

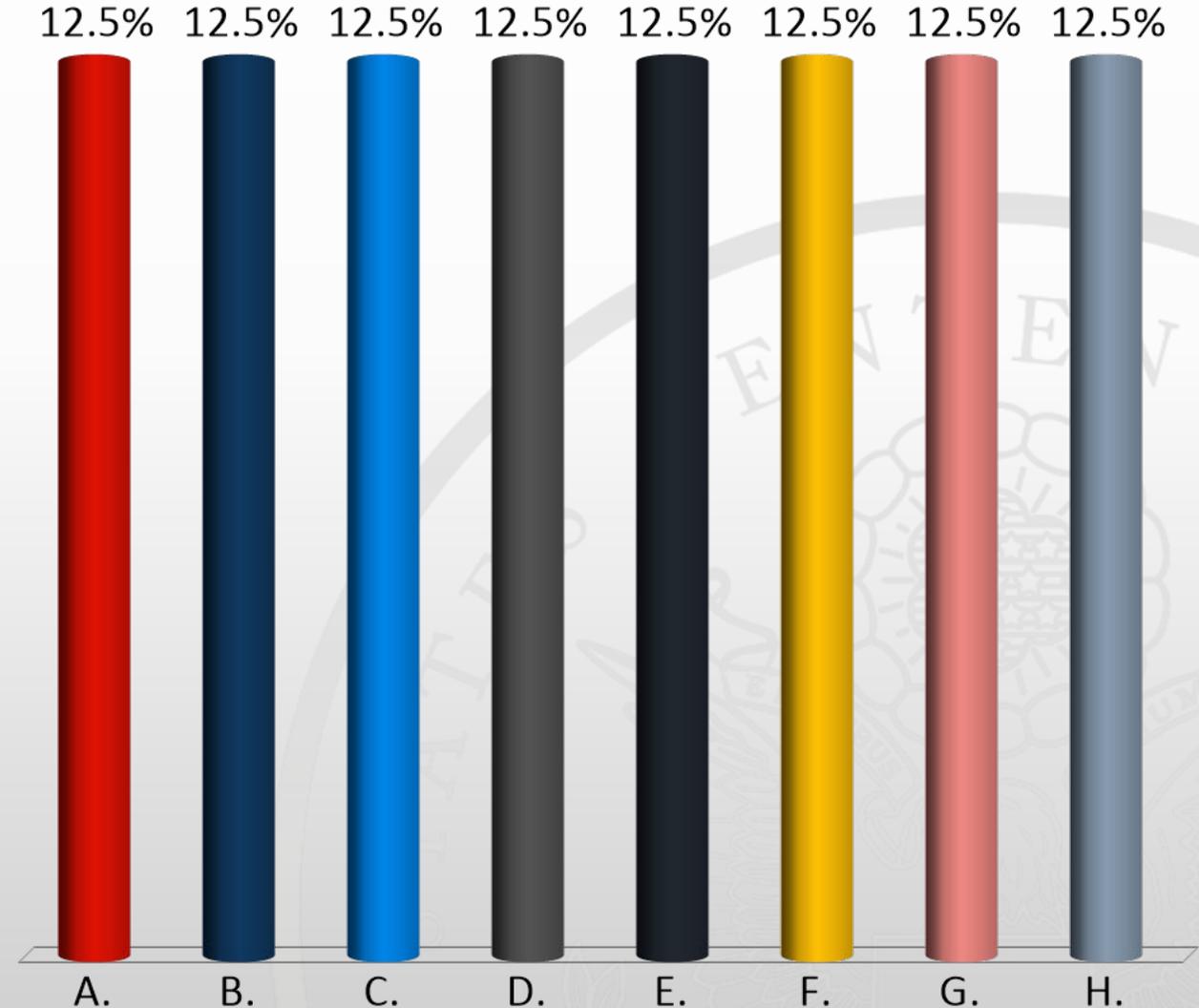


RICO Offenses



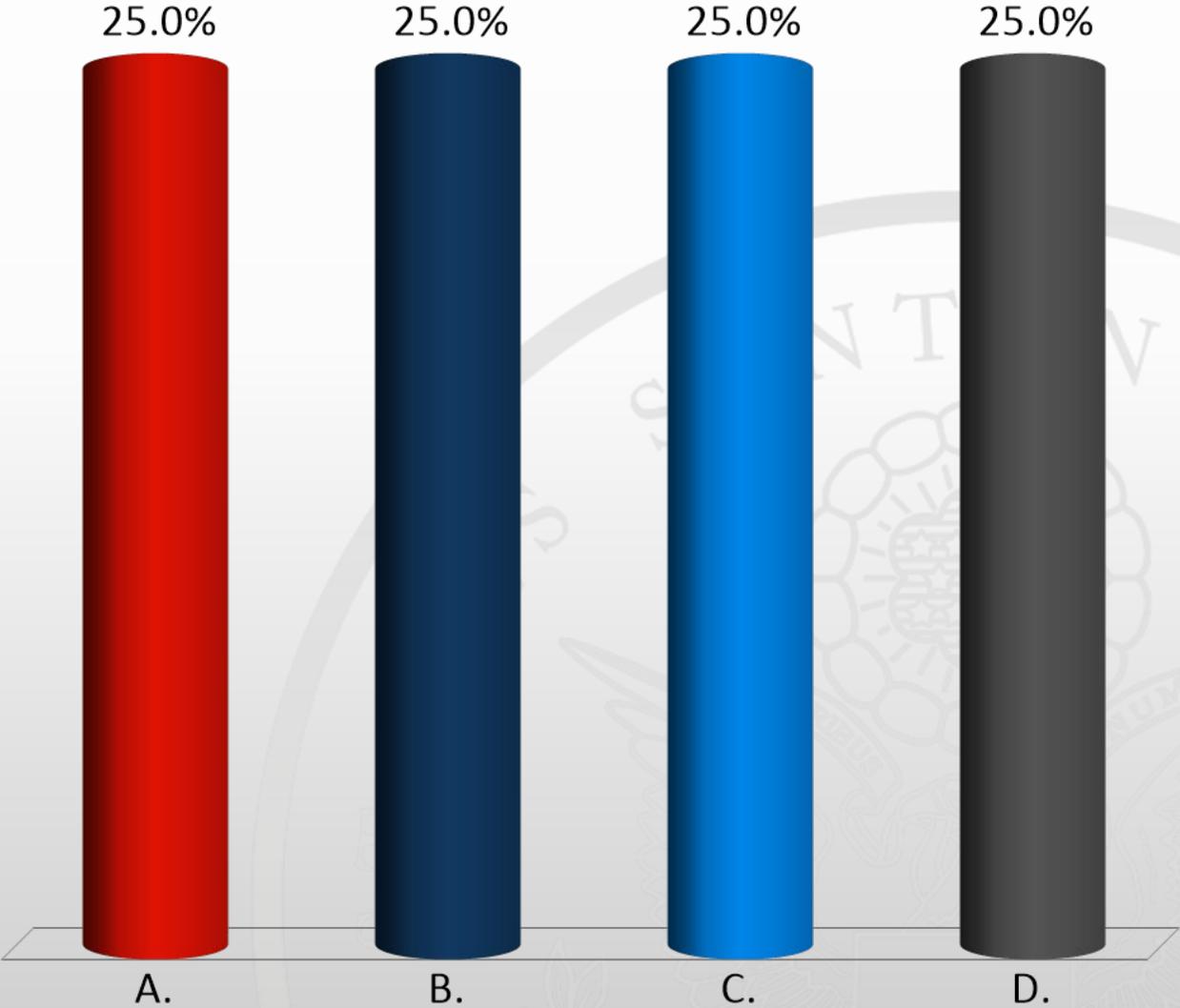
Who is in the Audience?

- 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



Discussion Outline

- De-mystify RICO- is that possible?????
- Relevant statutes and guidelines
- Determining the underlying racketeering activity
- RICO with additional substantive counts



RICO

Racketeer Influenced and Corrupt Organizations

- Relevant statutes:
 - 18 U.S.C. § 1961 – Definitions
 - 18 U.S.C. § 1962 – Prohibited Activities
 - 18 U.S.C. § 1963 – Criminal Penalties
- Statutory maximum (18 U.S.C. § 1963):
 - 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment)

Determining the Underlying Racketeering Activity

Standard of Proof Required

- Preponderance of Evidence Standard (Relevant Conduct)
 - *U.S. v. Carrozza*, 4 F.3d 70 (1st Cir. 1993)
 - *U.S. v. Yannotti*, 541 F.3d 112 (2^d Cir. 2008)
 - *U.S. v. Corrado*, 227 F.3d 528 (6th Cir. 2000)
 - *U.S. v. Masters*, 978 F.2d 281 (7th Cir. 1992)
- Beyond a Reasonable Doubt Standard (§1B1.2(d))
 - *U.S. v. Farese*, 248 F.3d 1056 (11th Cir. 2000)

RICO

Racketeer Influenced and Corrupt Organizations

- Applicable guideline: §2E1.1
- “Because of the jurisdictional nature of the offenses included, this subpart covers a wide variety of criminal conduct. **The offense level usually will be determined by the offense level of the underlying conduct.**” (Introductory Commentary, Chapter 2, Part E)

§2E1.1 (RICO)

a) Base Offense Level (Apply the greater):

1) 19; or

2) the offense level applicable to the **underlying racketeering activity**



Example 1

- Conviction: one count of 18 U.S.C. § 1962
- Applicable guideline §2E1.1
- Underlying racketeering activity:
 - Extortion (§2B3.2)



