



Relevant Conduct Principles in Gun and Drug Cases

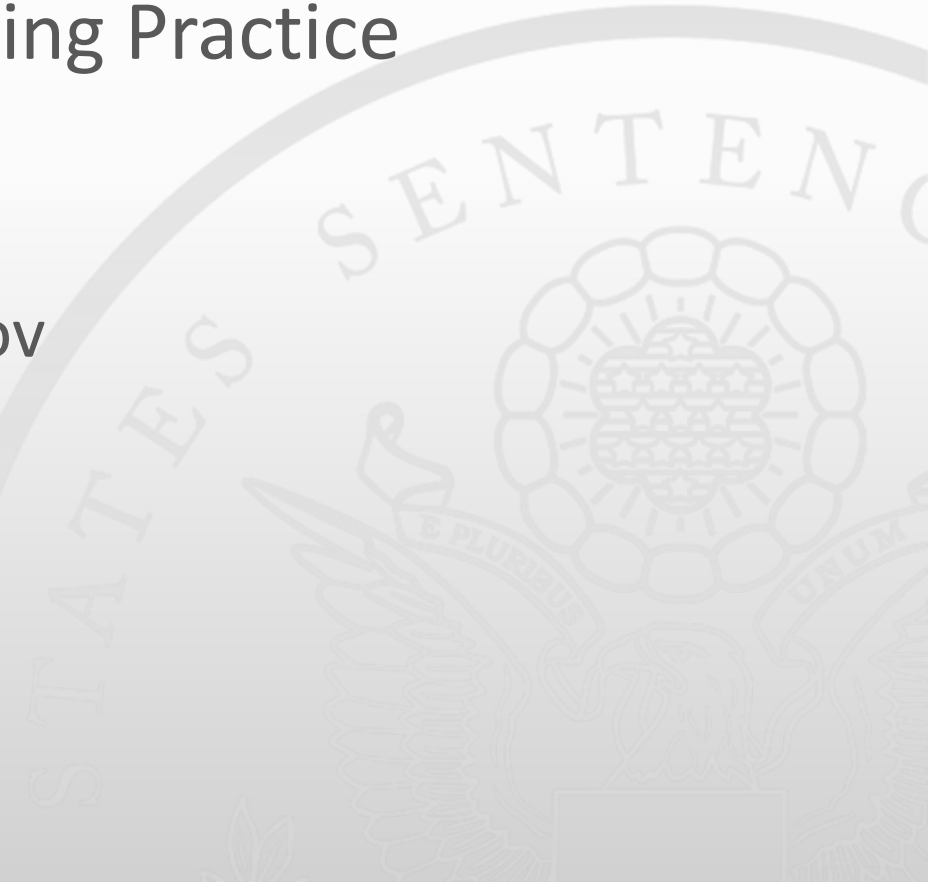
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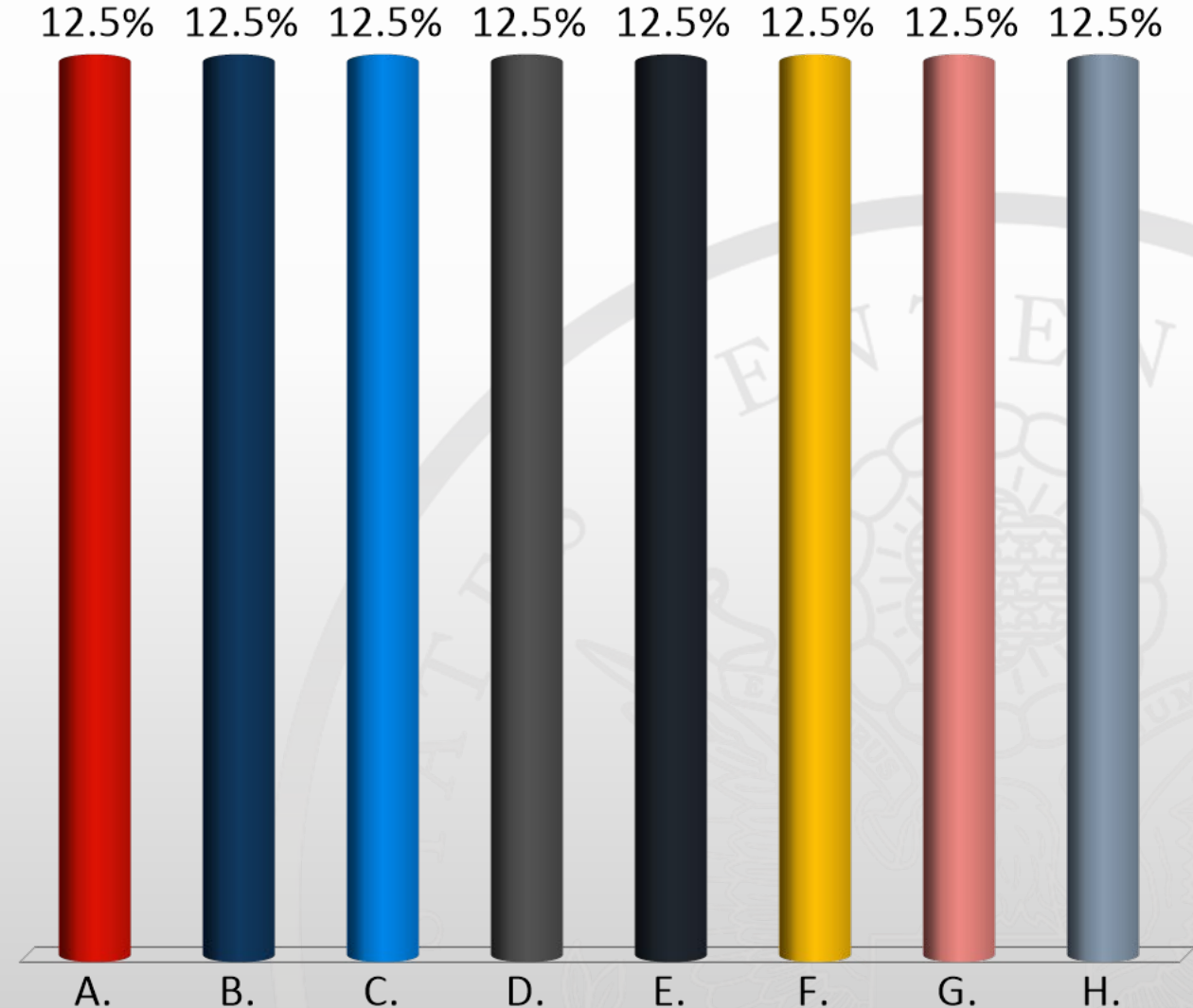
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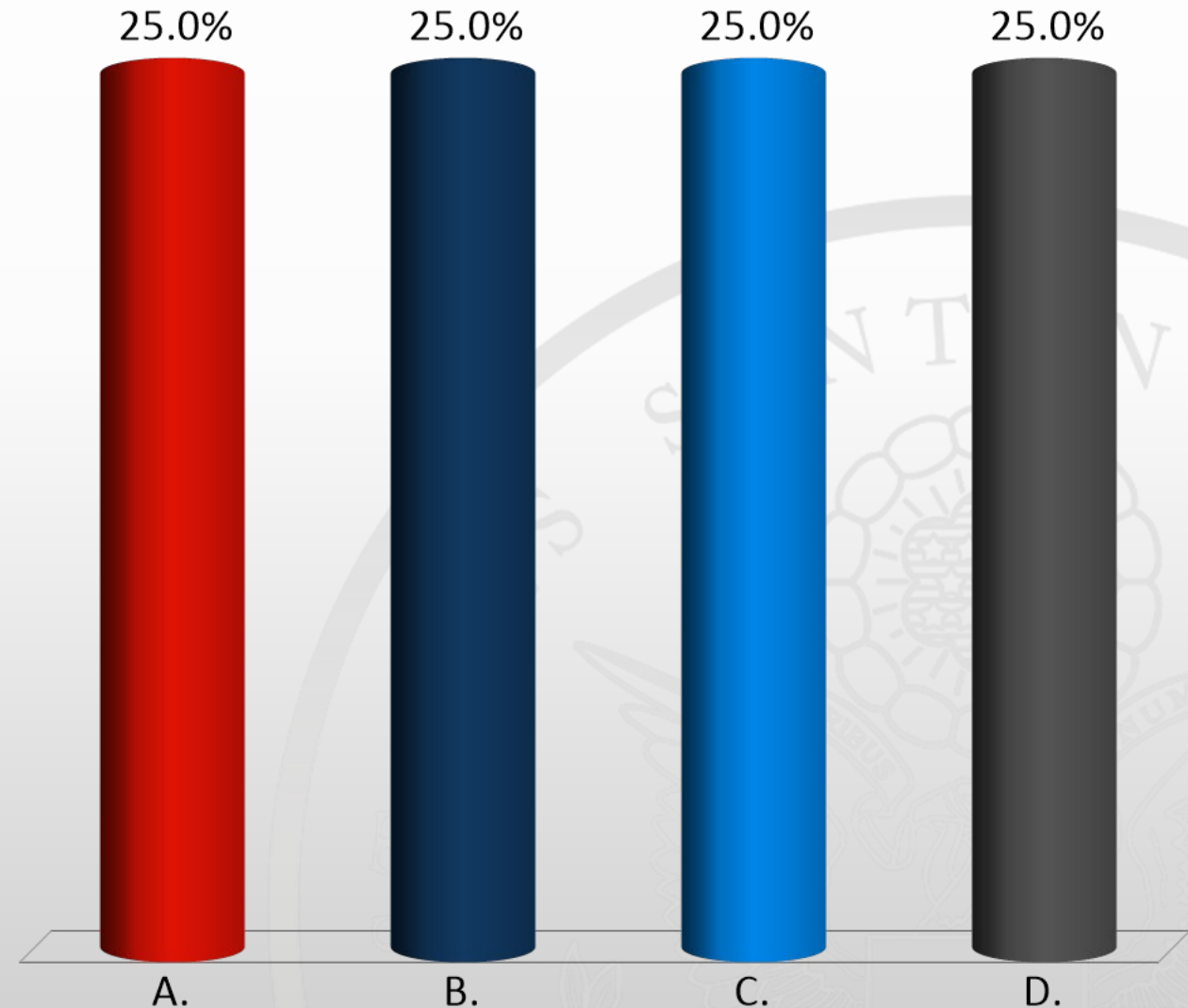
Who is in the Audience?

