



Relevant Conduct in Sex Offenses and Other Crimes Against the Person

Wednesday, September 4, 2019

10:15am – 11:45am; 1:15pm – 2:45pm

Annual National Seminar, New Orleans, LA

Introduction

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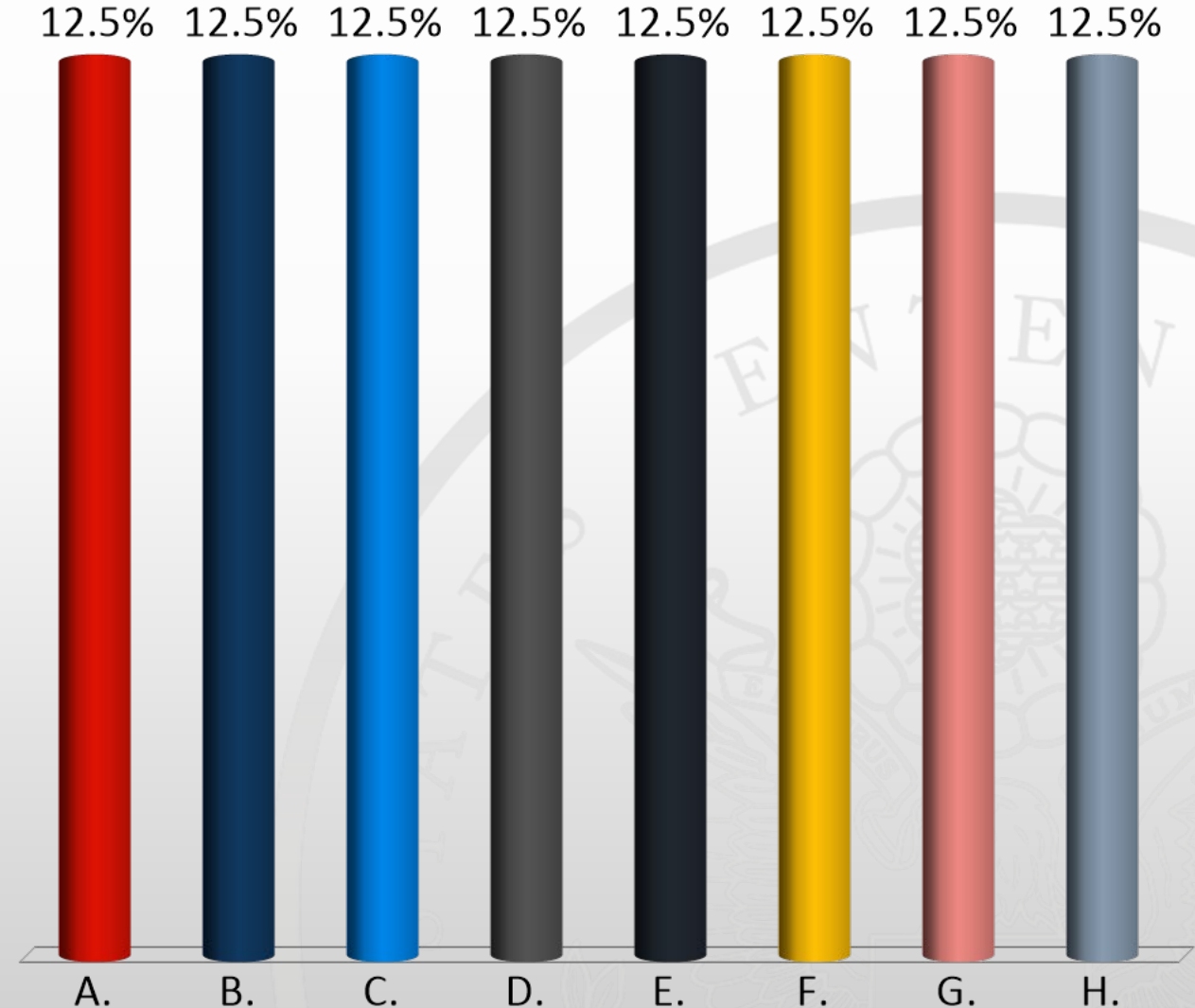
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Discussion Topics

- The **impact of relevant conduct** on the application of:
 - Sex offenses (§§2G1.1, 2G1.3, 2G2.1, 2G2.2)
 - Offenses against the person (§§2A2.2, 2A4.1, 2B3.1)
- The **impact of stipulations** on guideline application

