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IN THE SUPREME COURT OF PENNSYLVANIA

No. 9 WAP 2016

COMMONWEALTH OF PENNSYLVANIA, Petitioner,

v.

SHAWN LAMAR BURTON, Respondent.

BRIEF OF *AMICI CURIAE* PENNSYLVANIA EXONEREES

Appeal from the August 25, 2015 *En Banc* Opinion and Order of the Superior Court of Pennsylvania in Appeal No. 1459 WDA 2013, Reversing the August 27, 2013 Order of the Post-Conviction Court at Nos. CP-02-CR-0004017-1993 and CP-02-CR-0004276-1993

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

STATEMENT OF INTEREST

Amici curiae are Pennsylvania exonerees who for many years pursued their claims of innocence in prison without the assistance of counsel.[1] They obtained their release from wrongful incarceration after first demonstrating that new facts, previously unknown to them, demonstrated their innocence.

Based on the factual premise that *pro se* Pennsylvania prisoners have access to all publicly available information, the Commonwealth argues in favor of an irrebuttable rule presuming that publicly available information cannot be deemed unknown for purposes of 42 Pa. C.S. § 9545(b)(1)(ii). Because this factual premise has no empirical support, the Commonwealth's proposed rule should be rejected.

Amici curiae have a shared interest in ensuring that the law under Pa. C.S. § 9545(b)(1)(ii) permits Pennsylvania *pro se* prisoners to demonstrate that the facts on which their post-conviction relief claims are based were unknown to them based on their individual, particular circumstances. In particular, *amici curiae* have an interest in ensuring that the knowledge standard imposed on incarcerated,

[1] *Amici curiae* are Mr. Kenneth Granger, exonerated in 2010 after twenty-eight years of wrongful incarceration; Mr. Lance Felder, exonerated in 2014 after fifteen years of wrongful incarceration; Mr. Lewis "Jim" Fogle, exonerated in 2015 after thirty-four years of wrongful incarceration; Mr. Eugene Gilyard, exonerated in 2014 after fifteen years of wrongful incarceration; and Ms. Crystal Weimer, exonerated in 2016 after eleven years of wrongful incarceration.

pro se prisoners are based on the empirical facts concerning resources available to *pro se* prisoners.

ARGUMENT

The Commonwealth argues in support of a mandatory, conclusive presumption that publicly available information cannot be deemed "unknown" to *pro se*, incarcerated prisoners pursuant to 42 Pa. C.S. § 9545(b)(1)(ii).[2] *Amici curiae* submit this brief to demonstrate that this proposed presumption lacks empirical support and should not be adopted.

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[2] The cumbersome double negative is required by the language of the statute, providing in pertinent part:

> (b) Time for filing petition.--
>
> (1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that ….
>
> (ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence ….

42 Pa. C.S. § 9545(b)(1)(ii).

This provision means, in other words, if the facts underpinning a petition for post conviction relief were "not unknown" to the petitioner, then he would be bound by the one year period for filing a first petition, or 60 days for the filing of a second or subsequent. The Commonwealth's proposed presumption is based on the factual premise that all publically available facts cannot be "unknown" to a *pro se* prisoner and, therefore, there can be no exception to the one year or 60 day period.

I. THE MANDATORY, CONCLUSIVE PRESUMPTION URGED BY THE COMMONWEALTH HAS NO BASIS IN FACT

A legal presumption is a "conclusion of the law itself of the existence of one fact from others." *Watkins v. Prudential Ins. Co. of Am.*, 173 A. 644, 646 (Pa. 1974) (quoting *Tanner v. Hughes and Kinkaid*, 53 Pa. 289 (Pa. 1866)). Presumptions may be either: (1) permissive, meaning the fact finder may but is not required to infer the second fact from the existence of the first; or (2) mandatory, meaning the existence of the first fact tells the trier of fact that the existence of the second fact must follow from the first. *Commonwealth v. MacPherson*, 752 A.2d 384, 389-90 (Pa. 2000). Mandatory presumptions can be divided further, into those which are (a) rebuttable, such that evidence can be offered to demonstrate that the second fact did not actually follow from the first in the case at hand; or (b) conclusive, where no evidence can refute the existence of the second fact once the first is established. *Id.*

