



Criminal History – Implications for Immigration, Career Offender, Safety Valve and First Step Act

Thursday, September 5, 2019

9:00am – 10:30am; 10:45am – 12:15pm

Annual National Seminar, New Orleans, LA

Krista Rubin

Education Program Specialist
Office of Education and Sentencing Practice

Email: krubin@ussc.gov

HelpLine: (202) 502-4545



Discussion Topics

- Impact of criminal history calculations in guideline application
- Calculating criminal history
 - Is the prior conduct part of the instant offense?
 - Are multiple priors calculated as single or separate sentences?
 - When to apply extra points for status or crimes of violence?
 - How does a prior revocation effect time frames?



How Criminal History Can Impact Guideline Application

SENTENCING TABLE (in months of imprisonment)

	Offense Level	Criminal History Category (Criminal History Points)					
		I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
Zone A	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
	7	0-6	2-8	4-10	8-14	12-18	15-21
	8	0-6	4-10	6-12	10-16	15-21	18-24
Zone B	9	4-10	6-12	8-14	12-18	18-24	21-27
	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-16	12-18	18-24	24-30	27-33
Zone C	12	10-16	12-18	15-21	21-27	27-33	30-37
	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24	21-27	27-33	33-41	37-46
	15	18-24	21-27	24-30	30-37	37-46	41-51
	16	21-27	24-30	27-33	33-41	41-51	46-57
	17	24-30	27-33	30-37	37-46	46-57	51-63
	18	27-33	30-37	33-41	41-51	51-63	57-71
	19	30-37	33-41	37-46	46-57	57-71	63-78
	20	33-41	37-46	41-51	51-63	63-78	70-87
	21	37-46	41-51	46-57	57-71	70-87	77-96
	22	41-51	46-57	51-63	63-78	77-96	84-105
	23	46-57	51-63	57-71	70-87	84-105	92-115



Chapter 2 Guidelines that Include Criminal History

Illegal Reentry - §2L1.2

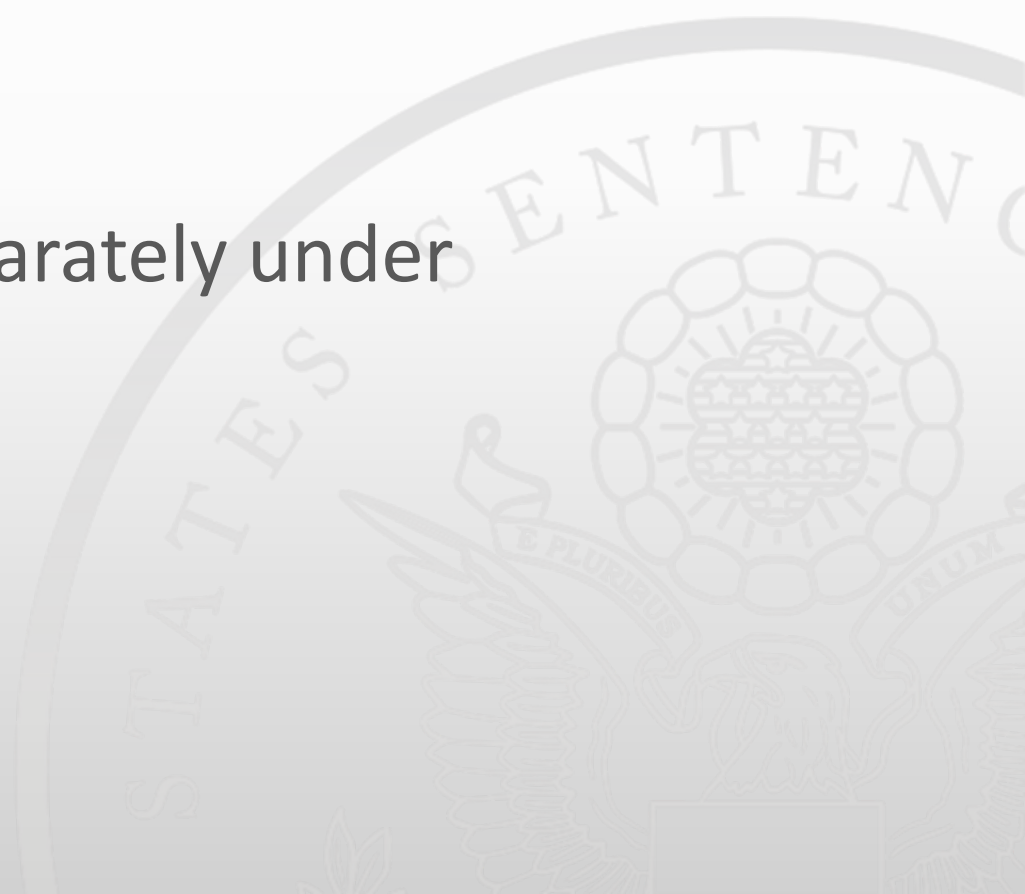
- (2) (Apply the Greatest) If, before the defendant was ordered deported or ordered removed from the United States for the first time, the defendant engaged in criminal conduct that, at any time, resulted in—
 - (A) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was five years or more, increase by 10 levels;
 - (B) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was two years or more, increase by 8 levels;
 - (C) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed exceeded one year and one month, increase by 6 levels;
 - (D) a conviction for any other felony offense (other than an illegal reentry offense), increase by 4 levels; or
 - (E) three or more convictions for misdemeanors that are crimes of violence or drug trafficking offenses, increase by 2 levels.

Felon in Possession - §2K2.1

- (2) 24, if the defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense;
- (4) 20, if—
 - (A) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense; or

Career Offender- §4B1.1

- Two prior convictions for crimes of violence or controlled substance offenses
- Each conviction must be counted separately under §4A1.1(a), (b), or (c)
- Increase in offense level and CHC VI



Safety Valve – 18 U.S.C. § 3553(f)

- Relief from mandatory minimum for drug offenses
- Criteria:
 - No prior 3-point offense
 - No prior 2-point violent offense
 - No more than 4 criminal history points (excluding 1-point offenses)