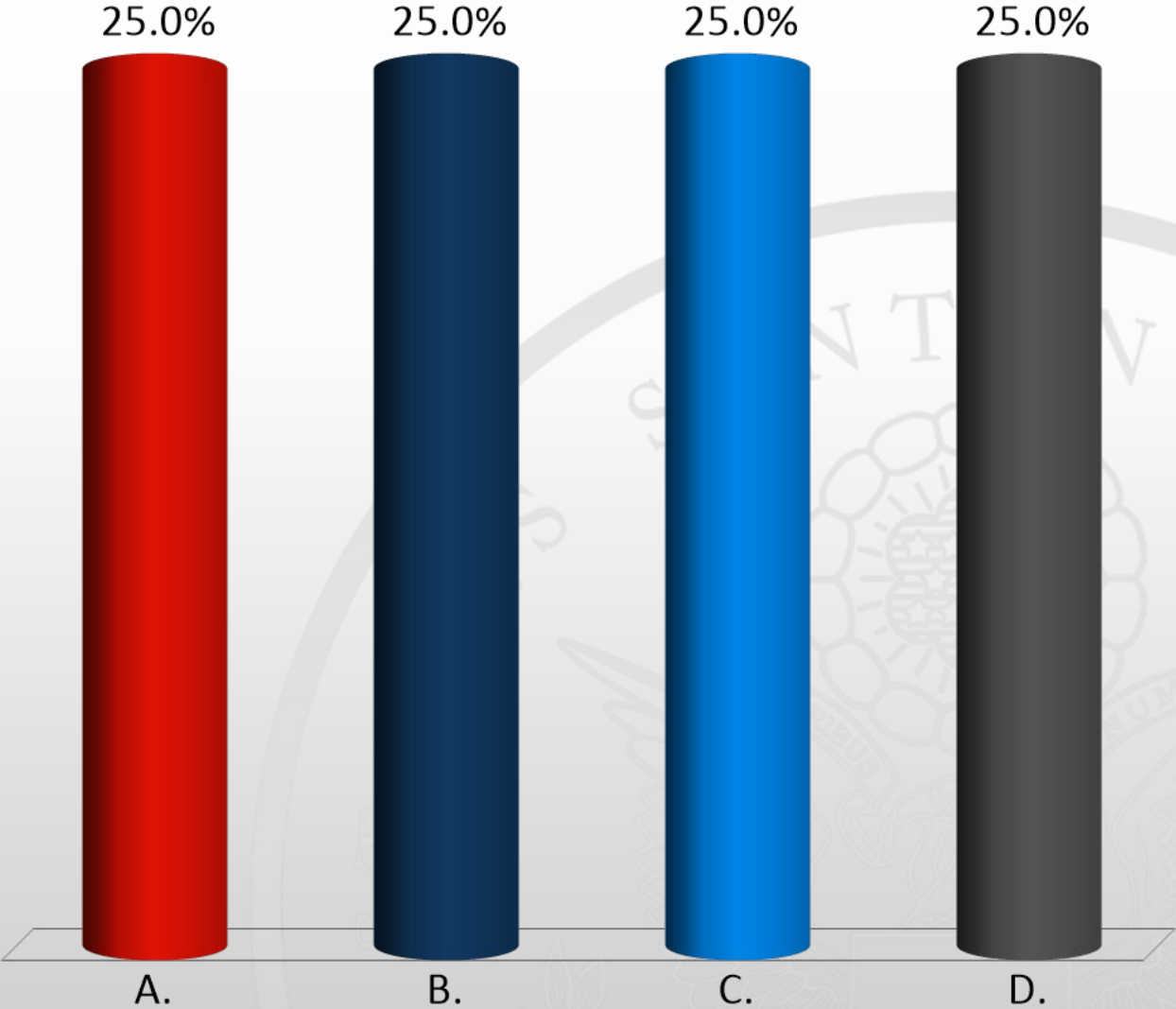
Who is in the Audience?

