

When Cultures Clash

Author Information: Lynn M. Malley, JD, MA
1316 S. Fairview Road
Columbia, MO 65203
573-445-2995
University of Missouri - Columbia
(LLM in Dispute Resolution candidate)
lynnmalley@justice.com

Title of Submission: When Cultures Clash

Submission Description:

This exercise is designed to get students to think outside of a number of boxes - the adversarial legal box, the white male box, and the Western logical box, among others. As written, it would be useful in a class on crosscultural dispute resolution or on negotiation. With some modification, it could be used as a mediation or ombuds simulation.

Comments: Please send comments and feedback on this exercise to
lynnmalley@justice.com

Copyright 2002 Lynn M. Malley. Distributed at the Third Annual Legal Educator's Colloquium, American Bar Association Section of Dispute Resolution Annual Meeting (April 6, 2002, Seattle, Washington). Teachers are free to copy this exercise for use in law and graduate school courses, provided that the appropriate acknowledgment of the author is made. For permission to use this exercise for any other purpose, contact the author.

When Cultures Clash

Teaching Notes

Multicultural Issues

When the World Trade Center came down in September of 2001, the intimate interconnectedness of the world's peoples was made clearer than ever. People from at least 51 nations representing six continents were injured or died in that incident. After the firemen and the doctors and the social service providers came the lawyers, offering their services. In situations like this, will lawyers act as adversarial advocates, as litigators, or as problem solvers? The multicultural character of the World Trade Center incident is not unique, but is becoming more the norm. In the United States, for example, the number of refugees has increased dramatically in the last two decades, and the so-called minorities now make up a third of the population. Many banks and other businesses now provide their written materials in English and Spanish. If lawyers are going to be of real service in this increasingly multicultural world of the present and future, knowledge of and sensitivity to this world must be presented and given an opportunity to grow.

When Cultures Clash is inspired by the details in Anne Fadiman's book, *The Spirit Catches You and You Fall Down*.¹ The facts in the book could as easily be adapted to the role play of a dependency mediation, a mediation in the context of a tort suit, or a conversation between the family and the doctors, facilitated by the hospital ombudsperson. The role play was designed to stimulate thinking about and to provide experience with different cultures (Hmong and American as well as legal and medical) as well as with the different roles that lawyers can play in assisting their clients. The role play is a negotiation in two parts, the first with the client and the second with the other attorney. Although litigation might be an option in a situation like the one presented, the time frame as well as the general facts of the case are designed to draw the attorneys to ask how they might best assist their respective clients, aside from the courtroom route.

¹ Fadiman, A., *The Spirit Catches You and You Fall Down*, Farrar, Straus, and Giroux, New York, 1997. In this book, Fadiman, an anthropologist, tells the true story of the horrific things that can result when medical providers do not even have language interpreters to help them understand language, much less cultural interpreters, to help them communicate with the refugees they treat. The story could as easily been written about the lawyers involved (or not) with the Lee family in the book. Any references to or information about the Hmong in this role play come from information provided by Fadiman. The Xiong family is based on the Lee family, but the facts presented are adapted to meet the goals of this role play.

Because it did not seem reasonable to actually have the family members speak Hmong and to use a real interpreter, I have suggested that the family and their attorney communicate in writing. This is designed to be a difficulty, though probably not as great as the real one it replaces, and is specifically debriefed.

Lawyer as Problem Solver - Lawyer as Negotiator

Lawyers often have to engage in at least two very different types of negotiations, the first with their clients and the second with their counterparts. They also have to deal with a variety of tensions as they decide how to handle a particular case. This role play is designed to allow practice negotiating behind the table (with the attendant experiences of the principal/agent tensions) as well as across the table (with the attendant experiences of the assertiveness/empathy and value distribution / value creation tensions).² It is also designed to demonstrate the effect that cultural issues can have on negotiations, and to raise questions about the difference between a language interpreter and a cultural interpreter.

Legal Issues

Although there are important legal issues in this situation, the students should be encouraged not to get caught in questions about any requirement that hospitals provide interpreters or about a statute of limitations. They are to be encouraged to focus on the interests of the parties as they work as problem solvers.

Use of the role play

This role play can be used in a negotiations class using the ideas in *Beyond Winning*³ after the various tensions have been covered in class as a demonstration of how the tensions show up in practice. It could also be used as a beginning exercise, to be referred to as the class progressed. With the addition of a third party neutral, these facts could easily become a mediation. The role play could also be used at any time in a crosscultural dispute resolution class. It could be modified so that there is only one doctor and only one parent, depending on the number of students available to participate.

As presented, the role play will fit in a nearly 3 hour block of a class that meets once a week, assuming that the students have read their respective materials ahead of time. Two fifty minute periods are allotted for negotiations and about an hour for debriefing. This will not likely be enough time to debrief both the negotiation and the crosscultural aspects of the role play.

² Problem solving negotiation ideas taken from Mnookin, R., et.al., *Beyond Winning*, Belknap Press, 2000.

³ *Id.*

Those instructors wishing to do both may want to allow a longer time period or to use two class periods and debrief after each of the two negotiations.

Perhaps the most important reason to use simulations that include a world view that is different from that found in the typical law school is that the world the aspiring lawyer will practice in is different from the typical law school. Simulations like this one allow students to be exposed to a small piece of that difference.

