

2018

## 93rd Henry M. Campbell Moot Court Competition Final Round

University of Michigan Law School

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**MICHIGAN LAW**  
UNIVERSITY OF MICHIGAN

*93rd*

HENRY M. CAMPBELL MOOT COURT COMPETITION

# FINAL ROUND



**MONDAY, MARCH 26**

4 P.M. Hutchins Hall 100

IN THE  
**Supreme Court of the United States**

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UNITED STATES OF AMERICA,  
*Petitioner,*

v.

ANDREW MONTGOMERY,  
*Respondent.*

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS FOR  
THE TWELFTH CIRCUIT

---

JOHANNAH WALKER  
*on behalf of Petitioner*

JOHN HE  
*on behalf of Respondent*

March 26, 2018  
*Henry M. Campbell Moot Court Competition*  
*University of Michigan Law School*

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MICHIGAN LAW  
HENRY M. CAMPBELL  
MOOT COURT COMPETITION  
UNIVERSITY OF MICHIGAN

**THE 2017–2018 CAMPBELL MOOT COURT BOARD**

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*Welcomes you to*

**THE 93<sup>RD</sup> ANNUAL  
HENRY M. CAMPBELL  
MOOT COURT COMPETITION**

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## STATEMENT OF THE FACTS

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In November 2015, two Munroe state police officers made a routine traffic stop. During the stop, they noticed drugs in the back seat of the car in plain view, and they arrested the occupant. After properly interrogating the occupant, and searching his phone, the officers discovered a phone number to his supplier. They officers decided to use a cell-site simulator, or Stingray, to locate and track the owner of the phone.

The two officers applied for a court order under the Pen Register/Trap and Trace statute to use the Stingray. The order was granted, and the officers legally acquired the information necessary to track the phone from the appropriate cell phone company (the ISMI). The officers went to a local nightclub frequented by drug runners to use the Stingray for the first time. They immediately picked up a signal from the phone, and they tracked it to an apartment complex. Over the next two weeks, the officers tracked the phone this way four times. On the fourth occasion, one of the officers decided to use the Stingray to track the phone to a specific apartment. The officer entered the apartment complex and used the Stingray to locate the phone in apartment 315.

Both officers knocked on the door of apartment 315. Andrew Montgomery answered and gave consent for the officers to search the premises. They found five kilograms of heroin. Montgomery was arrested and charged with possession of narcotics with intent to distribute. Before his trial, Montgomery moved to suppress the evidence from his apartment, arguing that the use of the Stingray constituted an illegal search. He won on appeal, and the Supreme Court granted certiorari.

## QUESTIONS PRESENTED

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The petition for a writ of certiorari is granted. The parties are directed to brief and argue the following questions:

*Whether the use of a cell-site simulator device by police to track the location of a cell phone is considered a "search" under the Fourth Amendment.*

*Whether law enforcement's good-faith reliance upon third-party doctrine precedent or pen register statute constitutes an exception to the exclusionary rule.*

# JUDGING PANEL

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## **The Hon. Karen Nelson Moore**

*United States Court of Appeals for the Sixth Circuit*

Judge Moore was sworn in as a circuit judge on the U.S. Court of Appeals for the Sixth Circuit on March 29, 1995. A graduate of Harvard University-Radcliffe College and Harvard Law School, both magna cum laude, she served as a law clerk for Judge Malcolm Wilkey on the U.S. Court of Appeals for the D.C. Circuit and for Justice Harry A. Blackmun on the U.S. Supreme Court.

After spending two years as a litigation associate at Jones, Day, Reavis & Pogue in Cleveland, she joined the faculty at Case Western Reserve Law School, where she held the Arthur E. Petersilge Chair. Her major teaching and scholarship fields were civil procedure, complex litigation, U.S. Supreme Court practice, and federal income taxation. In 1990–1991, she was a visiting professor of law at Harvard Law School.

In 2010, she was elected to a six-year term on the Board of Overseers of Harvard. She was president of the board from 2015 to 2016. Previously, she has served as a trustee of Radcliffe College and an officer of the Harvard Alumni Association. Since 1995, she has served on numerous committees of the federal judiciary, including the Judicial Conference committees on judicial security and on information technology.