Safety Valve Eligibility Under the First Step Act



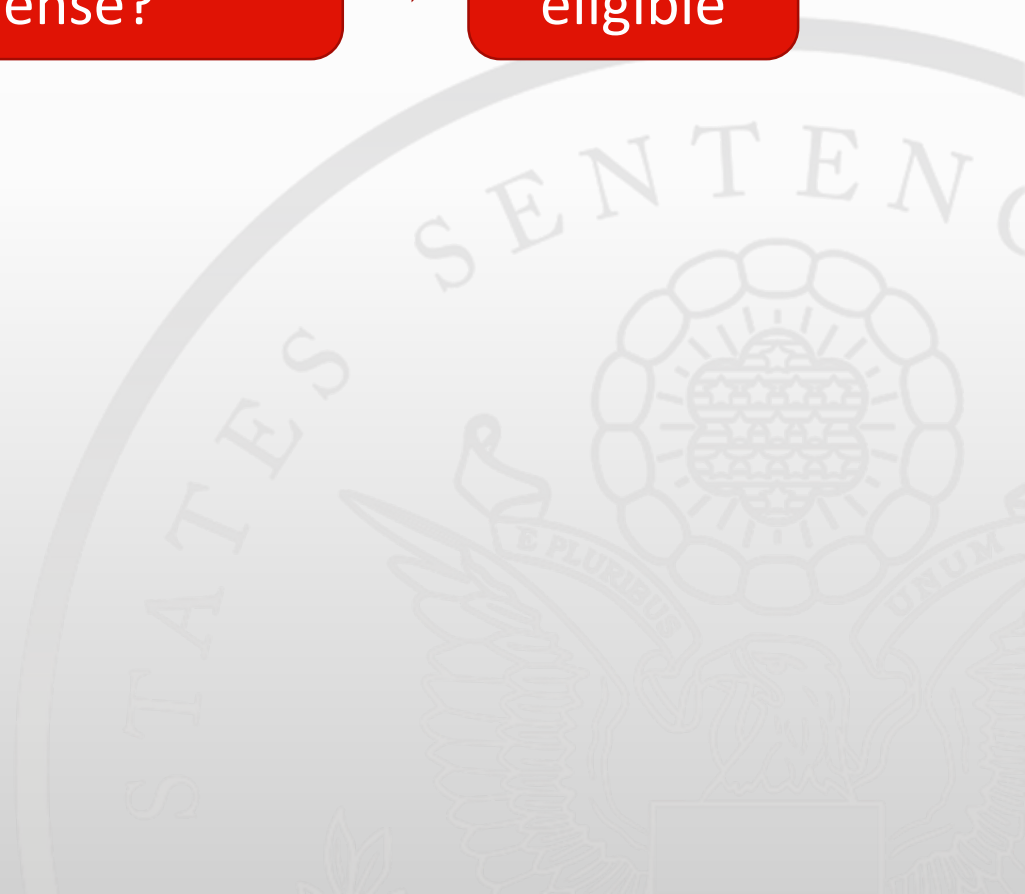
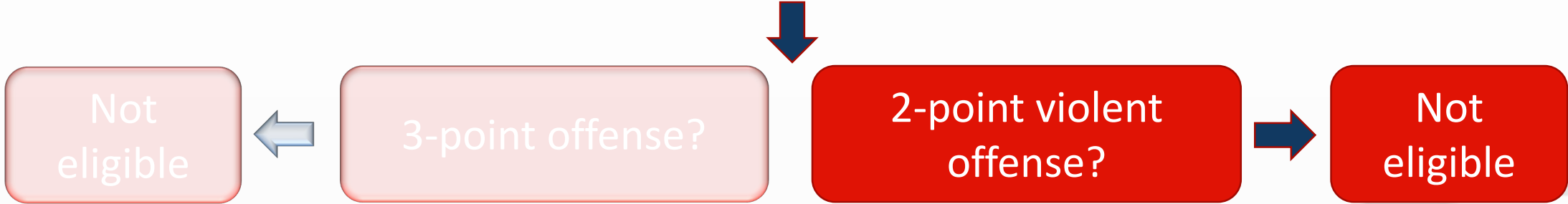
3-point offense?



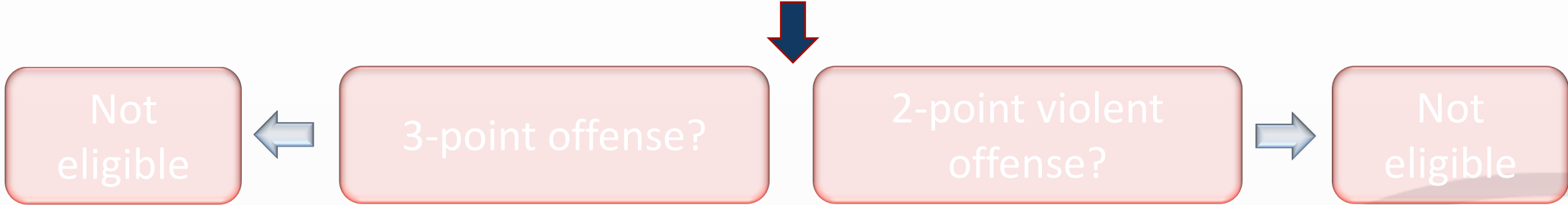
Not eligible



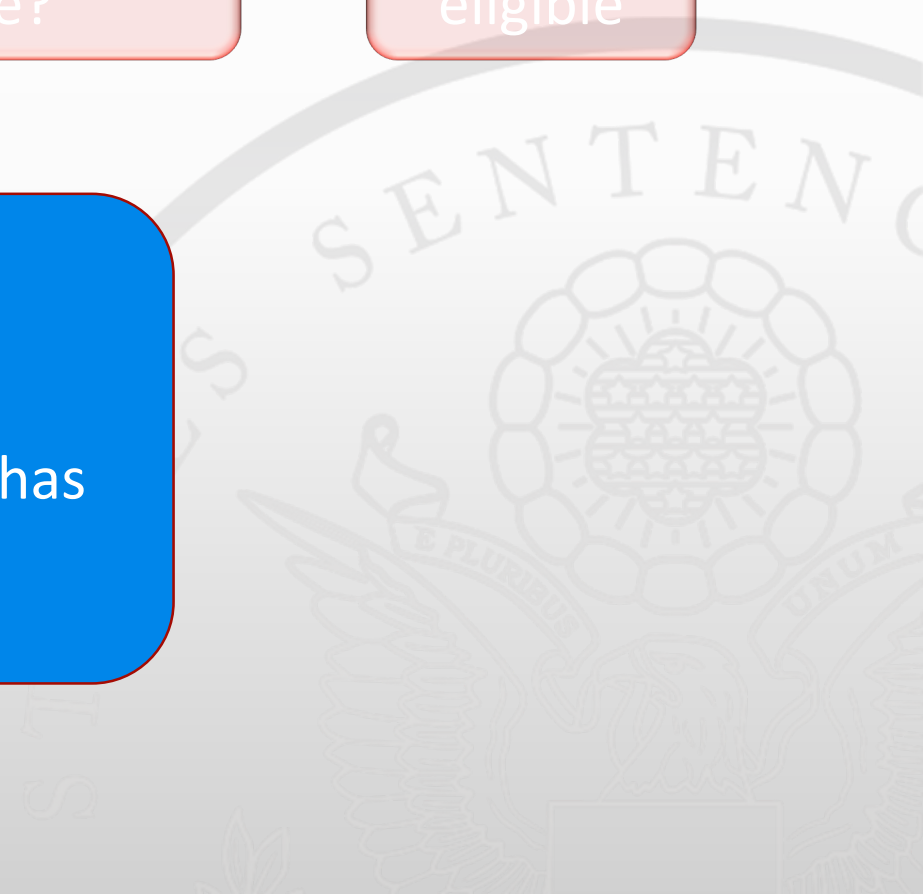
Safety Valve Eligibility Under the First Step Act



Safety Valve Eligibility Under the First Step Act



Exclude 1-point offense
Then determine if the defendant has 4 points or less





Quick Review: Criminal History Rules

Criminal History – §4A1.1

Measures the seriousness of a defendant's prior record and the likelihood of recidivism

- Prior Sentences – (a), (b), and (c)
 - 1, 2, or 3 points each
- Status – (d)
 - 2 points
- Crimes of Violence – (e)
 - 1 point each – up to a total of 3 points



Relevant Conduct and “Status”