How to Distribute Documents

Everyone gets: **General Information**

Additionally,

Observers get: **General Information Timeline**

Xiongs get: **Confidential Information for Poa and Yee Xiong
Confidential Xiongs? Comments on General Information
Timeline**

Attorney for Xiongs gets: **Confidential Information for Attorney for the Xiongs
Confidential Xiongs? Comments on General Information
Timeline
Actions against health care providers (medical malpractice statute)**

Doctors get: **Confidential Information for the Doctors
Confidential Dr. Meanwell?s and Dr. Tryhard?s Comments on
General Information Timeline**

Attorney for doctors gets: **Confidential Information for the Attorney for the Doctors
Confidential Dr. Meanwell?s and Dr. Tryhard?s Comments on
General Information Timeline
Actions against health care providers (medical malpractice statute)**

Other considerations

Requiring the Xiong family to conduct its communication in writing at times requires the entire situation to take place in writing. The instructor may want to be sure there is a whiteboard or chalkboard or overhead projector available, especially if there are observers who could not see writing on paper. If this writing gets too tedious or takes too long, the role play could continue with regular speech, but not before the point when both the time-consuming nature of writing and

the possible distortion of summarizing in writing becomes evident. Another way to accomplish this might be to have a person role play the interpreter and have the parties whisper to the interpreter and the interpreter then paraphrase aloud what s/he just heard in the whisper.

Debriefing Questions

Staying in role -

Attorneys:

When you met with your clients,
what were the tensions?
How did you deal with them?
What were your clients' interests?
How did you find out what their
interests were?

After meeting with your clients,
how did you define the problem?
What potential solutions did you see?
What was your clients' BATNA?
How did you decide whether to
include your clients in the
meeting with the other side?

When you met with the other attorney,
did you negotiate process?
Did you talk about interests or
positions?
How did the value creation / value
distribution issue appear?
Were you able to empathize with the
other side's story?

After meeting with the other attorney,
did you reach any resolution?

Did you get the information that you needed
from your clients?

Clients:

When you met with your attorney,
did you feel listened to?
Did you tell your attorney what
your interests were?
Why or why not?
Did your attorney help you to see
anything differently?

If you were included in the negotiation
with the other side,
Did you feel listened to?
How did they define the problem?
What potential solutions did they
see?
Did being included help you to see
anything differently?

If you were not included, how did that feel?

After meeting with the other side,
Was any resolution reached?
If so, did the resolution meet your
needs?

Did your attorney get all the information
that he/she needed from you?

Stepping out of role -

What was the most frustrating thing about this role play?

What lessons did you learn about the process of negotiating?

How did the three tensions show themselves?

What was the difference between the behind the table negotiating and the across the table negotiating?

What lessons did you learn about the experience of working with someone from another culture?

What would have been the impact of having a language interpreter present?

A cultural interpreter?

If you played the Xiongs, or when you interacted with them, what was the impact of being able to communicate only in writing?

What cultures impacted this negotiation? (i.e. law, medicine, American, Hmong, Eastern, Western, Christian, Animist, etc.)

Considering the roles that a lawyer might take, why did this scenario lend itself to the role of problem solver?

What if the lawyer had met the client when the child was two years old? Would that change in facts increase any of the tensions? Which? Why?

General Information

150,000 Hmong have fled the mountains of Laos since that country fell to the communists in 1975. Many were resettled in the United States in large groups between 1975 and 1992. They were settled in random groups, mostly in cities, across the country. Few, if any, social services were in place for them. Just finding someone in the beginning who spoke English and Hmong was almost an impossibility. Having access to someone who functioned well and was respected in both the American and Hmong cultures, someone who could act as a cultural interpreter, was impossible.¹

The Xionsgs were among the Hmong who came to the United States in 1980. They were among the 15,000 Hmong who settled in Smalltown, Yourstate. The Xionsgs' fourteenth child, Pua, was born in the hospital in Smalltown, Yourstate, in 1982. Though the Xiong children were beginning to learn English in the local schools at the time of Pua's birth, the Xiong parents, like most other adult Hmong, did not speak any English. Those in the medical and social service communities did not speak any Hmong. Only when things went wrong was this lack of communication recognized as a problem. The problems with Pua began shortly after her birth, and after she had several seizures, she was taken to the hospital in Smalltown. Each time, the seizure had stopped by the time the family had arrived, and since there were no words to exchange and no obvious physical problems, the Xiong family was sent home. It was not until this had been going on for five months that Pua had a bad enough and long enough seizure that it was still going on when the Xionsgs arrived at the Smalltown hospital with her. Then the doctors knew that Pua had epilepsy.

Though there were still no words to exchange, no common language, no inquiry about how this child's illness might be impacting the family or how the family thought about it, the Xionsgs were sent home with the appropriate medicine to "Give as directed." Both parents, over

¹ Fadiman, A., *The Spirit Catches You and You Fall Down*, Farrar, Straus, and Giroux, New York, 1997. Any references to or information about the Hmong in this role play come from information provided by Fadiman. The Xiong family is based on the Lee family, but the facts presented are adapted to meet the goals of this role play.

the course of Pua's many hospitalizations over the years signed her chart indicating their willingness to do what they were told. Pua's seizures got progressively worse over time.

