

**Jevons Institute – University College London
2009 Colloquium on Antitrust and Regulation**



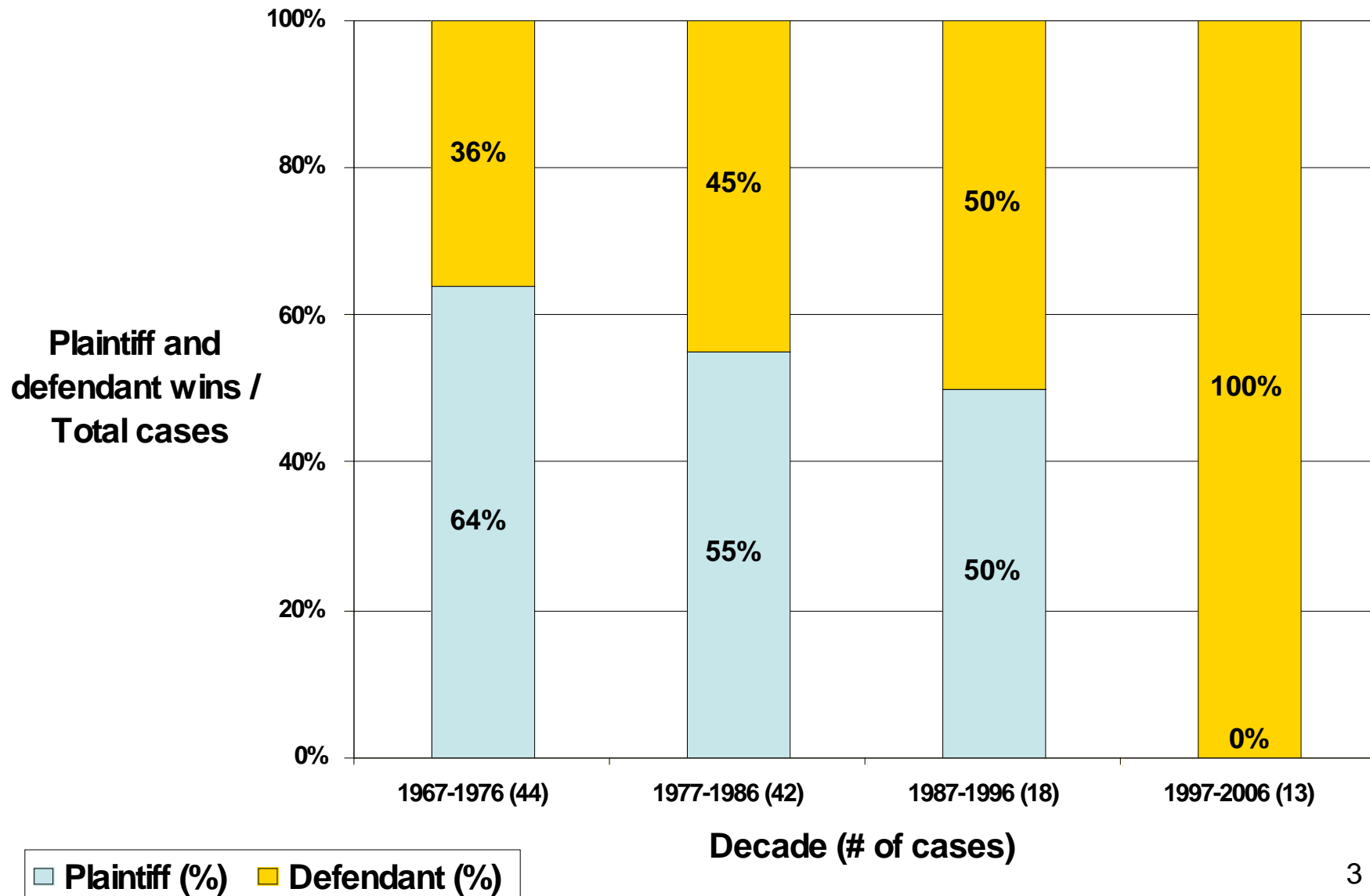
**The Role of Behavioral Economics in Consumer
Protection and Competition law**

Douglas H. Ginsburg, June 3, 2009

*NCAA v. Board of Regents of
University of Oklahoma,*
Supreme Court (1984)