## **The Hon. Diane S. Sykes**

*United States Court of Appeals for the Seventh Circuit*

Judge Sykes was nominated to the U.S. Court of Appeals for the Seventh Circuit by President George W. Bush and confirmed by the U.S. Senate in 2004. Prior to her appointment to the federal bench, she was a justice on the Wisconsin Supreme Court. She was appointed by Governor Tommy G. Thompson in September 1999 to fill a mid-term vacancy on the state high court and elected to a full 10-year term in a statewide election in April 2000.

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From 1992 to 1999, Judge Sykes served on the state trial bench in Milwaukee County; she was first elected in 1992 and re-elected in 1998. From 1985 to 1992, Judge Sykes practiced law with the Milwaukee firm of Whyte & Hirschboeck SC. and from 1984 to 1985, was a law clerk to The Hon. Terence T. Evans on the U.S. Court of Appeals for the Seventh Circuit.

Born and raised in the Milwaukee area, Judge Sykes earned a bachelor's degree in journalism from Northwestern University and a law degree from Marquette University. Between college and law school, she worked as a reporter for the *Milwaukee Journal*.

## **Justice Bridget Mary McCormack**

### *Michigan Supreme Court*

Justice Bridget Mary McCormack joined the Michigan Supreme Court in January 2013. She is the Court's liaison to Michigan's business and Tribal courts.

An NYU Law graduate, Justice McCormack started her legal career in New York City. In 1996, she joined the Yale Law School faculty. She then joined the University of Michigan Law School faculty in 1998, where she taught criminal law, legal ethics, and various clinics. She was named associate dean for clinical affairs in 2002.

Justice McCormack was elected to The American Law Institute in 2013. The U.S. Department of Justice and the U.S. Department of Commerce's National Institute of Standards and Technology appointed her to the National Commission on Forensic Science in 2014. She serves as an editor on the ABA's preeminent journal, *Litigation*. She continues to teach at the University of Michigan each year and publishes in professional journals and law media.

Justice McCormack is married to Steven Croley, a partner at Latham and Watkins. They have four children.



# ORIGIN OF THE HENRY M. CAMPBELL MOOT COURT COMPETITION

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Henry Munroe Campbell was a distinguished lawyer who served as legal counsel to the University of Michigan's Board of Regents for several years.

Mr. Campbell was born in 1854, the son of famed Michigan Supreme Court Justice James V. Campbell. He graduated from the University of Michigan in 1876 and later from the University of Michigan Law School. In 1878, he established a law partnership in Detroit with Henry Russell. Over the years, the firm prospered and continues today as the Detroit-based firm of Dickinson Wright PLLC.

Mr. Campbell became an attorney of considerable eminence in Michigan and was widely regarded as a constitutional scholar. He helped draft the Michigan Constitution in 1908 and served as chief counsel to the delegates who petitioned the Michigan Supreme Court to secure early submission of the document to the electorate.

Mr. Campbell maintained a keen interest in the affairs and growth of the University of Michigan. In *Board of Regents of the University of Michigan v. Auditor General*, 132 N.W. 1037 (Mich. 1911), he successfully argued for the constitutional autonomy of the University and its governing body. Mr. Campbell was a well-liked and inspiring teacher. One of the young lawyers he trained recalled years later, "he created and fostered a sense of loyalty, of cooperation and uncompromising integrity that must endure. To him the law was a science, its profession a service."

Following Mr. Campbell's death in 1926, his law partners met with then-University of Michigan Law School Dean Henry M. Bates to discuss a fitting memorial. They decided to establish a case club competition to foster training for law students in appellate advocacy in his honor. The first Henry M. Campbell competition was held in the 1927–28 academic year.

A trust fund to finance the competition was established in 1927 and has been periodically augmented with gifts from Dickinson Wright PLLC. Each year, prizes are paid from the income of the trust fund to the finalists in the Henry M. Campbell Moot Court Competition. This year cash prizes will be paid to the top five finalists.

