okay, you don't get cases that way. I was trying to get at if there's a pattern of cases where it would make the cases more interesting or less interesting.

SS: I don't think that would be it. I'm very interested in cases that involve accounting irregularities. And it's not like somebody sticks their hand in the cookie jar. These are very, very bright executives and so they come up with all kinds of clever ways to hide problems within the business. They play around with the expenses or the revenue side. I have a case right now, where the allegation is that b/c a business was going down and they weren't selling their products they kept loading products on their customers to the point where sometimes their customers had 52 weeks of inventory and didn't have to pay them for half a year but when the customers just wouldn't take any more they started shipping the product around their own warehouses and making it seem as if they were actually shipping it to a customer but they were parking it in their warehouses and at the end of every quarter, they got huge fleets of trucks just to ship the product around to make it seem like it was really moving.

LT: And that all comes out in the accounting irregularities

SS: Yes b/c there are rules about revenue recognition

LT: Actually I have some questions about the Sotheby's auction case

SS: Yes

LT: that just came out. How did Berger & Montague become involved in these cases.

SS: We were retained by a shareholder. The stock went down materially when the conspiracy was revealed. And it turned out that our shareholder was chosen as the lead counsel, lead plaintiff, and we were chosen as the lead counsel. So it was very interesting b/c the defendants argued on their motion to dismiss that there was no duty to disclose a criminal act or even an act – they hadn't admitted that it was a criminal act – they hadn't said anything on the subject so they had no duty to disclose. So we found that they had made statements in their reports about the intense competition and they were really doing well anyway. So we said once they brought up the subject of competition they had to disclose that they had eliminated the competition by their price-fixing conspiracy. We won the motion to dismiss, and it wasn't until we won that motion that they started to talk to us b/c I think they thought they could get our case knocked out.

LT: Was this one of your more memorable cases

SS: It was in a way b/c the subject matter of the art world was so interesting. It was different b/c it wasn't financial manipulation by accounting but it was by price-fixing. And there was a lot of intrigue about the personalities in Sotheby's and
Christies, so that made it very interesting. But in terms of litigation, it happened very fast. Even though it was a very big and good result, excellent result for the class. I mean we believed we were going to recover about 60% of the absolute damage of the class members on a case that could have been knocked out, we think that’s really great. So for that reason it was exciting, but I’ve had other cases that have been much more in the trenches that have been fought much harder, that are in fact really much more memorable to me.

LT: In terms of settlements is settlement always the goal. Is there ever a situation where you would bypass a settlement for litigation?

