



Introduction to Criminal History

Tuesday, September 3, 2019

3:15 pm – 4:30 pm; 4:45 pm – 6:00 pm

Annual National Seminar, New Orleans, LA

Introduction

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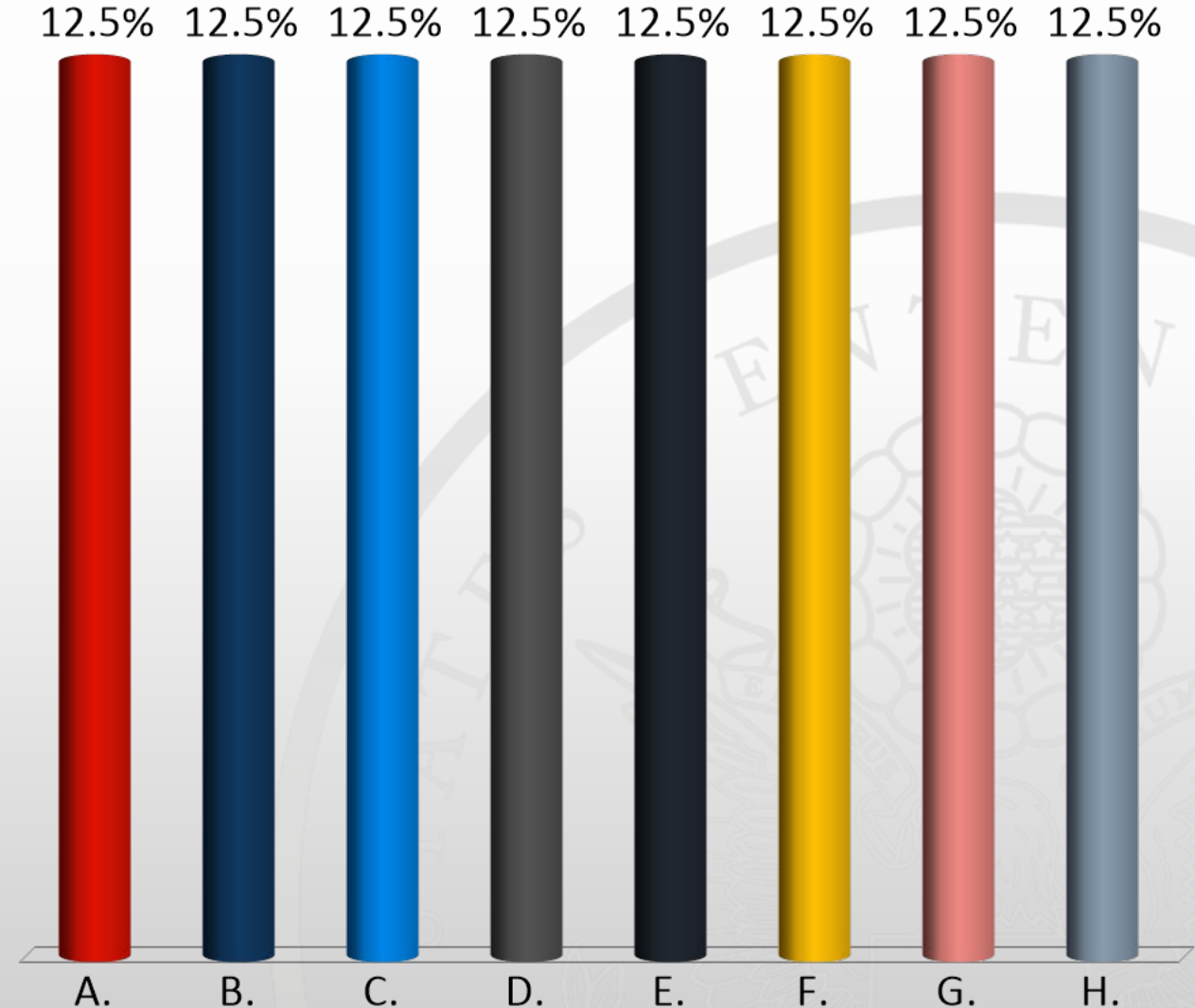
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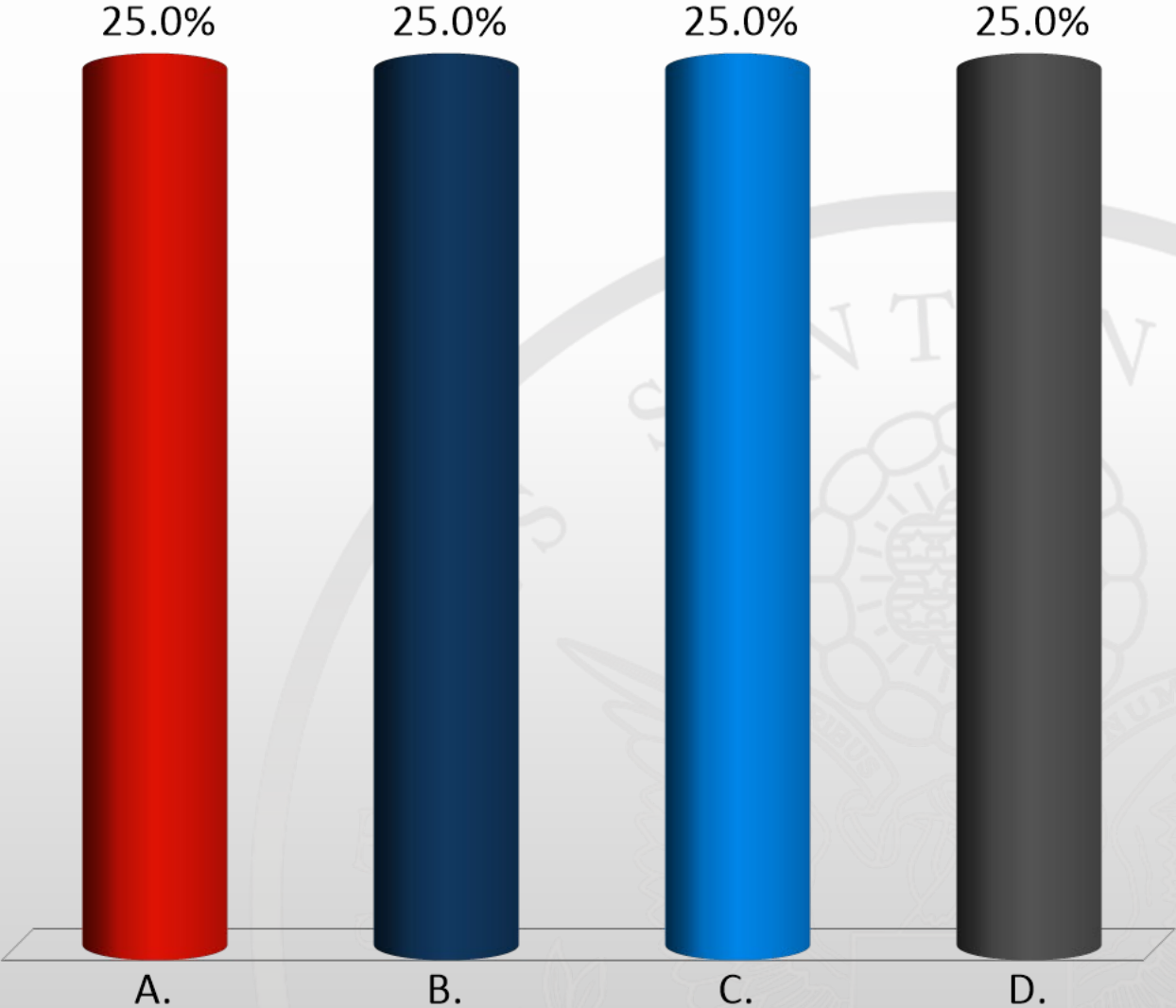
Who is in the Audience?

