

---

# Data Analytics and The Supreme Court

---

Robert H. Sloan & Richard Warner  
University of Illinois at Chicago  
October 10, 2019

# A Preview

- You will download and analyze a database of Supreme Court decisions from 1946 – 2018.
- A sample analysis:
  - show that from 2005 – 2012, Justice Roberts voted with the conservatives.
  - Show that in 2012, he begins to side with the liberals in some cases.
  - For ‘conservative’ and ‘liberal,’ see <http://scdb.wustl.edu/documentation.php?s=2>. Note the terms are introduced but not defined.

---

# Web Crawler-like Legal Issues

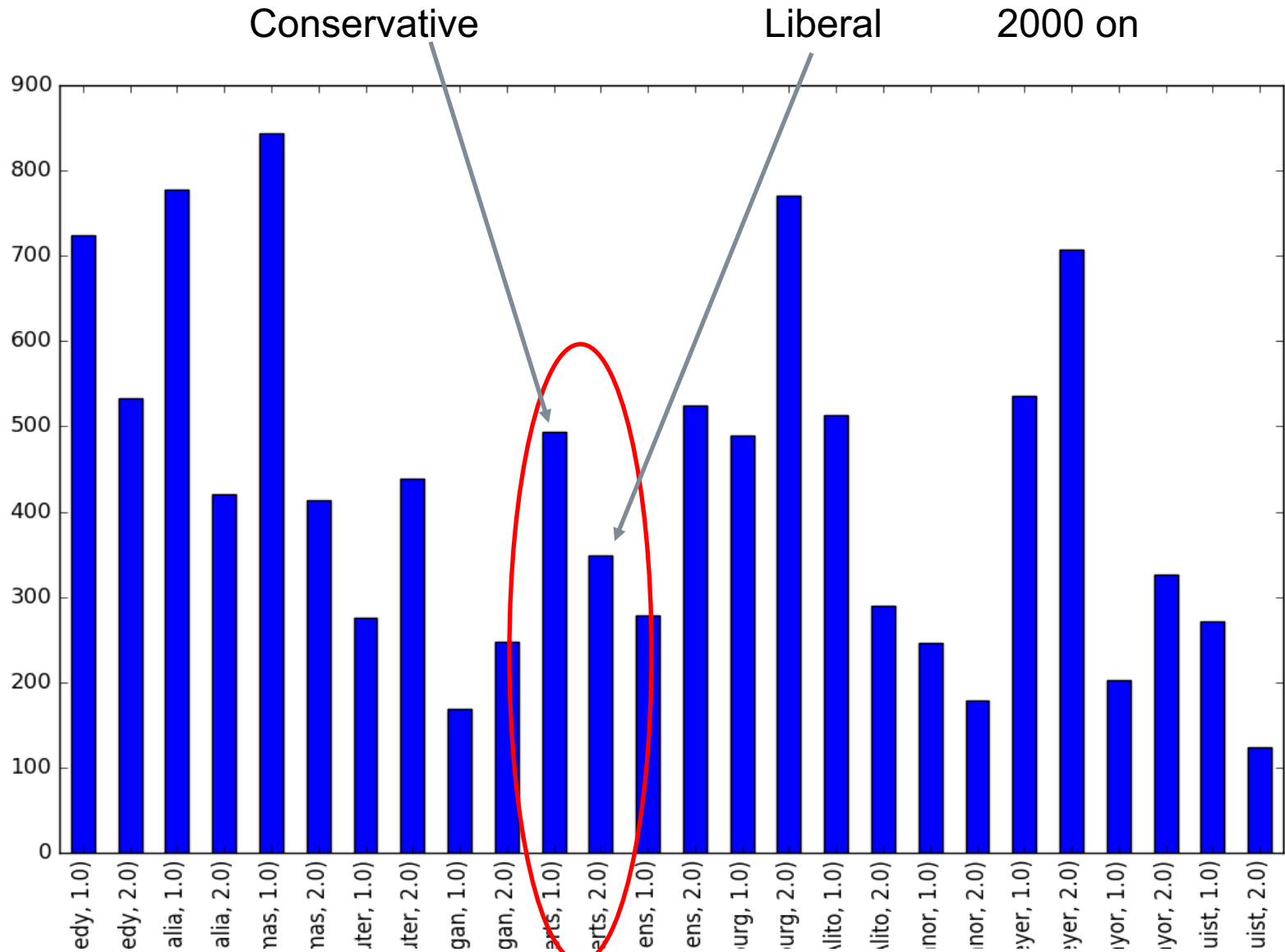
```
fileref = open('SCDB_2016_01_justiceCentered_Citation.csv', encoding="ISO-8859-1")  
scdb = pandas.read_csv(fileref)
```