During the 1980's Smalltown Medical Center (SMC) had no money in its budget for interpreters, so medical histories of the Hmong were not generally taken. Or perhaps they were taken with the aid of an older child in the family or a Hmong hospital dishwasher who happened to be working at the time and who spoke a bit of English. All of this was of little assistance to the Xionsg, for as they dealt with Pua's illness, no systematic help was in place. To shorten the story, Pua was removed from the care of her parents because they were noncompliant with her medicines and she was getting sicker and sicker. She was placed in foster care with a family that loved her and supported her return to her parents. During that time period, three important things happened: 1.) One social worker got to know the Xionsg well enough through spending enough time with them that she came to believe that they loved their daughter very much and would not do anything to hurt her; 2.) Pua's seizure medication routine was simplified; and 3.) Pua seemed to get better. Pua was eventually returned to the care of her parents. Unfortunately, she had a type of epilepsy that was progressive, and she had not been diagnosed when she first was brought to the hospital. Eventually, Pua had a major seizure that would not stop. That one left her, from the Western medical perspective, brain-dead.

Confidential Information for Attorney for the Xiongs

When your friend Sally Socialworker called to tell you about the Xiongs, you were astounded at the story. Not that you aren't aware of the lower quality of medical care that is often provided to the poor, but this story was amazing, even to one as jaded from the handling of personal injury cases as you had become. Sally's work as a family services social worker often involved working with families that did not provide adequate care for their children. The two of you are good friends and you have often listened to these sad stories of the nameless people she tries to help.

This story was different. The child Pua, who was about six, was by all medical accounts and by appearances brain-dead. By medical records, she should actually be dead. When you first met the Xiongs, Pua was in a pack made from a hand stitched cloth on Yee's back. She appeared to be about three and she showed no signs of physical or mental activity. She was clean and obviously well cared for, and even in this sad state, a pretty child. She would make a great impression on any jury. And it would impress your partners if you were able to bring in that BIG win!

The hospital records were less sympathy inducing. Pua had been removed from her parents care by the juvenile court twice, once for an extended period, mainly because they did not follow medical advice, and especially because they did not administer medicine to Pua properly, even though they repeatedly signed the hospital forms saying that they understood and would abide by the doctors' instructions. Of course there is more detail than that, much of it seemingly damning to your clients. But there is something else. In the beginning, when Yee and Poa first took Pua, then just a few months old, to the hospital because of her seizures, there was no one in the hospital who could speak Hmong, therefore no way for the Xiongs to tell the doctors what was happening to their child. The first several times she had been brought to the hospital by her frantic parents who could not speak English, Pua had stopped seizing before they arrived and the doctors had seen a very tired and congested infant. They had prescribed ampicillin and sent her home. Who knows what an earlier diagnosis might have done for this child.

Back to when you first met this family. At Sally's suggestion, you had gone with her and an interpreter, actually a cultural interpreter, to their house rather than having them come in to your office. Sally had told you that would make them more comfortable, and you had done that for other seriously injured clients. Sally had explained the difference between a cultural interpreter and a language interpreter to you when you suggested that you take along a language interpreter from the same company that provides interpreters from the district court where you most frequently practice. In her usual tactful manner, she explained that the conversation would probably go further if it were facilitated by someone respected by the Xiong family or at least the Hmong community, rather than someone who could just speak the language. It was Sally who had convinced the Xiongs to talk with you in the first place. No one had a lawsuit in mind, at least not from what you could tell from what Sally said or from what you could understand from the Xiongs. Sally's interest in getting the Xiongs to talk with you was to prevent this same type of disaster from happening to other refugees. And the

Xiongs? interest seemed to be in making the doctors understand. But of course, with your background, you knew that there might be a great deal of money in this case. What a picture was this child! And you also know that the Xiongs have no money to pay you.

Attached is the timeline of events in this situation as commented on by the Xiongs with the help of the interpreter you hired who actually wrote the comments. You found this interpreter through the local Hmong society, someone Sally had worked with in the past.

Before class

Prepare for your second meeting with the Xiongs.

What do you want to say to them?

How can you make them understand the possibilities?

Are you sure that you understand their interests?

And what about the interpreter who wrote the Xiongs? comments to the timeline?

Is she reporting accurately what everyone is saying?

(Or should the interpreter be the teen in the Xiong family?)

You will have 50 minutes to meet with the Xiongs, followed by 50 minutes to meet with the attorney for the doctors.

When meeting with the Xiongs, be sure to consider whether they should be at the meeting with the attorney for the doctors.

(In order to simulate the difficulty of communicating through an interpreter, you must speak with your clients only in writing, either on a board or using an overhead, unless otherwise directed by your instructor.)

Prepare for your negotiation with the attorney for the doctors.

What is your goal?

What is your BATNA?

What are the doctors? interests?

Their goal?

You will have fifty minutes for the meeting.

Confidential Information for the Doctors

I. Tryhard, MD, and I. Meanwell, MD

You are I. Tryhard, MD and I. Meanwell, MD, a team of pediatric physicians who work at Smalltown Medical Center (SMC). You are proud of the care you give your patients and are both reputed to be very caring and effective physicians. You have had excellent medical training and years of experience. You pride yourselves on giving the best quality of care to all of your patients.

It has been difficult to do that with some patients lately. Many people from the mountains of Laos have settled in your town and the SMC budget is strained to provide care to all of them. None of them have jobs or speak English, so they are on welfare and the state is supposed to pay for their care. Even with that, they do not seek care until it is almost too late. And they do not follow directions.