- 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

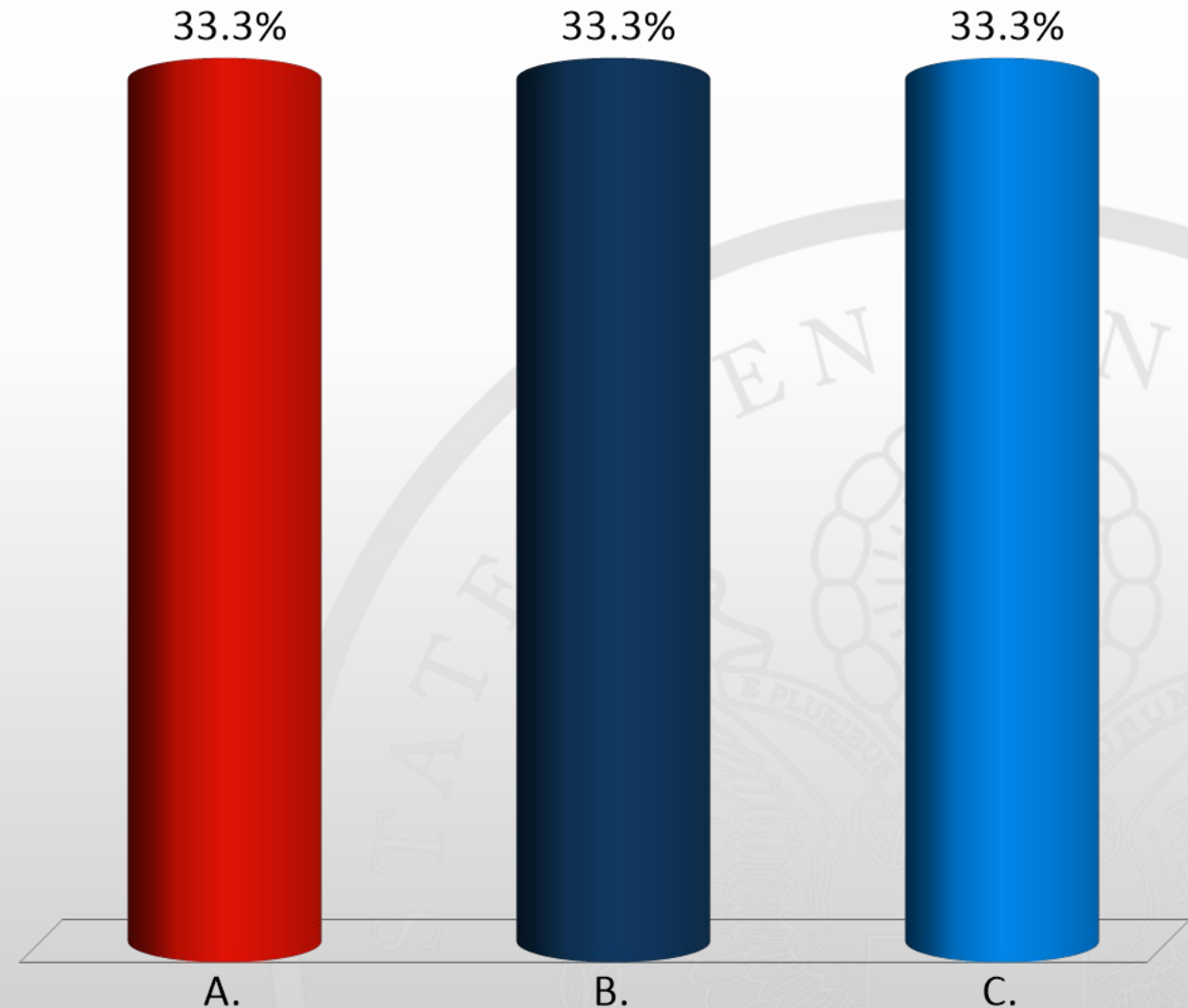




Scenarios and Discussion

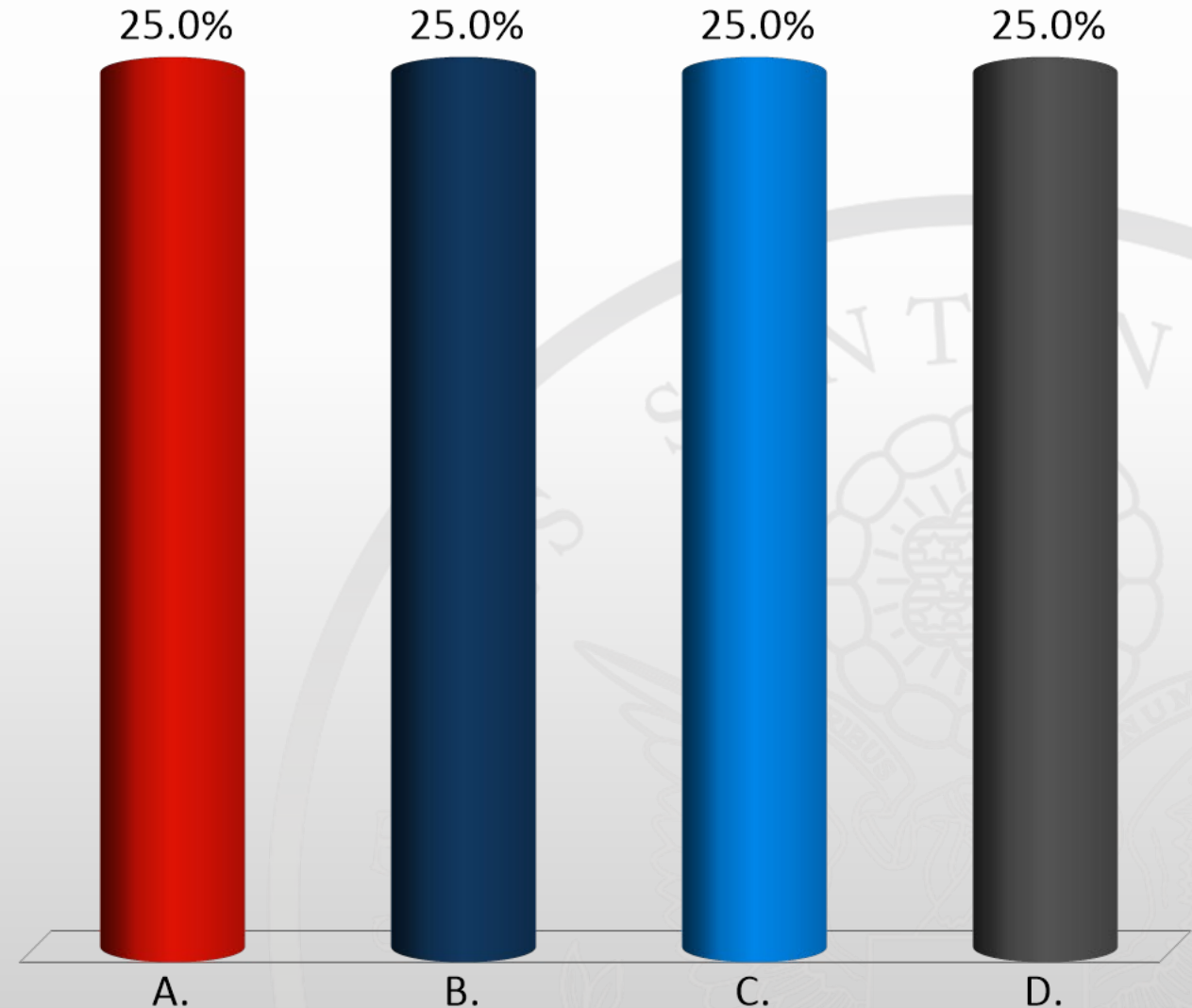
Scenario 1: How many additional calculations of §2G1.3 should be completed?