Copyright, contracts, CFAA

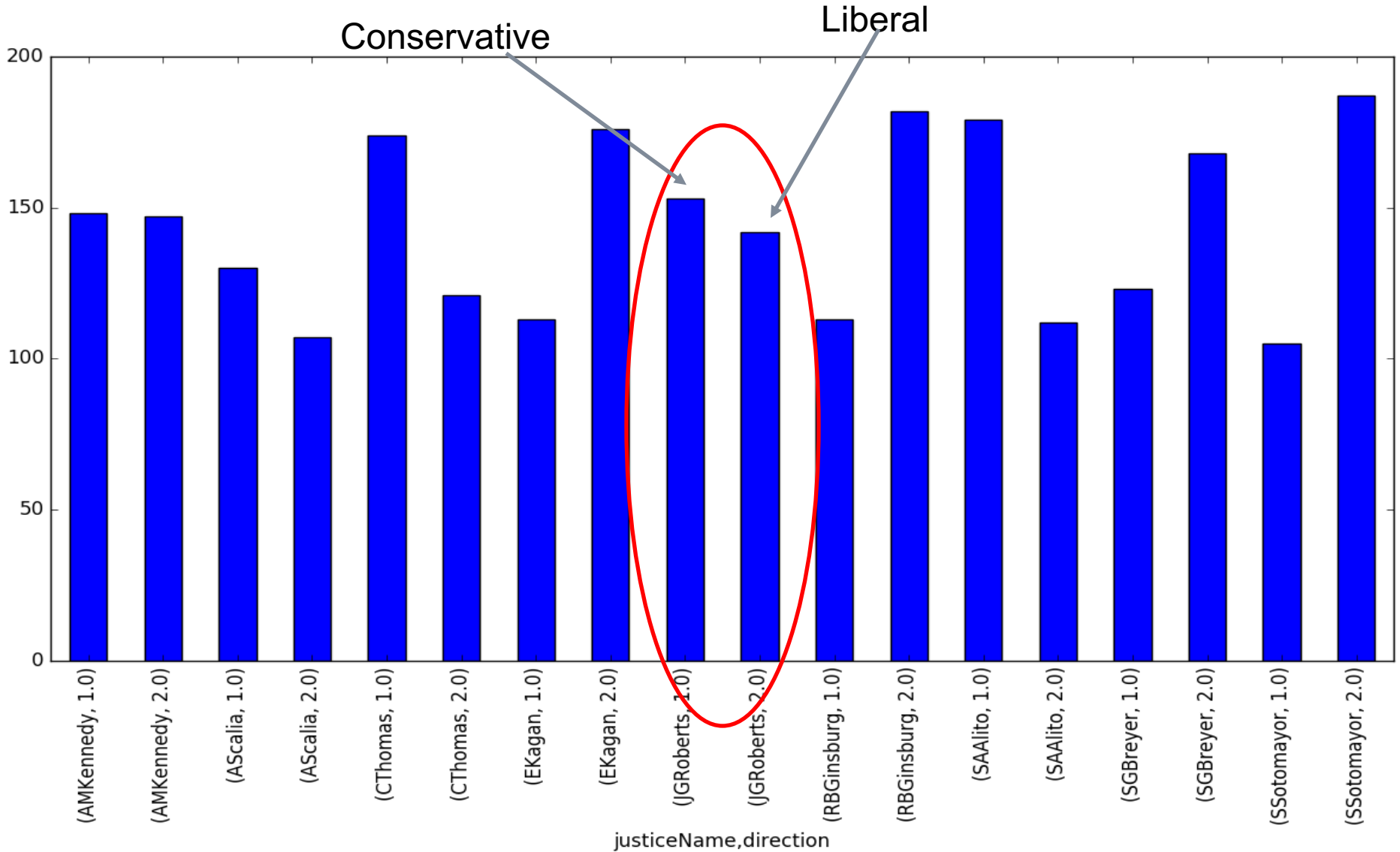
For the Supreme Court database, you have permission.