- A. Circuit Staff Attorney
- B. CJA Panel Attorney/Private Defense Attorney
- C. Federal Public Defender
- D. Judge
- E. Law Clerk
- F. U.S. Probation Officer
- G. U.S. Attorney
- H. Other



Years of Experience with Federal Sentencing?

- A. Less than 2 years
- B. 2 to 5 years
- C. 5 to 10 years
- D. More than 10 years



Relevant Conduct Analysis

WHO:

(a)(1)(A): Acts of the defendant

(a)(1)(B): Certain acts of others
(3-part analysis)

WHEN:

Offense of Conviction

(a)(1):

In preparation

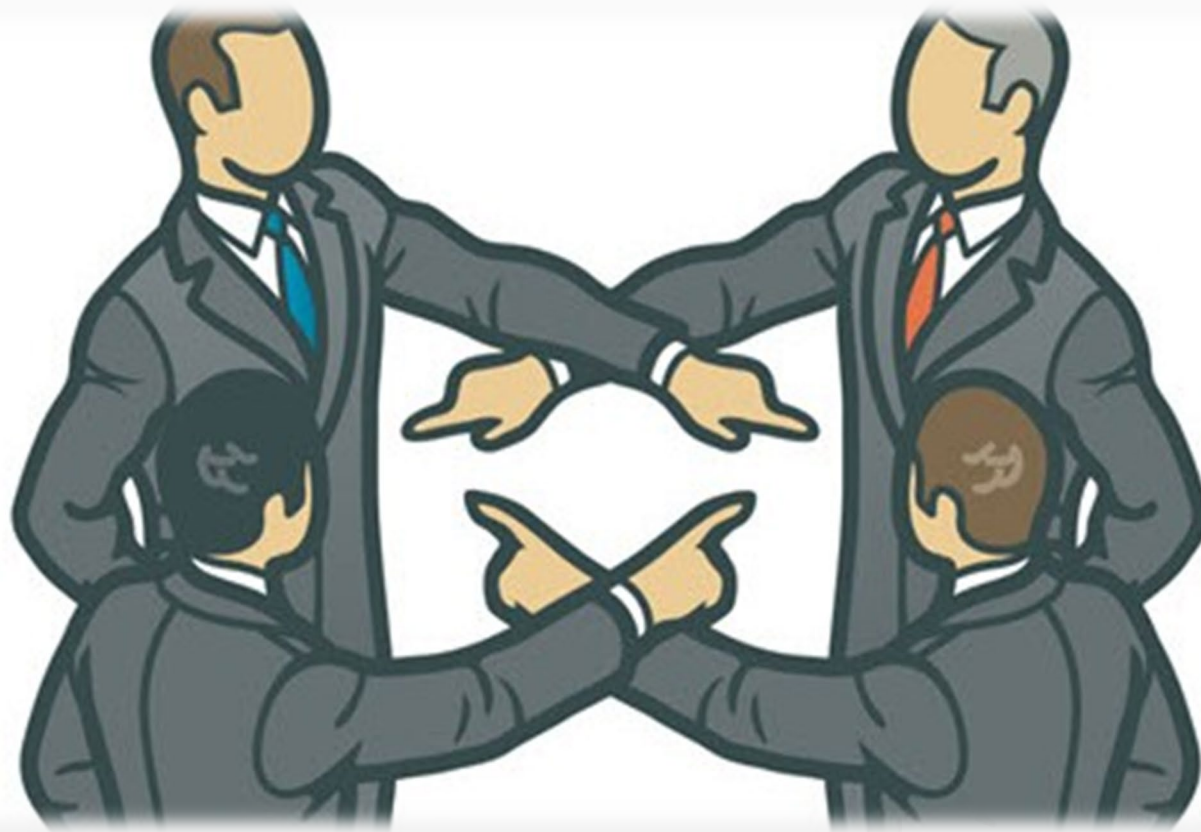
During

Avoiding detection

(a)(2):

Same course of conduct/
common scheme or plan

Holding a Defendant Accountable for the Acts of Others Under Relevant Conduct



When Can You Hold the Defendant Accountable for the Acts of Others?

§1B1.3(a)(1)(B)

1. What was the **scope** of the defendant's jointly undertaken criminal activity?
2. Were the acts of others **"in furtherance of"** the defendant's jointly undertaken criminal activity?

- AND -
3. Were the acts of others **"reasonably foreseeable"** in connection with the defendant's jointly undertaken criminal activity?

Determining Scope in a Conspiracy

Scope of jointly undertaken criminal activity



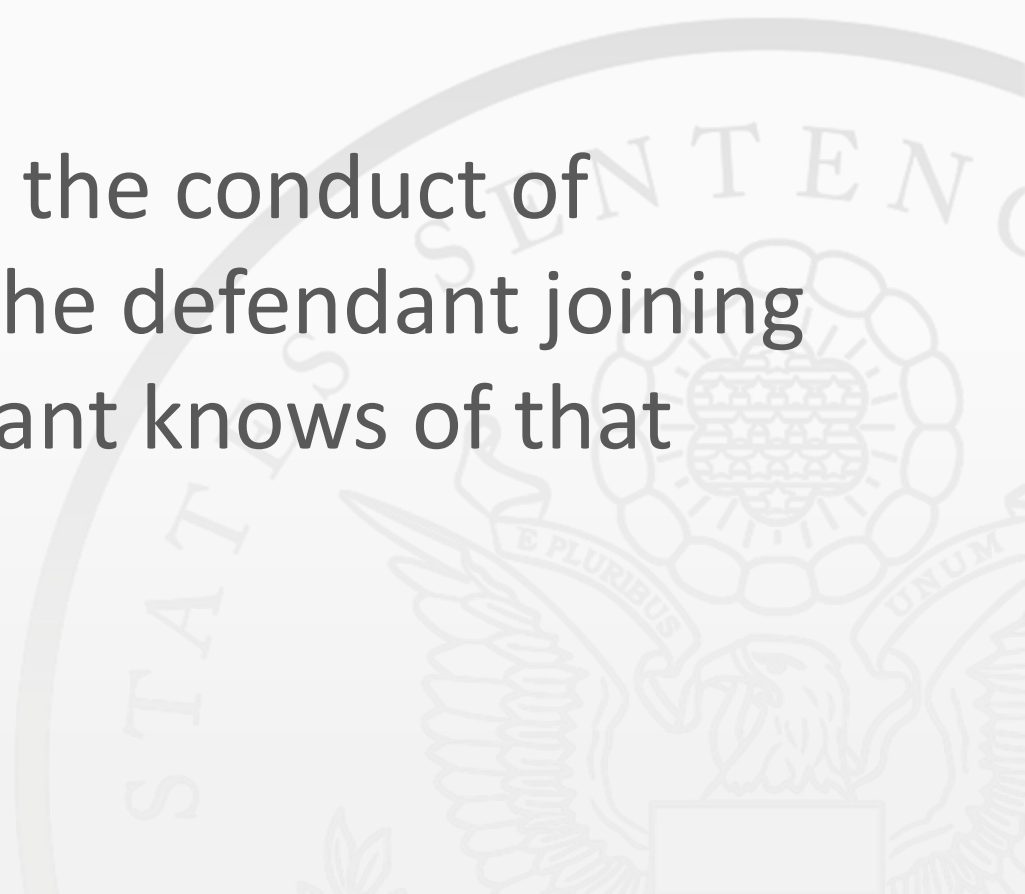
Scope of the entire conspiracy*

*May be the same, but not necessarily.

“Bright Line Rule”

§1B1.3, App. Note 3(B)

Relevant conduct does not include the conduct of members of a conspiracy prior to the defendant joining the conspiracy, even if the defendant knows of that conduct.