- A. 7
- B. 0
- C. A number in between 1 and 7



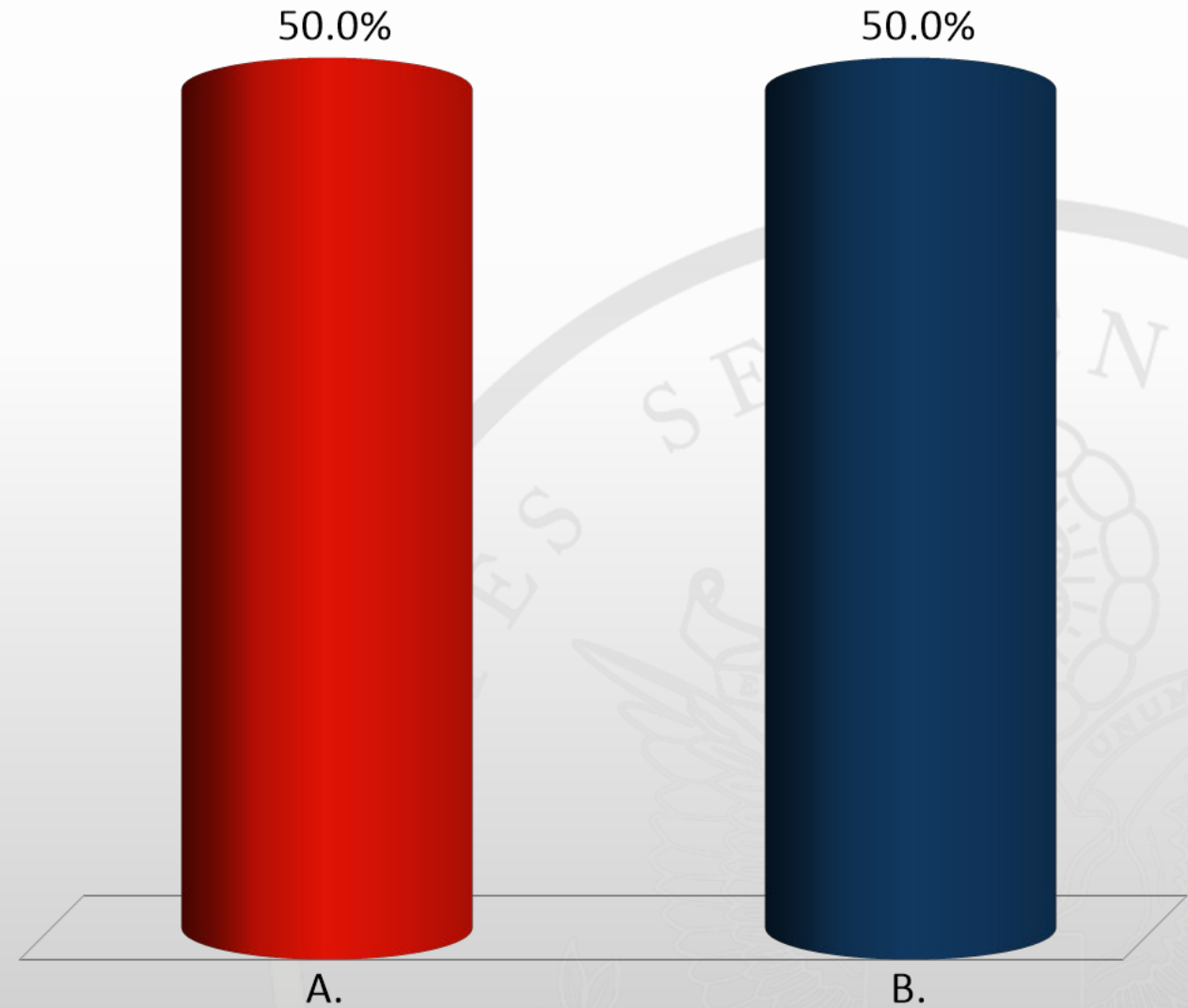
Scenario 2: How many additional calculations of §2G2.1 should be completed?

- A. 5
- B. 4
- C. 0
- D. A number in between 1 and 4



Scenario 3: Will the cross reference at §2B3.1 apply?