- 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



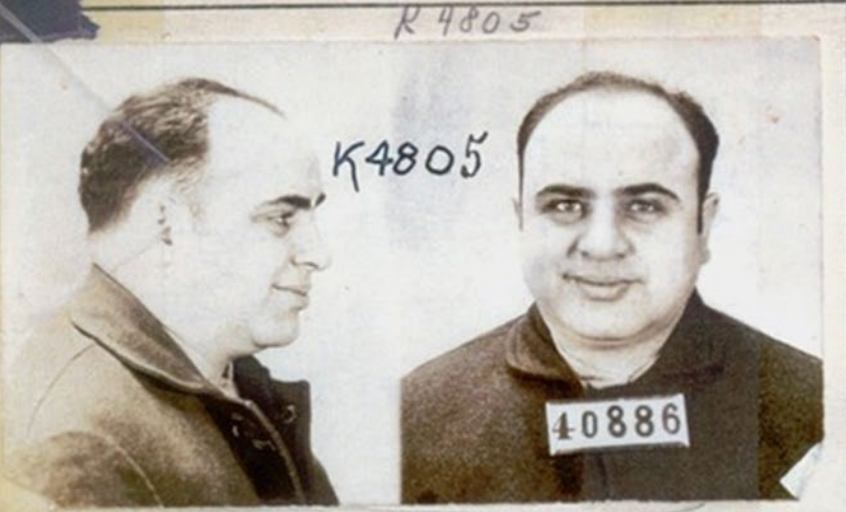
Learning Objectives

- Calculating length of sentence
- Determining applicable time frames and earliest date of relevant conduct.
- Understanding other special rules to score prior sentences

1 copy of 4 post - ident - 7 - 1932 502 Jacksonville 10-25-02
 DEPARTMENT OF JUSTICE BUREAU OF INVESTIGATION
 IDENTIFICATION DIVISION WASHINGTON, D. C.

Station S. Penitentiary, Atlanta Ga. Located at _____

Received MAY 4 1932
 From N. Ill - Chicago



Scars and marks oblique scar of 4" across cheek 2" in
scar of 2 1/2" on left jaw - oblique scar of 2 1/2"

CRIMINAL HISTORY

NAME	NUMBER	CITY OR INSTITUTION	DATE
	C	My City	1919
	D	Chicago Ill	1923
	E	Do	5-8-24
	H	Do	6-7-26
	I	Do	7-28-26
	J	Do	10-1-26
	K	Do	11-12-27
	L	Joliet Ill	12-22-27
		Phila. Pa	5-17-29
	M	Miami Fla	1928
		Do	5-8-30

CITY OR INSTITUTION	DATE	CHARGE	DISPOSITION OR SENTENCE
My City	1919	Dis Cond	Discharged
Chicago Ill	1923	Traffic Viol	Dismissed
Do	5-8-24	Murder Wit	Released
Do	6-7-26	Vis NPA	Dismissed
Do	7-28-26	Murder	Charge Withdrawn
Do	10-1-26	Vis NPA	Dismissed
Do	11-12-27	Refus. to Testify	Do
Joliet Ill	12-22-27	Con Weap	Fined 26.00. on
Phila. Pa	5-17-29	Do	Served 12 mos.
Miami Fla	1928	Do	Released
Do	5-8-30	Do	Do

Please see additional criminal history and police record

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Chapter 4

Criminal History and Criminal Livelihood

§4A1.1

- Federal record
 - Clear, easy to find
- State/Local Records
 - Look to case law
 - Establish methods in your district to address issues

CHAPTER FOUR

CRIMINAL HISTORY AND CRIMINAL LIVELIHOOD

PART A – CRIMINAL HISTORY

Introductory Commentary

The Comprehensive Crime Control Act sets forth four purposes of sentencing. (See 18 U.S.C. § 3553(a)(2).) A defendant's record of past criminal conduct is directly relevant to those purposes. A defendant with a record of prior criminal behavior is more culpable than a first offender and thus deserving of greater punishment. General deterrence of criminal conduct dictates that a clear message be sent to society that repeated criminal behavior will aggravate the need for punishment with each recurrence. To protect the public from further crimes of the particular defendant, the likelihood of recidivism and future criminal behavior must be considered. Repeated criminal behavior is an indicator of a limited likelihood of successful rehabilitation.