Holding a Defendant Accountable for Acts Outside the offense of Conviction

§1B1.3(a)(2):

“Expanded” Relevant Conduct



Analysis of §1B1.3(a)(2)

WHO:

Acts of the defendant

Certain acts of others
(3-part analysis)

WHEN:

Offense of Conviction

(a)(2):

Same course of conduct/
Common scheme or plan

Not All Offenses are Created Equal

Drugs/Fraud/
Firearms Offense

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graph TD; A[Drugs/Fraud/Firearms Offense] --> B[Conduct from Offense of Conviction plus "expanded relevant conduct"]; C[Physical Harm Cases (e.g., Robbery, Production of Child Porn)] --> D[Conduct from Offense of Conviction only];
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Conduct from Offense of
Conviction plus "expanded
relevant conduct"

Physical Harm Cases (*e.g.*,
Robbery, Production of
Child Porn)

Conduct from Offense of
Conviction only

Holding a Defendant Accountable for Acts in the Same Course of Conduct or Common Scheme or Plan

“Expanded” Relevant Conduct

- Drug trafficking
- Fraud, theft, & embezzlement
- Firearms
- Alien smuggling
- Trafficking/possession of child pornography
- Money laundering
- Tax violations
- Antitrust
- Counterfeiting
- Bribery
- Other similar offenses

“Common Scheme or Plan”

§1B1.3(a)(2); App. Note 5(B)(i)

- Offenses must be connected to each other by at least one common factor, such as:
 - Common victims
 - Common accomplices
 - Common purpose
 - Similar *modus operandi*



“Same Course of Conduct”

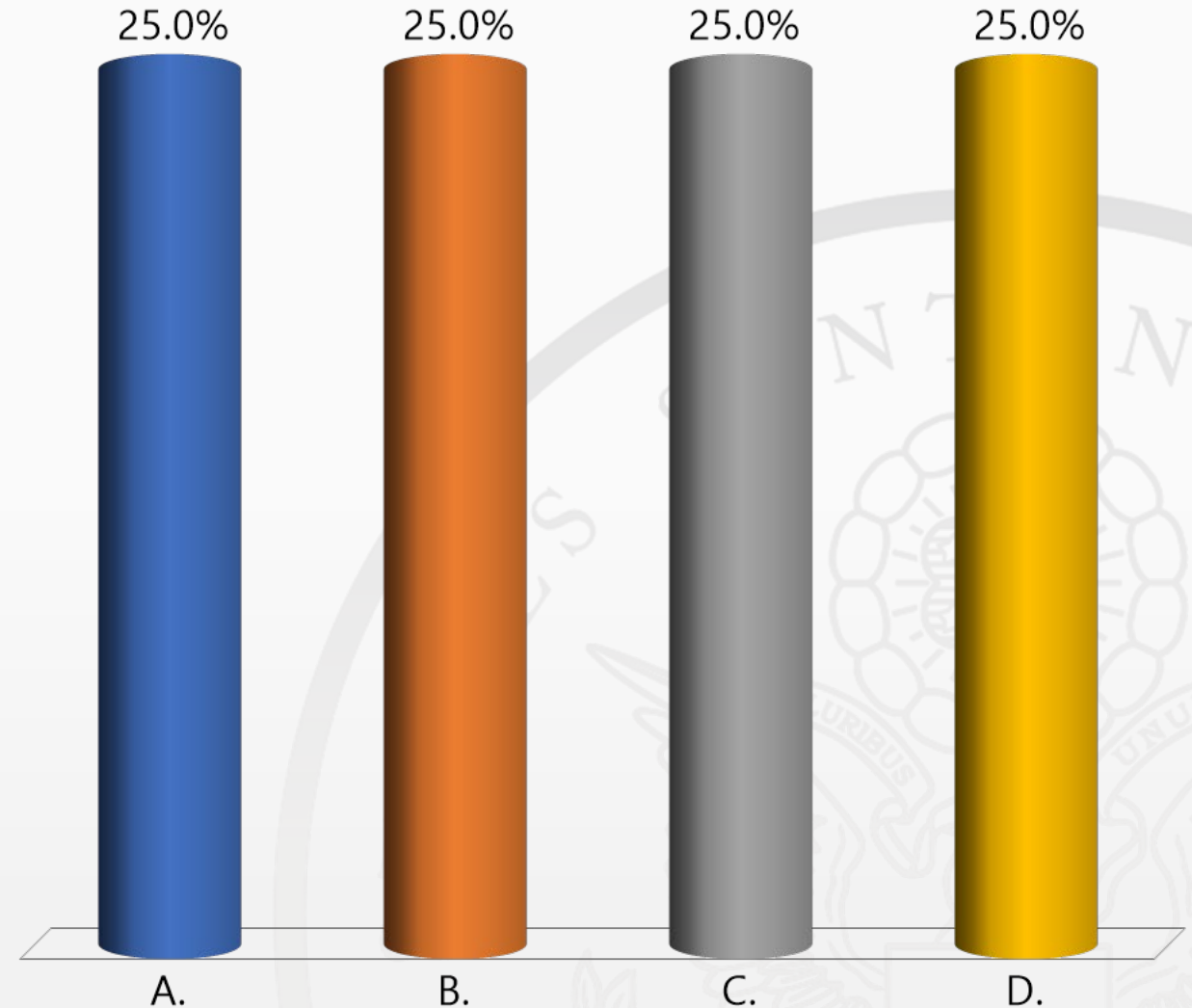
§1B1.3(a)(2); App. Note 5(B)(ii)

- Similarity
- Regularity (repetitions)
- Temporal proximity



1(a): What quantity of heroin will be attributed to Smith?

- A. 50 grams
- B. 100 grams
- C. 150 grams
- D. 3 kilos



When Can You Hold the Defendant Accountable for the Acts of Others?

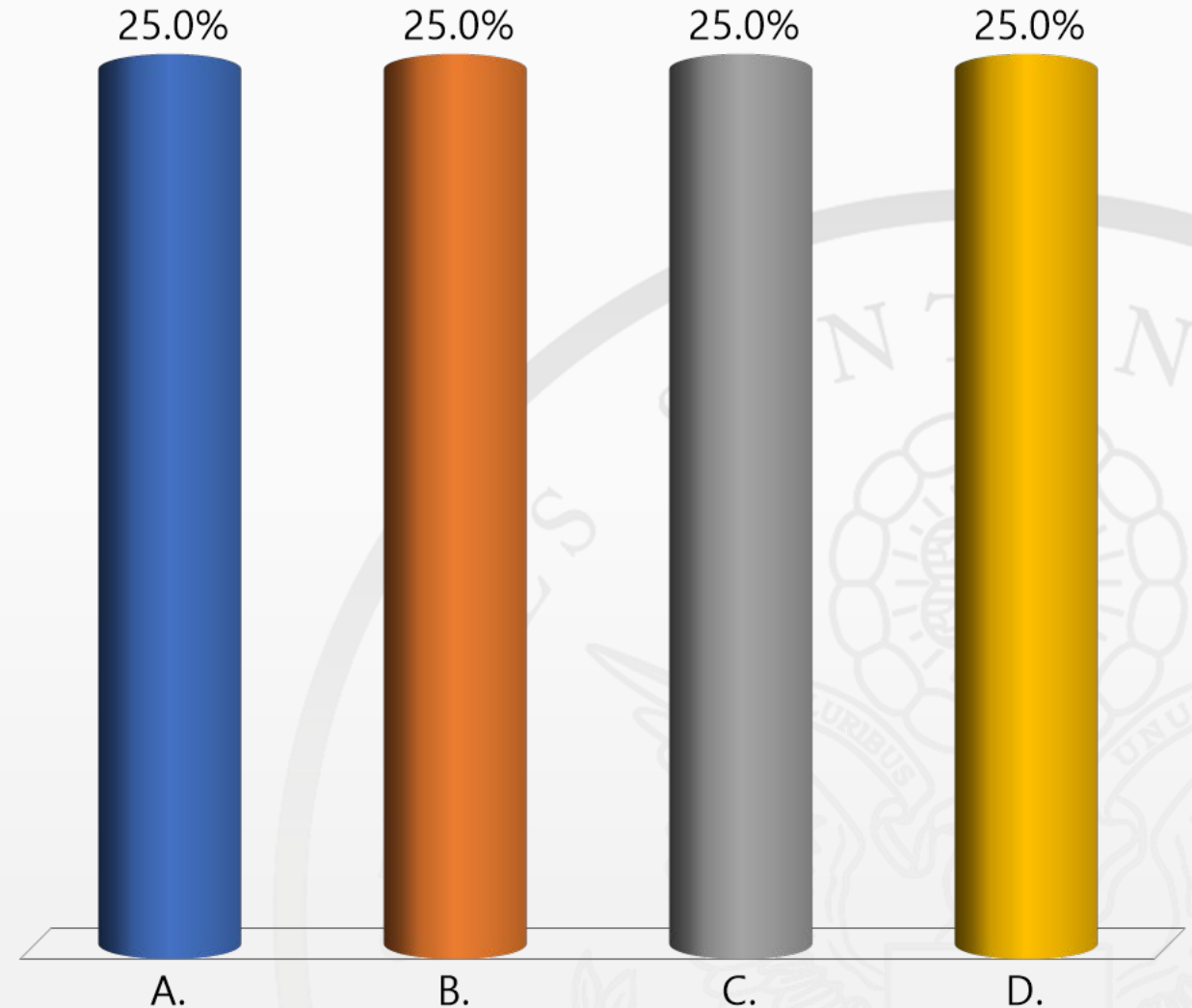
§1B1.3(a)(1)(B)

1. What was the **scope** of the defendant's jointly undertaken criminal activity?
2. Were the acts of others **"in furtherance of"** the defendant's jointly undertaken criminal activity?

- AND -
3. Were the acts of others **"reasonably foreseeable"** in connection with the defendant's jointly undertaken criminal activity?

1(b): After learning this information: what quantity of drugs would assign to Smith?