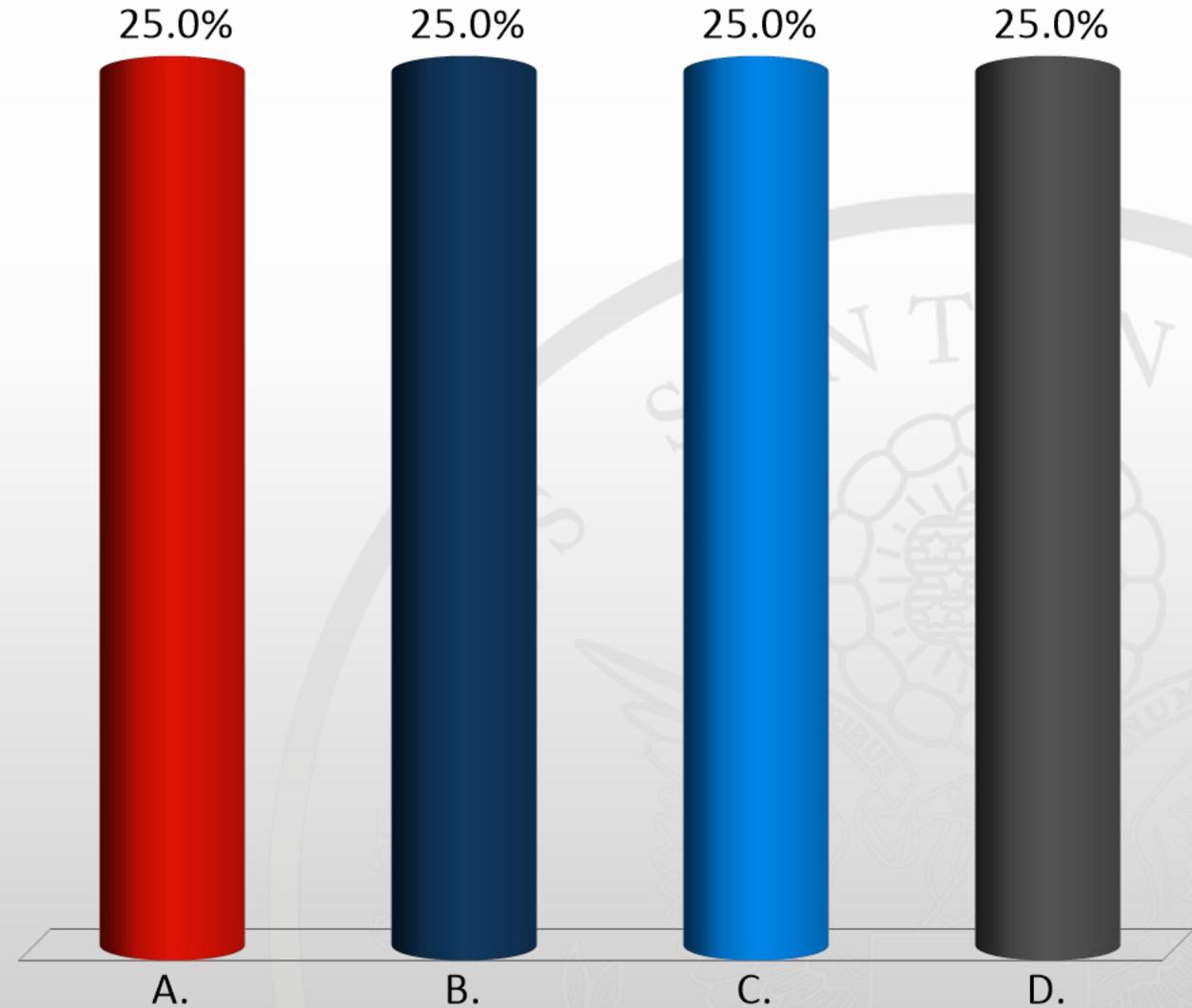
Example 1 (cont.)

<u>§2B3.2</u>	
BOL	18
OL	18



What is the BOL at §2E1.1?

- A. 18
- B. 19
- C. 25
- D. Some other number



§2E1.1 Application Note 1

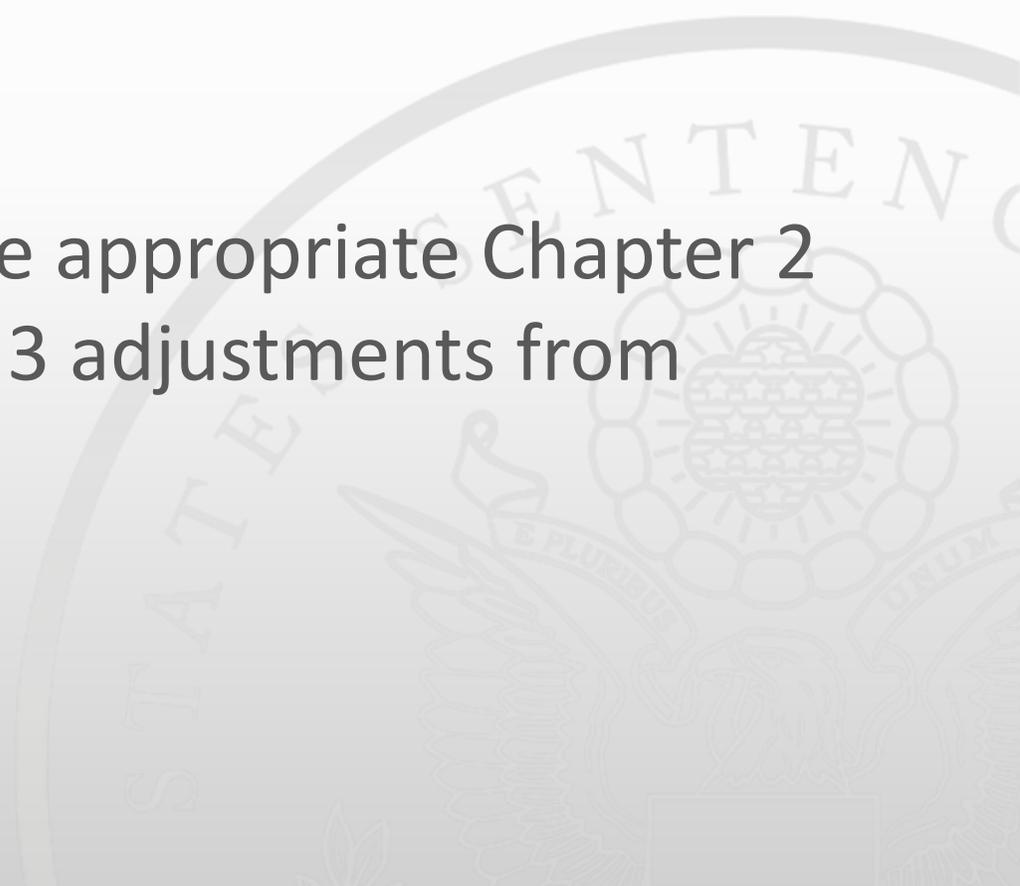
- Where there is more than one underlying offense, treat each underlying offense as if contained in a separate count of conviction for the purposes of (a)(2).
- To determine whether subsection (a)(1) or (a)(2) results in the greater offense level, apply Chapter Three, Parts A, B, C and D to both (a)(1) and (a)(2).