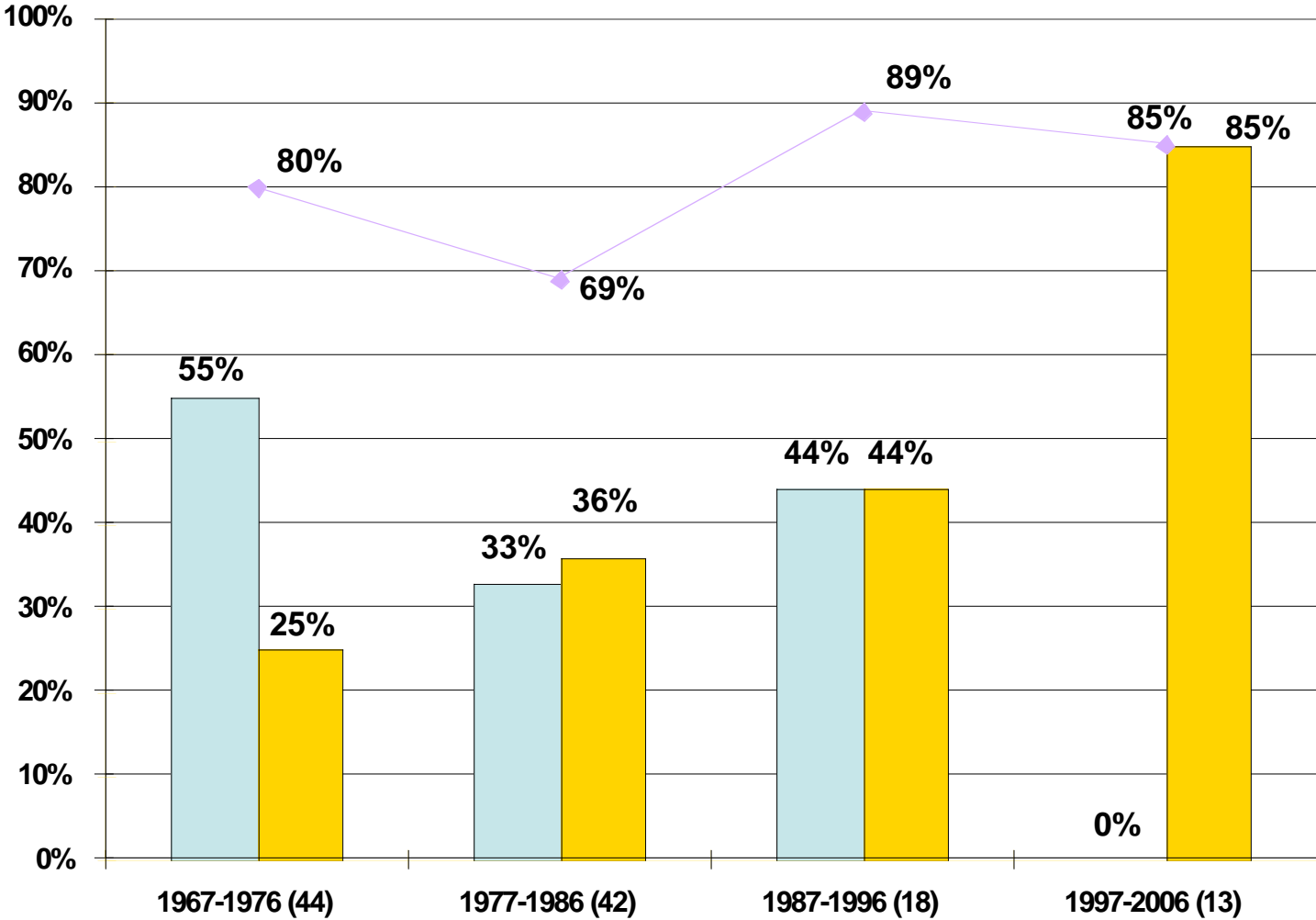
“Congress designed the Sherman Act as a consumer welfare prescription. A restraint that has the effect of reducing the importance of consumer preference in setting price and output is not consistent with this fundamental goal of antitrust law.”