- A. 3 Kilos
- B. 270
- C. 210
- D. 150



Analysis of §1B1.3(a)(2)

WHO: Acts of the defendant

Certain acts of others
(3-part analysis)

WHEN:

Offense of Conviction

(a)(2):

Same course of conduct/
Common scheme or plan

“Common Scheme or Plan”

§1B1.3(a)(2); App. Note 5(B)(i)

- Offenses must be connected to each other by at least one common factor, such as:
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“Same Course of Conduct”

§1B1.3(a)(2); App. Note 5(B)(ii)

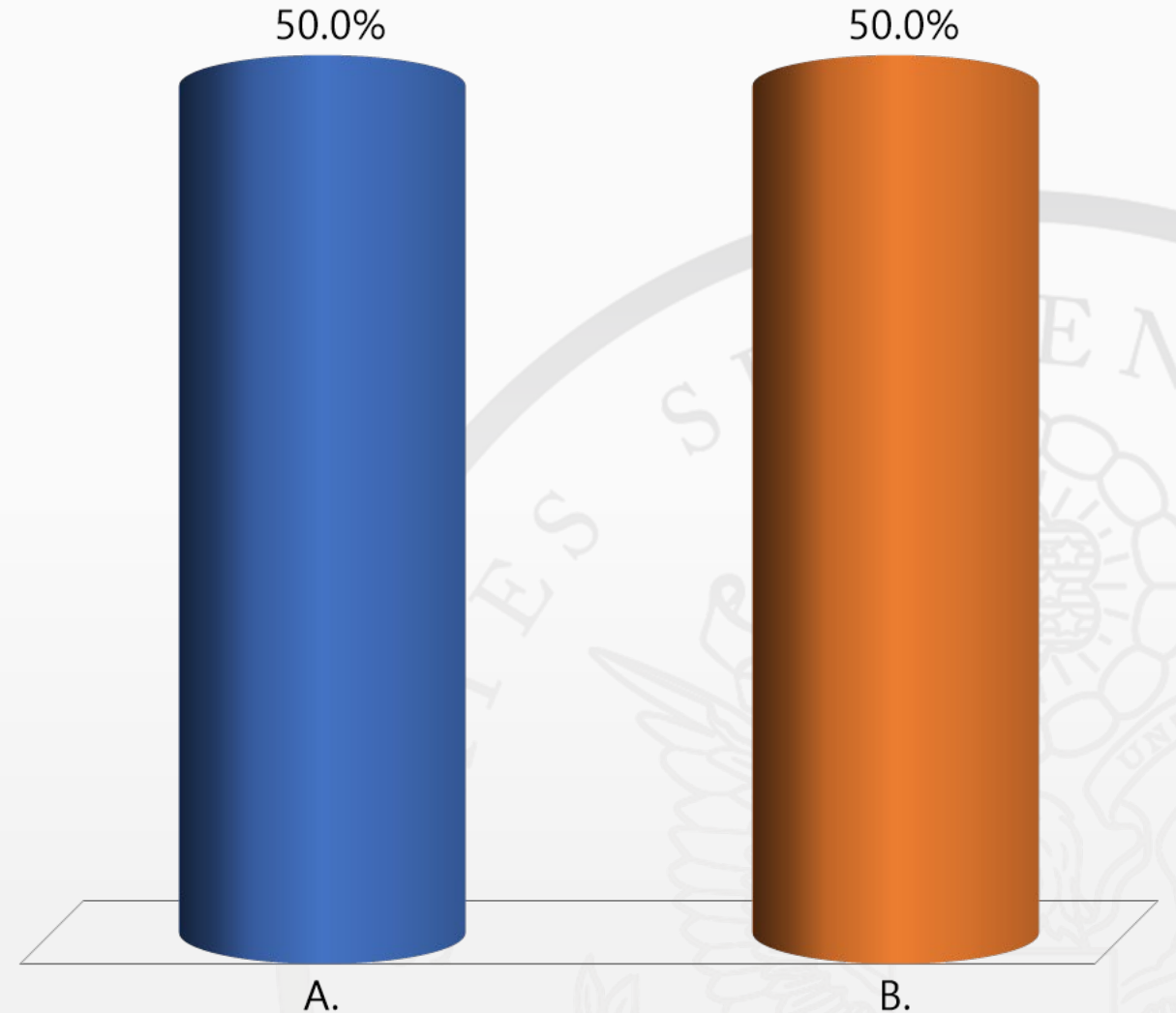
- Similarity
- Regularity (repetitions)
- Temporal proximity



1(c): Does this new information change the drug quantity attributed to Smith?

A. No

B. Yes

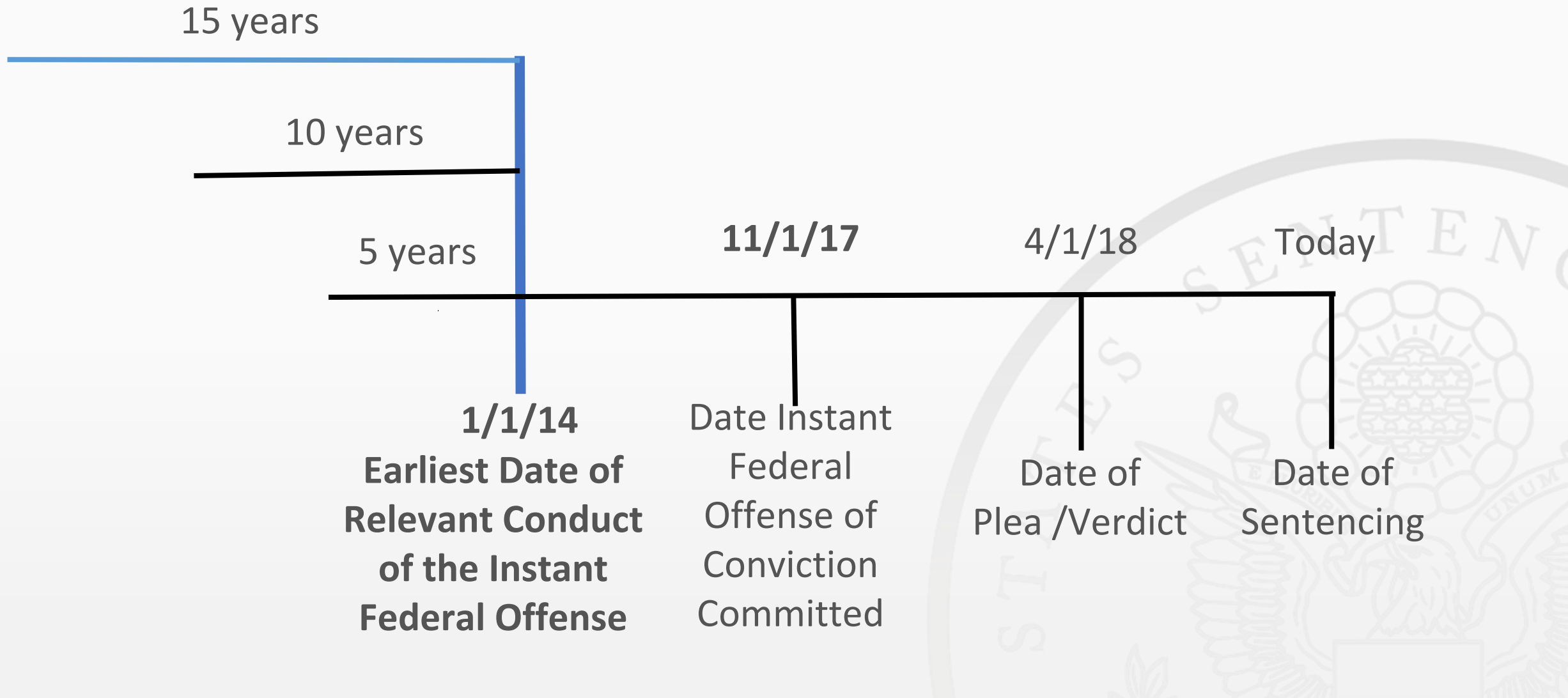


Limits on Conduct Associated with a Prior Sentence

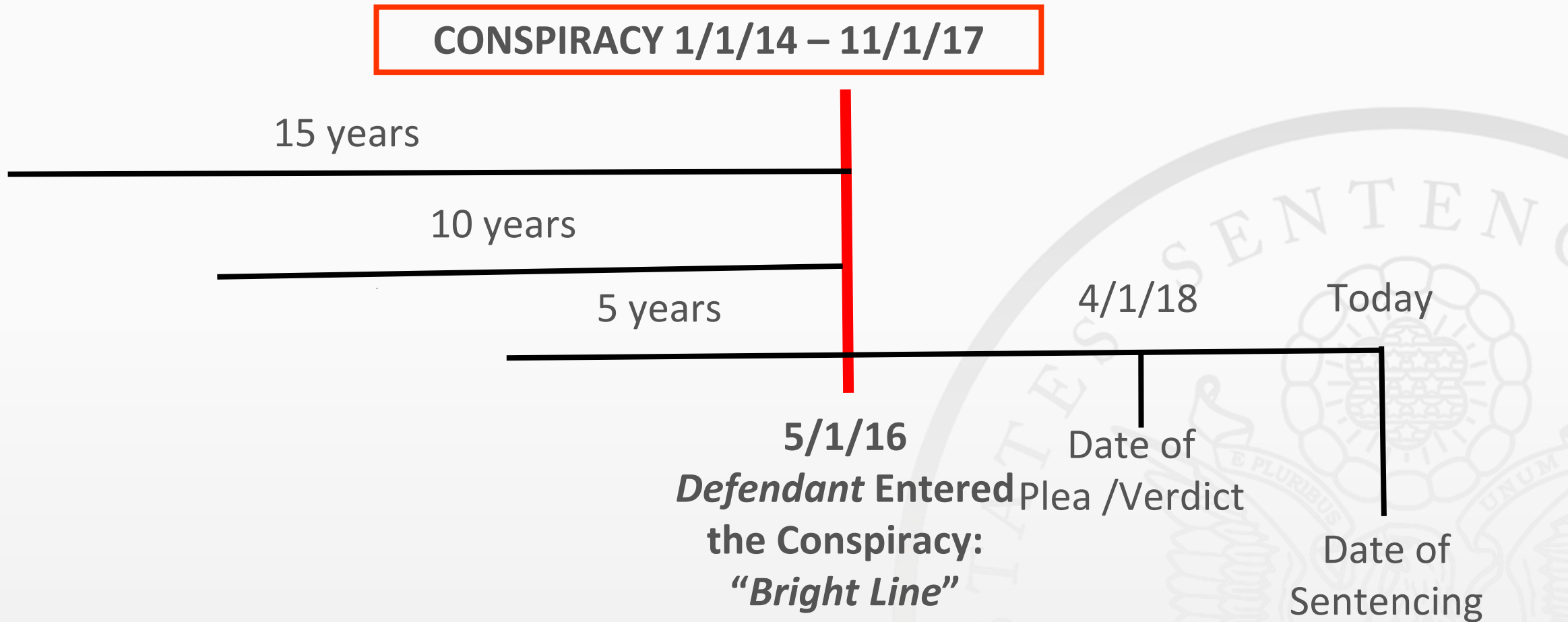
- Offense conduct associated with a sentence imposed prior to the acts constituting the instant federal offense of conviction **is not considered part of the same course of conduct or common scheme or plan** as the offense of conviction **under §1B1.3(a)(2)**