§2E1.1 Application Note 3

- If the offense level for the underlying racketeering activity is less than the alternative minimum level specified (i.e., 19), the alternative minimum base offense level is to be used
- If the higher offense level is determined through application of (a)(2), do not apply these Chapter Three adjustments a second time.

Determining the Base Offense Level

- To apply BOL (a)(2), treat each underlying offense as if a substantive count of conviction
- For each underlying offense, apply the appropriate Chapter 2 guideline and any applicable Chapter 3 adjustments from Parts A, B, and C



Example 2

- Conviction: one count of 18 U.S.C. § 1962
- Applicable guideline §2E1.1
- Underlying racketeering activity:
 - Extortion (§2B3.2)
 - Extortion (§2B3.2)
 - Extortion (§2B3.2)



Example 2 (cont.)

<u>§2B3.2</u>	
BOL	18
OL	18

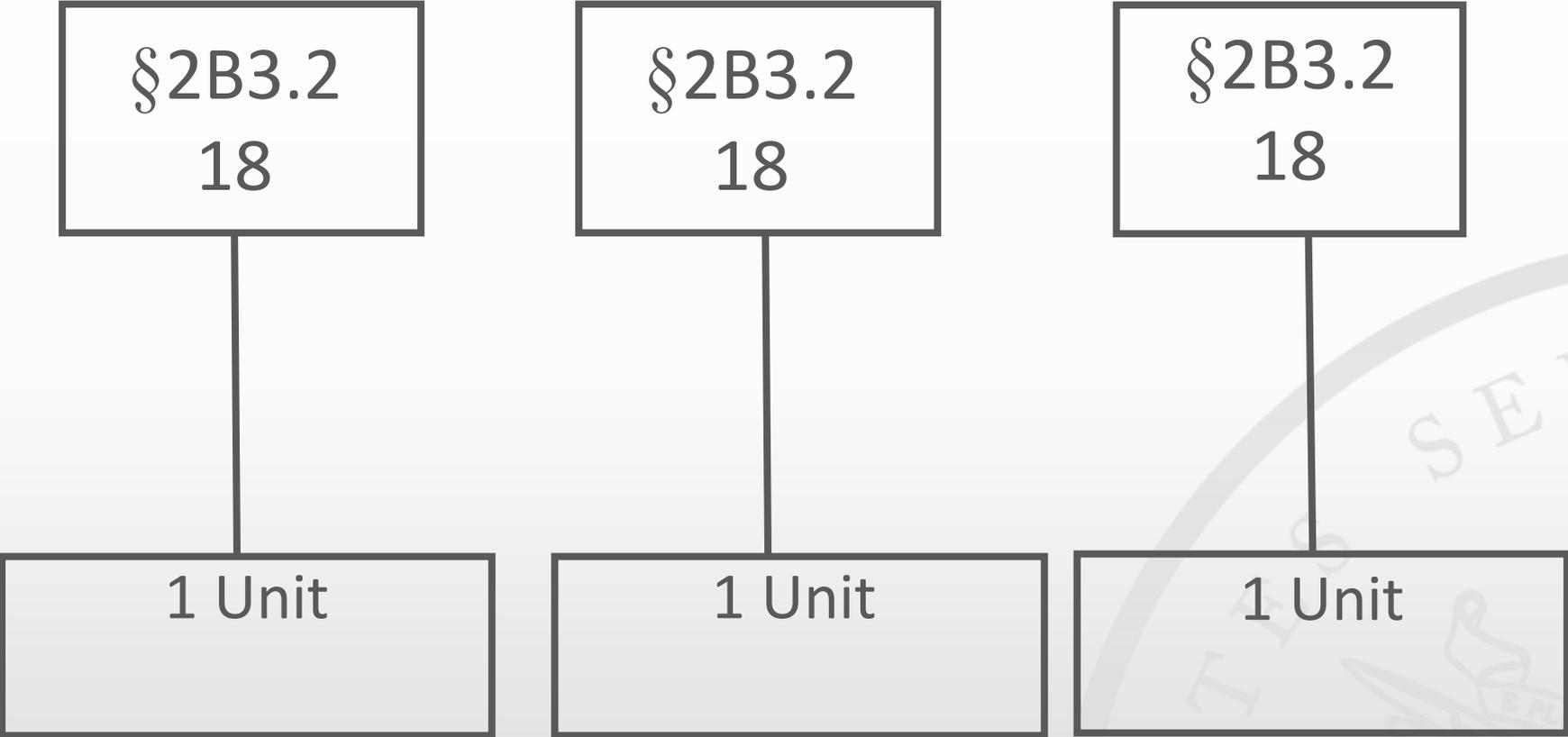
<u>§2B3.2</u>	
BOL	18
OL	18

<u>§2B3.2</u>	
BOL	18
OL	18

Determining the Base Offense Level

- Apply the grouping rules in Part D of Chapter 3 to determine the combined offense level for the underlying offenses
- Compare the combined offense level for the underlying offenses determined under BOL (a)(2) to BOL (a)(1) (OL 19)