Success of Plaintiffs and Defendants by Decade



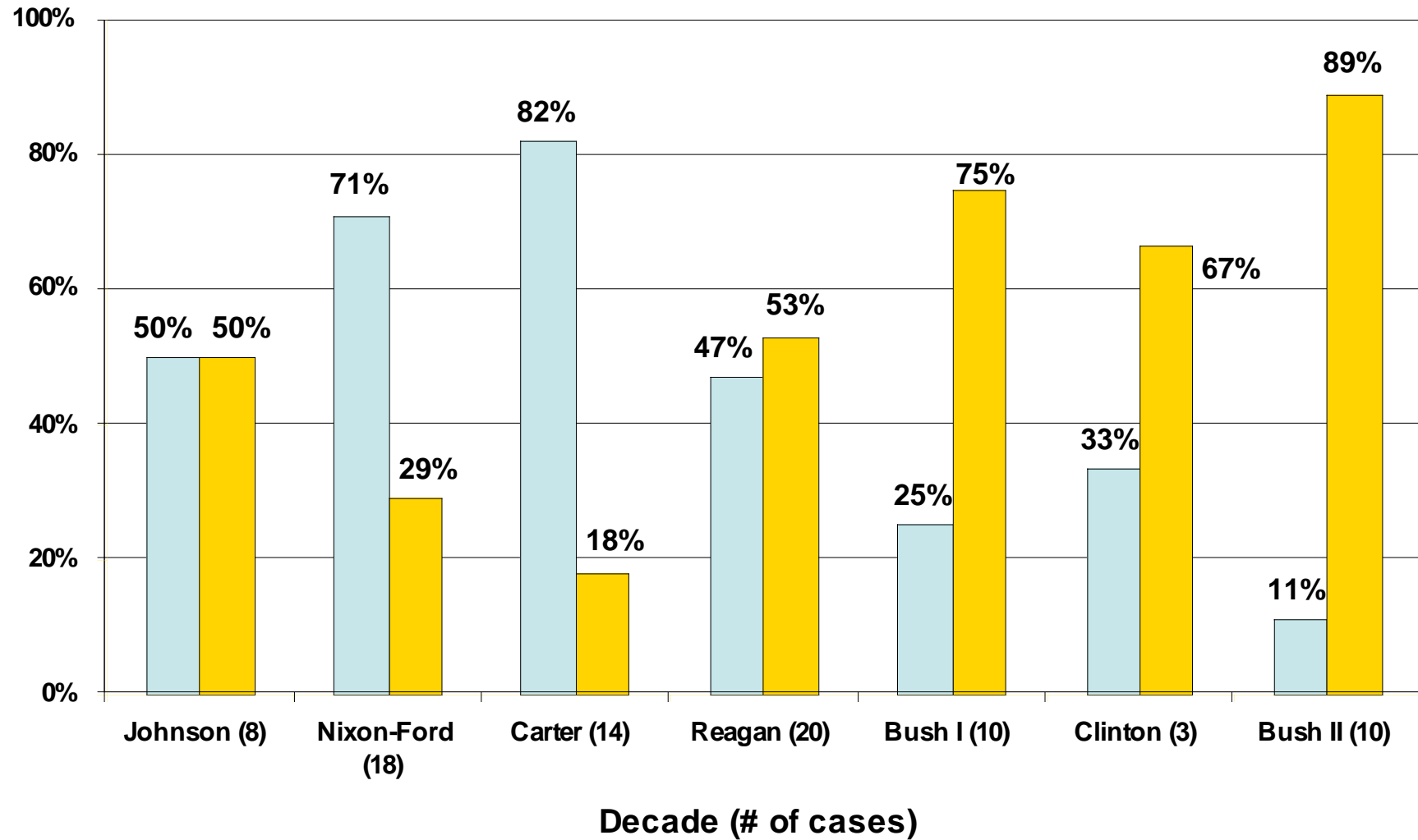
Supermajority (2/3 or greater) of the U.S. Supreme Court

Of all cases decided, the percentage in which a plaintiff or defendant won by a supermajority