Take the Xiong baby for example. Pua was a beautiful infant who has been to the emergency room several times when one of you has been on call. Though her family members - all dozen or so of them - were very excited and talking fast the first couple of times they brought her in, she just appeared tired and sounded congested. It was hard to tell if her general behavior was age-appropriate since you couldn't talk with Pua or understand her parents. And, until the third visit to the ER, it was impossible to tell why they were bringing her in. That time, it was clear. She was having a grand mal seizure when she came in. Your notes from that night indicate that you knew right away that Pua was having a seizure and that's probably what had happened the other two times. Even now, you don't understand why her parents did not bring someone with them who could speak English when they brought her in each time before. She needed to be on that medicine from the beginning. The third time, one of the Hmong hospital kitchen workers was there to act as interpreter in the hospital. You still thought that should have helped the parents understand what they must do to care for Pua; why didn't it help to have an interpreter? The scene that evening was repeated many times in the months and years ahead. Pua, cute and fat, seizing. The whole ER centered on her. The clinic follow-up visits. The blood tests showing no medicine in her. How could they not expect this to happen over and over, when they didn't follow medical instructions?

Since you were the main pediatricians in the ER, you were always either there or on back-up, the bottom line, so to speak. And it got harder and harder to watch this little girl go downhill, especially when you thought just giving the right medicine would curb the downhill slide. Finally, you (Meanwell) decided to take a stand. You asked the court to remove Pua from her parents, to put her in a safe place where she would get her medication as prescribed. You heard that the foster parents had taken her to another hospital for neurological tests, and that Pua had been diagnosed with a rare and severe form of epilepsy. She'd also been put on a single drug that she seemed to respond well to for a while. That was what allowed Pua to be returned to her family, the simplicity of the drug regimen. Actually, you wish you had risked putting her on that med. You'd thought about it but it had seemed too risky. Hindsight showed how good it would have been to take that risk sooner.

Once Pua was returned to her parents, things went almost too well for a time. The bottom started to fall out when Pua fell off a swing at the school and was brought in to the ER seizing without stopping. She was admitted to SMC where she contracted an infection and had to stay for two weeks. (That's the infection that you and Tryhard wrote up in the medical journal.) You both knew that this seizure was the beginning of the end and began to dread answering the phone when on call. You were always afraid it was going to be about Pua, and that you weren't going to be able to make it stop. That time finally came the night before Thanksgiving in 1986. When it came, you knew it was the one you had been dreading because when you got to the ER, Pua was unconscious and her body was literally jumping off the table due to the severity of the seizure. It took two hours and enough drugs for a horse to get her calmed down. You knew that she needed to be admitted to a children's ICU, but SMC did not have one, so you sent her on to the other hospital. It just got worse there, and when they sent Pua back to SMC, it was to die.

You've heard that Pua is still alive, carried around on her mother's back, but she sure seems dead to both of you. You know that the Xions got a lawyer because you got a letter, and then you got a lawyer. You haven't been served with any legal papers and that's a relief, so you're not sure what this is all about. Being sued by this family in particular would be a real slap in the face. You both spent so much time with Pua. You did the best you could. You've talked briefly with your lawyer once before. He gave you a timeline of events in Pua's life and asked you to comment on it. The timeline with your comments is attached for your review. Go over it as you prepare to meet with your lawyer again.

Confidential Information for the Attorney for the Doctors

You have met with Drs. Meanwell and Tryhard once briefly, when they first got a letter from the attorney for the Xiongs. They seemed like reasonable, competent doctors, and more than usually caring for the welfare of their patients. Clearly, this case has taken its toll on them. You have also talked with a few of the other staff doctors about Drs. Tryhard and Meanwell and have found them to be well respected. You also learned that no one, at least none of the other doctors you talked with, knew that Meanwell had asked that Pua be removed from her parents. Much to your surprise, that information came as a surprise to the other doctors you spoke with. Without exception, each doctor you spoke with expressed admiration for Pua's parents and the care they provided for Pua over the years. There was clearly something going on that you did not understand, and you aren't sure how important it is.

You have learned from Tryhard and Meanwell that while any lawsuit would be difficult for them, a lawsuit over this case would be crushing. Both of them felt like they had poured themselves without reservation into the care of this child for many years. For Tryhard, she had eventually become the source of the nightmare of the coming of "The Big One."

In your brief investigation, you have learned a bit about the Hmong, too, but you're not quite sure what the fact that these folks are refugees from Laos should have to do with anything. They've been here a number of years and haven't even learned to speak English yet. They couldn't or wouldn't even follow the doctor's instructions about how much medicine to give the child. It was their acting against medical advice that ultimately caused this child to be removed from their care for two extended periods. But the child is pitiful. Just bringing her into the courtroom will inflame the jury.

You're not quite sure what the other attorney has on his/her mind. It seems a little strange that s/he has not filed a lawsuit and named the hospital, too. That would put the insurance company on notice and there could be a real conversation about settlement. Or maybe, if they file a lawsuit against your clients, you will be the one to name the hospital.

The timeline with comments from the doctors is attached for your review.

Before class

Prepare for your second conversation with the doctors. You will have 50 minutes for the meeting.

What do you want to say to them?

How can you make them understand the possibilities?

Are you sure that you understand their interests?

Are their interests the same as yours?