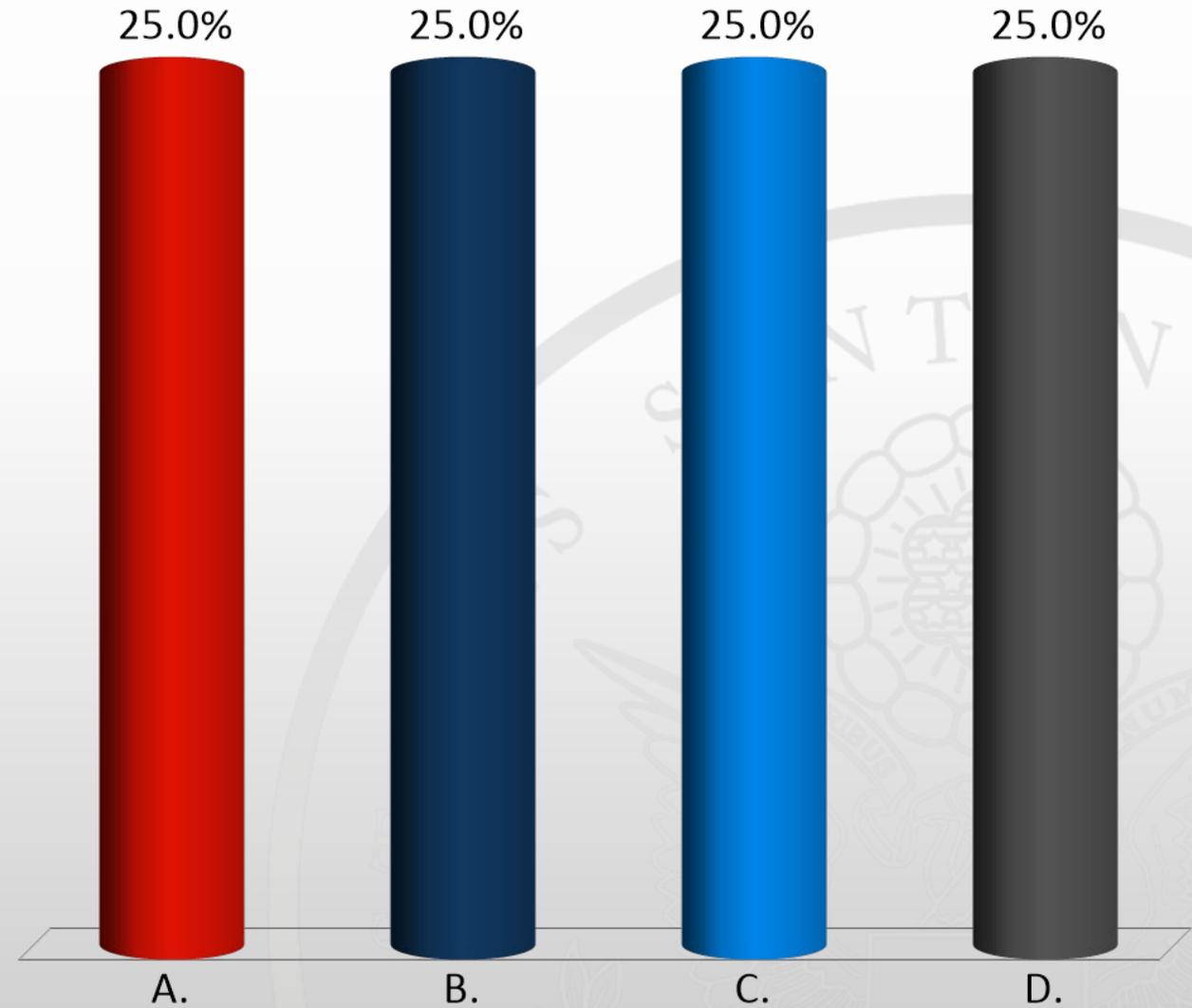
Example 2 (cont.)