Here, the Commonwealth argues in favor of a mandatory, conclusive presumption that publicly available documents are known by an incarcerated, *pro se* prisoner. As this Court recently recognized, "[i]t is no small matter to establish a mandatory presumption by decisional law." *City of Pittsburgh v. W.C.A.B.*, 67 A.3d 1194, 1205 (Pa. 2013), reasoning:

> [A] presumption must have some rational connection between the fact proved and the ultimate fact presumed, and the inference of one fact from proof of another shall

> not be so unreasonable as to be a purely arbitrary mandate.… '**A presumption should always be based upon a fact, and should be a reasonable and natural deduction from that fact.**'

Id. (quoting *Rich Hill Coal Co. v. Bashore*, 7 A.2d 302, 313-14 (1939) and *Petrone v. Moffat Coal Co.*, 233 A.2d 891, 893 (Pa. 1967)) (emphasis supplied). Thus, a question before this Court is whether the mandatory, conclusive presumption advanced by the Commonwealth is based upon – or in the words of this Court, "a reasonable and natural deduction from" – facts. *Amici curiae* submit that the answer is no: Publicly available information is not available or known to *pro se*, incarcerated prisoners in Pennsylvania.

According to the Commonwealth, the *en banc* Superior Court Majority "baldly suggests that a presumption of access for *pro se* prisoners is 'cynical.'" *See* Commonwealth Br. at 26 (quoting *Commonwealth v. Burton*, 121 A.3d 1063, 1072 (Pa. Super. Ct. 2015)). Instead, the Commonwealth agrees with Judge Olson's unsupported statement that:

> [T]he Majority infers, without support, that all *pro se* prisoners are entirely isolated and have no access to publicly available information. But the Majority makes no effort to ascertain what resources, contacts, and capabilities are available to [respondent], or others who are similarly situated, to discover public information such as the contents of Goodwine's expungement motion. Incarcerated individuals (whether *pro se* or represented by counsel) reside in prisons, not off-the-grid islands. Prisons within this Commonwealth have law libraries,

> computer terminals, internet access, and legal aid assistance.

Id. (quoting *Burton*, 121 A.3d at 1079) (Olson, J., dissenting)). The Commonwealth adds, "[i]t is further submitted that while an inmate may not be permitted direct access to the internet, he could nonetheless submit a request to a civilian prison employee, such as the prison librarian, to search for the desired public information or record." *Id.*

Strikingly, the Commonwealth's brief provides no factual support for its statements. It refers the Court to no policy or procedure. It likewise cites no article or empirical study supposedly in support of its factual position. Indeed, the Commonwealth's brief is no less "bald" than its characterization of the *en banc* Superior Court.

As developed in the following sections, this *amicus brief*, in contrast, demonstrates that in fact Pennsylvania *pro se* prisoners do not have access to publicly available information. For example, Pennsylvania *pro se* prisoners do not have internet access, legal aid assistance, or access to civilian prison employees who can perform research on their behalf. Further, although prisons have law libraries, including some with non-internet computer databases of legal materials, they are limited and do not provide access to information that otherwise might be thought of as public such as case dockets and court filings. Hence, the facts and the reasonable deductions from them show that the limited access actually

available to prisoners in Pennsylvania fall well short of supporting the Commonwealth's proposed presumption that matters of public record are known to *pro se* prisoners.