§1B1.3, App. Note 5(C)

The Interplay Between Criminal History Time Frames and Relevant Conduct

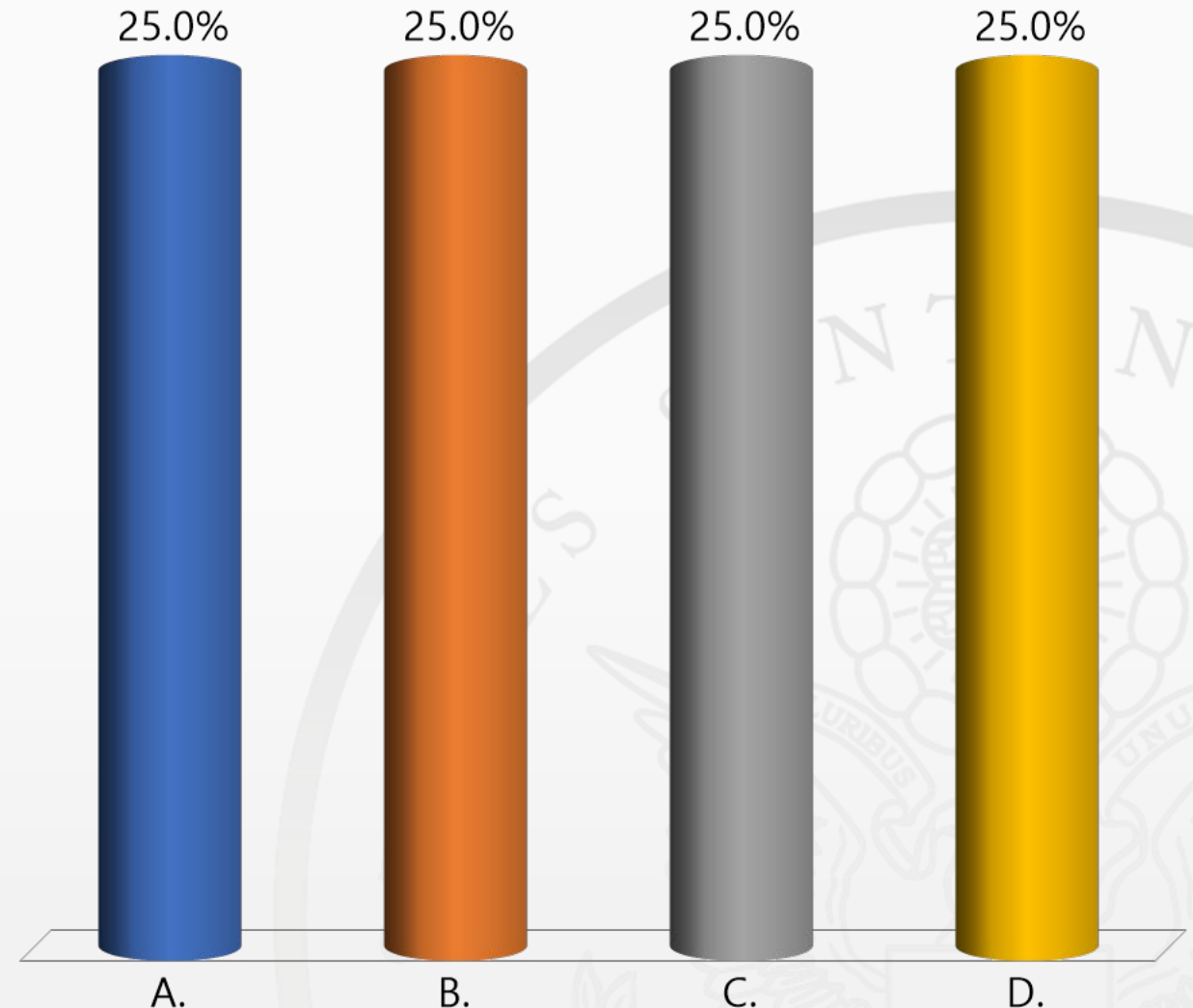


Time Frames and Relevant Conduct in a Broad Conspiracy



1(d): Is Smith still eligible for safety valve?

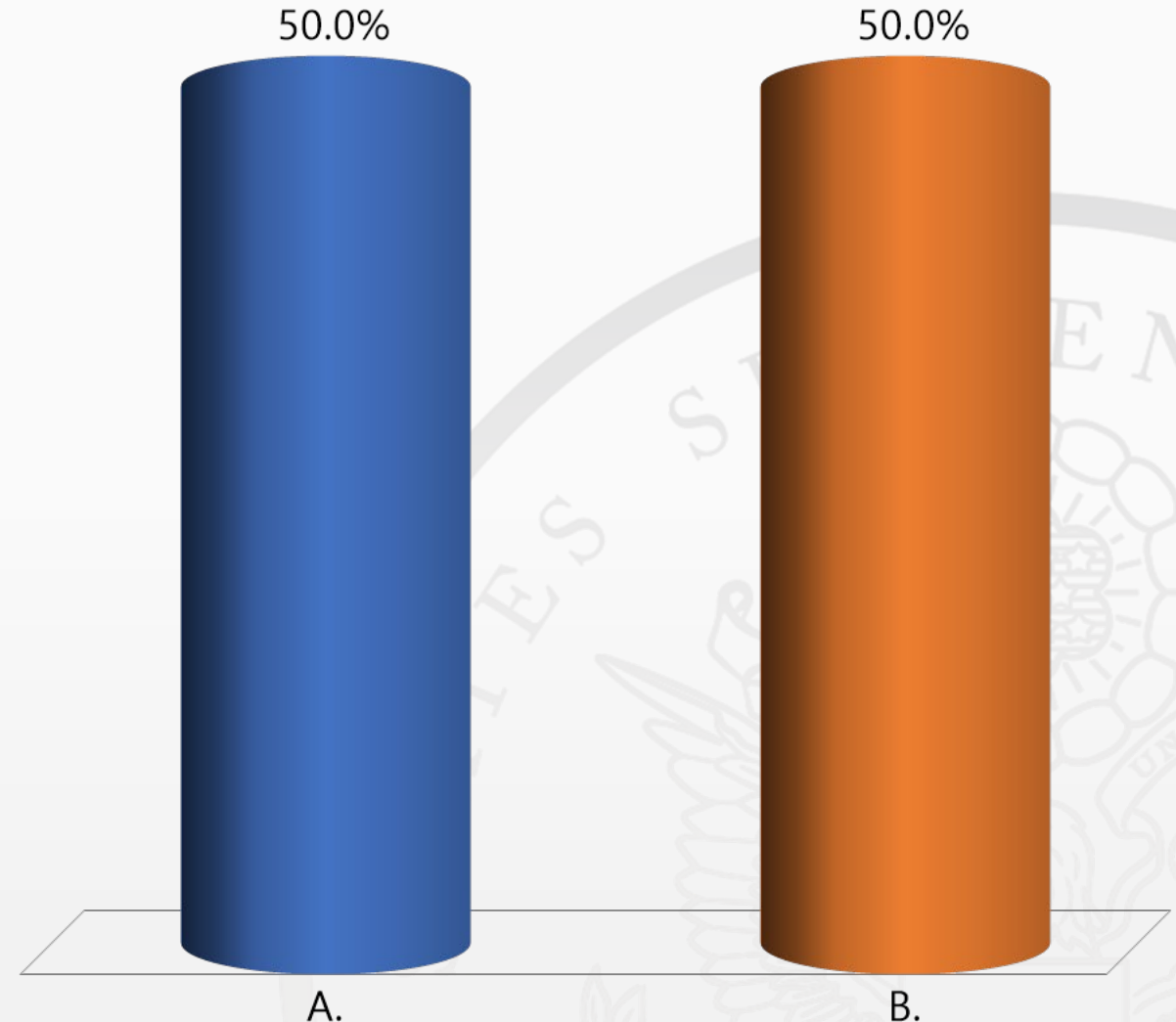
- A. Yes: he never distributed drugs
- B. No: he was part of the conspiracy and is liable for the death
- C. No: the death was part of the same of course of conduct/ common scheme or plan
- D. Maybe: if he can show that the death was not part of his jointly undertaken conduct



2(a): Does the specific offense characteristic at §2D1.1(b)(1) for gun possession apply?

A. Yes

B. No



Safety Valve Criteria

18 U.S.C. § 3553(f)

1. Defendant does not have more than 4 Criminal History Points . . . ;
2. Defendant did not use violence/threats of violence or possess a firearm or other dangerous weapon in connection with the offense;
3. Offense did not result in death or serious bodily injury;
4. Defendant was not an organizer/leader/ manager/supervisor . . . ;
and
5. Not later than the time of the sentencing hearing, defendant has truthfully provided to the Government all information . . .