- A. Yes
- B. No



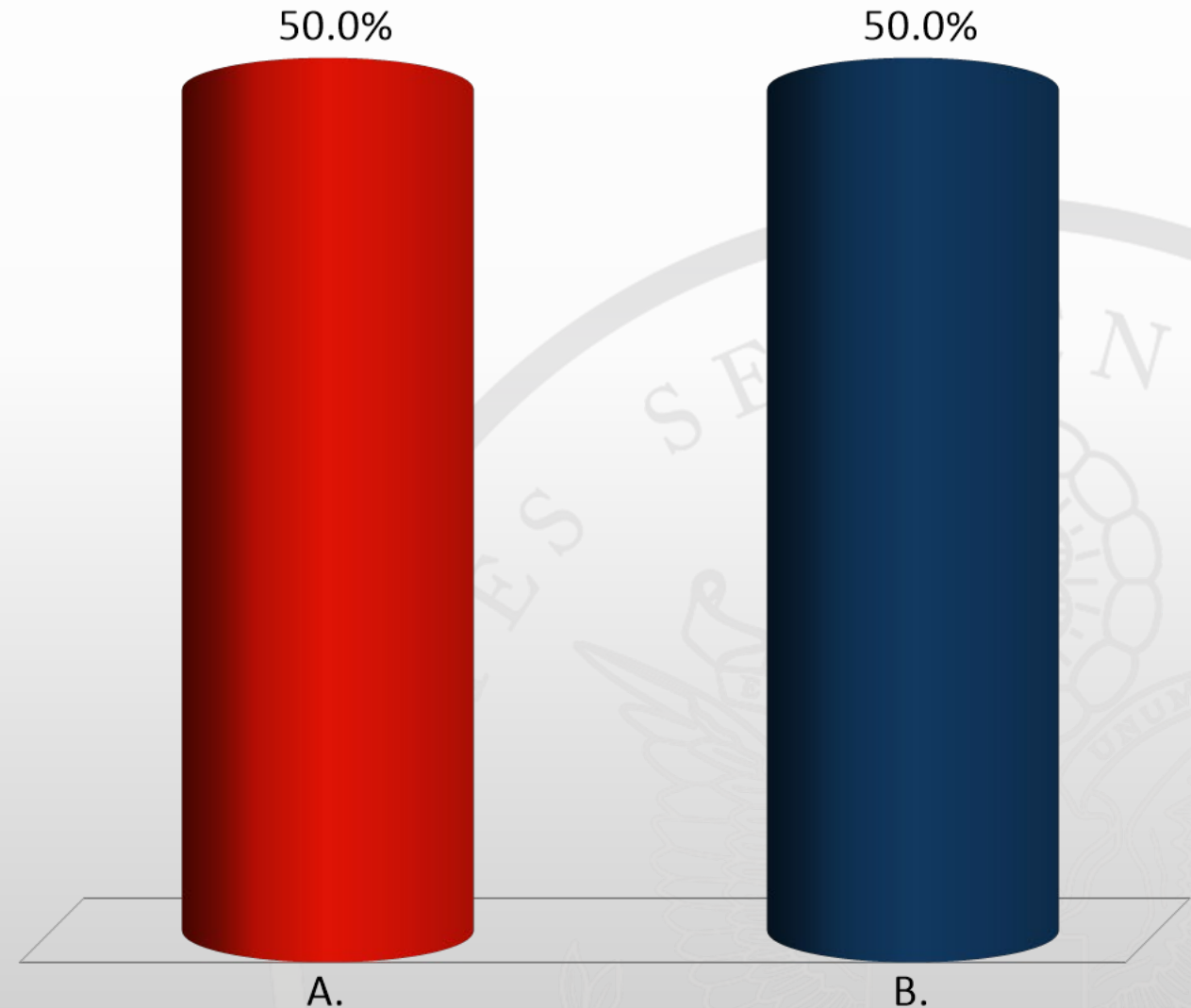
Cross Reference at §2B3.1

(c) Cross Reference

- (1) If a victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder).

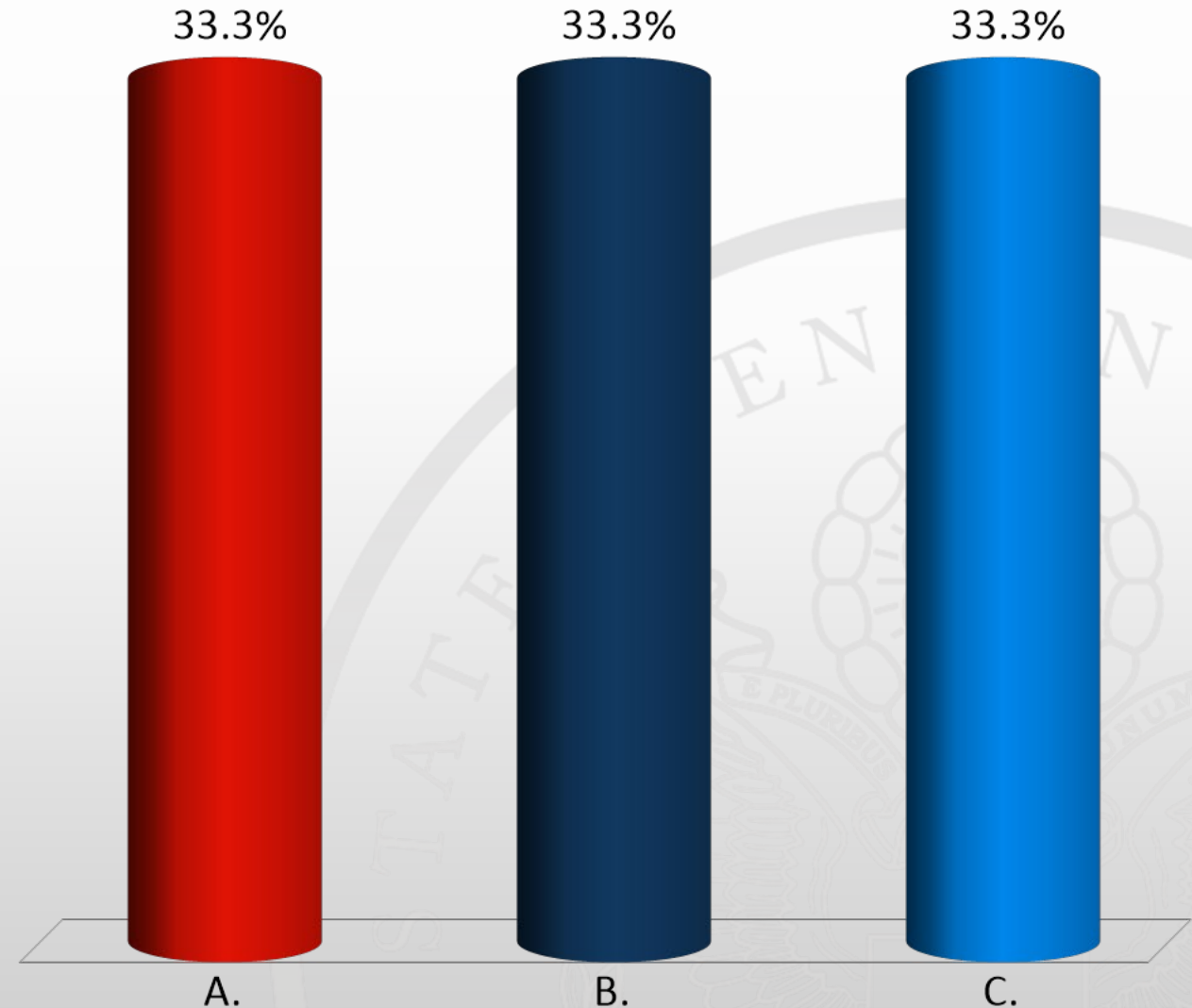
Scenario 4: Will “pseudo counts” be calculated for this case?