3 units = 3 OL Add to highest count
Combined OL: 18 +3 = OL 21

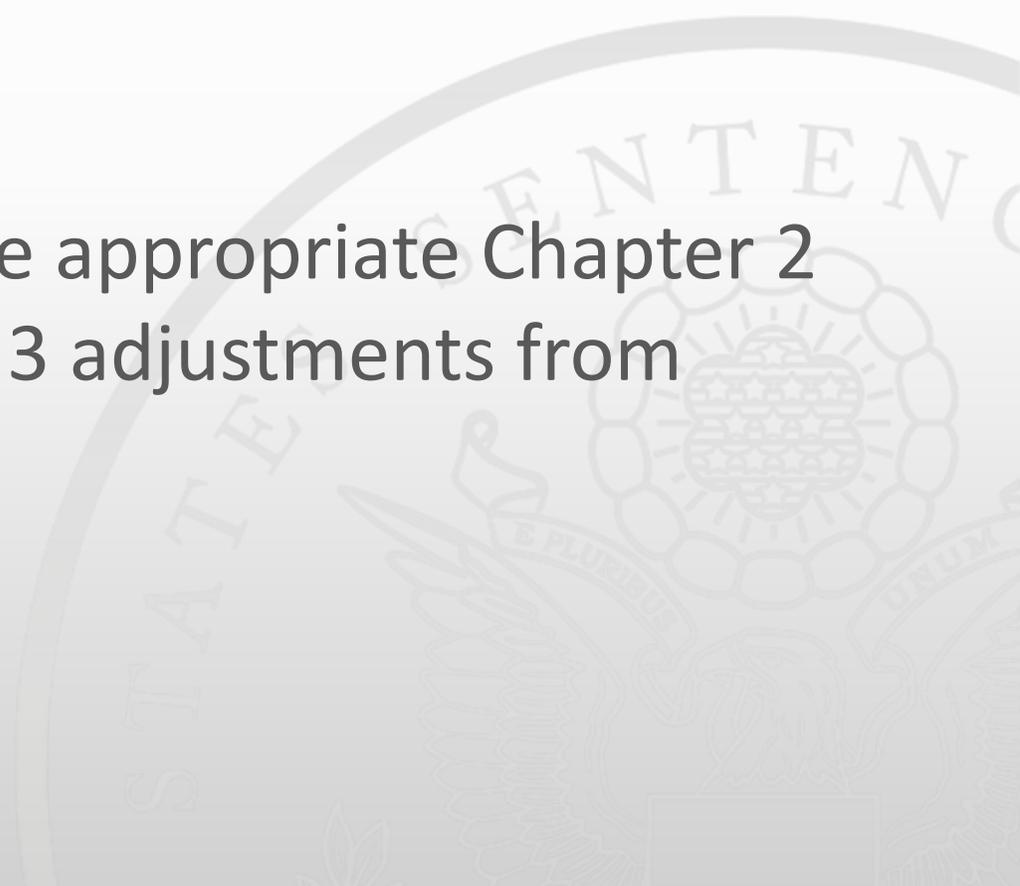
What is the BOL at §2E1.1?

- A. 19
- B. 45
- C. 21
- D. 62



Determining the Base Offense Level

- To apply BOL (a)(2), treat each underlying offense as if a substantive count of conviction
- For each underlying offense, apply the appropriate Chapter 2 guideline and any applicable Chapter 3 adjustments from Parts A, B, and C



Example 3

- Conviction: one count of 18 U.S.C. § 1962
- Applicable guideline §2E1.1
- Underlying racketeering activity:
 - PWID 5 KG Cocaine (§2D1.1)
 - Attempted Murder (§2A2.1)
 - Robbery (§2B3.1)



Example 3 (cont.)