SS: If I had the opportunity for a good settlement I always take it because I think that trial is just too risky. Now one of the cases that really sears in my mind the most and was one of the most formative was a case in Florida called In re Cascade, securities litigation. It was one of the biggest frauds of the nineties. It was a women’s apparel and cosmetic company that claimed to have about 250 apparel stores and over 200 cosmetic counters and was growing very rapidly. In fact the truth came out that they had maybe 50 stores virtually all of which were losing money and they had no cosmetic counters it was a complete fiction. And when the company was liquidated, all the inventory of these so-called cosmetic counters consisted of a few bottles of colored water that fit into one brown paper bag. So the company was, once it went into bankruptcy was liquidates and there was absolutely nothing left. There were no assets. And my class had lost – I think it was around 75 million dollars. So we had to go after the professionals, the accountants. And Raymond James, who was a very large regional brokerage house had an analyst that covered this company – it was the only major house that did. And in the space of less that two years wrote 30 glowing reports about this company. The stock went up to 11 dollars and one of the things that the analysts said was pristine balance sheets. And these cosmetic counters were the key to the growth, and he had never even gone to visit any of them b/c if he had he would have found out that they weren’t there. There might have been one for show in one store. So this was a very unique case to have a case against the brokerage house, but not on even on their brokerage side, but on their analyst side. So this is an example of why I think the litigation I do is so fascinating. And I don’t think there had ever been a case where a security analyst had been sued for recklessly written research reports. So we got one of the experts in the country who actually teaches the CFA course, the Certified Financial Analyst course. And they have a set of standards just like accountants and we believed that this analyst breached every one of them. So we could not settle the case. They didn’t take it seriously at all. We were w/in less than a week of trial and the judge still hadn’t decided the summary judgement motion. We had gotten nowhere on settlement. The case was 6 years old. They had tried to knock out our experts. I mean, there must have been 50 motions in the case. So we got down to – we got three days notice to argue the summary judgement motion and what was horrible was we were still taking the expert depositions. There were reasons why the schedule got all compressed at the end. It was terrible for us.
was up in Boston defending our expert and I got notice that in three days I had to go down and argue the summary judgement motion in Florida. And it was just horrible. I had to actually cut the deposition short and I had to stay up all night prepared for it and we walked into court. But the evening before we had made our first progress in settlement. And we were within a few million dollars of each other. They had really offered basically nothing up until that time. And we got to the courthouse and the judge was very, very strict. A woman named Leonora Nesbitt in the Southern District of Florida. To our amazement, the lead defense lawyer had had a heart attack overnight. He was the senior partner of this firm and his junior partner – who’s a very experienced lawyer – came in and said your honor, my partner so and so has had a heart attack overnight and I wasn’t prepared to argue this motion. Can we have a two week extension of this and the trial? And the judge said no. Seriously. And she said, “Ms. Savett I want to hear argument on the summary judgement motion. I got up and I actually started to argue it for like a minute. And a man that had served as a mediator in an unsuccessful mediation, we had called him on our way in from the airport, just to see if he could try to broker a settlement cause we were really close. He came bursting through the courthouse in his golf clothes with cleats and he went up to the podium and he said, “Your honor can I have just 20 minutes with these parties. I think maybe I can negotiate, I think maybe we can have a settlement.” And the judge hesitates, and she says okay you can have 20 minutes but if you’re not finished in 20 minutes, I want to hear argument on summary judgement. And right in the hallway outside the courthouse we settled that case after 6 years of brutal litigation. And I believe that it was a totally unique case. Cause I don’t think a brokerage house had ever paid a substantial settlement involving their analyst and a falsely written research report. So that was one of my most exciting cases and it wasn’t one of my biggest, but it was a good size one. But it wasn’t anything compared to a Sotheby’s at 70 million of a Waste Management at 220 million or I don’t know whether you know it was just in the Wall Street Journal and the New York Times Friday, but we um a the company announced that we settled a partial settlement of the Rite-Aid securities litigation for 200 million dollars. We did not settle with the accountant or the inside officers, but we settled with the company. Those, I think were my three largest. But this one was 9 million dollars, the one in Florida, but in some ways it was the most meaningful b/c of what we went through.

LT: It seems that in litigation it’s part preparation and part chance from what you said with the heart attack

SS: Well that didn’t make any difference in the result actually. I don’t think that made any difference.

LT: Do you think that if the partner had been there.

SS: I think the same thing would have happened. I think we still were trying to settle it. B/c everybody, it was the eleventh hour and everybody was up against the
wall. But it just went to show you how stern the judge was. She just felt the younger lawyer was with the case for 6 years and was capable of arguing it and the case was very old. She didn't want to wait any longer.

LT: How do you feel that mediation works.

SS: Excellently. Every single class action that both parties have agreed to mediation that I've ever had. Ended up settling. Sometimes not in the initial sessions. Sometimes it took a while. But just the fact of having that third party in there. Who is really, really bright and would stick with it and force the parties to deal with each other. Now getting a party to agree to enter into mediation is difficult sometimes. I think it's absolutely great and there are only a few people I've seen who can do it really well. Cause the mediator has to have so many skills. They have to be very smart. They have to be able to get a very good grasp of the strengths and weaknesses of both side of the case and they have to have tremendous negotiating and interpersonal skills.

LT: Are there certain people that you go to for mediation

SS: There are a few that I think are outstanding

LT: And who chooses the mediator

SS: It has to be agreed to by both sides.

LT: I have a question as to the new economy and the internet and all the emphasis on the stock market. Do you find that it's changing securities litigation in any way? With all the media hype that's surrounding it these days.