When meeting with the doctors, be sure to consider whether they should be at the meeting

with the attorney for the Xionsg.

Prepare for your negotiation with the attorney for the Xionsg. You will have 50 minutes for that meeting also.

Confidential Information for Poa and Yee Xiong

You are among the 150,000 Hmong who have fled the mountains of Laos since that country fell to the communists in 1975. Your tribe came to the United States in big groups between 1975 and 1992. You Hmong were settled in random groups, not in your clans, in many cities across the United States. Your family and much of your clan came to Smalltown, Yourstate in 1982. You had traveled through the mountains of northern Thailand to escape Laos expecting to be killed at any moment. Your thirteenth child, Lau, was born in a refugee camp in Thailand in the usual way ... with Yee squatting over a clean dirt floor, with Poa not looking, and with Lau's placenta buried for her to use again for her return journey to the spirit world at her death. When you arrived in the United States, there was no one to help you understand the U.S. culture. You had never seen a phone or a toilet, though many of your relatives died in Laos fighting on behalf of the Americans to keep the communists out.

You don't understand how these people do things. They don't keep their promises to take care of the families of those who died in their service. They get upset when someone in your neighborhood sacrifices an animal to drive away an evil spirit, even when only the head of the animal is left out on the porch and not the whole animal. They separate babies from their mothers at birth. How inhumane! Babies need that loving mother touch from the first second. You have carried each of your children on your back or front in a pouch for a long time after each birth. Worst of all, you don't understand their medicine. Sometimes it works well and quickly, like pills to stop the diarrhea everyone in your community had last week after the big cow sacrifice and party for the spirits. But other times.....

You don't know anyone who speaks both English and Hmong, though your older children are learning English in school. Someday you know that they will be able to explain things to you. For now, you just wish you could explain to those doctors about Pua and what a special child she is. She is your dearest child, the one who may become a shaman when she grows up because she shakes and her eyes roll back in her head and then she falls to the ground. You know that means that the spirit catches her and then she falls down. Becoming a shaman is usually reserved for boy children in your tribe, so that makes Pua even more special. At least, that's the way it used to be.

Pua's shaking began shortly after her birth. At first, you just thought it was the spirit acting and you held her and loved her when this happened. After it happened several times and seemed to intensify, you began to worry and you took her to the hospital in Smalltown. At first, she always stopped shaking by the time that you got to the hospital, and the doctors didn't understand why you came. There had never been anyone there who could help you talk to those doctors about your precious child.

One time, Pua was still shaking when you and your extended family arrived at the hospital. The doctors would not let any of you come in the room with them and Pua, but when they came out, she was calm. This time, there was someone who spoke both Hmong and English. You could exchange a few words with those doctors. There were many more times when you went to the hospital with Pua and she just got worse. You stopped giving her the medicines prescribed by the American doctors for long, because she was being harmed by those medicines. You have consistently sought the assistance of the local shaman who performed various rituals and animal sacrifices to help Pua get better. But she hasn't gotten better. There was a long time when the doctors punished you for not giving her their bad medicine by taking her away from you. And when she came back to you, her spirit was gone. While you do not like the way the doctors act, you are deferential to them because they seem to have some spirit power.

You have come to know and trust Sally Socialworker, even though she is someone from the government, because she helped you get Pua back. She has asked you if you want to talk with a friend of hers, an American lawyer. You have talked with her/him once. It is hard. S/He does not understand Hmong language or values. S/He talks about money and court. But you only want the doctors to understand and to be sure that no one else's child has their spirit stolen away, like Pua's was. S/He wants to talk with you again. S/He has given you a writing about the things that have happened to Pua and asked what you think about them. How does a parent answer a question like that? A copy of the writing with your comments is attached so that you can review it before you meet with the lawyer again.

(In order to simulate the difficulty of communicating through an interpreter, you must speak with the lawyer only in writing, unless otherwise directed by your instructor.)

General Information Timeline

- 7/19/82 Pua Xiong born at Smalltown Medical Center (SMC); weighed 8 lbs 7 oz; apgar score 9 out of 10 four minutes after birth
- 10/24/82 first SMC ER visit; diagnosis - early bronchial pneumonia
- 11/11/82 second ER visit; diagnosis - early bronchial pneumonia
- 3/8/83 third ER visit; seizing on arrival; diagnosis - epilepsy
- Between 3/8/83 and the "Big One," Pua admitted to the SMC 17 times, over 100 visits to the SMC ER and clinic, parents almost always there
- 3/5/85 Juvenile court petition filed alleging that parents were administering sub-therapeutic medication levels
- 6/26/85 Pua placed in foster care for minimum of six months
- 8/85 Xiong's first weekly visit with Pua in foster care. In foster care, getting correct meds, Pua seized more than at home.
- 9/85 Pua told Sally Socialworker he wanted to commit suicide if Pua not returned
- 9/85 Pua returned home for a week; no meds given
- 12/85 Yee threatening suicide if Pua not returned
- 12/18/85 6 month reunification review; court ruled parents had not demonstrated ability to comply with Pua's medical regimen and would not sign a social services plan for reunification
- 2/86 following Pua's neurological testing at Big City Hospital, Pua's medications simplified; tentative diagnosis - Lennox-Gastaut Syndrome, a rare form of epilepsy characterized by mental retardation and various kinds of hard-to-control seizures
- 2-4/86 Sally Socialworker taught Yee how to give Pua the one new medicine
- 4/30/86 Pua returned home as parents administering medication adequately
- after 4/30/86 no seizures for 4 months thereafter
- Pua enrolled in special education school three days per week, 8 - 1
- 9/86 Pua fell off swing at school and hit her head; seizures changed character and became seizures that did not stop on their own, as before, but that required medication to be stopped
- Pua admitted to SMC for 14th time, stayed 14 days, got an infection from hospital procedures; Pua's doctors published an article about the hospital-caused infection
- 10/86 Pua admitted again with severe seizures and high fever
- 11/25/86 the night before Thanksgiving - Pua seized continuously for 2 hours; Pua treated at SMC for the usual; because SMC had no children's intensive care unit, Pua transferred to Big City Hospital
- 11/26/86 Dr. Tryhard and Dr. Meanwell left for Thanksgiving holidays with their families
- 11/25/86 -