§2D1.1

BOL 30

Firearm +2

§3B1.1

Leader +4

OL 36

§2A2.1

BOL 33

Injury +4

OL 37

§2B3.1

BOL 20

Gun +5

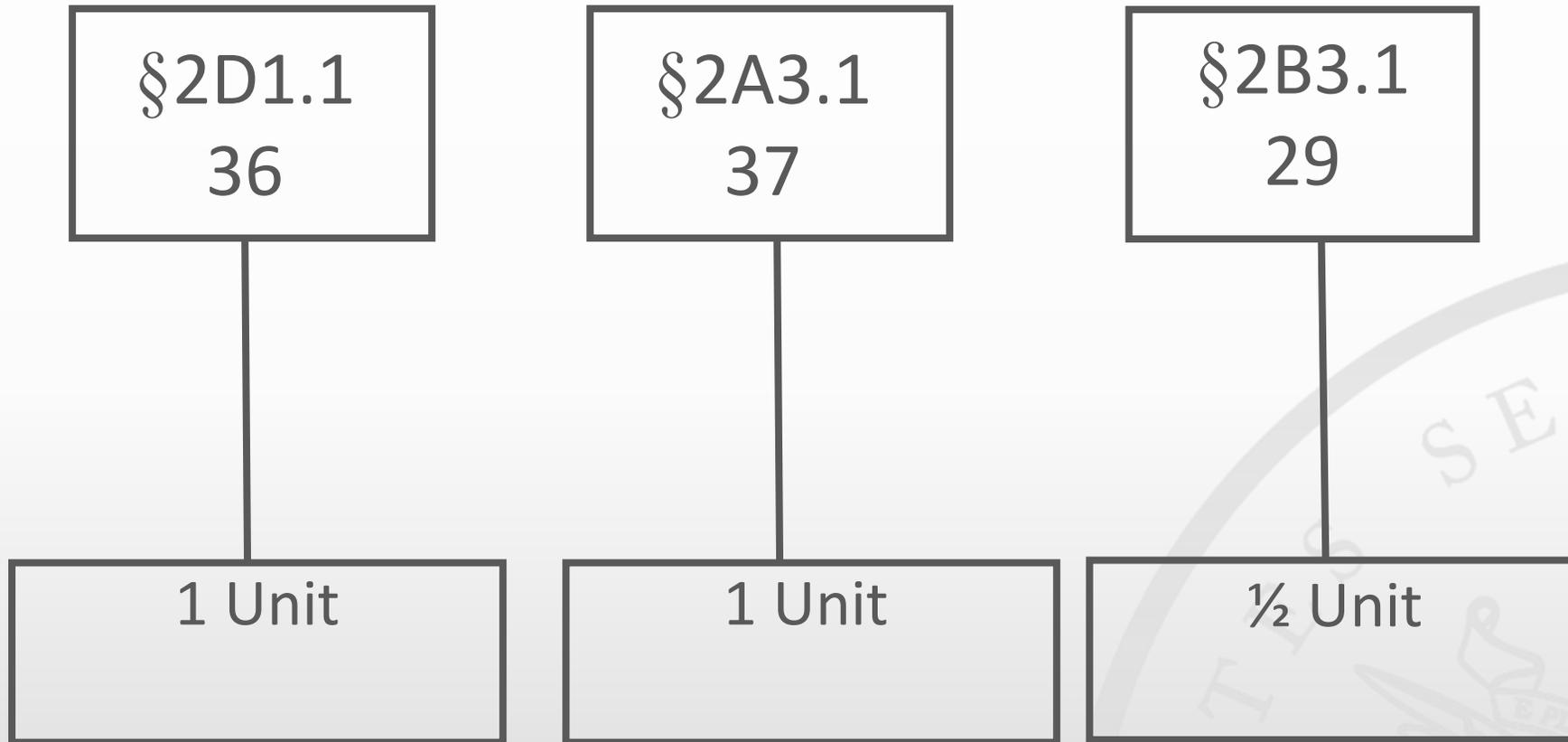
Injury +4

OL 29

Determining the Base Offense Level

- Apply the grouping rules in Part D of Chapter 3 to determine the combined offense level for the underlying offenses
- Compare the combined offense level for the underlying offenses determined under BOL (a)(2) to BOL (a)(1) (OL 19)

Example 3 (cont.)



2 ½ units = 3 OL Add to highest count
Combined OL: 37 + 3 = OL 40

Example 3 (cont.)

- Compare BOL (a)(1) to BOL (a)(2)
- BOL (a)(1) = 19
- BOL(a)(2) (OL 40) will apply



Calculating RICO with Additional Substantive Counts



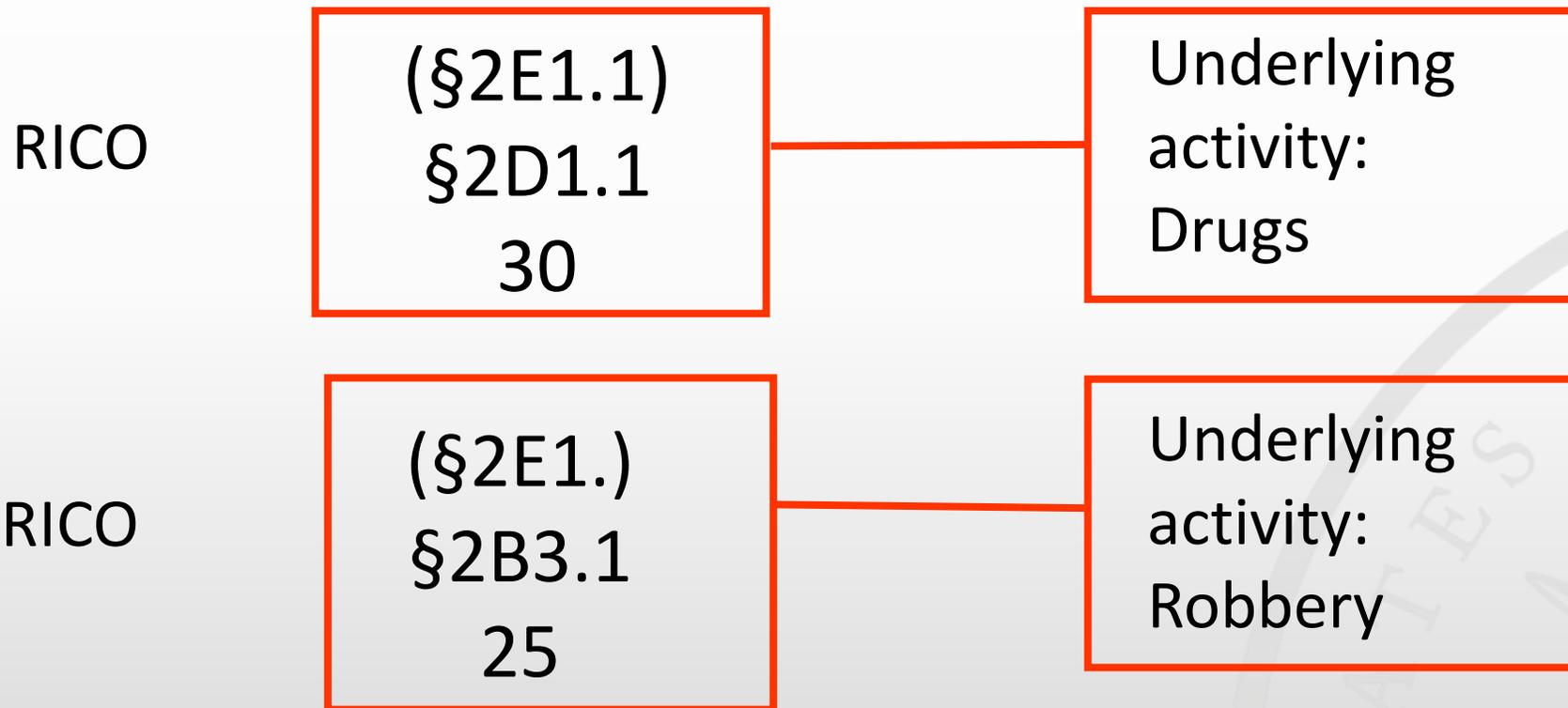
Scenario

- Counts of conviction:
 - RICO (§2E1.1)
 - Underlying offenses:
 - Drugs (§2D1.1)
 - Robbery (§2B3.1)
 - Drugs (§2D1.1)
 - Robbery (§2B3.1)



Scenario (cont.)