The specific factors included in §4A1.1 and §4A1.3 are consistent with the extant empirical research assessing correlates of recidivism and patterns of career criminal behavior. While empirical research has shown that other factors are correlated highly with the likelihood of recidivism, e.g., age and drug abuse, for policy reasons they were not included here at this time. The Commission has made no definitive judgment as to the reliability of the existing data. However, the Commission will review additional data insofar as they become available in the future.

*Historical
Note*

Effective November 1, 1987.

What Do We Need to Know?

1. Earliest date of relevant conduct
January 1, 2016
2. Age of the defendant at the time of the conviction
27 – (was he convicted as an adult or a juvenile?)
3. Date of the conviction –
September 27, 2018

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



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

Criminal History Points

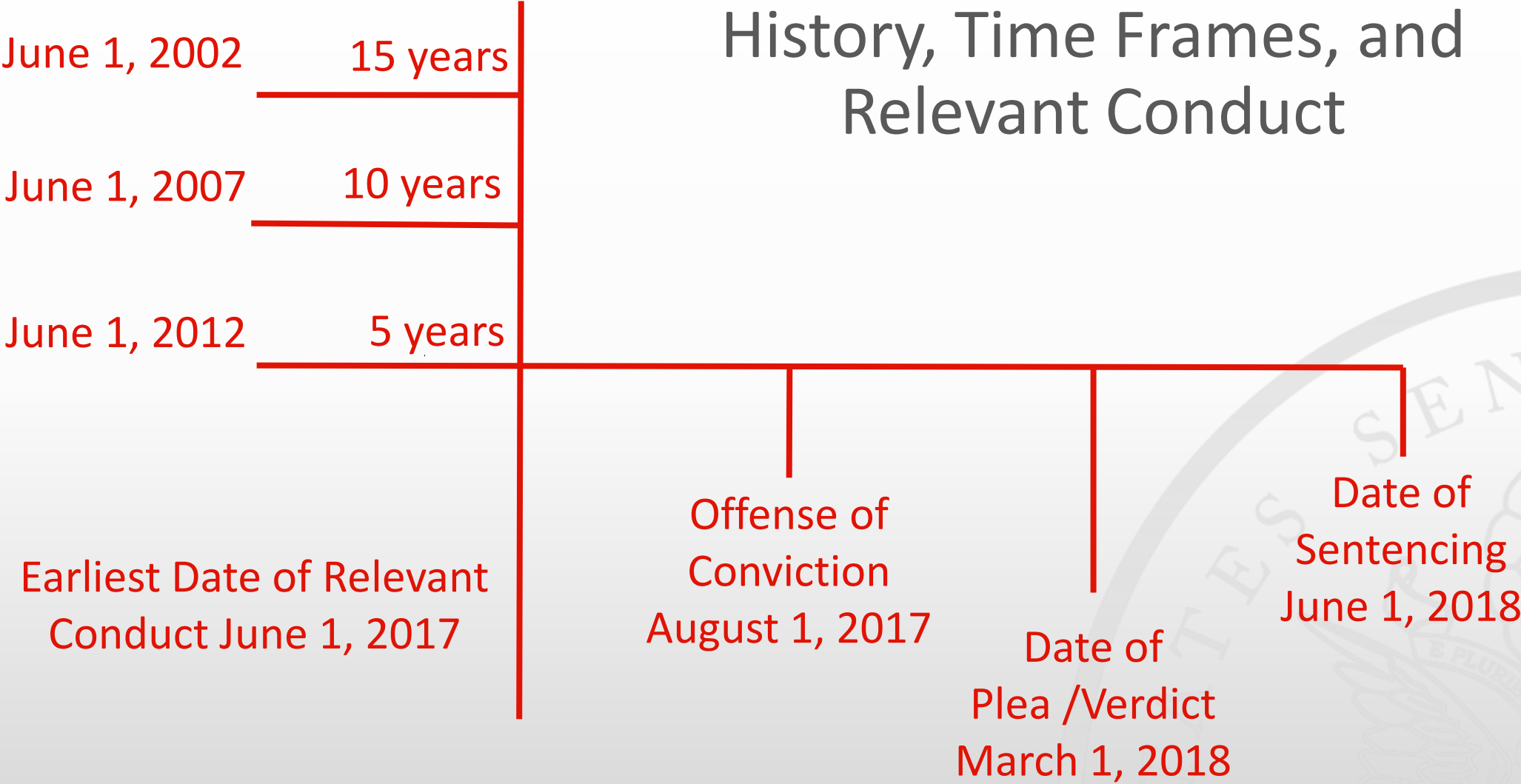
Prior Offense Committed before age 18

Points	Sentence	Time Frame (Earliest Date of Relevant Conduct)
3	>13 months – only if the juvenile was convicted as an adult	Sentence imposed or released from incarceration within 15 yrs. of the earliest date of relevant conduct
2	≥60 days	Sentence imposed or released from incarceration within 5 years of the earliest date of relevant conduct
1 (Max of 4)	All other convictions*	Sentence imposed within 5 years of the earliest date of relevant conduct

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Interplay between Criminal History, Time Frames, and Relevant Conduct



Real Life Example

Earliest Date of Relevant Conduct – January 1, 2018

- Defendant was convicted of drug trafficking on March 1, 1980 and he was sentenced to 30 years in prison
 - He was released from incarceration – March 1, 2005
- We can look back 15 years from the earliest date of relevant conduct for offenses in which the sentence was greater than 13 months
 - January 1, 2003
- We look at the release date – did it occur within the 15 year time frame?
 - Yes

Relevant Conduct and “Status”

§4A1.1(d) and App. Note 4

- “Status” if the defendant was under criminal justice sentence, eg. 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.**

Length of Prior Sentence

§4A1.1(a) and App. Note 2

- Set by the maximum sentence imposed
 - If sentence or any portion is suspended, the maximum is established by the unsuspended portion
- Unaffected by release
 - *E.g.* release to parole, released due to jail overcrowding, or early release for “good time”