§4A1.1(d) and App. Note 4

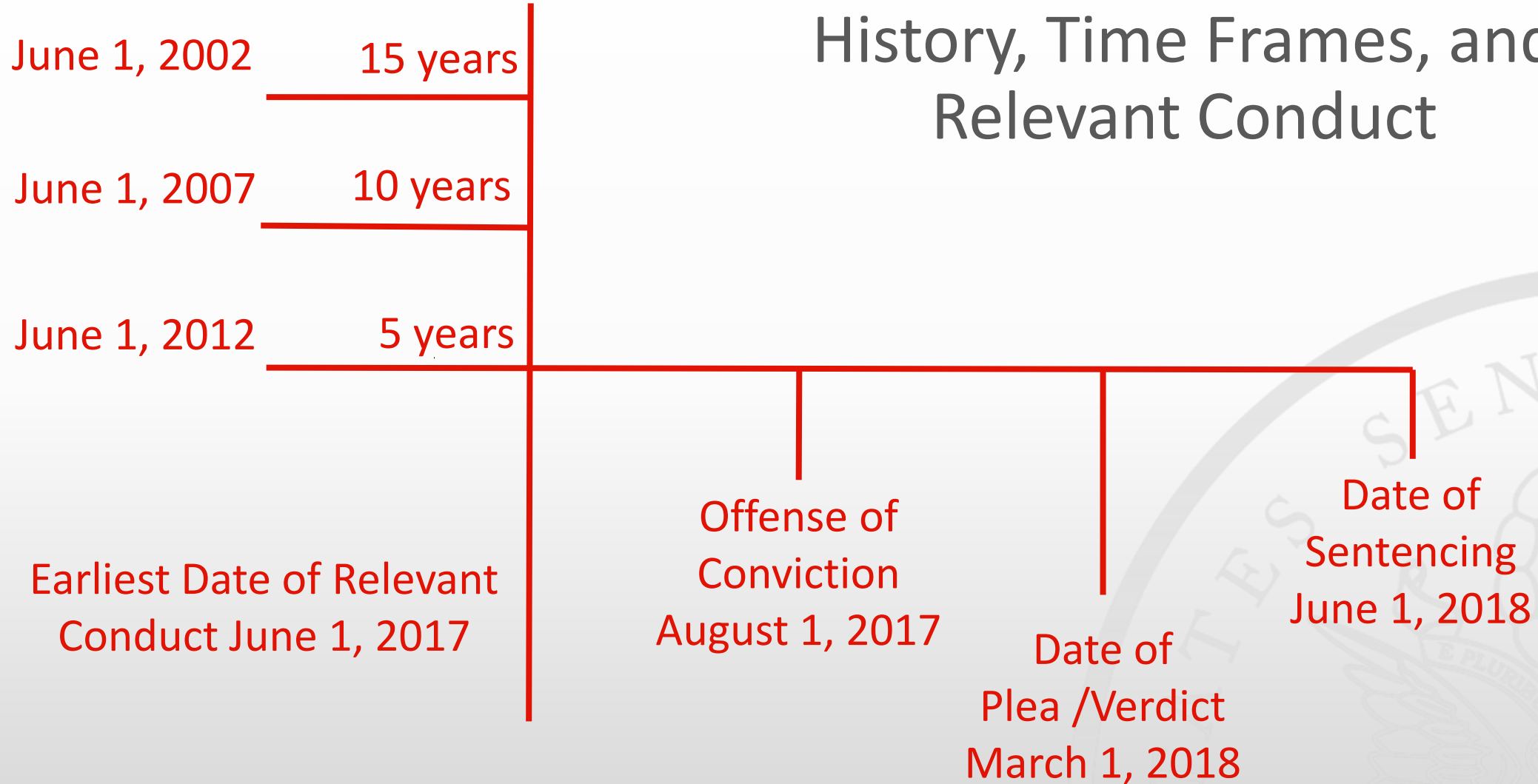
- “Status” if the defendant was under criminal justice sentence, *e.g.* probation, parole, supervised release, imprisonment, work release, or escape status, during any relevant conduct, add two points.
 - Note: “status” can only apply if the sentence from which it resulted has been counted (assessed criminal history points)

Crime of Violence

§4A1.1(e)

- Add 1 point for each prior sentence resulting from a conviction of a crime of violence that did not receive any points under (a), (b), or (c) above because such sentence was treated as a single sentence, **up to a total of 3 points for this subsection.**

Interplay Between Criminal History, Time Frames, and Relevant Conduct



Criminal History Points

Prior Offense Committed at age 18 or older

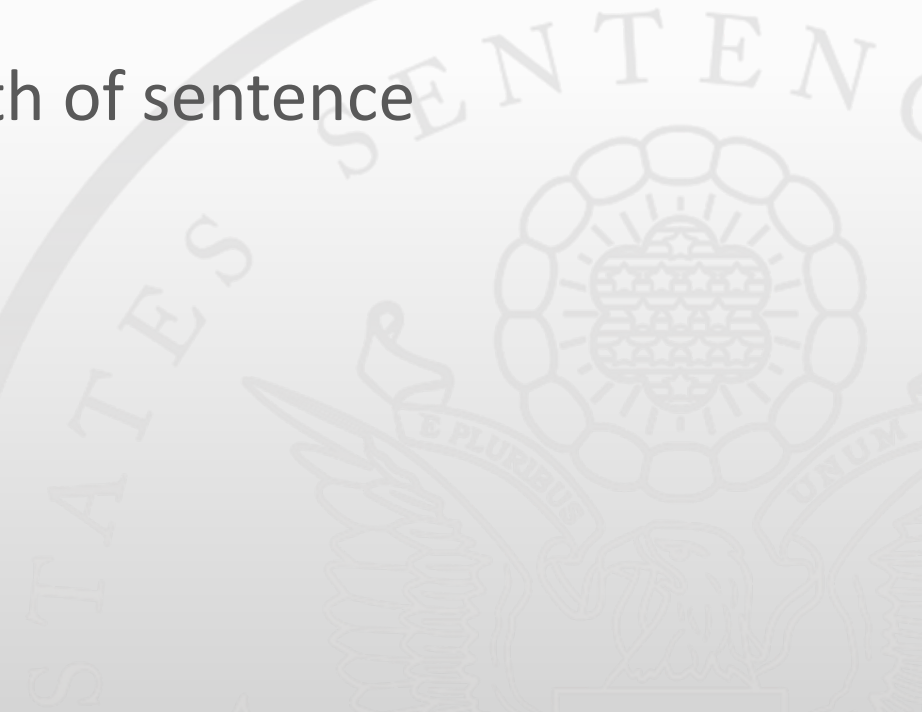
Points	Sentence	Time Frame (Earliest Date of Relevant Conduct)
3	>13 months	Sentence imposed or released from incarceration within 15 yrs. of the earliest date of relevant conduct
2	≥60 days	Sentence imposed within 10 years of the earliest date of relevant conduct
1 (Max of 4)	All other convictions*	Sentence imposed within 10 years of the earliest date of relevant conduct

*There are exceptions at §4A1.2(c)(1) – for these offenses, sentence imposed must be more than 1 year probation or a term of imprisonment of at least 30 days

*There are also exceptions at §4A1.2(c)(2) – these offenses are never counted

Prior Revocations

- Sentence length = time imposed at the original sentencing + time imposed upon revocation
- 10-, 15- year time frames determined by length of sentence



Treat Multiple Priors as a Single Sentence When:

- The prior sentences are **NOT** separated by an intervening arrest **AND**
- The sentences were either:
 - Imposed on the same day OR
 - Named in the same charging document



Determining Sentence Length for Multiple Priors Treated as a Single Sentence

- **Concurrent** sentences: Use the longest sentence
- **Consecutive** sentences: Add up the time imposed



