

Weitzman: This is Molly Weitzman interviewing Thomas Kuhnle.

Can you tell me your name and where you live?

Kuhnle: Sure, my name is Thomas Kuhnle, and I live here in Palo Alto.

Weitzman: And what is your current occupation?

Kuhnle: So currently I'm a Superior Court Judge and I sit in Santa Clara County and my particular location is San Jose. So I'm a trial court judge for the state of California, but the cases I keep track of are here in Santa Clara County.

Weitzman: Where did you attend law school?

Kuhnle: So I attended law school at Stanford law school, which isn't too far from here, and I attended from 1992 to 1995.

Weitzman: When did you become a judge?

Kuhnle: So after law school, I worked in a law firm and I actually worked in the same law firm for approximately 15 years and in those fifteen years I've worked on all kinds of different cases including; environmental cases, and intellectual property cases, car dealership cases where always interesting, and a number of pro bono cases as well. And I had a terrific time practicing law in that area but I also was interested in becoming a judge at some point. And so you can become a judge in two ways, you can either be elected and if there's an empty seat

or if you challenge a sitting judge, you can participate in the election and the judge with the most votes wins. Alternatively, you can be appointed by the governor, and I was appointed by governor Arnold Schwarzenegger and my appointment was at the end of 2010. So my first day as a judge was January 23rd of 2011.

Weitzman: So you wanted to talk about guardianship, which has to do with your Special Immigrant cases.

Kuhnle: Well, let me take you a step back. I became a judge, as I said, in early 2011 and when you become a judge we call ourselves "baby judges", some baby judges are actually quite old but, my first year I did a criminal calendar, focusing on misdemeanors. That was actually in the courthouse that's here in Palo Alto. Then I did, after that, two and a half years of fairly serious felony cases and misdemeanor cases focusing on domestic violence. And that was a very difficult assignment at times, because domestic violence is a difficult issue. Then I did about 6 months of general civil trials, so I moved away from criminal work and into civil work. At the beginning of this year, at the beginning of 2015 I started the probate court assignment. When you are a probate judge, some of the things you do is wills and trusts and other documents and other procedures that happen when somebody dies and has property that they want

to distribute to family members and other people. So that's the core part of my assignment, but there are other parts of it that are actually quite interesting. I do adoptions, so if there is an adoption in Santa Clara County, right now I'm the judge who performs that ceremony. We have somewhere between 4 and 6 adoptions each week. Sometimes they're cute little babies and sometimes they're teenagers and sometimes they're actually adults who get adopted. I do name changes, so if you're in the county and changing your name; outside of a wedding or a birth, then I'm the judge that approves that. So there are people in their 30's or 40's or 50's who want to change their name and I'm the judge who reviews the paperwork and makes sure that everything is correct and appropriate. About 35 to 40 people change their name in our county each week, and I'm the judge who oversees that. We also have guardianships which we'll talk about in a moment but we also have conservatorships, so if somebody is old or has developmental disabilities or otherwise needs some assistance from somebody, then we sometimes appoint conservators and they're the people who can make decisions on behalf of either old people or people with deficiencies in their mental capacities. Those are the ones that I oversee not just appointing them but also making sure that they carefully keep

track of the finances of the person that's conserved and all of that. And in the final, big chunk of work I have is a mental health calendar. Some people in our county have such significant mental health disorders that the county has a role of taking care of them. And sometimes when you take care of people with mental health disabilities, they need to be kept in locked facilities because they need help, they need to take their medication, they need to be cared for. But there's always a tension between caring for them in locked facility on the one hand, and on the other hand, helping them live a free and happy life. Sometimes they don't want to be kept in the facility, so the way the law works is that they can challenge their placement in a secured facility, if they do then I'm the judge who hears those challenges and figures out whether the confinement to a particular mental health facility is appropriate. My assignment as probate judge includes all of those different calendars in fact sometimes I do things like quarantine orders like if there's somebody with a infectious disease that people worry about, those sometimes come to me as well. Southern focusing on guardianship, there are times when certain people need a guardian, you have to be under 18, and if you don't have parents who can care for you, and there is somebody who can step up and

play the role of a parent then that person can become a guardian. I'm the one who approves the appointment of guardians and then also manages the guardian and minor relationship to make sure that issues like visitation and any financial issues are taken care of.