II. *PRO SE* PRISONERS IN PENNSYLVANIA ARE "OFF THE GRID" AND HAVE NO INTERNET ACCESS

The Commonwealth quotes with approval the Dissent's statement that "[i]ncarcerated individuals (whether pro se or represented by counsel) reside in prisons, not off-the-grid islands. Prisons within this Commonwealth have … internet access …." *See* Commonwealth Br. at 26. Qualifying this statement, the Commonwealth adds, "while an inmate may not be permitted direct access to the internet, he could nonetheless submit a request to a civilian prison employee, such as the prison librarian, to search for the desired public information or record." *Id.*

While access to the Internet may seem pervasive to those outside of prison,[3] where computers and smart phones are fixtures of daily life, prisoners, de jure and de facto, do not enjoy such access, either directly or indirectly through prison employees.

[3] Even studies of access to the internet by members of the public – not those incarcerated – show that access is not uniform. Specifically, according to the United States Census Bureau, in 2011, 15.9% of those in the United States have no computer in their home and no internet connection anywhere. Thom File, *Computer and Internet Use in the United States*, Table 4, p. 8 (May 2013), http://www.census.gov/prod/2013pubs/p20-569.pdf. Although there is some variation in this percentage across the fifty states, the Commonwealth of Pennsylvania's experience (16.3%) tracks that of the nation as a whole.

As an initial matter, the Pennsylvania Department of Corrections' policies do not provide for any kind of inmate access to the internet or internet-based tools for legal research. The Policy Statement Regarding Access to Provided Legal Resources ("Resources Policy Statement") comprehensively lists the resources prisons make available to inmates to pursue legal claims.[4] It nowhere provides that inmates shall have any access – directly or indirectly through prison staff – to the internet or internet based tools. *See* Department of Corrections, *Policy Statement Access to Provided Legal Services*, No. DC-ADM 007 (April 6, 2015). Indeed, the Resources Policy Statement fails completely to even mention inmate internet access.

Other Department of Correction's statements likewise do not provide for any kind of inmate internet access for legal research. For example, the Department's Policy Statement on Information Technology ("Technology Policy Statement") sets strict guidelines on inmates' computer use and nowhere provides that inmates do or should have internet access in libraries or for legal research. *See* Dep't of Corrections, *Policy Statement Regarding Information Technology*, No. 2.3.1 (Oct. 28, 2010). The Technology Policy Statement contemplates supervised internet use by inmates in the Transitional Housing Unit, Reentry Services Office,

[4] The Department of Correction's Policy Statements are available at http://www.cor.pa.gov/About%20Us/Pages/DOC-Policies.aspx#.V7HNyvkrKUk.

and Veterans Service Unit. *See* Technology Policy Statement, Section 9. There is no similar allowance for internet use in the law library or for legal resources. *Id.; see also Pilchesky v. Pilchesky,* No. 12 CV 1282, 2012 WL 2995330 (Pa. Ct. Com. Pls. 2012) (describing internet use at SCI-Muncy as limited to "educational or vocational purposes"). Likewise, the Department of Correction's Inmate Handbook, including its "Legal Services" section, nowhere provides that internet access is available to inmates, either directly or indirectly through prison staff. *See* Pa Dep't of Corrections, *Inmate Handbook*, Section V.E (2013 ed.).

The lack of internet access in Pennsylvania prisons is consistent with the experience of other jurisdictions across the country. According to the most recent study we have located, as of 2009, all but four states denied internet access of any sort to prisoners. *Computer Use For/By Inmates*, 34 Corrections Compendium, 2009 WLNR 18793359 (June 22, 2000); *see also* Ben Branstetter, *The Case for Internet Access in Prisons*, Washington Post, Feb. 9, 2015; Max Kutner, *With No Google, The Incarcerated Wait for the Mail*, Newsweek, Jan. 25, 2015.