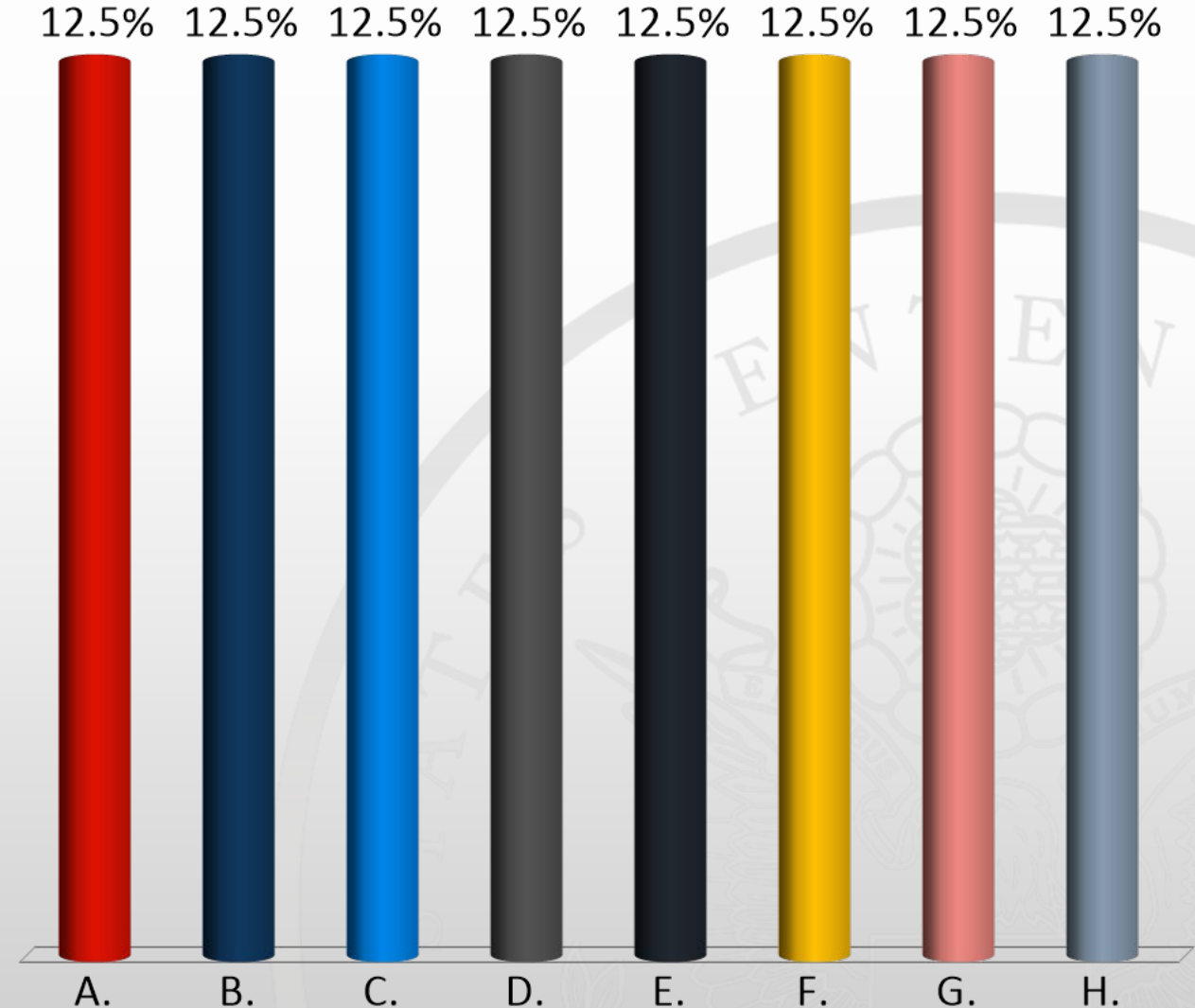


Scenarios and Discussion



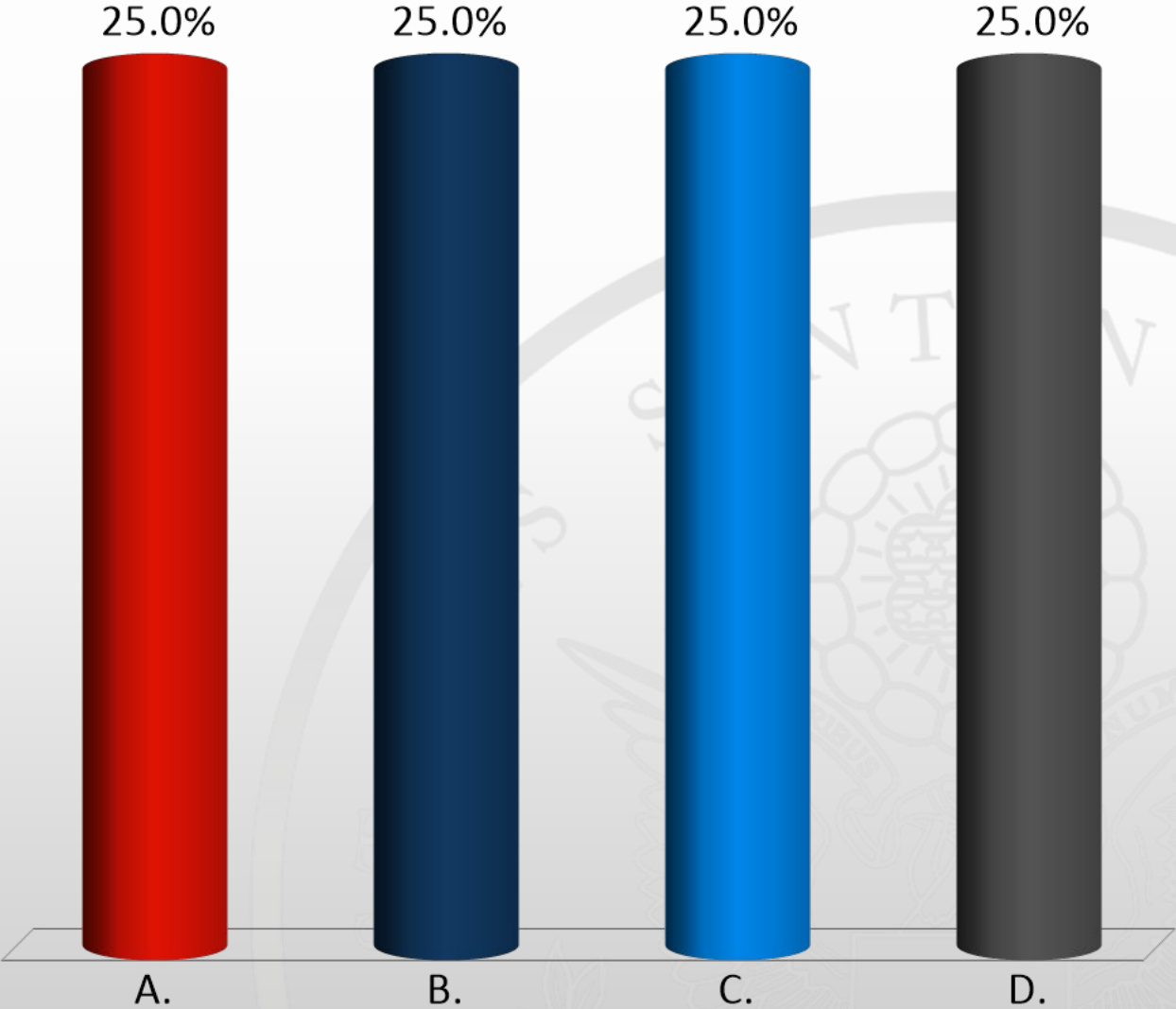
Who is in the Audience?