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Prior Sentence

§4A1.2(a)(1) and App. Note 1

Conduct that is part of the relevant conduct of the instant offense will not be a “prior sentence” for criminal history



Prior Sentence - continued

§4A1.2(a)(1) and App. Note 1

- Some Chapter Two guidelines that consider a defendant's prior convictions and certain other conduct give direction about also using those considerations in Criminal History
- *E.g.*
 - §2K2.1 (Felon in Possession), App. Note 10;
 - §2L1.2 (Illegal Reentry), App. Note 3



Excluded Offenses

§4A1.2(c)(1) and (2)

- §4A1.2(c)(1) -
 - Misdemeanor and petty offenses only counted when
 - Probation was more than one year – or
 - Sentence of imprisonment was at least 30 days – or
 - Prior offense was similar to an instant offense
- §4A1.2(c)(2) -
 - Misdemeanor offenses that are never counted

Other Considerations

§4A1.2(f), (h), (i), and (j)

- Expungements
- Diversionary dispositions
- Pardons
- Foreign sentences
- Tribal sentences



Felony Offenses

§4A1.2(o)

- Misdemeanor means having a maximum statutory penalty of one year or less
 - Note: All such offenses are counted in a “felony offense
 - *i.e.* – In Massachusetts you can be convicted of misdemeanor Resisting Arrest and face a maximum penalty of 2.5 years in jail or house of correction

