

A TORTURE-FREE SOCIETY



The Malaysians for Beng Hock movement strongly question the investigative direction of the Royal Commission which leads to a verdict of suicide. The attempt to use unscientific evidence to prove the deductions and claims of MACC in the absence of Teoh Beng Hock, is totally immoral and against the professional ethics of law and forensic psychiatry. This is because any third party information, which is usually inadmissible in court, including the interviews targeting relatives and friends could be twisted to give unfair advantage to MACC's assertions and claims.

We would like to remind the RCI chairman James Foong, when he allows expert witness testimony, he needs to refer to US federal court judgement *Daubert v. Merrell Dow Pharmaceuticals* in 1993 which is the most common reference for expert witness testimony. The Daubert standard is one of the main references of American Academy of Psychiatry and Law.

The Daubert standard indicates that the judge is the “gatekeeper” to dismiss unscientific and unqualified evidence. It defines that a scientific evidence must fulfill four requirements :

1. The theory or technique must be falsifiable, refutable, and testable.
2. Subjected to peer review and publication.
3. Known or potential error rate, the existence and maintenance of standards and controls

concerning its operation.

4. Degree to which the theory and technique is generally accepted by a relevant scientific community.

Thus, whether they are Teoh family members, Beng Hock's friends and colleagues or MACC officers, a forensic psychiatrist will not be able to falsify their statement because the key person Teoh Beng Hock had died, where no one is able to cross-examine his statements. It is also one-sided story when MACC officers claimed Beng Hock was "Hesitating", "Silent", "Thinking about something" because the dead could not refute these suggestions and there was no CCTV recording of it all. All these unfalsifiable information should not qualify as scientific evidence. It is blatantly disrespectful to the dead if the RCI accept the information.

Under such circumstance, we cannot understand why James Foong said "Soh Cher Wei is an important witness". Doesn't he know about such fundamental knowledge of law? Furthermore, James Fong is wrong to say Soh Cher Wei never give any statement, where in fact she had given her statement on 23 July 2009 after Beng Hock was found dead. Did James Foong not do his homework?

In the Psychiatry or Psychology field, the object/client being observed is of paramount importance, while the other collateral or third party information can only be supplementary evidence.

US University of South Florida mental health law and policy associate professor Randy Otto wrote a journal entitled "legal and ethic issues in accessing and utilizing third party information" which contends that "Although such data (third party information) are relied on by forensic mental health experts and are necessary to formulate opinions, nonetheless, this information falls within hearsay category, and as such, it is normally inadmissible for consideration by the jury for any purpose other than to establish the credibility of the expert's opinions".

Regardless of the professional view of law or psychiatry, the Malaysians for Beng Hock movement feel that since Teoh Beng Hock had died, it is inaccurate and useless to evaluate Beng Hock's state of mind from third party information, most worryingly being that the interviews could be twisted and manipulated by irresponsible parties.

We question why the RCI chairman is unjustifiably and unconventionally interested in the psychiatric examination, which overlooks other important clues of the homicide possibility. For example why MACC officers only submitted their handphones to the police after 1 week? Why MACC Selangor deputy chief Hishammudin Hasim's handhone was only submitted to police after approximately 2 weeks? Why were all the information in MACC officers handphones on the date of tragedy disappeared? Pathologist Dr. Shahidan overturned all his statements in the inquest, and the MACC refused to present all investigation documents relevant to the case.

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