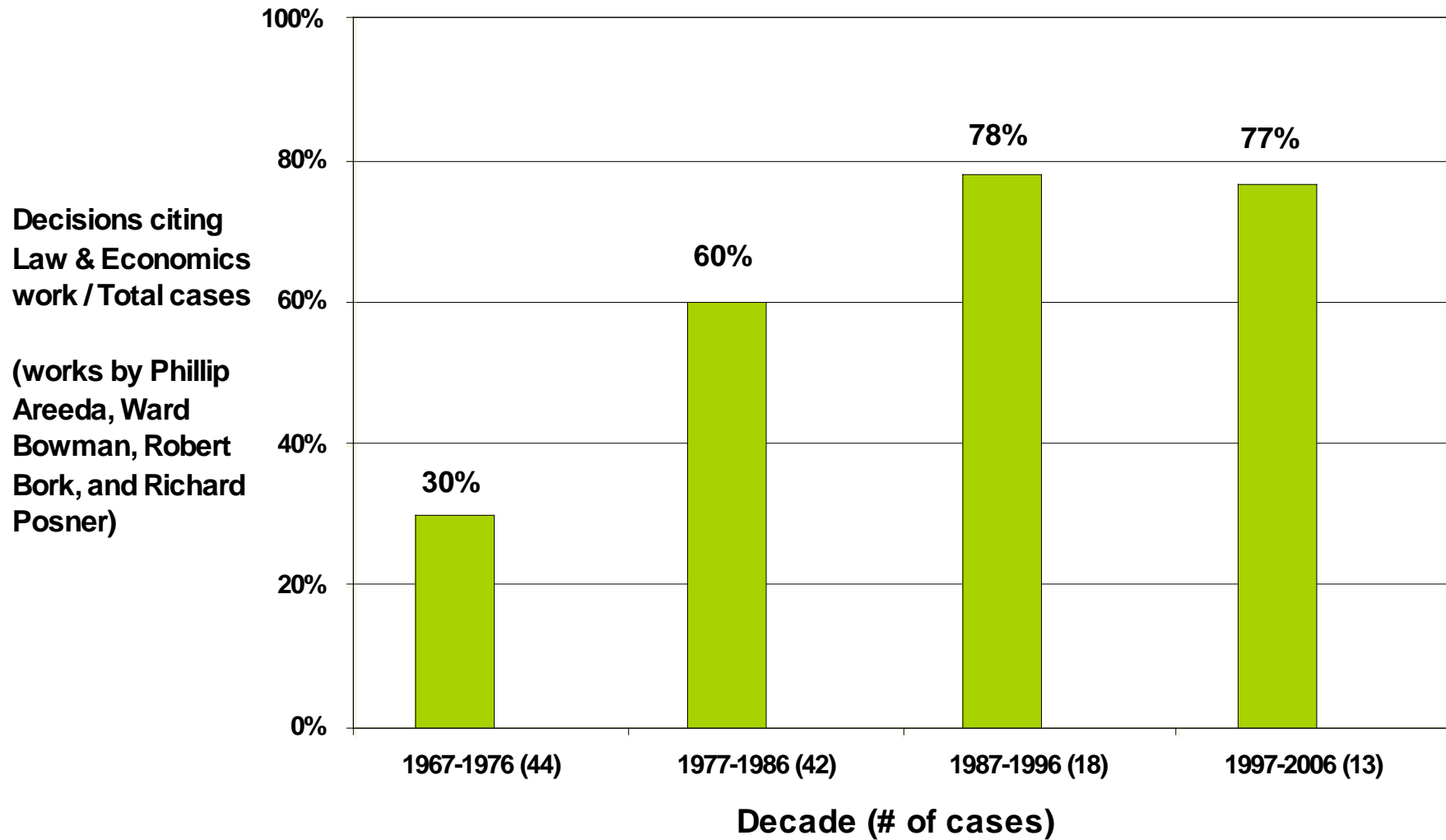
Plaintiff (%)
 Defendant (%)
 Total (%)

United States' Position as Amicus in Private Cases by Presidential Administration