- A. Yes
- B. No



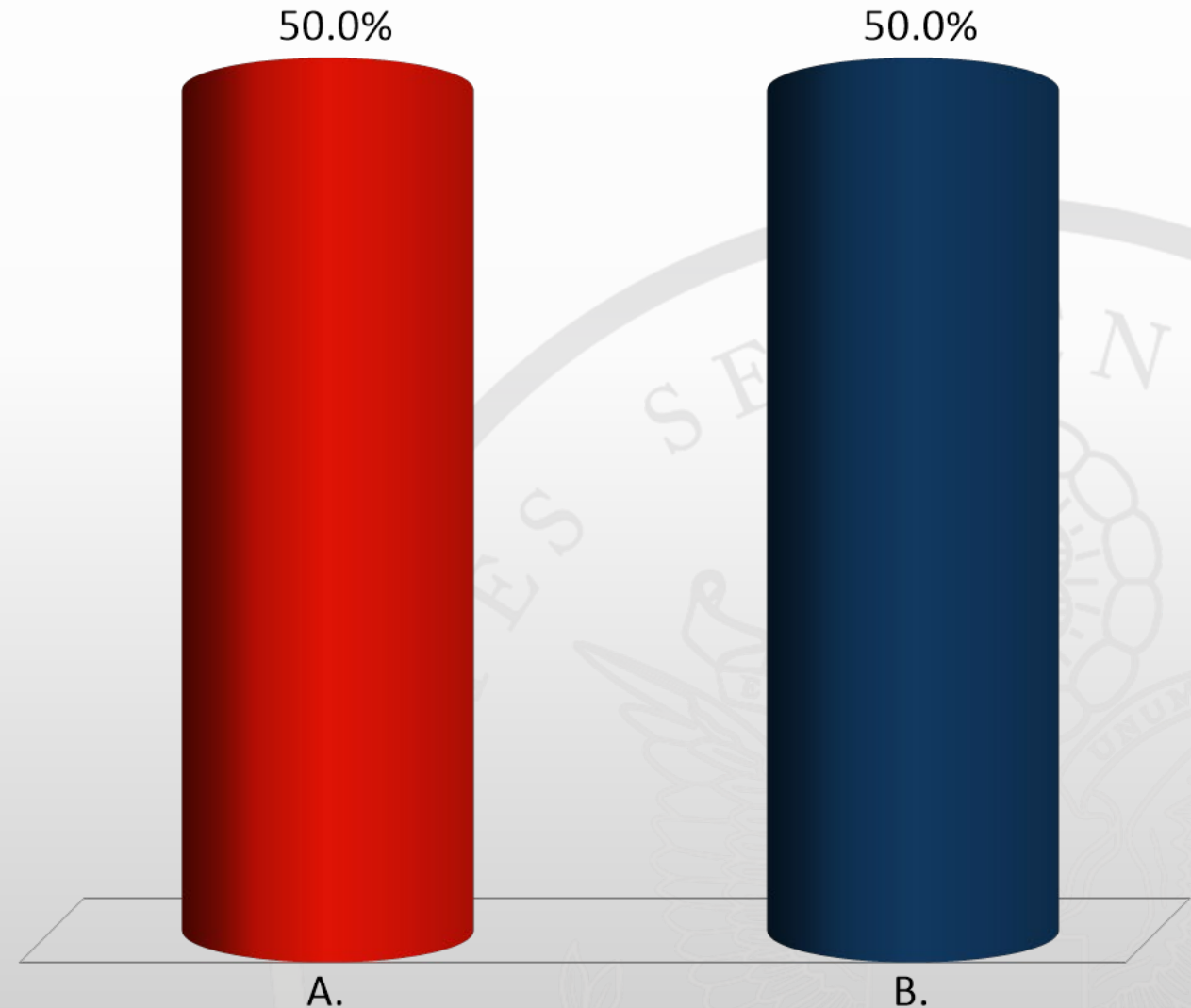
Scenario 5: How many additional calculations of §2G1.1 should be completed?