- 12/5/86 Pua at Big City Hospital; during this stay, Pua's nonstop seizures continued; treatment of the seizures and the systemic infection required many invasive treatments, including a spinal tap; Pua left brain-dead but with a high fever and in a very agitated state
- 12/5/86 Pua transferred to SMC to die
- 12/6/86 Poa demanded that Pua's IV be removed
- 12/9/86 Sally had arranged for home health care for Pua so the Xionsg could bring her home to die; Poa and Yee asked to sign documents about taking their daughter home and about properly caring for her; Poa picked Pua up and ran with her from the pediatric floor, trying to take her home
- 12/9/86
10 pm Yee and Poa take Pua home so the other children can see her die and so she can be surrounded by family; Pua in a persistent vegetative state, quadriplegic, spastic, incontinent, incapable of purposeful movement
- 3/5/87 juvenile court removed the Xionsg's probationary guardianship of Pua and closed the juvenile case
- 3/87+ Pua continued to have home health check ups and stayed healthy looking, fever and fiery eyes gone
- current (1990) Pua about three feet long/tall, soft skin, pink lips, passive; constantly in a pack on Yee's back or on a mattress on the Xionsg's living room floor so the other children can play around her

Confidential

Xiongs? Comments on General Information Timeline

- 7/19/82 Pua Xiong born at Smalltown Community Medical Center (SMC); weighed 8 lbs 7 oz; apgar score 9 out of 10 four minutes after birth
- 10/24/82 first SMC ER visit; diagnosis - early bronchial pneumonia We took her to the hospital because she was shaking all over and had fallen on the floor and wouldn't stop shaking. She stopped on the way to the hospital, but we went ahead. When we got there, she was just tired. No one at the ER spoke Hmong so there was no way to explain what had happened, but we knew that a spirit had taken her soul.
- 11/11/82 second ER visit; diagnosis - early bronchial pneumonia Same thing as the first time
- 3/8/83 third ER visit; seizing on arrival; diagnosis - epilepsy This time, Pua was still shaking when we arrived. Finally, they saw why we brought her! And someone who spoke some English was there. But I'm not sure they understand now or understood then that she has the illness where the spirit touches you and you fall down.
Between 3/8/83 and the "Big One," Pua admitted to the hospital 17 times, over 100 visits to the SMC ER and clinic, parents almost always there Almost always there? The one time that one of us was not there for a few minutes, Pua fell out of the hospital bed on her head. We knew then that we had been right to sleep by her bed whenever she had to stay in the hospital.
- 3/5/85 Juvenile court petition filed alleging that parents were administering sub-therapeutic medication levels It was the medicine that was making her sick! Every time we gave her medicine, she couldn't sit still.
- 6/26/85 Pua placed in foster care for minimum of six months They came with the police and took Pua with no warning while Yee was visiting a relative. I (Poa) didn't know what to do. That was the day Pua became Government Property! They were just punishing us for not giving her the medicine that made her sick. What a strange country!
- 8/85 Xiongs? first weekly visit with Pua in foster care
When we found out where Pua was, we all went to visit. The other parents were good to us and good to Pua, but she missed us so much, just like we missed her. Being away from us just made her sicker.
In foster care, getting correct meds, Pua seized more than at home.
- 9/85 Poa told Sally Socialworker he wanted to commit suicide if Pua not returned That's true! Turning my child into government property was so disrespectful. We believe that parents are responsible for their children. The government should not get involved and if they do, they shouldn't make things worse like they did for Pua.
- 9/85 Pua returned home for a week; no meds given We had the shaman do several ceremonies for Pua. The American medicine just made her sicker.

12/85 Yee threatening suicide if Pua not returned What greater dishonor is there than to have your child taken away!

12/18/85 6 month reunification review; court ruled parents had not demonstrated ability to comply with Pua's medical regimen and would not sign a social services plan for reunification How could we sign a plan for Pua's return with people who should never have taken her in the first place? What honor have they?

2/86 following Pua's neurological testing at Big City Hospital, Pua's medications simplified; tentative diagnosis - Lennox-Gastaut Syndrome, a rare form of epilepsy characterized by mental retardation and various kinds of hard-to-control seizures What? They never even ask us what really happened. Would they even understand if we told them that Pua's problem is caused because her sister slammed the door when she was little and her soul was frightened away?