# And Produce . . .



# From 2012



---

# Counting Liberal and Conservative

- It would be easy to count the conservative and liberal votes for each Justice if the database listed all of a Justice's decisions for a given year together.

---

# Like This

For Justice Roberts, it would look something like:

Roberts, 1

case

case

\*\*\*

Roberts, 2

case

case

\*\*\*



# The Explanation?

- a) Roberts has changed his views to be more liberal
- b) His views are what they have always been, but the facts and arguments in particular cases led him to side with the liberals.
- c) Hard to tell if it is (a) or (b) or a combination.

# The Current Court

<b>Justice</b>	<b>Age</b>	<b>Appointed by</b>
Clarence Thomas	69	George H. W. Bush
Ruth Bader Ginsburg	84	Bill Clinton
Stephen Breyer	79	Bill Clinton
John G. Roberts	63	George W. Bush
Samuel A. Alito, Jr.	67	George W. Bush
Sonia Sotomayor	63	Barack Obama
Elena Kagan	57	Barack Obama
Neil Gorsuch	50	Donald Trump
Brett Kavanaugh	53	Donald Trump

# Approximate Political Composition

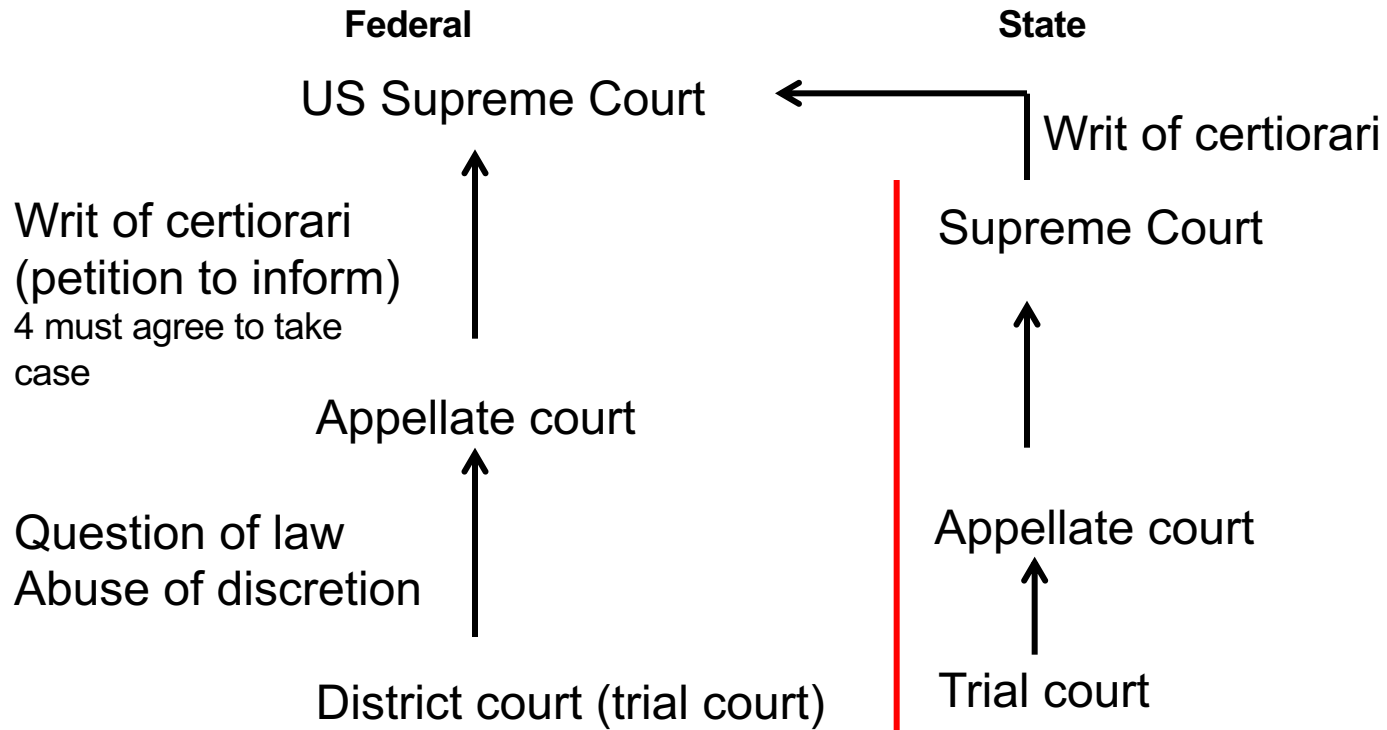
Justice	Age	Appointed by
Clarence Thomas	69	George H. W. Bush
Ruth Bader Ginsburg	84	Bill Clinton
Stephen Breyer	79	Bill Clinton
John G. Roberts	63	George W. Bush
Samuel A. Alito, Jr.	67	George W. Bush
Sonia Sotomayor	63	Barack Obama
Elena Kagan	57	Barack Obama
Neil Gorsuch	50	Donald Trump
Brett Kavanaugh	53	Donald Trump

---

# Getting to the Supreme Court

- Appeal from a Federal Appeals Court
- Appeal from a state supreme court
- Original jurisdiction
  - Some cases go directly to the Court.
    - State v. State
    - State v. citizens of another state or aliens
    - Foreign states and their ministers.

# Appeal From Federal/State Court



---