“Defendant” v. “Offense”

1B1.3

“Defendant”

- Limits the application of that factor to acts that **the defendant** “committed, aided, abetted, . . .”
- Cannot look to actions of others in the conspiracy

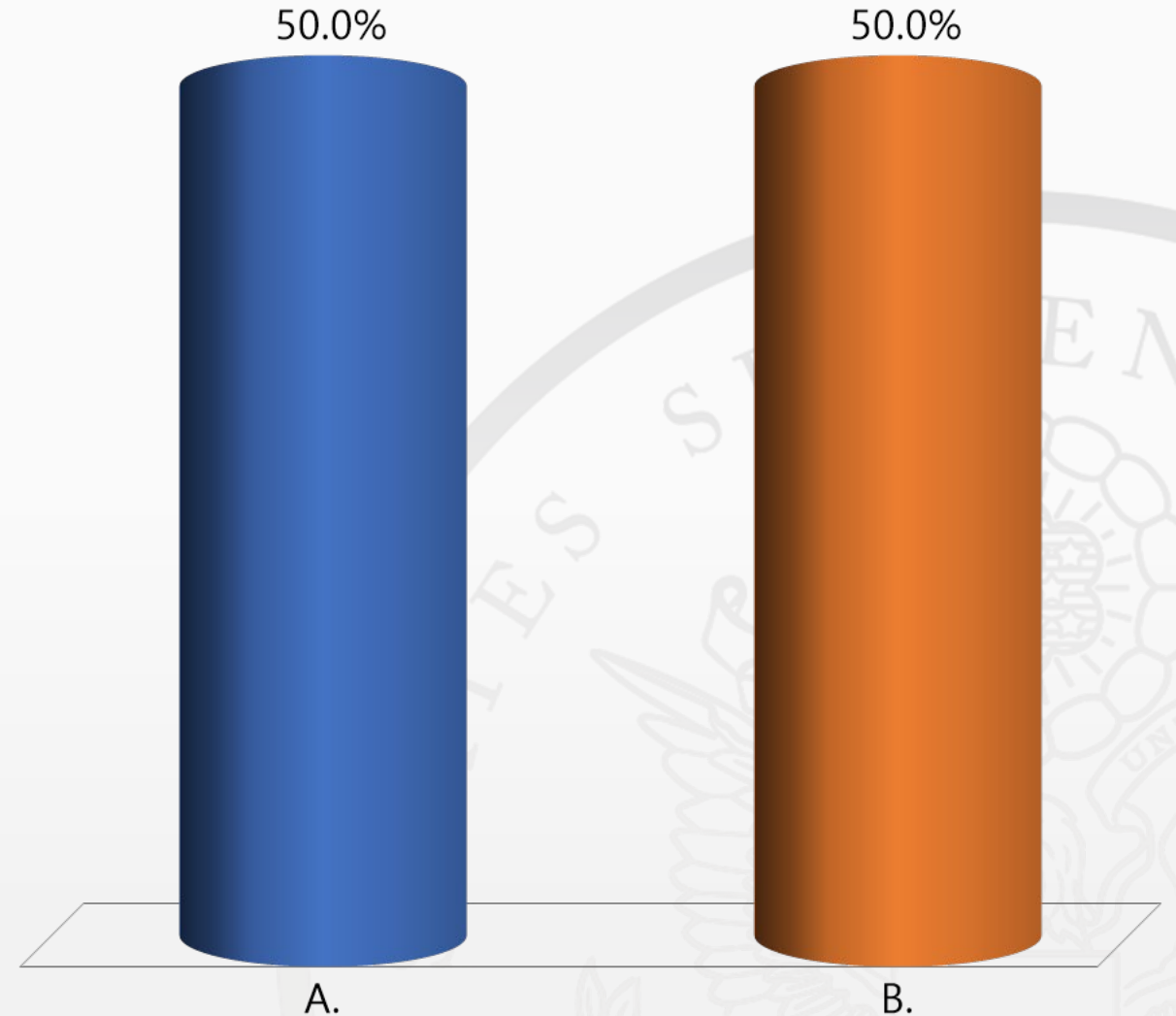
Offense

- Includes acts of the defendant **and** acts of others that were within the defendant’s relevant conduct
- Can look to acts of others in the conspiracy

2(b): Does the specific offense characteristic at § 2K2.1(b)(6)(B) apply?

A. Yes

B. No



Firearms SOC

§2D1.1(b)(1) & App. Note 11

“...should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense.”

Note: Under relevant conduct a defendant can be held accountable for a co-participant's firearm

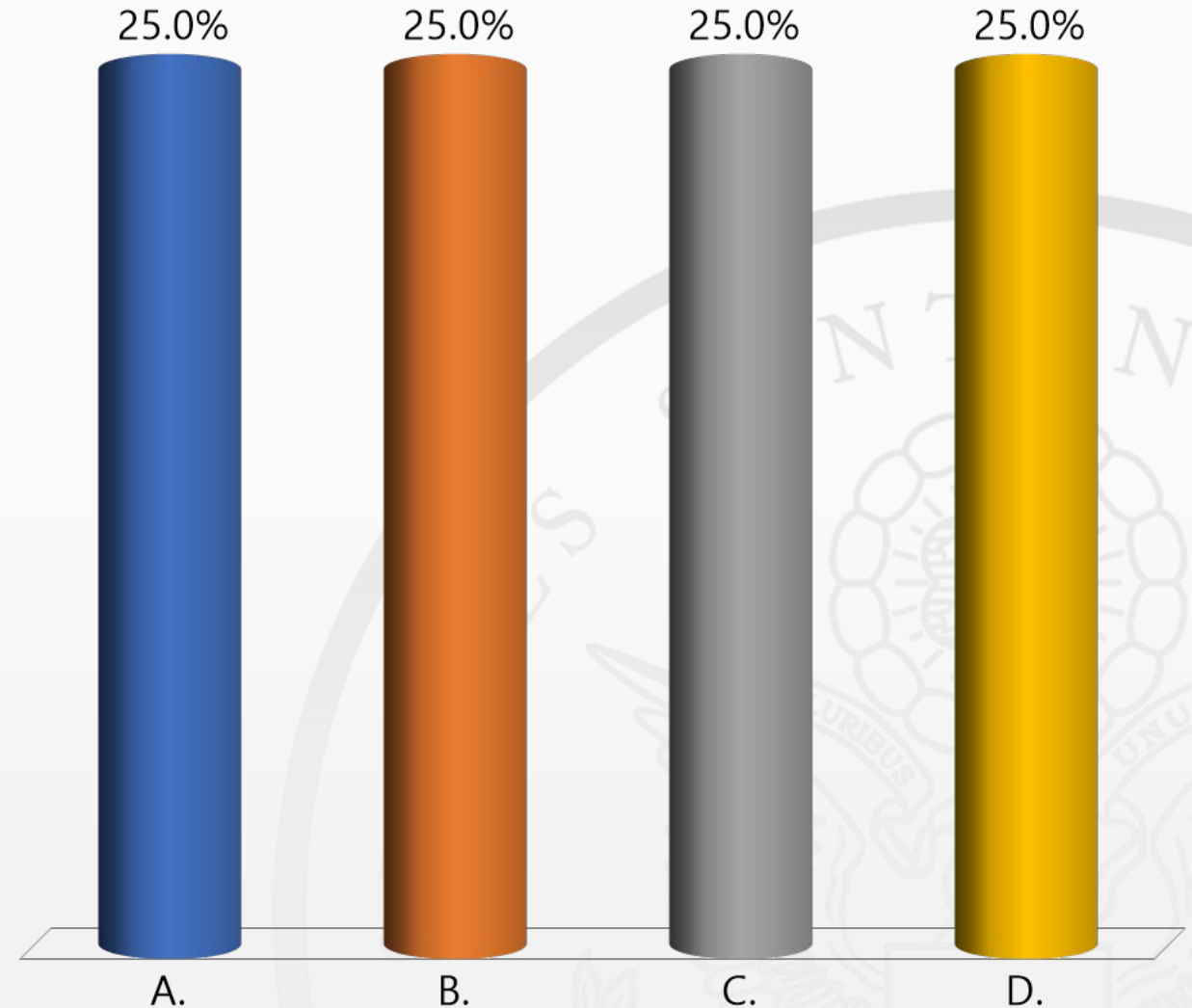
Impact of § 924(c) on SOC

§2K2.4, App. Note 4

- **Do not apply** the firearm (weapon) SOC in guideline for the *underlying* offense
 - § 924(c) accounts for any weapon SOC for the underlying offense
 - § 924(c) accounts for any weapon within the relevant conduct