- A. 4
- B. 0
- C. Need more information



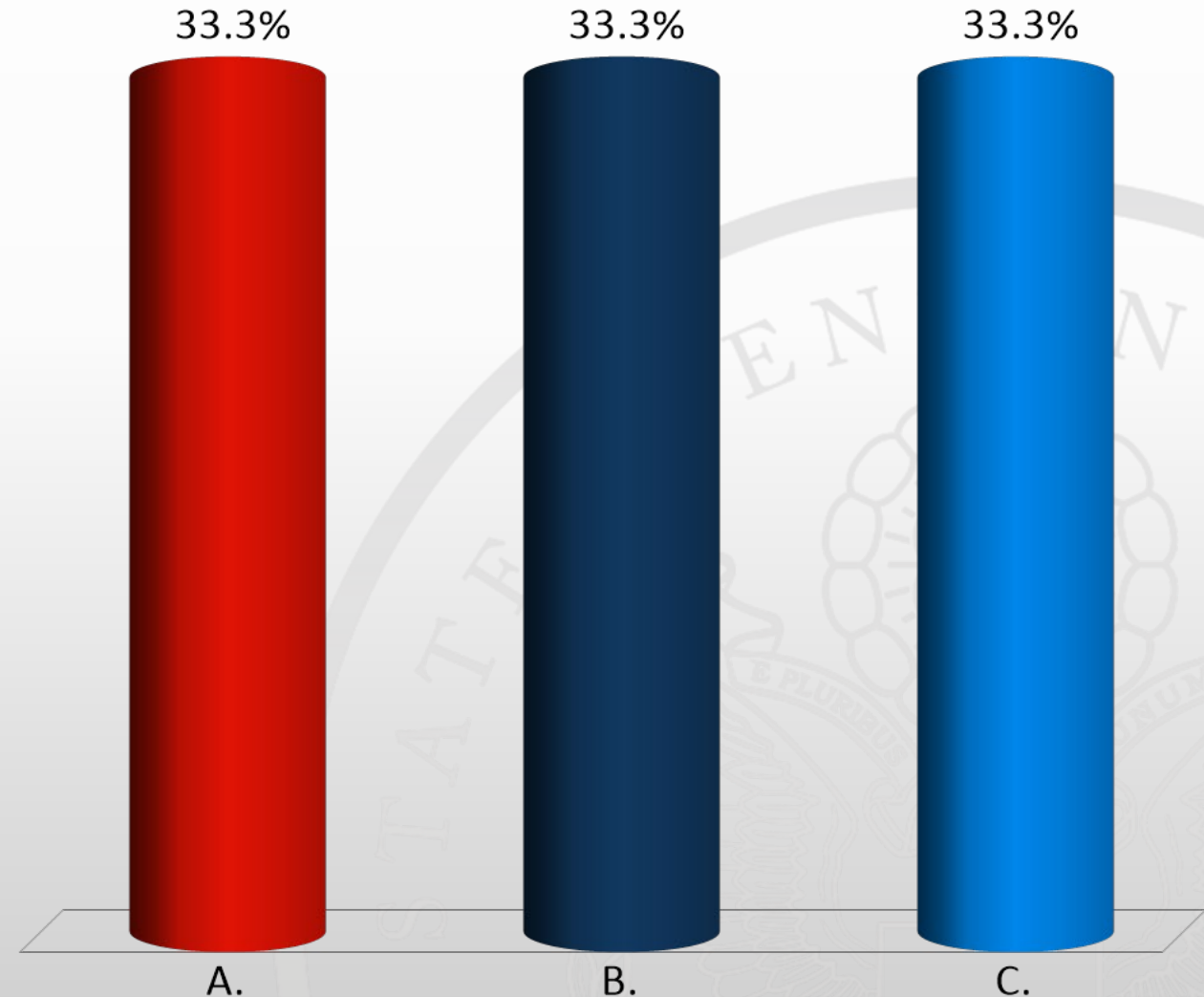
Scenario 6: Can the more serious injuries related to victim B be used when calculating §2A2.2?

- A. Yes
- B. No



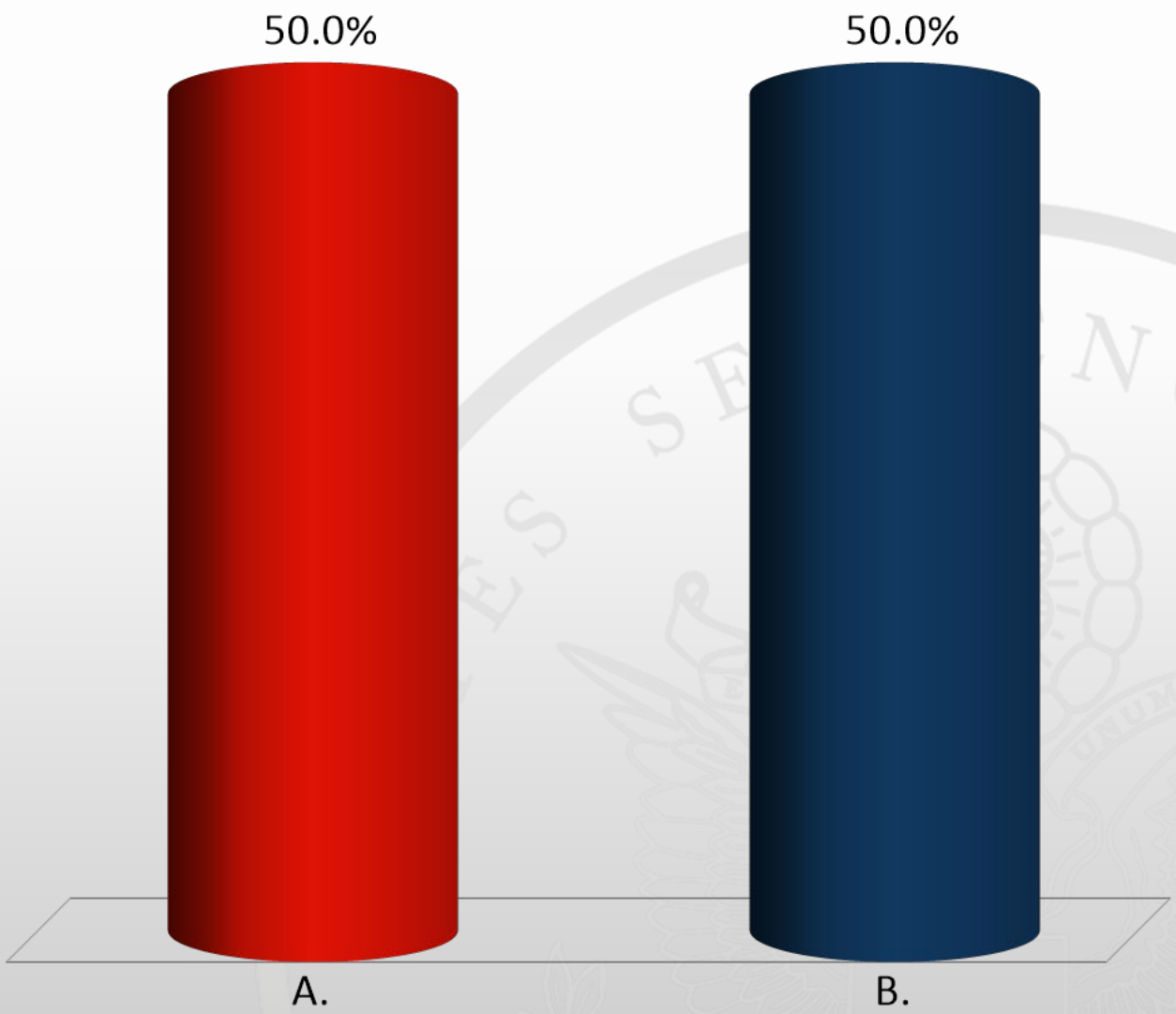
Scenario 7: How many additional calculations of §2G2.1 should be completed?