Finally, as an empirical matter, none of the exoneree *amici curiae* ever had any kind of internet access while in prison. They also did not know any other prisoner who had such access. The *amici curiae*'s experience, moreover, is the same as many other Pennsylvania prisoners who have challenged their convictions on the basis of new evidence. *See, e.g., Commonwealth v. Smallwood,*

No. CP-21-CR-88-1972, In Re: Opinion Pursuant to Pa. R.A.P. 1925 (July 27, 2015) (granting PCRA petition based on newly discovered facts and holding that Ms. Smallwood "was an incarcerated layperson and did not have access to the internet."), *appeal pending* 709 MDA 2015. Multiple other prisoners pursuing post conviction claims based on new evidence agree that they, too, did not have any access to the internet while in prison. *See Commonwealth v. Johnson,* CP-22-CR-1544-1996 (Dauphin Cnty. Ct. Com. Pl.), Letter Brief from Michael Wiseman, Esq. to the Honorable Lawrence F. Clark, Jr., Senior Judge (Aug. 8, 20916), Ex. A, Certification of Lorenzo Johnson dated Aug. 5, 2016 ¶ 6 ("In prison I do not have, nor have I ever had, access to the internet."); *Commonwealth v. Brensinger*, CP-39-CR-3251-1997 (Lehigh Cnty. Ct. Com. Pl.), Certification of Rusty Brensinger dated April 13, 2015 ¶ 13 ("I have had no access to the internet since I have been incarcerated."); *Commonwealth v. Johnson*, CP-51-CR-1108001-1986 (Phila. Cnty. Ct. Com. Pl.), Certification of Kevin Johnson dated July 10, 2015 ¶ 47(b) ("I have no access to the internet."); *Commonwealth v. Roberts*, CP-22-CR-1127-2006 (Dauphin Cnty. Ct. Com. Pl.), March 29, 2016 Hr'g at 78:11-13 (Q: "It is correct that in prison you don't have Internet access to do your own research; is that correct? A: Yes.").

III. PRISON LAW LIBRARIES IN PENNSYLVANIA HAVE LIMITED RESOURCES WHICH DO NOT INCLUDE PUBLIC DOCKETS

Without support, the Commonwealth also advances the notion that *pro se* prisoners could obtain documents in the public record from their prison law library. This factual assertion appears premised on the supposition that a prison law library must have the same kind of access to public documents which may be found in other law libraries such as those in courts, law schools, law firms or bar associations. That premise, too, has no basis.

Critically, Pennsylvania prison law libraries do not include a vast array of documents available to those outside prison, including public dockets and case filings. In addition, as outlined below, they are limited in multiple other ways that hamper *pro se* prisoners' ability to learn about or understand information which could be the basis of a claim for relief.

First, the actual materials in Pennsylvania prison law libraries are limited. The Resources Policy Statement prescribes the materials that should be available in prison law libraries. The listed materials consist primarily of case law and statutes, although in *amici curiae*'s experience prisons often do not always have all of the materials listed.[5] Notably, the listed materials do not include many types of

[5] For many prisoners, these legal materials are insufficient to develop and litigate their legal claims. Mr. Fogle supplemented the law library with his own collection of legal resources, including criminal law treatises and books on legal forms. He estimates that he spent thousands of dollars on legal books to assist with

material that would be public case dockets or documents filed in cases such as motions, pleadings, or transcripts. In *Commonwealth v. Bennett*, this Court implicitly recognized that *pro se* prisoners do not have access to case dockets or filings. *Commonwealth v. Bennett*, 930 A.2d 1264, 1275 (Pa. 2007). In that case, the Court rejected the argument that the court order dismissing Mr. Bennett's own petition for post-collateral relief was a public record which could not be unknown to Mr. Bennett. The Court explained that such a presumption rests on an "implicit … recognition that the public record could be accessed by the defendant." *Id*. In Mr. Bennett's case, that implicit recognition was invalid: "[I]n light of the fact that counsel abandoned Appellant, we know of no other way in which a prisoner could access the 'public record.'… [t]he matter of 'public record' does not appear to have been within Appellant's access." *Id.*

Amici curiae's experience confirms the lack of access to filings on court dockets. *Amici curiae* all struggled to obtain court filings from *their own cases* for many years because these documents were not available to them in prison. Mr. Gilyard and Mr. Granger, for example, relied on the assistance of friends, family members, and intermittent counsel outside of prison to send them some of

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his *pro se* efforts. Ms. Weimer also struggled with the lack of scientific materials in prison law libraries, which were crucial in her case to demonstrating new developments undermining discredited "bite mark science" that led to her conviction.

their own case materials, but never obtained all of the materials they sought. The possibility of assistance outside of prisons does not support the Commonwealth's argument that all documents in the public domain are known to *pro se* prisoners. Many, like Mr. Fogle, did not have such help while in prison.