Weitzman: As a guardian and parent yourself, does that affect the way you think about children needing a guardian of their own?

Kuhnle: It certainly does. Let me share with you the kinds of situations that lead to guardianships. So a child is born, and for whatever reason, the dad is either out of the picture or the dad is maybe in prison, and let's say for this example, "mom" is a meth addict and so she doing meth she has a hard time working and doing other things and so she's essentially homeless she has this beautiful little child but she can't care for it. So in those situations, sometimes another family member will step up and say "look, you're not doing very well, we can't find dad, we're gonna take care of your kid," and mom may be okay with that, or maybe not but if mom is okay with it, then the kid lives with grandparent for example and the grandparent takes care of the child. Sometimes the relationship can continue that way without any court intervention, but sometimes the

grandparent will need to enroll the child in school, or will need to approve medical care and you can only do that if you're either a parent or guardian. So sometimes don't have a choice but to go to court and become the official guardian. The grandparents come to court, they fill out a lot of paperwork, we have investigators to make sure the grandparents can take care of the children, and then they come to court, I speak with them, I talk to them about their paperwork and then I determine if they're an appropriate guardian or not. In most situations they're people who are trying to help their family and they are usually pretty amazing people who are willing to raise a child, pay all the child's expenses and take care of a child that isn't theirs. So part of my thought on guardianship is that there are children who are in pretty bad circumstances who are able to find a loving family member to take care of them and often I feel like its pretty amazing that that happens. On the other hand, there are times when the guardianship is one that causes me concern. Maybe the grandmother is not a particularly caring person, maybe the aunt who really wants to become a guardian, really wants to be the guardian so that she can receive public benefits because the minor lives with her, but she doesn't really care about the minor. Sometimes there are places where

the guardian's live that aren't going to be safe for the minor, maybe another person in the household has a significant criminal record. That causes me a lot of concern. There are times when it's a wonderful situation and I'm thrilled that a grandparent or another family member stepped up to take care of the child, there are other times when I'm concerned and that's why these cases come to a judge so that the judge can think about, "is this really gonna be the best situation for the child?"

Weitzman: So besides concern, do you ever feel personal anger towards a parent or guardian who has failed to take care of their child?

Kuhnle: I don't that I feel angry very often. There are a lot of people in our county who live in really challenging circumstances, and for example there are times when the child is born with parents who are technically still children. We had a case a couple weeks ago where the mom was sixteen, the dad was seventeen, and they couldn't care for the child. I can imagine how some people might feel empathy for the child and feel angry that that child isn't receiving the care and love that it a child coming into the world we all hope would receive, but I can understand that those circumstances are tough for everyone involved, and so my feelings aren't so much anger as they are a

concern, but a concern that can sometimes be alleviated if we can figure out a way for that child to be cared for with somebody other than the parents. I'm not sure that anger is a feeling, I do sometimes feel very sorry for the child in that circumstance, another thing that happens and it's something that here in Palo Alto we don't think about a lot, but there are guardians, so a grandparent for example, who come to court to become the guardian because the child has significant dental issues, and in Palo Alto we of course all brush our teeth and use floss and all of that, but there are some other kids in our county who don't have environments that are conducive to taking really good care of themselves and so there are times really easy stuff to prevent comes before and I'm often sad that they've had really painful dental issues because they haven't been cared for. Again it's not so much a feeling of anger, its more a feeling of that there a lot of people in our county who face really significant challenges.

Weitzman: So, Special Immigrant Juvenile Status cases deal with guardianship, can you tell me more about those kinds of cases?