4/30/86 Pua returned home as parents administering medication adequately Sally helped us understand what they wanted.

after 4/30/86 no seizures for 4 months thereafter We took Pua to a very special Hmong Shaman in Minnesota for treatment. It was a great expense (3 months of Pua's government money) for this treatment, but worth it for our most-loved child. She was much better.

9/86 Pua enrolled in special education school three days per week, 8 - 1 Pua fell off swing at school and hit her head; seizures changed character and became seizures that did not stop on their own, as before, but that required medication to be stopped Sally thought it would be good for Yee to have some time to herself instead of loving Pua and carrying her around all of the time. We should have known that no one could care for her as we could.

10/86 Pua admitted to SMC for 14th time, stayed 14 days, got an infection from hospital procedures; Pua's doctors published an article about the hospital infection We always knew that it was the medicine they gave her that made her sick!

11/25/86 Pua admitted again with severe seizures and high fever

11/26/86 the night before Thanksgiving - Pua seized continuously for 2 hours; Pua treated at SMC for the usual; because SMC had no children's intensive care unit, Pua transferred to Big City Hospital Pua had never been sick like this before.

11/26/86 Dr. Tryhard and Dr. Meanwell left for Thanksgiving holiday with their families The doctors were going on family trips so there would be no one at SMC to care for Pua so they sent her to another hospital. Perhaps if they had not been going on a family trip, Pua would not have gotten sicker.

11/25/86 -
12/5/86 Pua at Big City Hospital; during this stay, Pua's nonstop seizures continued; treatment of the seizures and the systemic infection required many invasive treatments, including a spinal tap; Pua left brain-dead but with a high fever and in a very agitated state They never even asked about making a hole in Pua's spine! How could they do that knowing that it would allow her spirit to leave forever?

12/5/86 Pua transferred to SMC to die We wanted her closer to home, really we wanted her home with us, as always.

- 12/6/86 Poa demanded that Pua's IV be removed
- 12/9/86 Sally had arranged for home health care for Pua so the Xiongs could bring her home to die; Poa and Yee asked to sign documents about taking their daughter home and about properly caring for her; Poa picked Pua up and ran with her from the pediatric floor, trying to take her home They told us she was going to die. How can you tell when someone is going to die and not do something to fix it? The only way I know to foretell a specific time of death is if you have plans to cause the death then. I did run with my child. I tried to get her away from people who were planning to kill her!
- 12/9/86
10 pm Yee and Poa take Pua home so the other children can see her die and so she can be surrounded by family; Pua in a persistent vegetative state, quadriplegic, spastic, incontinent, incapable of purposeful movement
- 3/5/87 juvenile court removed the Xiongs' probationary guardianship of Pua and closed the juvenile case I never understood what that was about. There was never someone there who could speak Hmong, or if there was, they just told us what to do!
- 3/87+ Pua continued to have home health check ups and stayed healthy looking, fever and fiery eyes gone.
- current (1990) Pua about three feet long/tall, soft skin, pink lips, passive; constantly in a pack on Yee's back or on a mattress on the Xiongs' living room floor so the other children can play around her.

Confidential

Dr. Meanwell's and Dr. Tryhard's Comments on General Information Timeline

- 7/19/82 Pua born at Smalltown Medical Center (SMC); weighed 8 lbs 7 oz; apgar score 9 out of 10 four minutes after birth
- 10/24/82 first SMC ER visit; diagnosis - early bronchial pneumonia *The only signs of trouble were a cough and a congested chest. Looking back, you know those were probably caused by the aspiration of saliva during the seizure. There was no one around who could speak Hmong so the resident couldn't even ask what the problem was; he just practiced veterinary medicine. (There were never funds in the hospital budget for an interpreter, except for about one year in the early 1990's!) Poa did sign the receipt for the instructions for the ampicillin.*
- 11/11/82 second ER visit; diagnosis - early bronchial pneumonia *Same situation, same misdiagnosis.*
- 3/8/83 third ER visit; seizing on arrival; diagnosis - epilepsy *Meanwell's notes that night indicate that he knew right away that Pua was having a seizure and that's probably what had happened the other two times.*
- Between 3/8/83 and the "Big One," Pua admitted to the hospital 17 times, over 100 visits to the SMC ER and clinic, parents almost always there
For me (Tryhard) it was so hard to watch this child get worse and to know it was because her parents were not giving her the medicine I prescribed as I prescribed it. The social worker went to the house and found the medicine bottles dusty and half full. I finally could not watch that happen any longer and asked the court to take her out of the home and put her somewhere where she would get the proper medication. Otherwise, she was just going to be fried by the oxygen deprivation during the seizures.
- 3/5/85 Juvenile court petition filed alleging that parents were administering sub-therapeutic medication levels
- 6/26/85 Pua placed in foster care for minimum of six months *Pua had more seizures in foster care in the first four months than she'd had at home. I knew she was getting the correct medicine there, so I couldn't figure it out. This is when Pua first went to Big City Hospital for neurological tests.*
- 8/85 Xiong's first weekly visit with Pua in foster care. *In foster care, getting correct meds, Pua seized more than at home.*
- 9/85 Poa told Sally Socialworker he wanted to commit suicide if Pua not returned
- 9/85 Pua returned home for a week; no meds given
- 12/85 Yee threatening suicide if Pua not returned
- 12/18/85 6 month reunification review; court ruled parents had not demonstrated ability to comply with Pua's medical regimen and would not sign a social services plan for reunification *How can you put a child back with parents who don't give medicine during the week long trial period and who won't sign a piece of paper saying they'll do what the doctor says for their child??*