# A Place for Social/Political Views?

- Some object that Kavanaugh is too committed to conservative social political views to be an acceptable Justice.
- Should social and political views guide judicial decisions?
- To answer, start with the role of rules.

# The Law's Focus on Rules

- On his deathbed, Franz Kafka made his friend Max Brod a promise to burn all of Kafka's manuscripts.
- Brod broke the promise.
  - On the very plausible ground that the good achieved outweighed the promissory obligation.
- Imagine Kafka had a will with Brod as executor, and the will said to burn the manuscripts .

---

# The Need To Cite A Rule

- The will creates a legal obligation to burn the manuscripts.
- To avoid burning the manuscripts, Brod cannot just appeal to the good achieved.
- He has to cite a legal rule.
- Why?



# Democratic Theory

- Democratic theory: you have an obligation to obey the state only when the state is appropriately responsive to its citizens' will.
- Responsiveness requires citizens elect decision makers who represent the views of their electorate.
- *Apparent* consequence: *Only* representative decision makers can impose obligations on citizens.

# Consequences for Courts

- The judiciary is *not* representative.
  - Judges are *impartial* decision makers.
  - They do not favor the views and preferences of any distinct group.
- *So apparently:*
  - judges may *only* impose obligations that have been encoded in laws through prior representative processes.

---

# Judicial Legitimacy

- Judicial decisions are legitimate provided the courts issuing these decisions do so under constraints that ensure that they do not decide open questions any more than “necessary.”