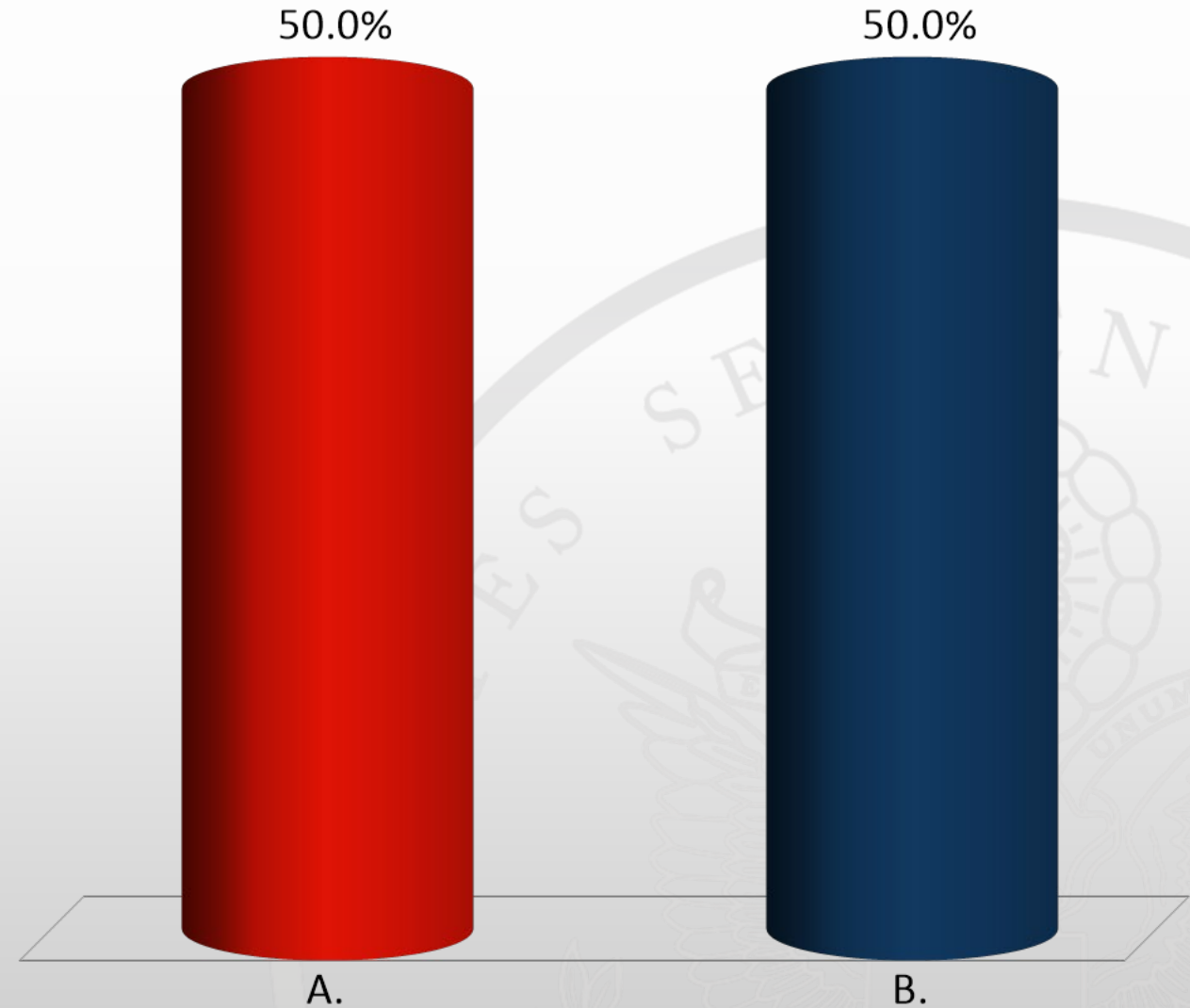


Scenarios and Discussion



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

- A. Yes
- B. No

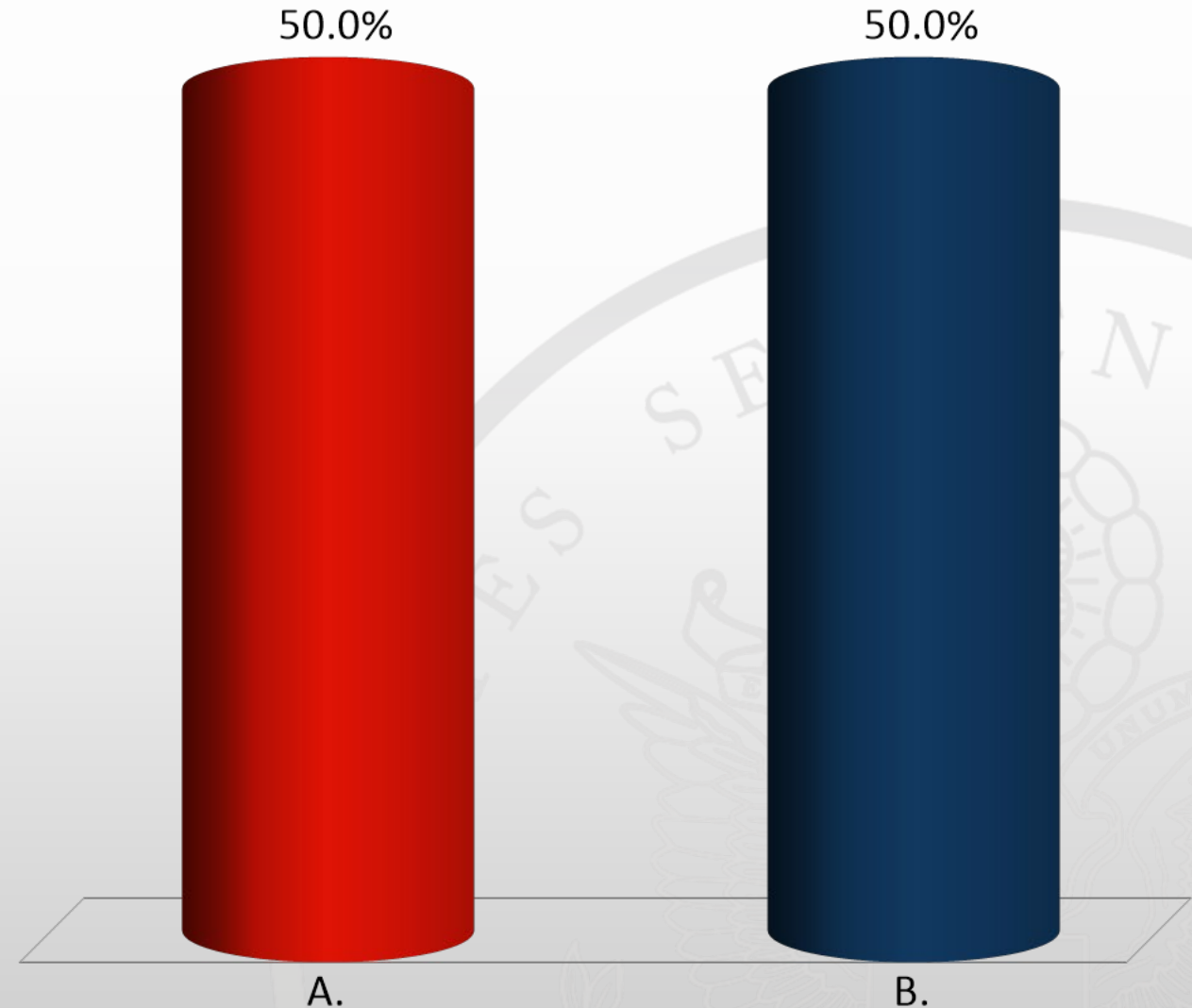


Criminal History Example 1

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
7/13/10 (Age 23)	Possession of Class D Substance/Marijuana (misd.), District Court Worcester, MA	10/25/10: Pled guilty, 1 year jail, sentence suspended, placed on 2 years probation