SS: What's changed is that the access to information is so rapid and so much fuller. That there's even more competition in my field of securities class action litigation and there's so much information coming at us all the time. So, I know when you're a senior partner you're supposed to work less. But I'm working as hard or harder than I've ever worked

LT: What about the PSLRA that was enacted in 1995. Do you think – It's been 5 years since is passed. Has it made an impact?

SS: A tremendous impact. The pleading standards are very very high and you have to plead fraud with particularity and great specificity. And so it causes us to do deeper investigations before we file complaints. And put tremendous amounts of work in - upfront and some cases that are good get dismissed. Which is really not fair in my opinion because I think they're expecting us to know too much before we even have discovery. But in that way it's changed the landscape a lot, but if you can survive that motion to dismiss the stakes go up a lot.
LT: I'm wondering if you also encounter ethical type dilemmas because you are representing a class, rather than an individual. If you feel that trade-offs need to be made.

SS: I don't feel that way because in most situations even in individual or an institution with a large loss I think its still best served to bring the class action. But there are sometimes when it's more advantageous for the client to bring their own individual action. You really need to look at it on a case by case basis

LT: I wanted to end our discussion with just some questions on lecturing. I noticed that you've lectured a little bit at University of Pennsylvania and Stanford. Is that correct?

SS: Well.. Stanford was only once. Once Mel Goldman from SF asked me to do a class with him on sec litigation. At Penn several years ago I taught in a class that was joint MBA and Law school class. That was during the era when there was so many deals, transactional situations so I spoke about the point view of the plaintiff’s class action attorney.

LT: How is teaching different from the practice What enrichment did you gain from that.

SS: I loved communicating with these really bright students. Who were very much in the real world. The other thing is that it's easier because you just have to make a good argument or present the information its not a total win or lose situation like it is in the courtroom or on a litigation I found it more relaxing. Even though you have to prepare well. There wasn't any viciousness. Like unfortunately there's a lot of hostility in litigation. And also the stakes are so high. But that's why I'm really an advocate of settlements because I think that everyone can win in a settlement. And most of the time a good case will end in a settlement. Its - This Cascade case that settled just a couple of days before trial was very unusual. B/c we had survived all the significant threshold motions and the case I believe had a lot of merit. We couldn't come to any meeting of the minds on how to value it between the two sides. But that usually doesn’t happen. With sophisticated counsel on both sides usually, you make, everyone compromises but there's enough of an acknowledgement of risk on both sides that you find a way to settle it.

LT: When do you think the viciousness comes out the most

SS: I think it has a lot to do with individual personalities and I think judges can do a lot to control it. I think when judges take a firm hand and they really make fair decisions and make them rather promptly. Counsel tend to behave better. If judges are really slow in making decisions or they make unfair decisions that favor one side or the other, then unfortunately I think the behavior gets much worse b/c people try to take adv. of that.
LT: Do you see yourself on the bench in the future.

SS: I think it would be great to be a federal judge. I mean I'm not counting on it, and I'm not lobbying for it or anything like that, but I guess life can take a lot of twists and turns but it would be something that I think would be the greatest job in the world.

LT: Do you think that it would be the next level in terms of challenge for you.

SS: I think that it would be a great challenge, but I don't think it would be more challenging than what I'm doing now. It would just be a different challenge.

LT: And what about academia

SS: No, I think I'm too action oriented. I think I really just love the adversarial process too much. I love keeping my hand in it. And I do do a great deal of speaking at PLI and ABA. I - probably 5 or 6 times a year, so I do feel like I'm teaching. But I - the main thing that really, really excites me is to develop these cases and litigate them.

LT: I'm done

LT: I did want to ask you one more question about juggling all this work. You're definitely involved large cases, time consuming cases. How do you juggle the interests of between family and career?