Kuhnle: Certainly, so these get a little bit complicated, and let me talk a little bit. So People who come from other countries face different immigration challenges, and usually



immigration is exclusively and area for federal law and not state law, so when I became the probate judge, and when I started handling guardianship matters I was really surprised that there were decisions that I would make that would have a significant effect on how a child immigrant status would be affected. And it turns out that federal law has a couple of rules that are really based on a humanitarian urge to treat abused or neglected children from overseas in a different way than children who are not abused or neglected. What the federal law says is that if a child is here in the United States, and is under a guardianship; and guardianships are state law, then the guardianship judge; in this case that's me, can make certain findings and if I make certain findings, then that child will be eligible for Special Immigrant Juvenile Status and that will make it a little easier for them to receive Permanent Resident Status, or Green Card Status here in the United States. So really in the past couple years, we see more and more of these, typically I see 2 or 3 a week. Let me paint a picture so you can sort of understand the situations that come before me. There's a fifteen year old whose living in Guatemala, lets say, these are hypothetical cases, these are the sort of ones I see. The father of the fifteen year old is an alcoholic and sometimes has temper

tantrums that can at times become a little bit violent, the place in Guatemala where the minor lives is an area where there are gangs and the minor is now old enough to be valuable to the gangs and so the gangs are trying to recruit the minor. So perhaps in this situation the minor was beaten up a couple times, the father occasionally gets violent with the minor, the mom can't do anything to prevent this and maybe the mom has a couple of younger children she has to focus on, and so the fifteen year old wakes up one morning and says "I've had enough, I'm gonna do my best to go to the United States". So if you're Guatemalan and you want to go to the United States, how do you get there, you sometimes walk, you hitch hike, you somehow get there. Sometimes it takes months and months and months, so it's not unusual to have someone tell the story that they were in Guatemala, that they worked on farms, they slept outside, as they slowly moved North, towards the United States. Then what happens is they go through these incredible journeys, very dangerous journeys, some turn back, some are injured or even killed on the way there. They get to the United States; they cross the border and the immigration patrols detain them, and put them in a detention camp. So then they do their best; the people who have detained them, to find some relative or some

friend who can take care of the minor while the minor decides whether to go back to the home country or whether the minor tries to find a way to stay in the United States. So the cases I see are often either family members; so aunts and uncles who live in the Bay Area, who are from Guatemala, who came here quite a bit earlier. They hear that their niece or nephew or friend or whoever it may be has been detained. They agree to take care of this person. So now the fifteen year old has spent 4 or 5 months going from Central America going for example to the Arizona border, they are detained there, they are transferred to distant family people here in San Jose and now the person says, "I need to be your guardian," and it comes to me as a probate judge on an application guardianship but there's also a request for me to make the findings for Special Immigrant Juvenile Status. I need to find, generally, that the child has been the subject of abuse, or neglect, or abandonment and that it's in the best interest of the child not to go back to their home country. Instead they should continue to live here and a specific requirement that I find that the child cannot be reunified with one or both of his or her parents because of the abuse. So in this situation, I don't know necessarily what the relationship is with the mom, or what the mom is up to, but the

child will have stated under penalty of perjury, so a promise to tell the truth, that his dad is an alcoholic, that his dad occasionally was violent with him and there were gangs there and he was neglected, abused and if he went back he would face those same risks. So the federal law says that if I make those findings, then that will assist the minor in working through the immigration process. The minor's hope is that the minor will eventually reach Permanent Residence Status. As a state court judge I don't have any, I don't care how the immigration proceeding comes out but I'm simply making the findings that the minor has been abused, can't go home and therefore after I make those findings, the minor may be eligible for this special status.

Weitzman: Is there any time you can think of that you could not grant a child a SIJ Status?

Kuhnle: Certainly, there are times when they come to me and they say, "I left home, looking for a better life in the United States, and I got detained at the border, and I'm living with my uncle, it'd be really great if I could be awarded Special Immigrant Juvenile Status." Well, as a judge, I have to look at the evidence to see if I can make the required findings. Was this person abused at home? Was this person neglected at home?