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

- A. Yes
- B. No

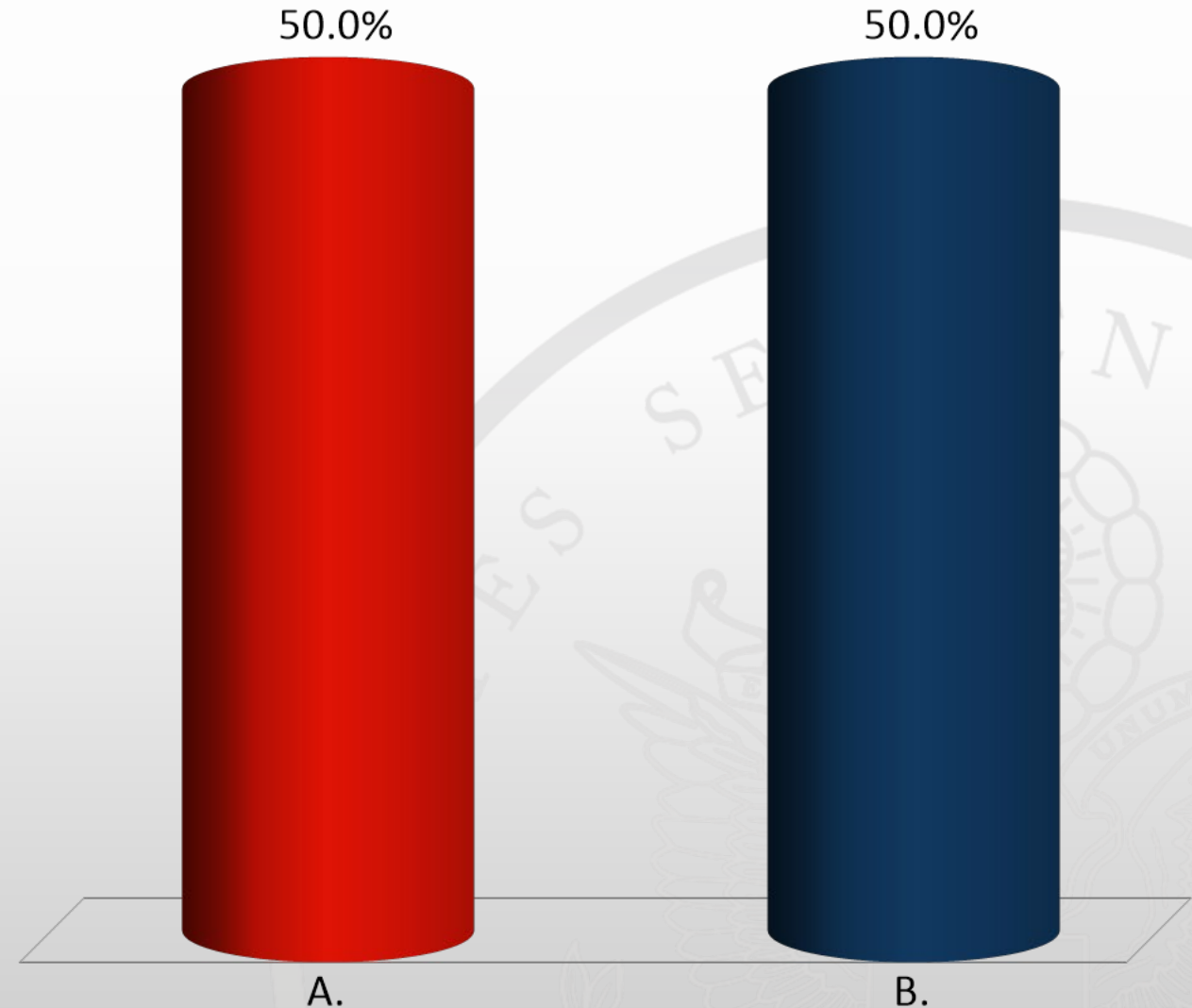


Criminal History Example 2

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
04/06/2011 (Age 44)	Possession of Marijuana (misd.) County Court Worcester, MA	09/21/11: Pled nolo contendere, 1 day jail, time served, 24 months probation

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

- A. Yes
- B. No

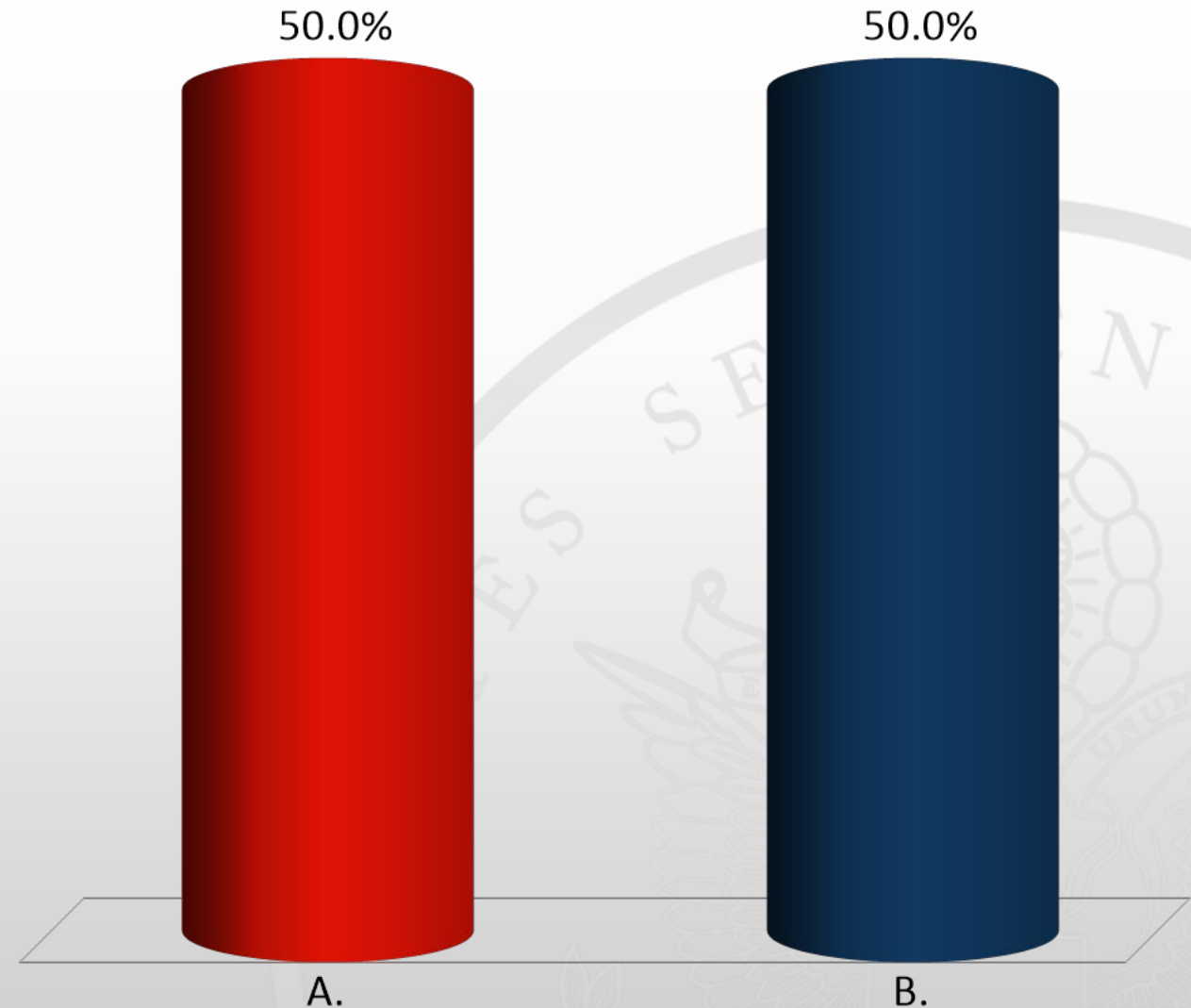


Criminal History Example 3

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
07/27/2004 (Age 16)	Assault Causing Bodily Injury (felony), Montgomery County Juvenile Court, Dayton, OH	04/04/2005: Pled true, adjudicated delinquent, 6 months probation

