

Legal Addendum

by David Matas

A. Burden of Proof

There are two possibilities. Either Raoul Wallenberg is alive. Or he is dead. There are two propositions at play. One is the proposition that he is alive. The other is the proposition that he is dead. The burden of proof should be on the proposition that he is dead. The burden of proof should not be on the proposition that he is alive.

If we assume that Wallenberg is alive, when in fact he is dead, then all we have lost is our own time and effort in attempting to locate him when he is nowhere to be found. If, on the other hand, we assume that he is dead, when in fact he is alive, then we will be perpetrating a cruel injustice on Raoul Wallenberg himself. In view of all that he has done for others, our own assumptions should be structured to do as much as possible for him.

B. Standard of proof

Our choices are prima facie proof, reasonable possibility, balanced of probabilities, clear and convincing evidence, and proof beyond a reasonable doubt. Prima facie proof is proof that is established after examining only the evidence in favour of a proposition, without examining any of the contrary evidence. Proof on a reasonable possibility is proof that establishes a proposition is more than a mere or hypothetical possibility, but goes no further. In terms of percentages, proof that establishes a proposition has one in ten chances to be true is considered to be proof on a reasonable possibility.

Proof on a balance of probabilities means proving that a proposition is more likely than not to be true. In terms of percentages, proof on a balance of probabilities must establish that a proposition has more than a 50% chance of being true.

Clear and convincing evidence of truth is a standard that is higher than a mere balance of probabilities. It approaches the standard of proof beyond a reasonable doubt, without quite reaching it. Proof beyond a reasonable doubt is the highest standard of proof. Demanding proof beyond this standard becomes unreasonable.

In addition to the burden of proof being on the proposition that Raoul Wallenberg is dead, the standard of proof should be proof beyond a reasonable doubt. A burden of proof on the proposition that Raoul Wallenberg is dead, with a standard of proof of proof beyond a reasonable doubt, is most likely to spur further inquiries and to answer all unanswered questions. Any other burden or