- 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



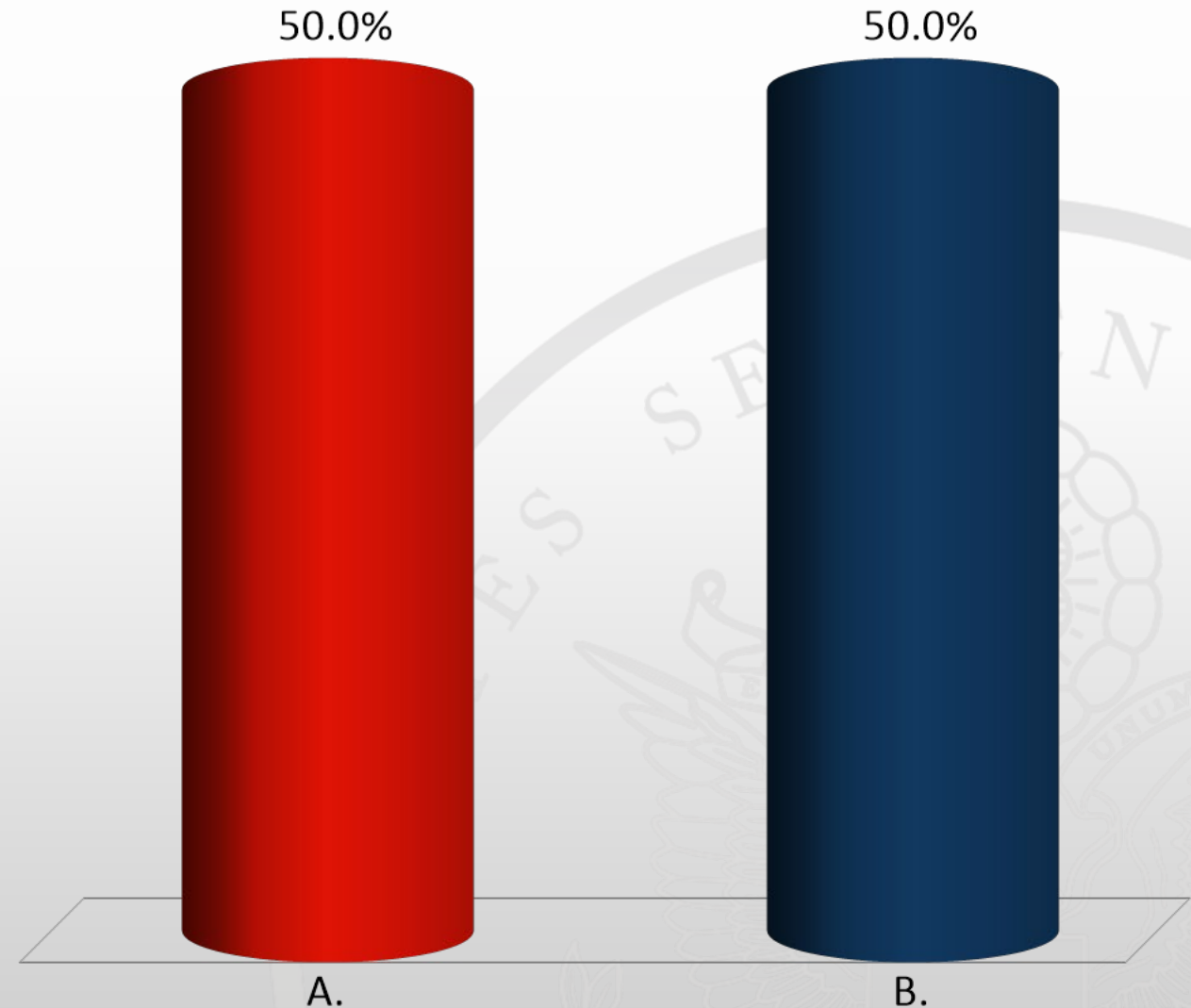
Years of Experience with Federal Sentencing?

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



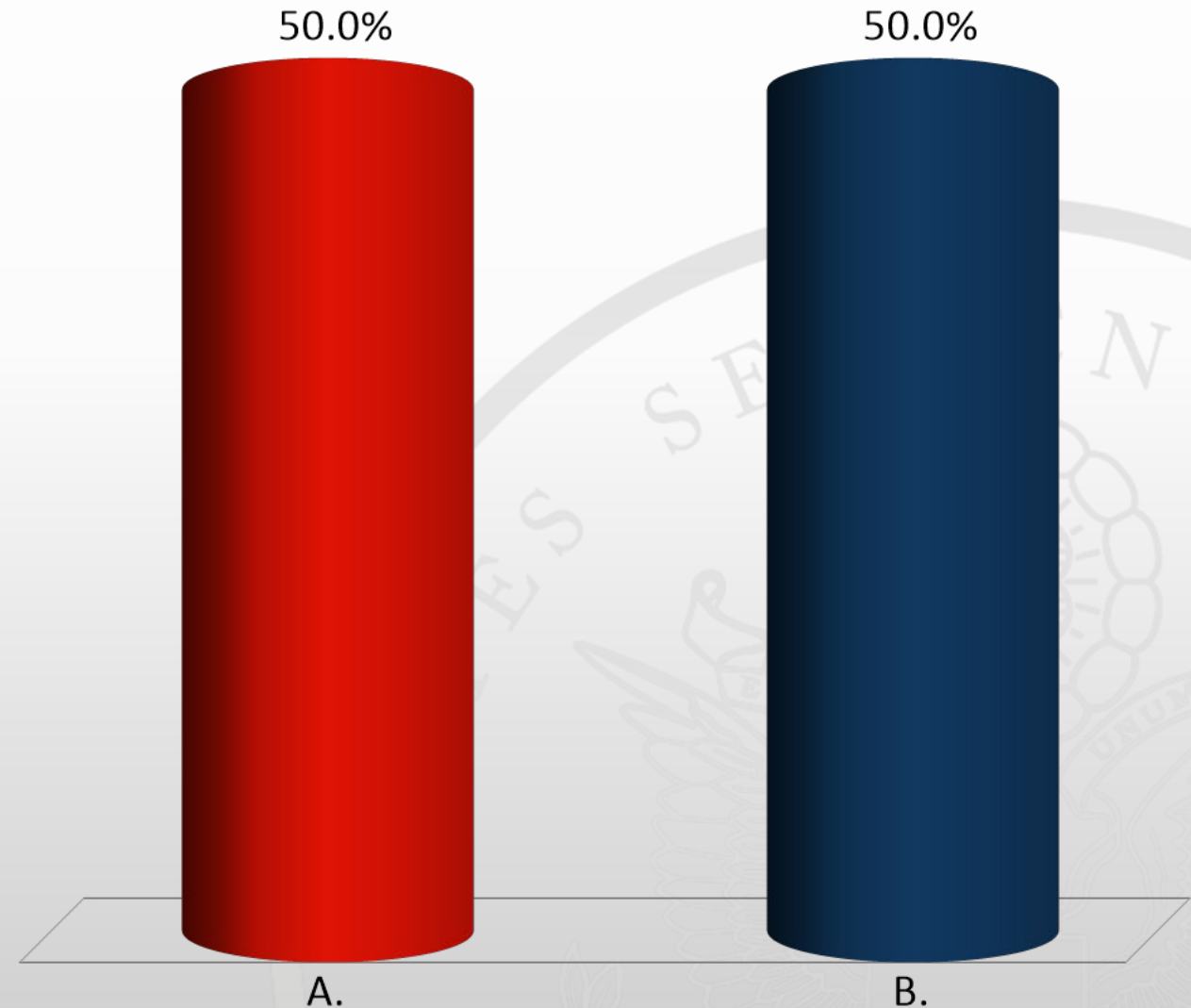
Scenario 1: Is the defendant's criminal history scored correctly?