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

- A. Yes
- B. No

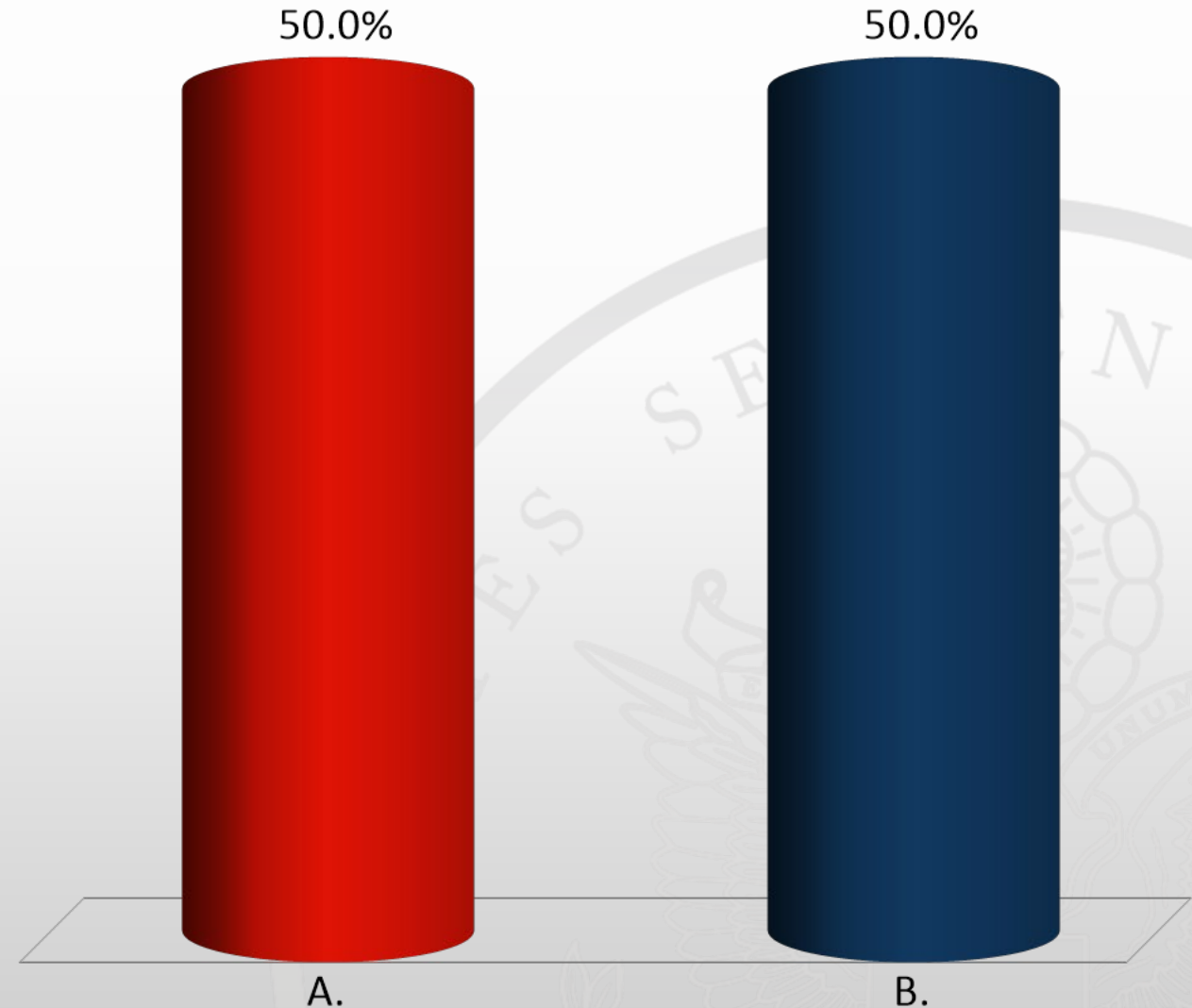


Criminal History Example 4

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
02/20/2017 (Age 28)	Arson (felony), Third Circuit Court, Detroit, MI	08/29/2017: Pled guilty, 12 months to five years custody