Is reunification with the family, with at least one of the parents, impossible? And there are some people who certainly have struggled to get to the United States but who don't meet those requirements. There are times when I'm unable to make the findings, and the person goes through the same immigration process but not with the benefit of a having these findings being made. So yeah, there are times when I don't before me sufficient evidence to make the required findings.

Weitzman: Does that make you feel guilty in any way, that you couldn't help this person into America for a better life? Or does it not really affect you?

Kuhnle: Well that's a good question. I mean, I often inspired by the stories of people who were leaving difficult situations and really on their own, taking these incredible risks and dangerous journeys to come to the United States and when they come here they find loving family members who will help them get on their feet. So that's a feel good story and one that I think all of us as human beings would think is a nice story. But there are times when that doesn't meet the legal requirements for Special Immigrant Juvenile Status so I'm always hope that maybe there'll be another way that maybe they can move through the immigration system, but that's a decision for the immigration authorities,

not for a state court judge. So I have to let that be processed under federal law, and I simply can't make those findings. What I can do there is I can still grant the guardianship, and so somebody who's gone through this risky and dangerous journey, I may not be able to make the findings that will assist their immigration process, but if I think, given the information I have, that the relative or friend who is here who has agreed to be their guardian, will make a good guardian, I can certainly grant that. So if somebody has lived a difficult life somewhere else, and there is somebody who is willing to be their guardian here in the United States, and it looks like that's a caring and loving relationship, then I do have the good feeling that this person is gonna be treated well. Often they come here and go to school, in our area, they get a good education they found family members or friends who are taking good care of them, so often it's a better situation then the situation they were previously in.

Weitzman: Is there any specific event that enlightened you to the importance of these kinds of cases?

Kuhnle: I think that these cases are important in a couple of ways. About a year ago, there was lots of news coverage of the detention camps in Arizona, Texas and New Mexico, where

juveniles had been sent and kept there and some of them had been forcibly return to the counties where they started. So that was a bad situation, playing a role in coming up with a more constructive solution of finding homes for these people and then letting the immigration system kind of work its way through, I think makes this a better approach than simply rounding these people up and then forcing them to return. I can't quite remember your question, but if your question was if this is something that is a beneficial development, I think it is because some of the resources we have in California and in other states, to establish guardianship relationships, that are often beneficial for everyone.

Weitzman: What is the most important thing that you want people to take away from your story?

Kuhnle: Maybe there are two things. One thing that I would like people to take away that our state justice system is set up to be able to carefully evaluate the welfare of children who don't have parents who can take care of them, so when we are working on guardianship matters, in particular, we a court investigators who can look into--- that we have the court resources to make sure that these children are put into households that can take care of them and are safe. So that one takeaway that I have that

its important that our system works to find children better places to live and that we really check them out to make sure that they are safe and beneficial. The other interesting part is that state courts can play some role in immigration rules even though that's an area in federal law. Once again, there are some really neat stories about how people have left terrible situation and are in much better situations and that's a good thing in the way that we are handling these. I don't have to -- I'm not in a position where I need to be in favor of certain immigration policies or be against them, all my role is that I make certain findings and when I make those findings, then the federal immigration authorities take it from there. I think that's, as a judge, an easier role to be in because I'm a fact finder, not an ultimate decision maker when it comes to immigration.

Weitzman: Is there anything else you want to add?

Kuhnle: No, other than to say that, Molly you go to Palo Alto High School, and we were lucky enough to live in this community that the people who live here often have a lot of advantages and think that one thing that I've learned, serving as a probate judge and working in particular in guardianship matters, is that there are a lot of people in our county that live in much, much



more difficult situations. I think it's helpful for all of us, particularly those of us who live in, what we call in San Jose; North County, to realize that challenges are close at hand and that there are social services agencies, the courts and a lot of other institutions that work hard to improve the situation and sometimes we have good results, sometimes we have bad results but there are all sorts of very difficult things that happen, then its something that often we miss when we are here in the North County.

Weitzman: Thank you so much for your time.