- A. The total number of videos received
- B. 1 – for the only other video recovered
- C. 0



Scenario 8: Should an additional calculation of §2G2.2 be completed?

- A. Yes
- B. No



Stipulations Under §1B1.2

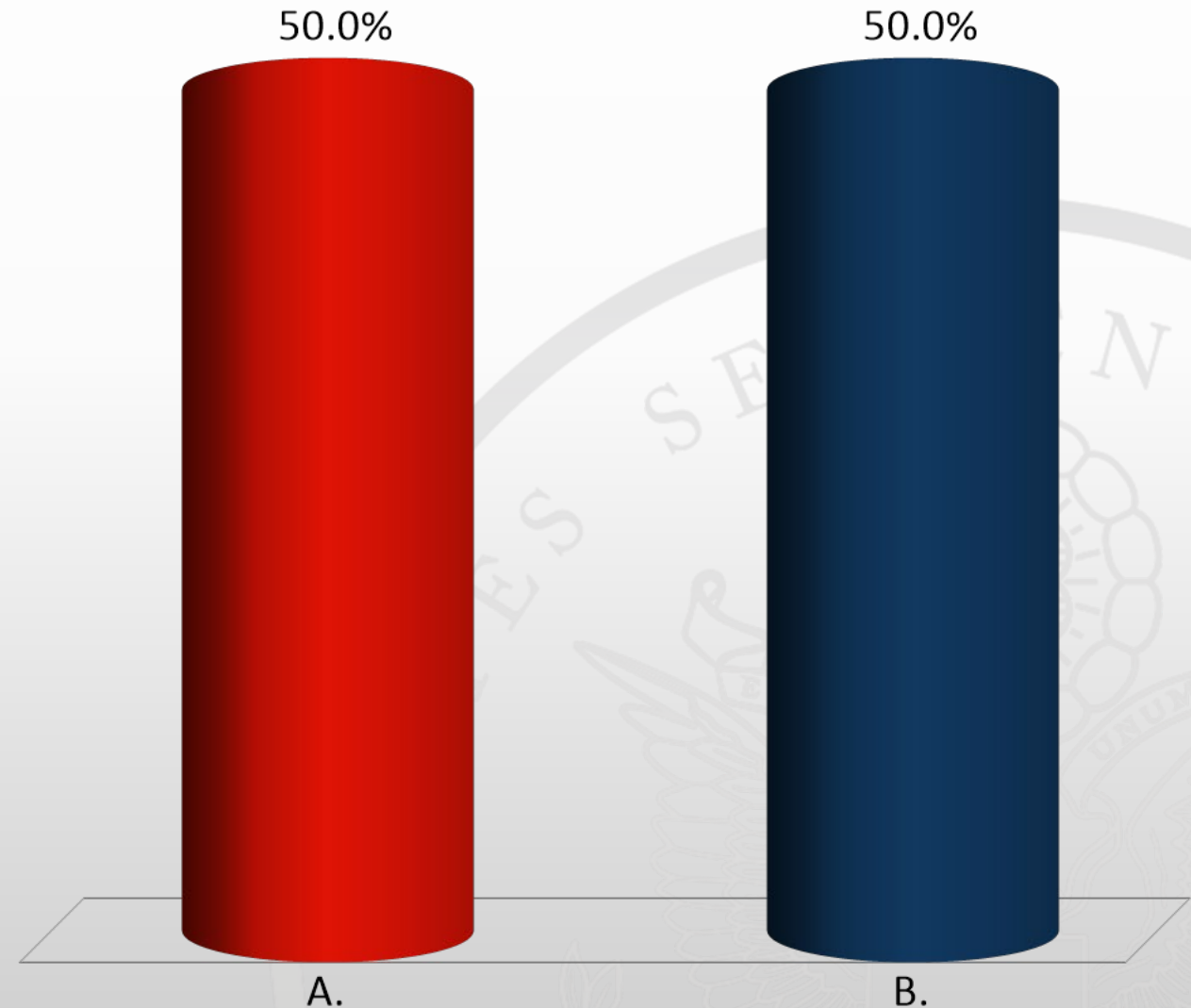
- If the plea agreement has a stipulation:
 - To a more serious offense, use that offense to calculate the guidelines
 - Establishing additional offenses, use those offenses to calculate the guidelines
 - §1B1.2(a) and (c), Application Notes 1 and 3

Stipulations Under §1B1.2

- A stipulation must be an explicit agreement between the defendant and the government
 - §1B1.2, Application Note 1
- “For the proviso in § 1B1.2(a) to apply, there must be not simply a stipulation, but a stipulation that ‘specifically establishes’ a more serious offense.”
 - *Braxton v. United States*, 500 U.S. 344 (1991)

Scenario 9: Should the prior state convictions receive criminal history points?

- A. Yes
- B. No



Questions or Comments?



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