- A. Yes
- B. No



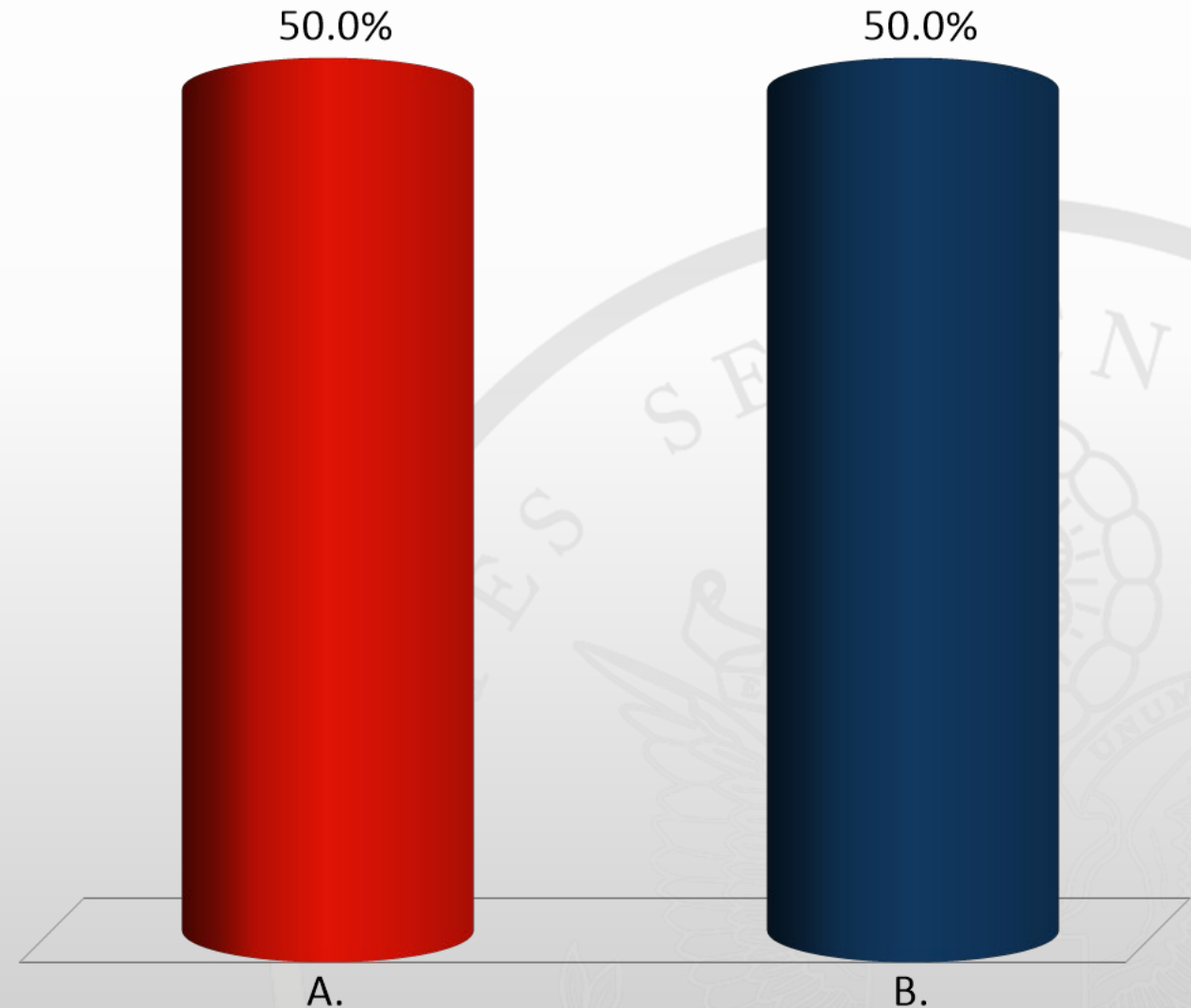
Scenario 2: Is the defendant's criminal history scored correctly?

- A. Yes
- B. No



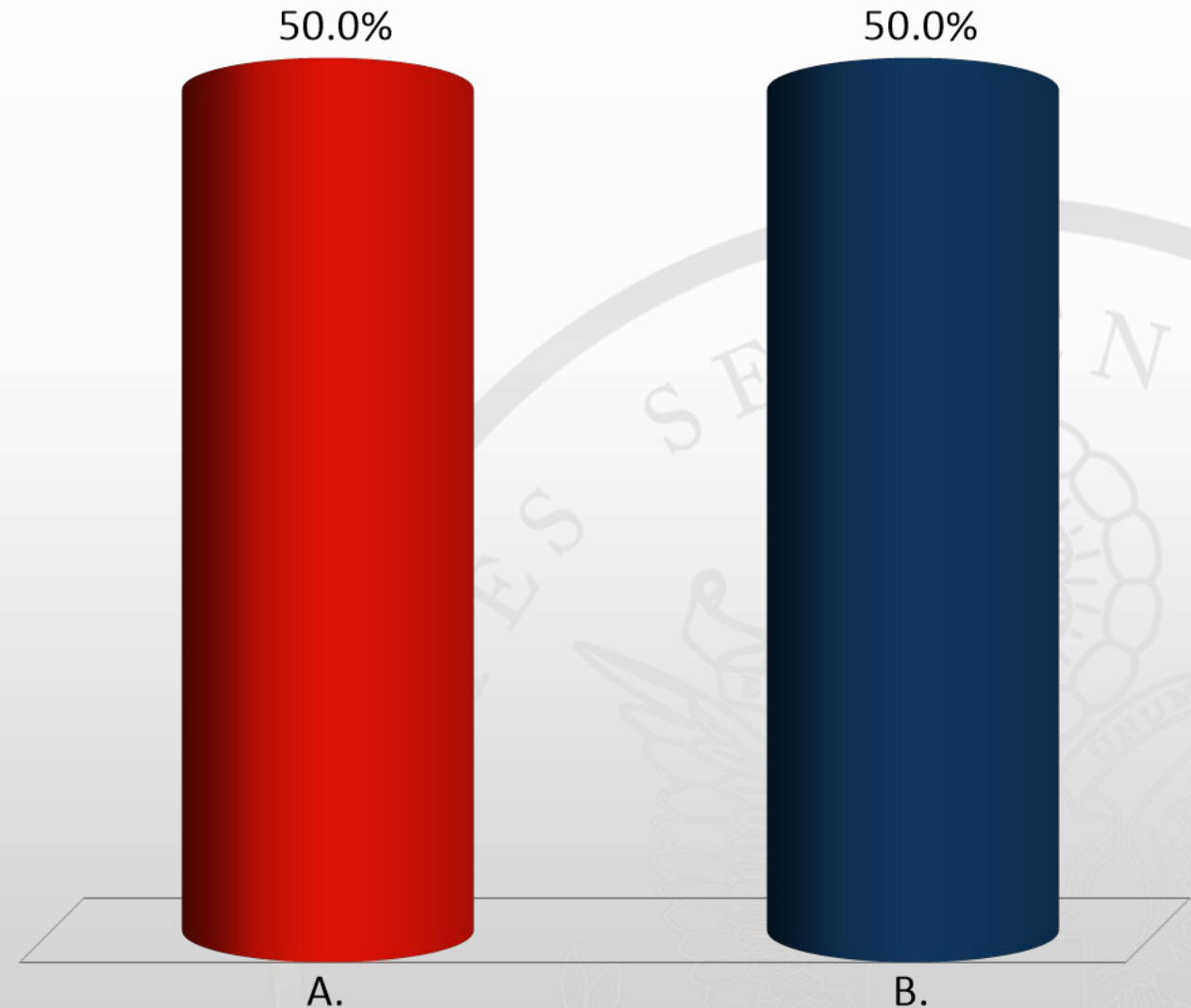
Scenario 3: Is the defendant's criminal history scored correctly?