Department of Corrections policies also make obtaining information outside of prison difficult. Prisoners must generally pay for phone calls and stationery, envelopes and stamps. *See* Inmate Handbook, Section I.A.6, I.A.8; II.N. The Department of Corrections Policy prohibits them from sending mail to former inmates or parolees or calling a "judge, criminal justice official, prosecutor or court administrator without his/her prior written approval." *Id*. II.N.5.d; II.H.1. Mr. Granger also struggled with the cost of filing fees for motions requesting documents and copying fees for the reproduction of records in his own case.

Second, prison law libraries are, literally, "off the grid." Prisoners have no internet access through computer terminals; rather, according to the Resources Policy Statement, computer materials will be "[a]vailable on CD-ROM." Resources Policy Statement, Legal Reference Materials. Thus, prisoners don't have access to web-based research tools and resources such as Westlaw, Lexis-Nexis, or Google but rather have access to prescribed materials that are loaded onto the computer terminal hard drive and periodically updated. Indeed, *amici curiae* remember learning about legal developments from news stories, but then

waiting several weeks for the actual opinions to be added to the library's computer terminal database.

Moreover, computer terminals are only potentially useful to those inmates who know how to use them. Mr. Fogle entered prison thirty-five years ago, before ever using a computer. When computer terminals arrived in the prison where he was incarcerated, he did not know how to use them and the prison did not provide any training for inmates. As he puts it, "computers passed me by."

Third, Pennsylvania prisoners have only limited physical access to prison law libraries. An inmate must submit a request to prison officials and be granted permission to use the library. *See, e.g.*, *U.S. ex rel. Paraprofessional Law Clinic v. Beard*, No. Civ. A. 78-538, 2002 WL 1160757, at *1 (E.D. Pa. May 30, 2002). The Resources Policy Statement limits the amount of time each prisoner can access the library to "a maximum of six hours per week" unless insufficient demand permits more available spots. Resources Policy Statement, Section 1(B)(3). In *amici curiae*'s experience, however, prisoners were not able to spend even six hours per week in a law library. Usually this time was limited to one or two days per week and prison officials cancelled prior authorizations to visit the library as often as every other week. In 2005, an Eastern District of Pennsylvania Court described the law library at SCI Graterford, one of the largest prisons in Pennsylvania, as "chronically under-staffed and intermittently subject to closure."

Paraprofessional Law Clinic, 2002 WL 1160757 at *6. During their short allotted time in the law libraries, prisoners have to share the limited materials. Mr. Gilyard and Mr. Granger remember that precious time in the library was often spent waiting for another inmate to finish using a book, typewriter, or computer terminal.

Finally, prison law libraries are limited because many inmates are unable to use even the limited resources provided. As Thomas C. O'Bryant, a self-taught inmate and advocate, explains, "[p]risoners do not enter the prison system armed with a legal education and skilled in the art of legal advocacy; rather, they must acquire what legal knowledge they can once in prison." Thomas C. O'Bryant, *The Great Unobtainable Writ: Indigent Pro Se Litigation After the Antiterrorism and Effective Death Penalty Act of 1996*, 41 Harv. C.R.-C.L. L. Rev. 299, 309 (2006). For many inmates, acquiring these skills is difficult due to of lack of education, physical or mental health issues, or limited English language skills. *Id.* According to Pennsylvania Department of Corrections Secretary John Wetzel, in 2015, forty-two percent of state offenders had less than a 12th grade education, and the average inmate read at below an eighth- or ninth-grade level. *See* Press Release, Governor Wolf Announces Million Dollar Federal Grant to Improve Prison Education System, Implement Career Pathways (Nov. 6, 2015).[6] In 2003, the

[6] Available at https://www.governor.pa.gov/governor-wolf-announces-million-dollar-federal-grant-to-improve-prison-education-system-implement-career-pathways/.