RICO will operate like a conspiracy count to commit more than one offense.



Scenario (cont.)

In addition to the underlying RICO offenses, calculate the guidelines for the substantive counts.

RICO

(§2E1.1)
2D1.1
30

2D1.1
30

RICO

(§2E1.1)
§2B3.1
25

§2B3.1
25



Scenario (cont.)

Apply the grouping rules to both the underlying RICO offenses and the substantive counts.

RICO	<div style="border: 1px solid red; padding: 5px; display: inline-block;">§2D1.1 30</div>	<div style="border: 1px solid red; padding: 5px; display: inline-block;">§2D1.1 30</div>	Count Group 1 – Rule (a) - same victim, same act
RICO	<div style="border: 1px solid red; padding: 5px; display: inline-block;">§2B3.1 25</div>	<div style="border: 1px solid red; padding: 5px; display: inline-block;">§2B3.1 25</div>	



Example 3 (cont.)

Count Group 1

§2D1.1
30

1 Unit

Count Group 2

§2B3.1
25

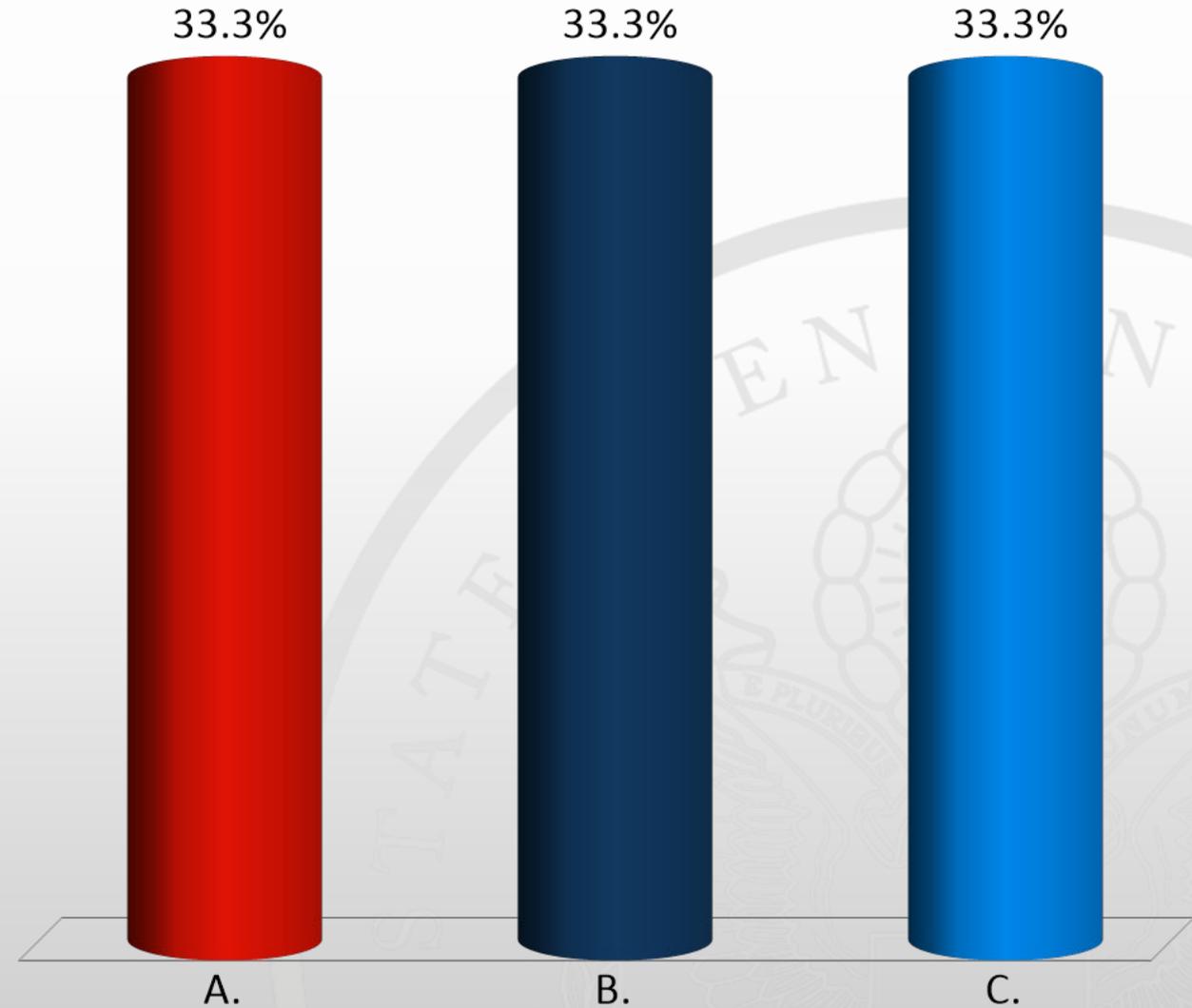
1/2 Unit

1 1/2 units = 1 OL Add to highest count
Combined OL: 30 + 1 = OL 31



What is the BOL at §2E1.1?

- A. 31
- B. 25
- C. 19



Thank you!



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