# AWARDS

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Please join us in recognizing all eighty-six exceptional competitors who participated in this year's Henry M. Campbell Moot Court Competition, and especially:

## QUARTERFINALISTS

Michael Abrams	Aviv Halpern	Anna Rasmussen
Julie Aust	Philip Hammersley	Ryan Rones Christopher
Sophie Baum	John He	Schwartz
Emerson Bursis	Seth Horras	Nikhil Sethi
Erin Emory	Hillary John	Johannah Walker
Eric Fleddermann	Adam Kleven	Kevin Weehunt
Gary Fox	Caleb Nagel	Carolyn Weltman
Brett Frazer	Chris Pollack	Brent Winslow

## SEMIFINALISTS

Julie Aust	Philip Hammersley
Sophie Baum	John He
Brett Frazer	Johannah Walker
Aviv Halpern	Carolyn Weltman

## FINALISTS

John He	Johannah Walker
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## AWARD RECIPIENTS

### Preliminary Round

Eric Fleddermann & Johannah Walker  
*Best Petitioner Brief*

Aviv Halpern & Nikhil Sethi  
*Best Respondent Brief*

Eric Fleddermann  
*Best Oralist*

### Quarterfinal Round

John He  
*Best Petitioner Brief*

Carolyn Weltman  
*Best Respondent Brief*

Philip Hammersley  
*Best Oralist*

## RUNNERS-UP

Philip Hammersley  
*Third Place*

Aviv Halpern  
*Fourth Place*

Julie Aust  
*Fifth Place*

# SPECIAL THANKS

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The Campbell Board would like to extend a special thanks to the three esteemed judges who volunteered to serve on the panel for the final round of this competition, as well as all of the administrators, practitioners, and professors who served as judges for the earlier rounds. We would also like to thank those professors, administrators, and practitioners who graded briefs for the various stages of the competition. Without all of these parties' collective support, this year's competition would not have been a success.

## PRELIMINARY ROUND JUDGES

James Adams	Sarah DeYoung	Brian Kott
Christopher Allen	Maria Domanskis	Lucas Kowalczyk
James Allen	Sean Dutton	Mark Kowalsky
Kimberly Ang	Aghogho Edevbie	Michael Krachtman
Brian Apel	Amber Elliott	Jessica Kraft
Ankit Bahri	Daniel Ellman	John Lin
Evan Ballan	Alfred John Eppens	Eric Lipson
Michael Barnhart	Peter Falkenstein	David Loudon
Thomas Bejin	Steve Farina	Tom Ludden
Mark Bendure	Betsy Farrington	Curtis Mack
Justin Benson	Erica Fitzgerald	Tara Mahoney
John Birmingham	Colleen Fitzharris	Alexandra Markel
John Blattner	Gavin Fleming	Hans Massaquoi
Gary Boren	John Ford	Bradford Maynes
Howard Borin	Jonathan Frank	David McCreedy
Tom Bourque	David Franks	Rebecca McDade
Diane Bower	Rosemary Gardey	Andrew McGuinness
Andy Broder	Shomik Ghosh	Kenneth McIntyre
Joel Bryant	David Goldstein	Mitchell Meisner
Larry Buonomo	Donnelly Hadden	Gabe Mendlow
Rebecca Burtless-Creps	Margaret Hannon	D. Richard Miller
Clinton Canady	John Hardison	Edward Miller
Virginia Cardwell	Zane Hatahet	John Minock
Frances Carlson	Tim Hefferon	Ashley Mitchell
Bill Casey	Lynn Helland	Jim Moore
Joseph Celentino	Greta Hogan	Julian Mortenson
Michael Coakley	James Howarth	Jessica Morton
Marjory Cohen	Cindy Huss	Matthew Muma
Trent Collier	Kim James	Marc Newman
Laurence Connor	Kurt Johnson	Ellen Noble
Erin Conti	Richard Jolly	Erika Oblea
Christa Cottrell	Constance Jones	Gail Pabarue
Lee Crain	William Joselyn	Rick Pacynski
Franki Dame	Terry Kasiborski	David Palmiere
Adam Davidson	Jesse Kirchner	Rick Parks
Erika Davis	Rebecca Klipfel	George Parks
Kaitlyn DelBene	Adam Koshkin	Don Parshall

David Paruch  
Jonathan Paul  
Mackenzie Phillips  
Daniel Ping  
Seth Quidachay-Swan  
John Quinn  
James Ramer  
Paul Ream  
Benjamin Reese  
Ann Reyes  
Mark Riashi  
Chris Rice  
Raphael Richmond

James Ridella  
Clyde Robinson  
Emily Rose  
Laura Sagolla  
Mark Sassak  
Larry Saylor  
Matthew Schneider  
Betsy Sedore  
David Shand  
Dan Shemke  
JoAnn Slater  
Michael Slaughter  
Diane Soubly