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

- A. Yes
- B. No

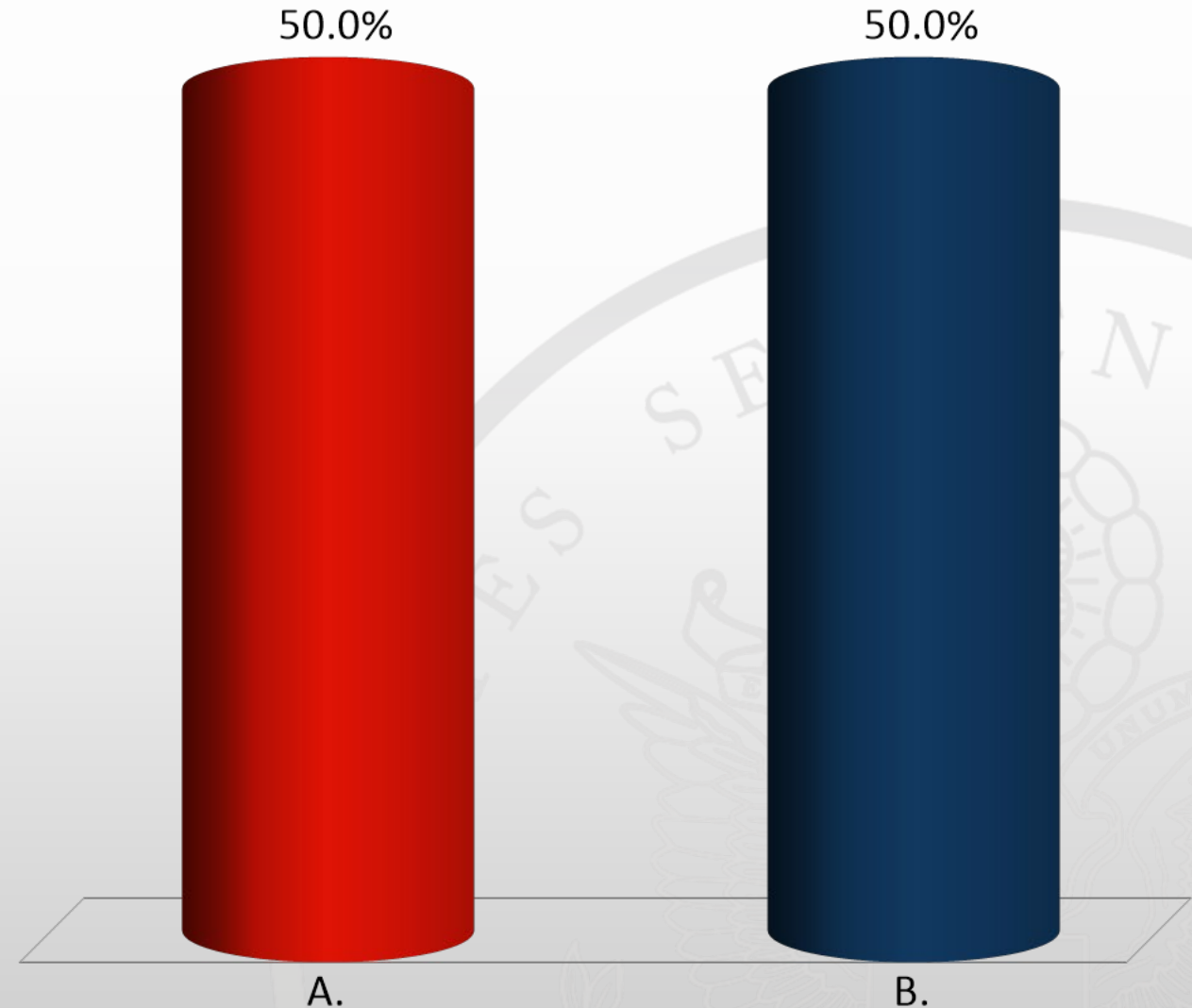


Criminal History Example 5

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
11/03/2016 (Age 28)	Terroristic Threats (misd.), 68th Judicial District, Lubbock, TX	05/14/2017: Pled guilty, 10 days jail

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

- A. Yes
- B. No

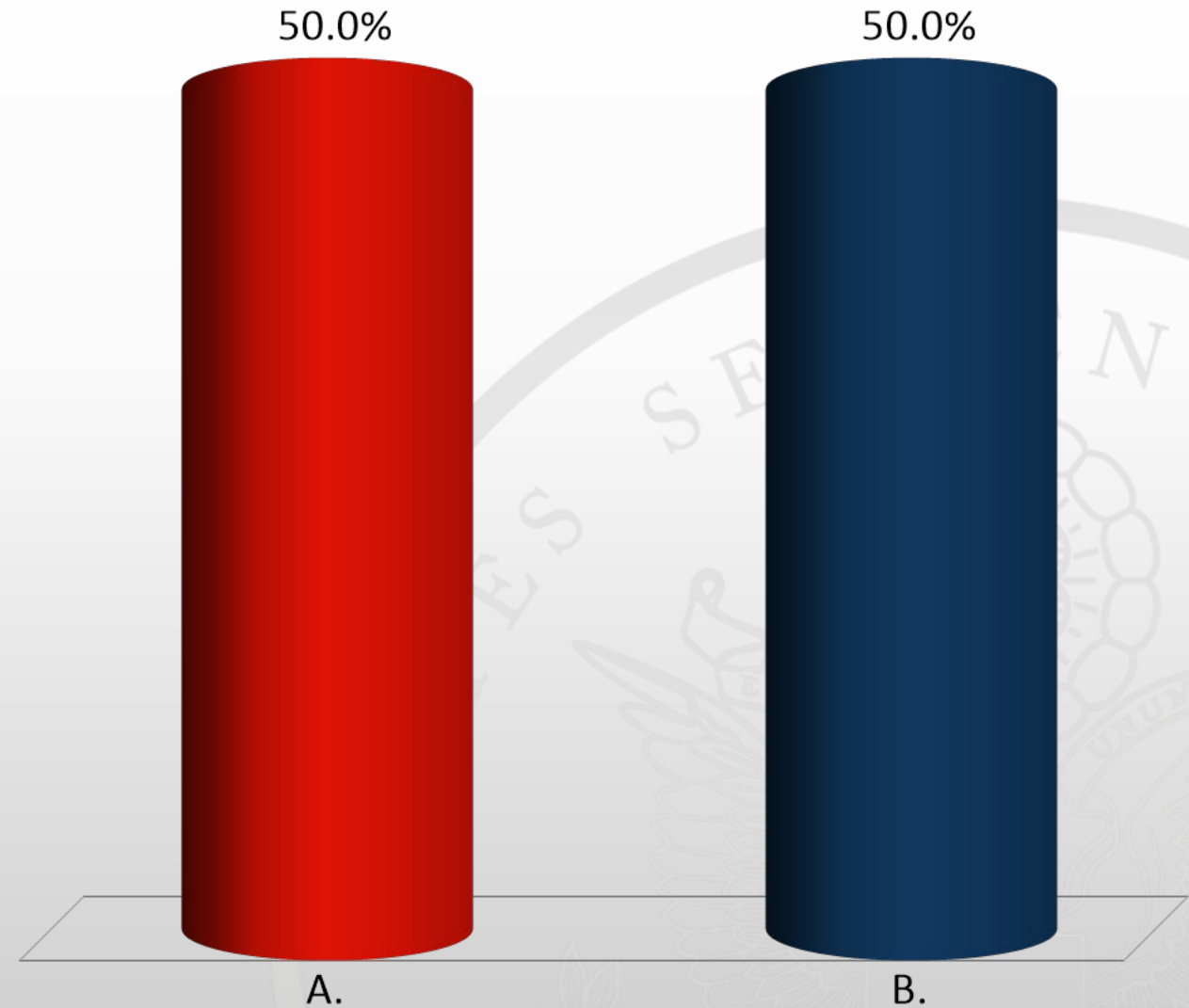


Criminal History Example 6

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
10/09/2015 (Age 35)	Possession of Cocaine (felony), Ramsey Court District Court, St. Paul, MN	03/19/2016: Pled guilty, 355 days jail, time served

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

- A. Yes
- B. No



Criminal History Example 7

<u>Arrest Date</u>	<u>Charge/Docket#</u>	<u>Date/Sent. Imposed</u>
06/16/2006 (Age 15)	First Degree Manslaughter (felony), Hennepin County District Court, Minneapolis, MN	12/08/2007: Pled guilty, 10 years jail and 3 years supervised release Although a juvenile at the time of his arrest, the defendant was certified as an adult and appeared in adult court

Questions or Comments?



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