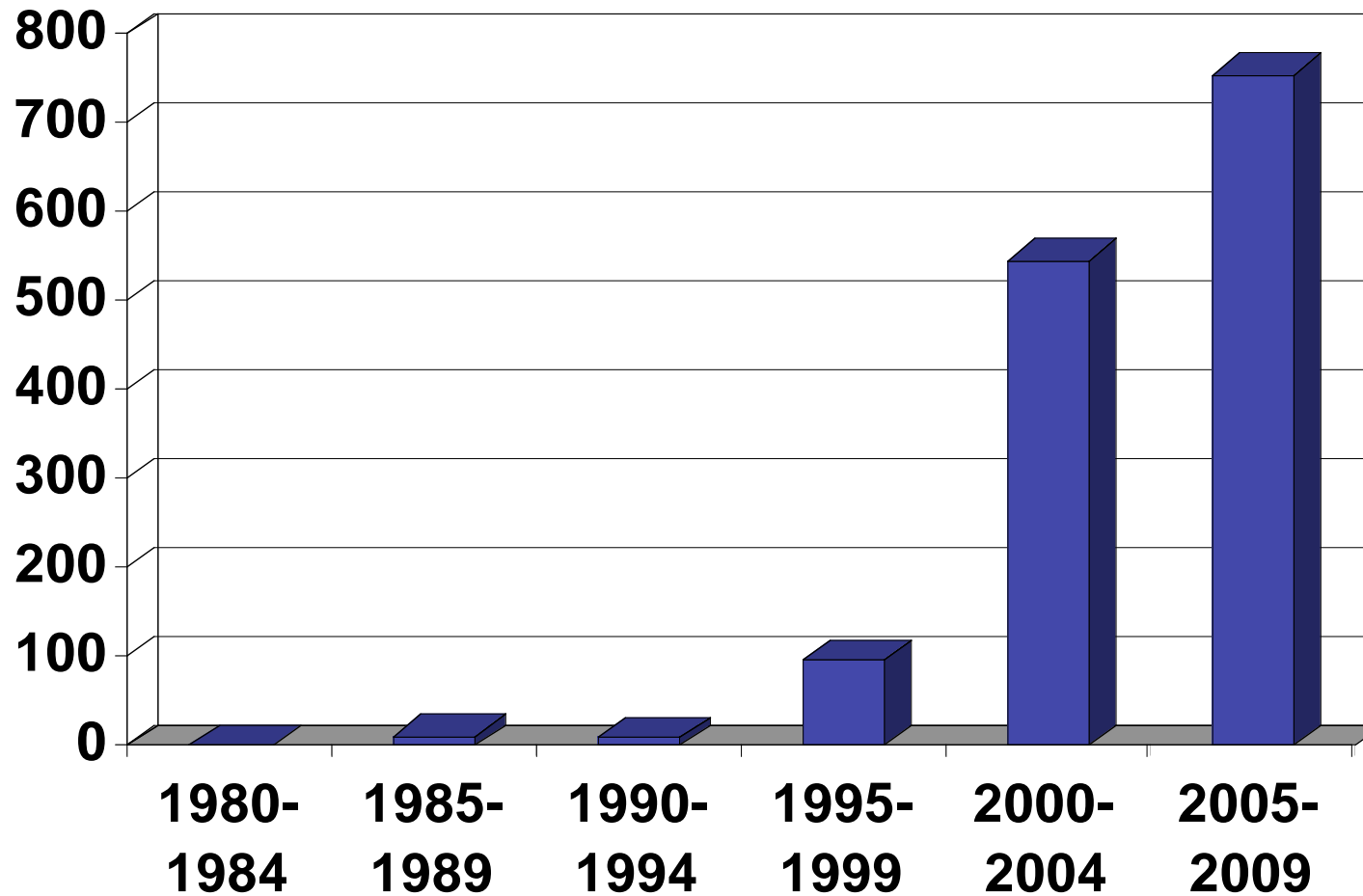


■ Plaintiff (%) ■ Defendant (%)