Dan Swanson  
Hannah Swanson  
Imran Syed  
C. Peter Theut  
Kurt Thornbladh  
Bree Van Engelen  
Kate Warner  
Matthew Wilk  
Terrill Wilkins  
Kendall Williams  
Emily Wolfe

## QUARTERFINAL ROUND JUDGES

Kate Andrias  
Brian Apel  
Evan Ballan  
Patrick Barry  
Ted Becker  
Kate Britt  
Howard Bromberg  
Kincaid Brown  
Kate Canny  
Cory Carone  
Joseph Celentino  
Dan Crane  
Josh Deahl  
Megan DeMarco  
Mariel Eben  
Daniel Ellman

Jen Fischell  
Colleen Fitzharris  
Jonathan Frank  
Richard Friedman  
Erika Giroux  
Margaret Hannon  
Gautam Hans  
Steve Hiyama  
Gordon Kangas  
Vikramaditya Khanna  
George Kimball  
Rachel Kohl  
Adam Koshkin  
Melanie Macey  
Sammy Mansour  
Dave McCreedy

Mary Miller  
Julian Mortenson  
Virginia Neisler  
Mark Osbeck  
Marissa Perry  
Richard Primus  
Benjamin Reese  
Amanda Rice  
Vivek Sankaran  
Eli Savit  
JoAnn Slater  
Sarah Slinger  
Jesse Taylor  
Beth Wilensky  
Sarah Zearfoss

## SEMIFINAL ROUND JUDGES

Richard Friedman  
Don Herzog

Dave Moran  
Julian Mortenson

Eve Brensike Primus  
Kim Thomas

## FINAL ROUND JUDGES

Hon. Karen Nelson Moore

Hon. Diane S. Sykes

Justice Bridget  
Mary McCormack

Additionally, we would like to thank the first-year law students who volunteered as marshals. We cannot thank them enough for the long hours they dedicated to making the competition a success.

*Abdullah Alzamli, Tihana Balagovic, Laurence Batmazian, Millan Bederu, Jamie Bircoll, Austin Bowman, Martha Brown, Philip Brown, Nina Cahill, Jacob Carlton, Joseph Condon, Gregg Coughlin, Monica Daegele, Michael Dauphinais, Sarah Du, Haley Dutch, Stephen Federowicz, Robert Fernandes, Alex Folkerth, Jacob Gach, Trini Gao, Alexandra Genord, Solana Gillis, Michael Goodyear, Mindy Gorin, Leia Gu, Christopher Hemry, Jennifer Hill, Mason Hill, Emily Hu, Abby Jacobs, Alexia Jansen, Chloe Jasper, Aaron Jones, Joseph Kiessling, Aaron King, Piotr Krypciak, Chad Lee, Jeffrey Levicki, Lixin Lin, Hetali Lodaya, Nicholas Loftus, Sean Magill, Nicholas Matosian, Gillian McGann, Steven Miller, Jacob Muller, Chris Opila, Dhruvi Patel, Brianna Potter, Kate Powers, Christopher Pryby, Randy Pummill, Chloe Roddy, Courtney Rygalski, Faraz Shahidpour, Claire Shimberg, Mary Kate Sickel, Sarah Smith, Christopher Southcott, Kevin Todd, Claire Tuffey, Roberta Turner, Andrew Vierra, Tempestt Watts, Olivia Wheeling, Anna Williford, Thomas Zaino, and Henry Zurn.*

The Campbell Board especially wishes to thank **Dickinson Wright PLLC** for their continued support of the competition.

Finally, we would like to extend our deepest thanks to Professors Kate Andrias, Evan Caminker, Edward Cooper, Richard Friedman, Samuel Gross, Margaret Hannon, Don Herzog, Ellen Katz, David Moran, Julian Davis Mortenson, Eve Brensike Primus, and Kim Thomas for their invaluable assistance with this year's problem; to our academic advisor, Judge Joan Larsen; to Dean Bayrex Martí for his ongoing support; and to Trudy Feldkamp, Jenny Rickard, and Shawn DeLoach for their tireless efforts over the course of the competition.

## **Thank You for Coming to the Final Round!**

*Please enjoy refreshments outside Hutchins 100 during the judges' deliberations.*