District Court for the Eastern District of Pennsylvania found that the reading level for many inmates was even lower. Fifteen to twenty percent of the inmates at SCI Graterford read below a fifth-grade level. *Paraprofessional Law Clinic*, 2002 WL 1160757, at *1.

In addition, many inmates suffer from mental or physical disabilities that may impair their ability to make use of legal resources. According to the most recent survey conducted by the United States Department of Justice Bureau of Justice Statistics, forty percent of female inmates and thirty-one percent of male inmates reported that they had physical or mental disability such as hearing, vision, or cognition. *See* Jennifer Bronson et al., *Disabilities Among Prison and Jail Inmates, 2011-12* (Dec. 2012).[7] The prevalence of disabilities among the prison population is nearly three times the rate of the general population. *Id.* Again, these disabilities may limit the ability of prisoners to make use of the legal resources available. O'Bryant, *supra* at 310-15. Finally, many inmates do not speak or read English, rendering the English-language materials in the library unusable.

In sum, the mere presence of law libraries in Pennsylvania prisons does not support the presumption that publicly available information is available or known to *pro se* prisoners in Pennsylvania. As a recent comprehensive review of the

[7] Available at http://www.bjs.gov/content/pub/pdf/dpji1112.pdf.

history and development of prison law libraries concludes, "[t]he prison law library has long been a potent symbol of the inmates' right to access the courts. But it has never been a practical tool for providing that access." Jonathan Abel, *Ineffective Assistance of Library: The Failings and the Future of Prison Law Libraries*, 101 Geo. L.J. 1171, 1171 (2013). The experience of *amici curiae* corroborates that Mr. Abel's conclusions accurately describe Pennsylvania *pro se* prisoner access.

IV. *PRO SE* PRISONERS IN PENNSYLVANIA HAVE NO LEGAL AID ASSISTANCE

The Commonwealth also asserts that Pennsylvania prisoners have "legal aid assistance," Commonwealth Br. at 26, although the Commonwealth offers no support for this proposition either. Let's unpack that concept and see whether it has any meaningful factual support.

The term "legal aid assistance" suggests prison staff or volunteers with legal training and experience who can help inmates with investigating and pursuing their legal claims. The Department of Corrections' policy statements, coupled with *amici curiae*'s experience demonstrates that no such assistance exists.[8]

[8] To the extent the Commonwealth meant to suggest that prisoners can hire legal counsel or find *pro bono* assistance, the suggestion is inapposite. *Pro se* prisoners, by definition, do not have legal counsel. They often lack the resources to retain legal help. Although it is possible for an *pro se* prisoner to be appointed legal counsel after filing a claim for relief, in the experience of the *amici curiae*, appointed attorneys do not ameliorate many of the problems for *pro se* prisoners investigating new claims. Many attorneys are appointed for a limited purpose, such as assisting with a federal habeas claim or particular issue on appeal in an already-filed suit. Ms. Weimer remembers the frustration of discovering that a

First, the Resources Policy Statement strictly limits the availability of library staff assistance and the help they are allowed to provide. According to the Policy, inmates may apply for "legal assistance services" if they are *pro se* and "legitimately illiterate;" "lack the skills or comprehension to speak or understand" written English; or "have a disability." *See* Resources Policy Statement, Section 2.A. For this limited group of inmates, the Resources Policy Statement then strictly curtails the assistance that can be provided. It is limited to "assistance in using the law library and an explanation of the proper methods for conducting legal research and the drafting of pleadings and other documents to be filed pro se by the inmate …." *Id.* Section 2.A.3.