- A. Yes
- B. No



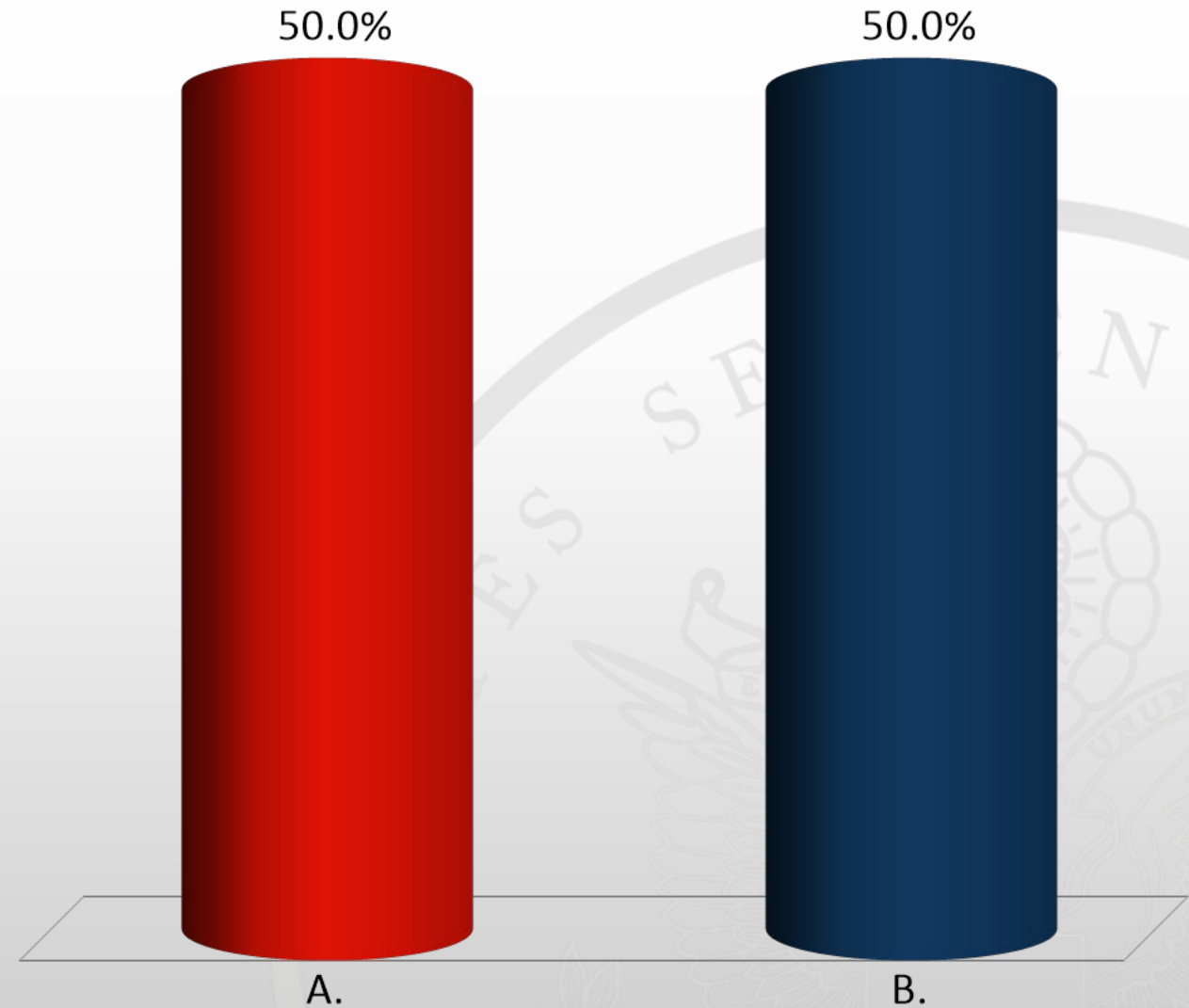
Scenario 4: Is the defendant's criminal history scored correctly?

- A. Yes
- B. No



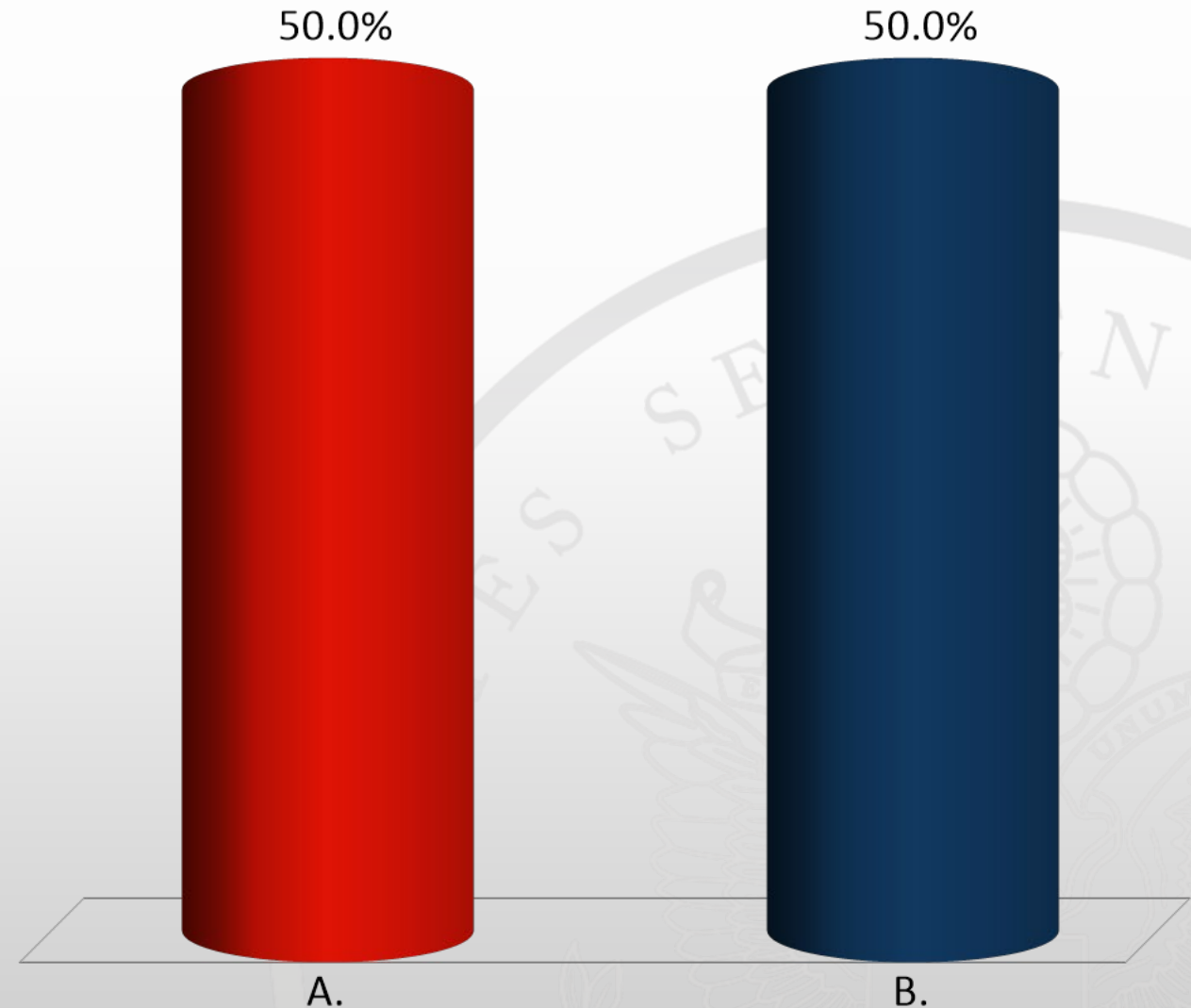
Scenario 5: Is the defendant's criminal history scored correctly?