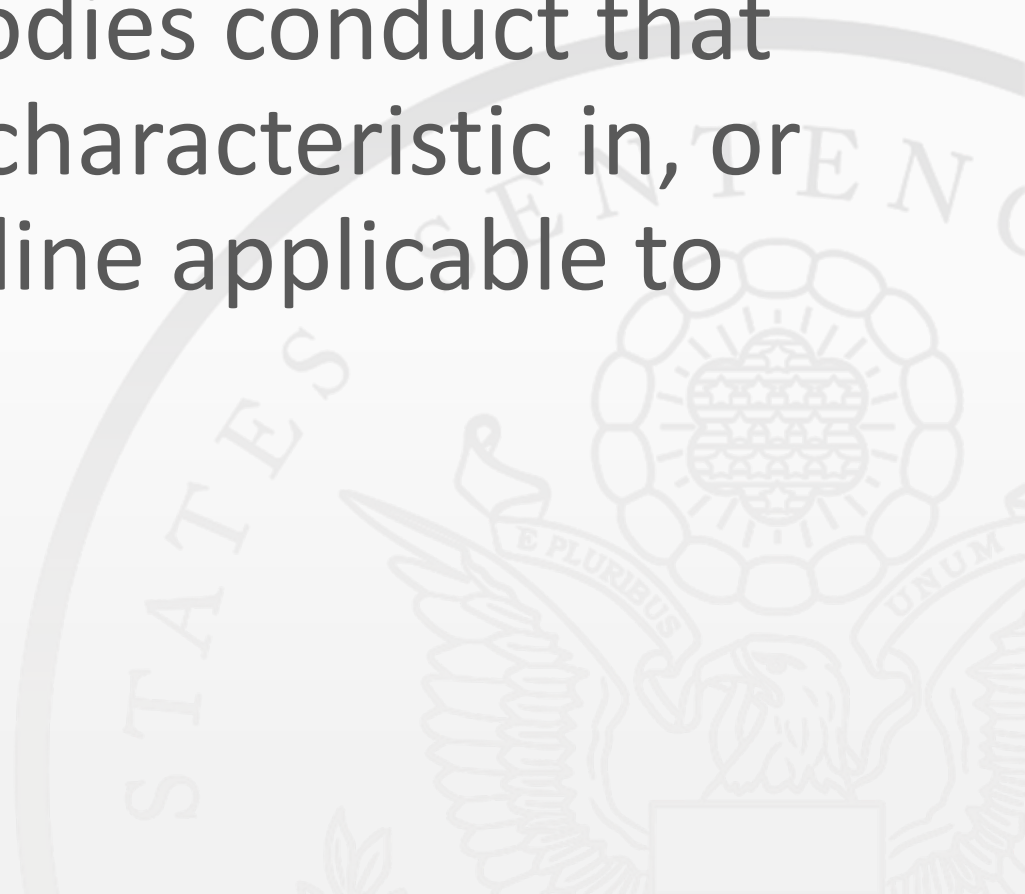
2(c): Do counts 1 and 2 group under U.S.S.G. § 3D1.2?

- A. Yes: under Rule D
- B. Yes: under Rule C
- C. Yes: under Rule B
- D. No: assign units.



Rule C Grouping

“When one of the counts embodies conduct that is treated as a specific offense characteristic in, or other adjustment to, the guideline applicable to another of the counts.”



Drug Trafficking & Felon in Possession Grouping Example

Count 1: §2D1.1
Drug Trafficking
BOL 20
Firearm SOC +2
= 22

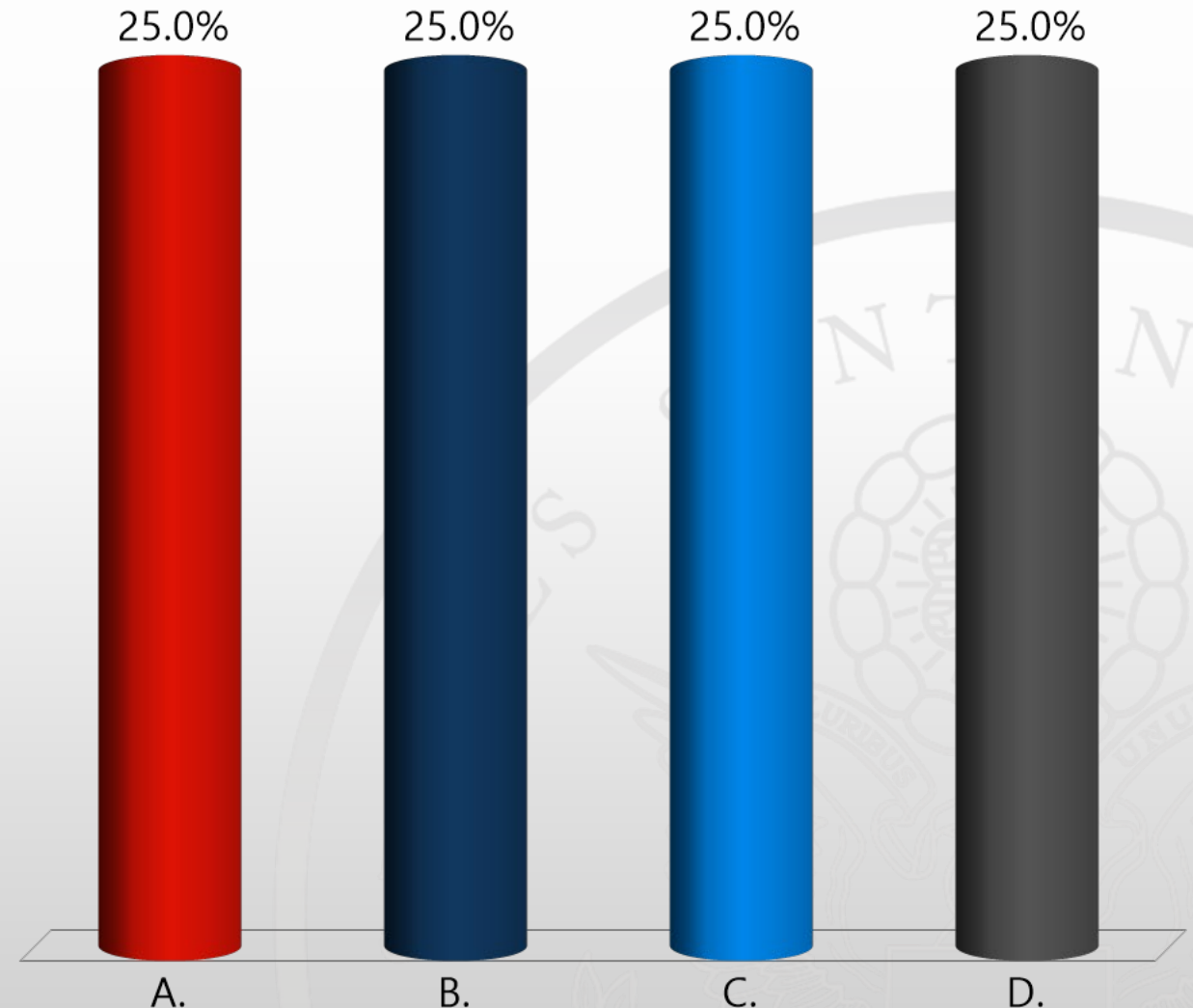
Count 2: §2K2.1
Felon-in-Poss
BOL 24
Drug SOC + **4**
= 28

Offense Level = **28**

Group counts 1 and 2 under §3D1.2(c)

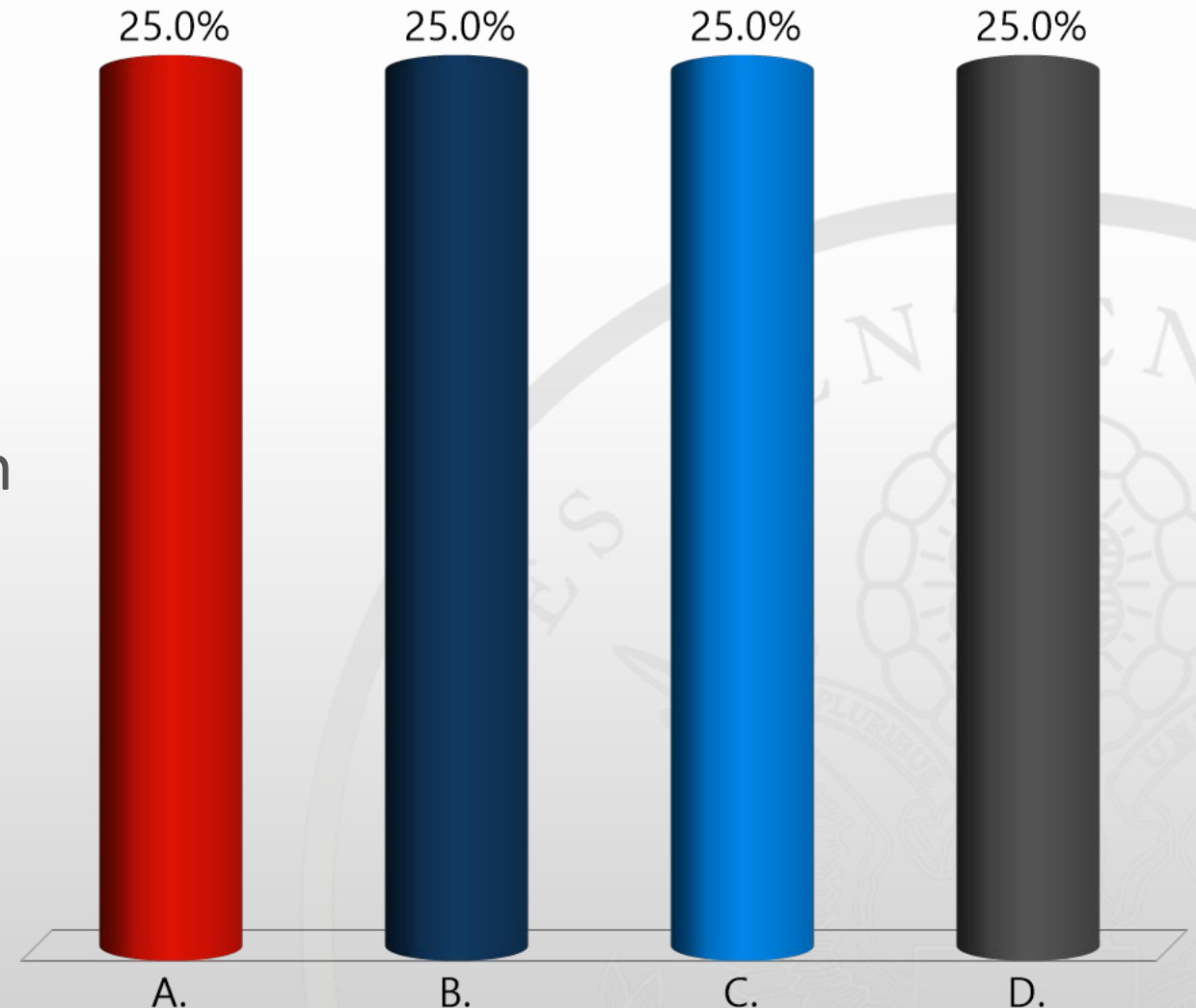
3(a): Will Washington get an increase under 2K2.1(b)(1) for the number of weapons found at his home?