Importantly, the Resources Policy Statement does not authorize or allow library staff to perform research on behalf of an inmate or to obtain documents from outside of the prison on the inmate's behalf. Specifically, the Resources Policy Statement explicitly prohibits assistants from providing legal advice to an inmate: "Library staff shall not engage in providing legal advice (advice regarding the substantive or procedural adequacy of a pleading or document) or engage in any activity that constitutes the practice of law." Resources Policy Statement, Section 2.C.3; *see also id.* at Section 2.D.3.f. ("Inmate Legal Reference Aids may

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court appointed attorney lacked the resources or authority to explore her innocence claim.

not provide legal advice (advice regarding the substantive or procedural adequacy of any such pleading or document) to or draft any document for an inmate.").

Second, the Department also does not require that library staff have legal training or experience in the law. There is thus no assurance that any staff that did assist would do so in a way that would be helpful.

Third, the Department has no policy permitting volunteers with legal training to access Pennsylvania prisons or assist *pro se* prisoners. At one time, inmates at the State Correctional Institution at Graterford formed the Para-Professional Law Clinic ("PPLC") to provide legal assistance by inmates for other Graterford inmates. In 2003, Graterford officials closed the PPLC program, despite urging to the contrary "in the strongest possible terms" from the Court of Appeals for the Third Circuit and the District Court of the Eastern District of Pennsylvania, which found that that the PPLC "is an integral part of the system of access at Graterford … and that the services provided by [PPLC] supplement the otherwise inadequate and unreliable services provided by Graterford itself." *See Para-Prof'l Law Clinic at SCI-Graterford v. Beard,* 334 F.3d 301, 306 (3d Cir. 2003) (quoting *U.S. ex rel. Paraprofessional Law Clinic v. Beard*, No. CIV.A. 78-538, 2002 WL 1160757, at *2 (E.D. Pa. May 30, 2002)).

Amici curiae's actual experience mirrors the Department's policies. The prison librarians had no legal training and often knew less about legal research than

self-taught inmates. None of the *amici curiae* ever had assistance from anyone with legal training or experience in his or her *pro se* legal efforts while incarcerated.

CONCLUSION

The Commonwealth argues in favor of an irrebuttable rule that documents that are publicly available cannot be deemed unknown to a prisoner for purposes of 42 Pa. C.S. § 9545(b)(1)(ii). This rule is based on a factual assertion – that *pro se* prisoners have access to publicly available information – that has no empirical support. As demonstrated above, Pennsylvania prisoners have no internet access or legal aid assistance, and the prison law libraries are limited resources that do not contain information available to the non-incarcerated public.

Amici curiae urge this Court to affirm the *en banc* Superior Court. *Pro se* prisoners should be permitted to demonstrate that facts upon which their claims are based were not known to them based on their individual circumstances, without the unfair and unsupportable mandatory and conclusive presumption advanced by the Commonwealth.

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WORD COUNT CERTIFICATION

Pursuant to Pa. R.A.P. 2135(d), this is to certify that the Brief for *Amici Curiae* Pennsylvania Exonerees complies with the word count limit set forth in Pa. R.A.P. 2135(a)(1). The word count of the word processing system used to prepare this brief states that those sections that shall be included in the word count under Rule 2135(b) contain 4,462 words.

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I hereby certify that on September 6, 2016, I caused a copy of the foregoing Brief for *Amici Curiae* Pennsylvania Exonerees to be served upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121, and will within 7 days file a paper copy with the Pennsylvania Supreme Court:

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IN THE SUPREME COURT OF PENNSYLVANIA

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Representing:	Appellee Amicus Curiae American Civil Liberties Union of Pennsylvania Appellee Amicus Curiae Pennsylvania Association of Criminal Defense Lawyers Appellee Amicus Curiae Pennsylvania Institutional Law Project Appellee Amicus Curiae The Pennsylvania Prison Society

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IN THE SUPREME COURT OF PENNSYLVANIA

/s/ John S. Summers

(Signature of Person Serving)

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