- A. Yes
- B. No



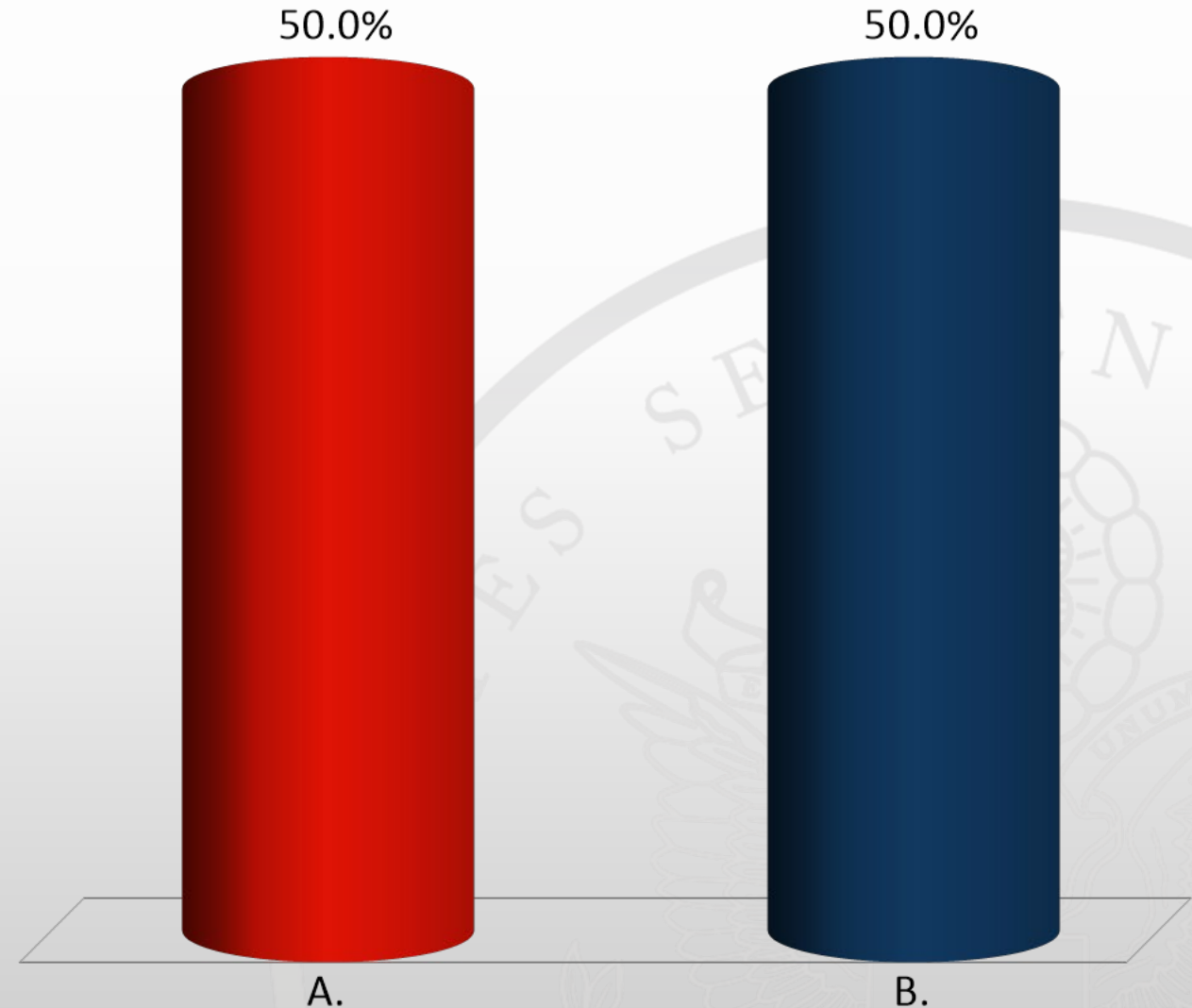
Scenario 6: Is the defendant's criminal history scored correctly?

- A. Yes
- B. No



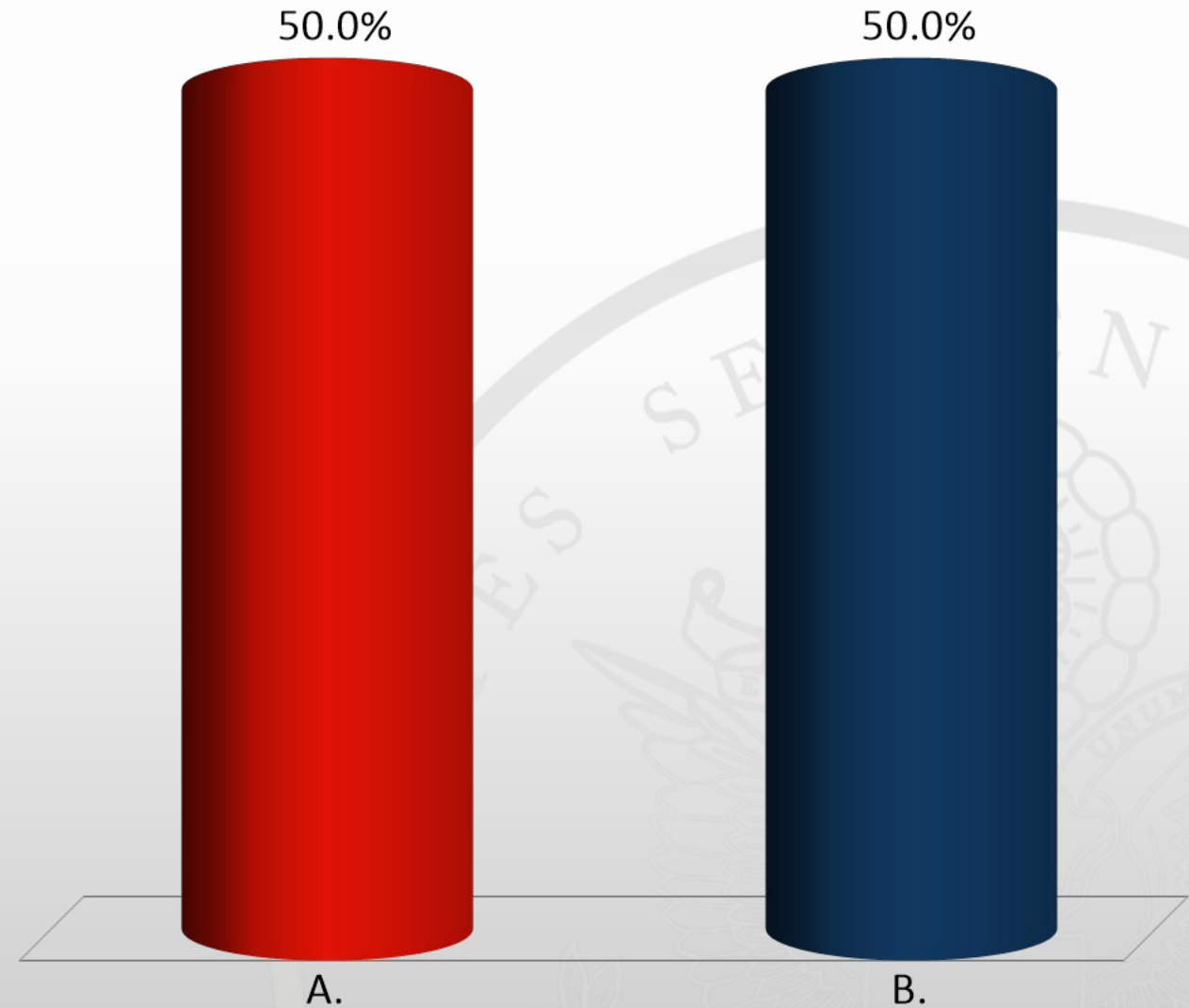
Scenario 7: Is the defendant's criminal history scored correctly?

- A. Yes
- B. No



Scenario 8: Is the defendant's criminal history scored correctly?

- A. Yes
- B. No



Questions or Comments?



www.ussc.gov

HelpLine (202) 502-4545



[@theusscgov](https://twitter.com/theusscgov)

training@ussc.gov



#USSCSeminar19