2/86 following Pua's neurological testing at Big City Hospital, Pua's medications simplified; tentative diagnosis - Lennox-Gastaut Syndrome, a rare form of epilepsy characterized by mental retardation and various kinds of hard-to-control seizures

4/30/86 Pua returned home as parents administering medication adequately
That social worker had done wonders teaching the parents about giving medicine correctly.

after 4/30/86 no seizures for 4 months thereafter. Pua enrolled in special education school three days per week, 8 - 1. *We heard they were taking her to a witch doctor?*

9/86 Pua fell of swing at school and hit her head; seizures changed character and became seizures that did not stop on their own, as before, but that required medication to be stopped *We'll never know if she fell out of the swing because she was seizing or the other way around, but this was really the beginning of the end.*
Pua admitted to SMC for 14th time, stayed 14 days, got an infection from hospital procedures; Pua's doctors published an article about the hospital infection *We wrote that article together like we always write. Pua had gotten an unusual infection because of a procedure I (Tryhard) did during this hospitalization. It was something that other docs would have wanted to know about so they did not do it to their patients.*

10/86 Pua admitted again with severe seizures and high fever

11/25/86 the night before Thanksgiving - Pua seized continuously for 2 hours; Pua treated at SMC for the usual; because SMC had no children's intensive care unit, Pua transferred to Big City Hospital. *This was the seizure we had been dreading...the big one...the one we couldn't stop. The call came at supper time the night before Thanksgiving. When we got to the ER, it was the most horrible scene you could imagine. At SMC, we don't have a children's intensive care unit, so once I had her quieted a bit, I had to transfer her to Big City Hospital to be admitted. She was one sick kid. We learned later that she had a systemic infection, but to us, she looked like she always had, only worse. And Meanwell and her family and my boys and I were going away for the holiday weekend.*

11/26/86 Dr. Tryhard and Dr. Meanwell left for Thanksgiving holiday with their families.

11/25/86 -
12/5/86 Pua at Big City Hospital; during this stay, Pua's nonstop seizures continued; treatment of the seizures and the systemic infection required many invasive treatments, including a spinal tap; Pua left brain-dead but with a high fever and in a very agitated state

12/5/86 Pua transferred to SMC to die *You wouldn't believe what Pua was like when she came back here ... wild-eyed and spiking incredible fevers. We knew that she couldn't last long that way, so we tried to make arrangements for her to go home with her folks like they wanted. We did want to be sure that they knew how to care for her and feed her.*

12/6/86 Pua demanded that Pua's IV be removed

12/9/86 Sally Socialworker had arranged for home health care for Pua so the Xions could bring her home to die; Pua and Yee asked to sign documents about taking their daughter home and about properly caring for her; Pua picked Pua up and ran with her from the pediatric floor, trying to take her home. *Two hours. That's all it would have*

taken, just two hours to get things in order so that Pua could go home and her parents could know how to care for her before she died. But her father couldn't wait. I know he loved her, but he could have waited just two hours, you would think!

12/9/86

10 pm Yee and Poa take Pua home so the other children can see her die and so she can be surrounded by family; Pua in a persistent vegetative state, quadriplegic, spastic, incontinent, incapable of purposeful movement

3/5/87 juvenile court removed the Xiongs' probationary guardianship of Pua and closed the juvenile case

3/87+ Pua continued to have home health check ups and stayed healthy looking, fiery eyes and fever gone

It's almost impossible to believe this child is still alive. Other families put their vegetative members in homes and they begin to look like a bag of bones and then they curl up in a fetal position and die. Pua must be getting some special care.

current (1990) Pua about three feet long/tall, soft skin, pink lips, passive; constantly in a pack on Yee's back or on a mattress on the Xiongs' living room floor so the other children can play around her

Actions against health care providers (medical malpractice statute)

RSYs 2001 Ch. 516.105. All actions against physicians, hospitals, dentists, registered or licensed practical nurses, optometrists, podiatrists, pharmacists, chiropractors, professional physical therapists, and any other entity providing health care services and all employees of any of the foregoing acting in the course and scope of their employment, for damages for malpractice, negligence, error or mistake related to health care shall be brought within two years from the date of occurrence of the act of neglect complained of, except that:

(1) In cases in which the act of neglect complained of is introducing and negligently permitting any foreign object to remain within the body of a living person, the action shall be brought within two years from the date of the discovery of such alleged negligence, or from the date on which the patient in the exercise of ordinary care should have discovered such alleged negligence, whichever date first occurs; and

(2) In cases in which the act of neglect complained of is the negligent failure to inform the patient of the results of medical tests, the action for failure to inform shall be brought within two years from the date of the discovery of such alleged negligent failure to inform, or from the date on which the patient in the exercise of ordinary care should have discovered such alleged negligent failure to inform, whichever date first occurs; except that, no such action shall be brought for any negligent failure to inform about the results of medical tests performed more than two years before August 28, 1999; and

(3) In cases in which the person bringing the action is a minor less than eighteen years of age, such minor shall have until his or her twentieth birthday to bring such action.

In no event shall any action for damages for malpractice, error, or mistake be commenced after the expiration of ten years from the date of the act of neglect complained of or for ten years from a minor's twentieth birthday, whichever is later.