- A. No: the weapons are not cited in the indictment
- B. No: the weapons are not part of the same course of conduct as the offense of conviction
- C. Yes: the guns will group in the guideline calculation
- D. Yes: the weapons are part of the same course of conduct as the offense of conviction



3(b): Does the stolen firearm enhancement and the obliterated serial number enhancement apply?

- A. Yes- a 2-level increase for a stolen weapon
- B. Yes – a 4 level increase for the obliterated serial number
- C. Yes – a 6 level increase for both a stolen firearm and obliterated serial number
- D. Neither enhancement applies



Stolen Gun/Obliterated Serial Number SOC

§2K2.1(b)(4), App. Note 8

- Strict liability standard

- If any firearm

- Was stolen, increase by 2 levels

OR

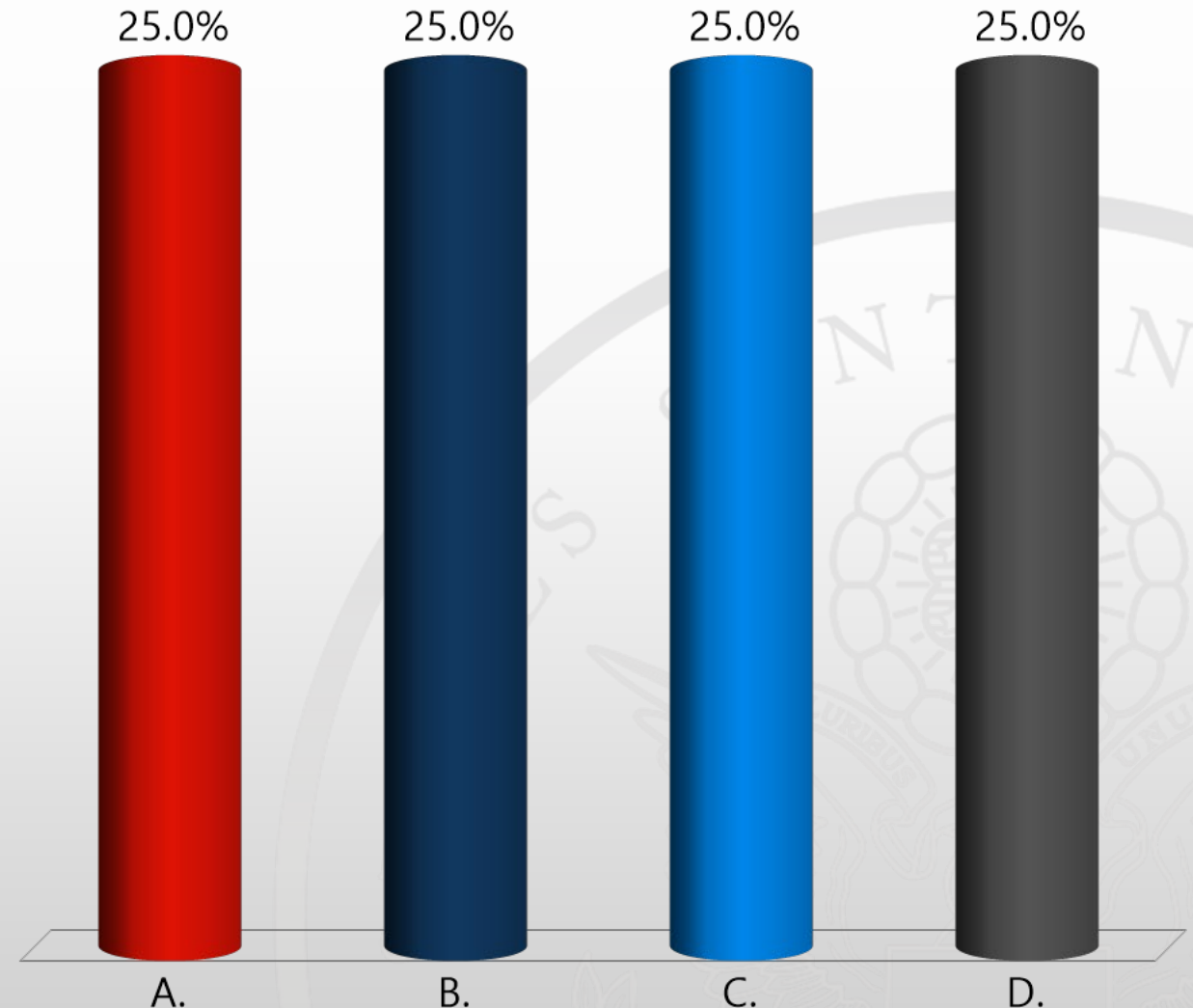
(*i.e.*, cannot give both; use the greater)

- Had an altered or obliterated serial number, increase by 4 levels



3(c): Will Washington get an increase under 2K2.1(b)(6)(B) for use of the firearm in connection with another offense?

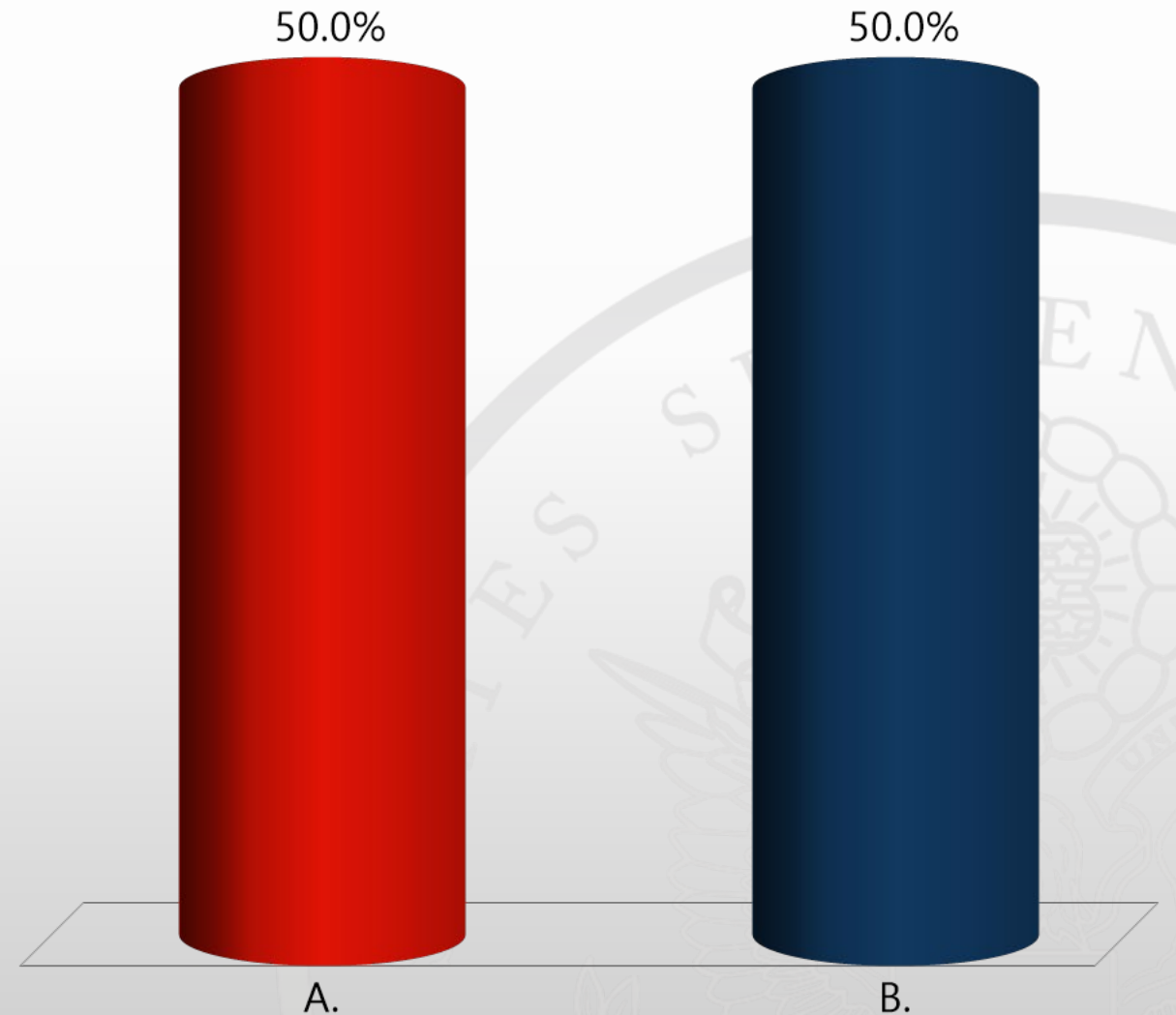
- A. No: the weapon was not cited in the Indictment
- B. No: the robbery was not cited in the Indictment
- C. Yes: the robbery is part of the defendant's relevant conduct
- D. Yes: all acts of the defendant are included in guidelines calculation



3(d): Will the cross-reference at 2K2.1(c) apply?

A. Yes

B. No



“In connection with” differences explained

Use/Possession SOC

2K2.1(b)(6)(B)

- “Used or possessed **any firearm** or ammunition in connection with another felony offense”

Use/Possession Cross Reference

2K2.1(c)

- “Used or possessed **any firearm or ammunition cited in the offense of conviction** in connection with . . . another felony offense.

(Add closing statement here;
“Questions or Comments?” is standard)



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