SS: Well that is the biggest challenge of all actually. I mean I've had three children. Right now they're ages 17, 20, and 23. And its so - I think it is so much harder for women in the profession, especially women litigators. B/c most men even though they love their children and they're involved with them do not carry as much responsibility with their kids like getting them to the dentists making sure they have their doctors appointments attending all their school plays. Making sure their homework's done. I think that its just - I feel torn apart so many times and have over the years b/c I've tried to juggle everything. There are days that you feel like you haven't done anything well. You haven't spend enough time with your kids, you haven't worked enough, but all in all I really wouldn't change it. I wish had more time to cook and do some really simple things like organizing my china around my house. Every time I entertain I can't find half my serving pieces b/c you kind of throw them back in the closet when you're done because you have to move onto the next thing. But seriously I think that um it's underestimated how much more responsibility women with children and families have who are active practicing lawyers and it makes a lot of sense that a lot of women are on four day schedules or flexible schedules I never did that. I always tried to do it all and um it was very hard and it's still hard to this day.
LT: Do you think the profession has become more accommodating now in the year 2000

SS: I think it is from what I read. I was in a firm that was quite accommodating. But the problem is that my own personality didn't allow me to make a lot of accommodation so I tried to do everything without ever shortchanging work or without shortchanging my kids and so I can't say that I had a very relaxed life.

LT: Do you find that's something common w/ litigation

SS: women attorney's

LT: In litigation

SS: Yes, I've spoken to some of my friends and they all complain of the same kinds of things. But one concession that I've made to myself is that I really care a lot about exercising so I try to do something every morning and now I come to work later than I ever did before. I usually don't get in till about 10 o'clock. But I try to get in at least a half an hour or hour of exercise almost every morning and that makes me feel a lot better. And car phones help a lot too b/c a lot of my work's on the phone so I can work all the way in. My commute is only about half-hour or forty-five minutes but I really make good use of that time.

LT: Do you feel that the time that you spend doing things other things outside the firm. Does that help you be a better lawyer?

SS: Definitely, without questions.

LT: What kinds of things from the outside do you bring inside with you here.

SS: Just um I guess. Understanding of people. Very, very important. Networking in my community. Somewhat involved in political life. Just having friendships with the parents of my children. Being involved in the community. I think that all makes you a better lawyer. Suprising but people you don't even know. Know you're a lawyer. They kinda like somehow know about you. A lot of people that I've run across along the way not through business have retained me as their lawyer. And they've had all different kinds of problems, but I guess they trust me b/c they saw me in other contexts. Like one of the fathers of one of – my son who I really didn't know very well. He was an oncologist. And when he had a problem with a roll-up of one of these big companies that buys medical practices and then they bought them up and then they undid the contract. He came to me, and I had never done anything quite like that before. But a good lawyer can handle any substantive area I think and negotiation skills are negotiation skills no matter what context you use them in. and I, I was able to actually save his economic life I believe. And he was able to start a new firm and had the money to do so b/c of
the settlement we made. That’s just an example of something I found very satisfying where I brought the outside world into my practice.

LT: Actually another question. How has being in a smaller firm, like Berger & Montague really helped you?

SS: Well, I love the size of our firm. I mean, it’s just about small enough to get your hands around. I’m starting to feel it’s getting almost too big for that. Even w/in our firm, I basically manage half the firm which is our securities litigation dept. So there are approximately about 20 some lawyer under my aegis. I like that b/c I have a personal relationship with every one of those people and I know what they’re strengths and weaknesses are and I think I’d know how to best use them. I like that very much. I sometimes can’t even imagine what it would be like to be in a 300 or 500 person firm but I guess you have own little group within that firm. But I feel like that in this firm I’ve helped to shape and mold the firm and I’ve made a huge difference so I like that very much too. And I’m part of the management of the firm.

LT: Do you, In terms of your younger associates When you cultivate them, as a female, do you think you have a different perspective.

SS: I do. I think I get a lot closer to them than they would with a man, and my own department has a very large number of women. I think it’s at least a third to a half which isn’t true in the rest of the firm. And I don’t know how that happened b/c I don’t think anybody discriminates. Yes, I’m really attracted to the women lawyers and we have a special bond.

LT: And that concludes the interview

SS: Thank you

LT: Thank you.