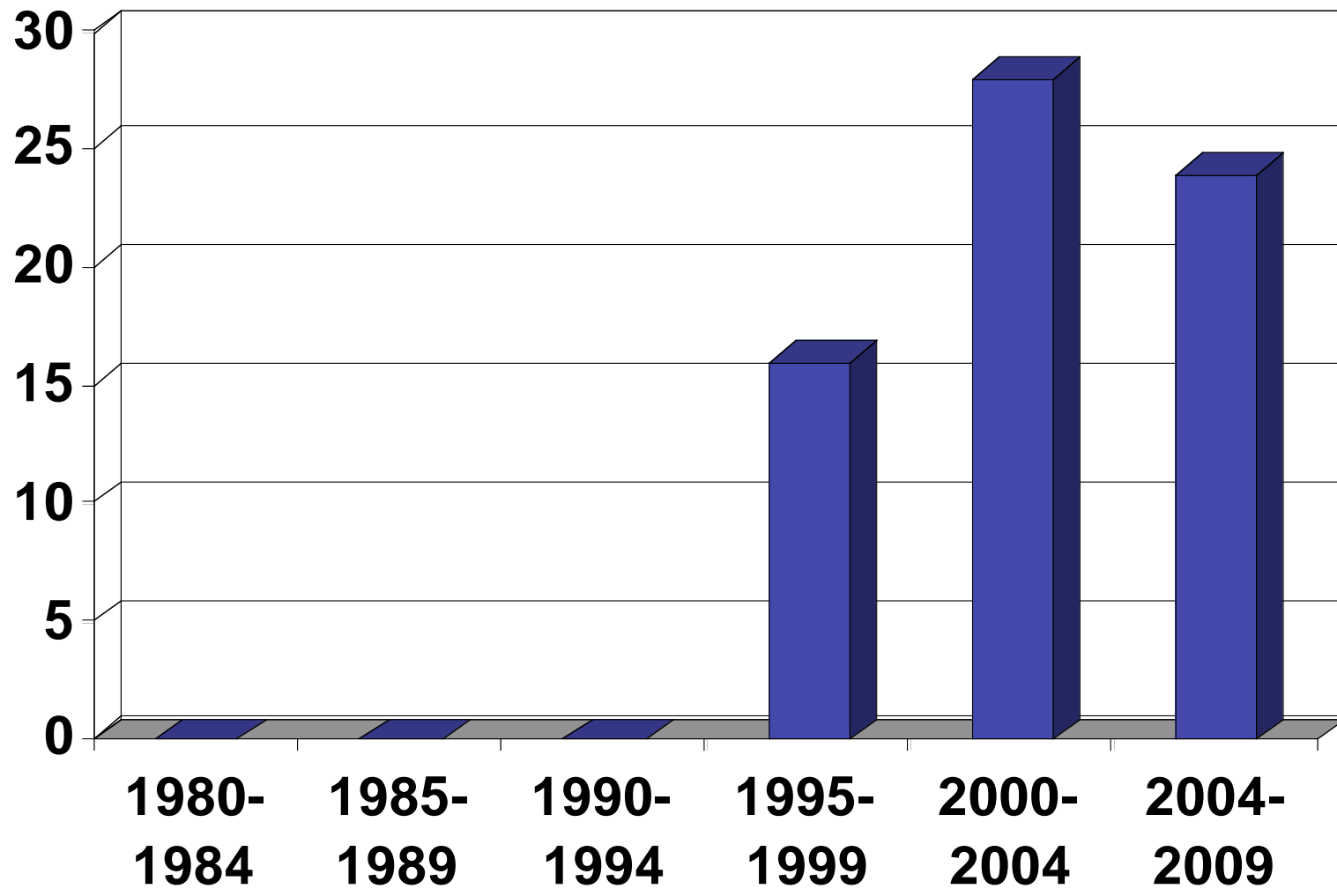
Percentage of Supreme Court Antitrust Decisions Citing Law & Economics Works



Number of Articles with “behavioral economics” in the text



Number of Articles with “behavioral economics” in the title



Behavioral Economics in law review articles

Years	Number of citations in <u>text</u>	Number of citations in <u>title</u>
1980-84	2	0
1985-89	11	0
1990-94	10	0
1995-99	97	16
2000-04	546	28
2004-May 09	755	24

Herbert Hovenkamp, “Enterprise in American Law 1836-1937”

“Elite American judges generally absorb the thinking of elite American intellectuals. Classical constitutional doctrine followed after the political economy that prevailed in America's best universities”

Herbert Hovenkamp, “Enterprise in American Law 1836-1937” (cont.)

“When the dominant American economic ideology changed -- not until the first three decades of the twentieth century -- the legal ideology followed close behind.”