



# Sentencing Scenarios

# **The Honorable Rosanna M. Peterson**

District Judge

Eastern District of Washington, Spokane

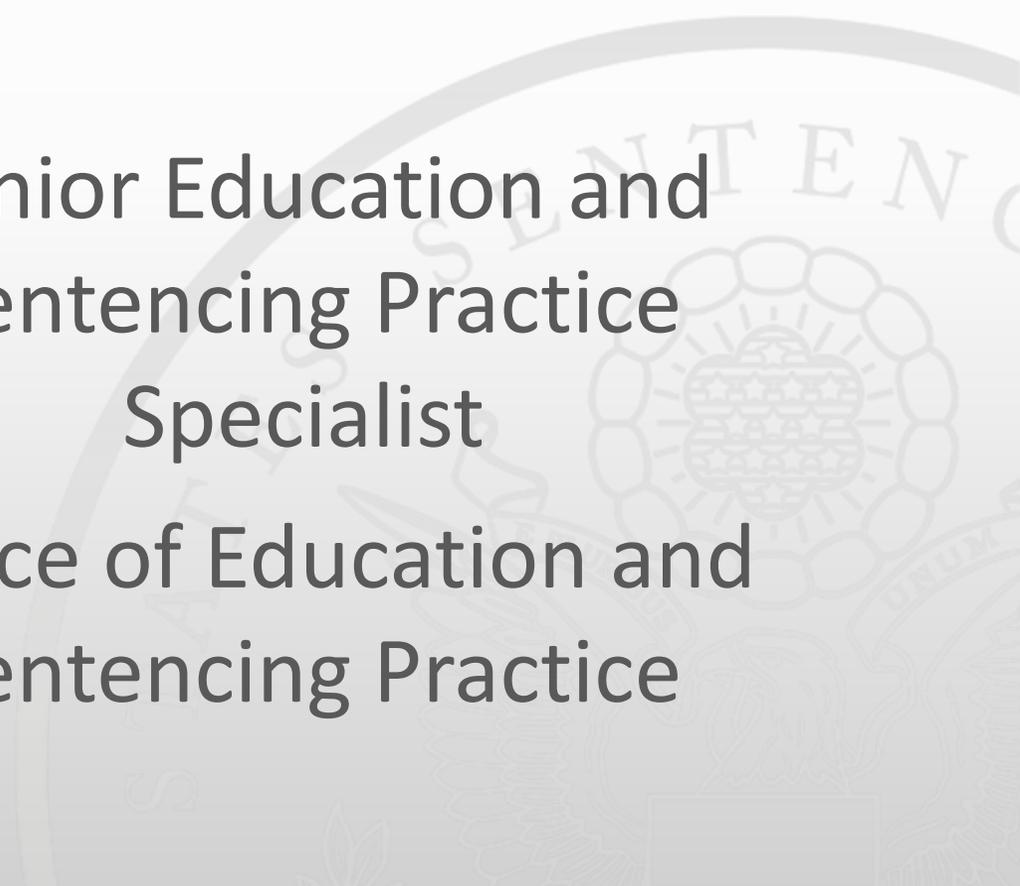


## **Ebise Bayisa**

Senior Attorney  
Office of Education and  
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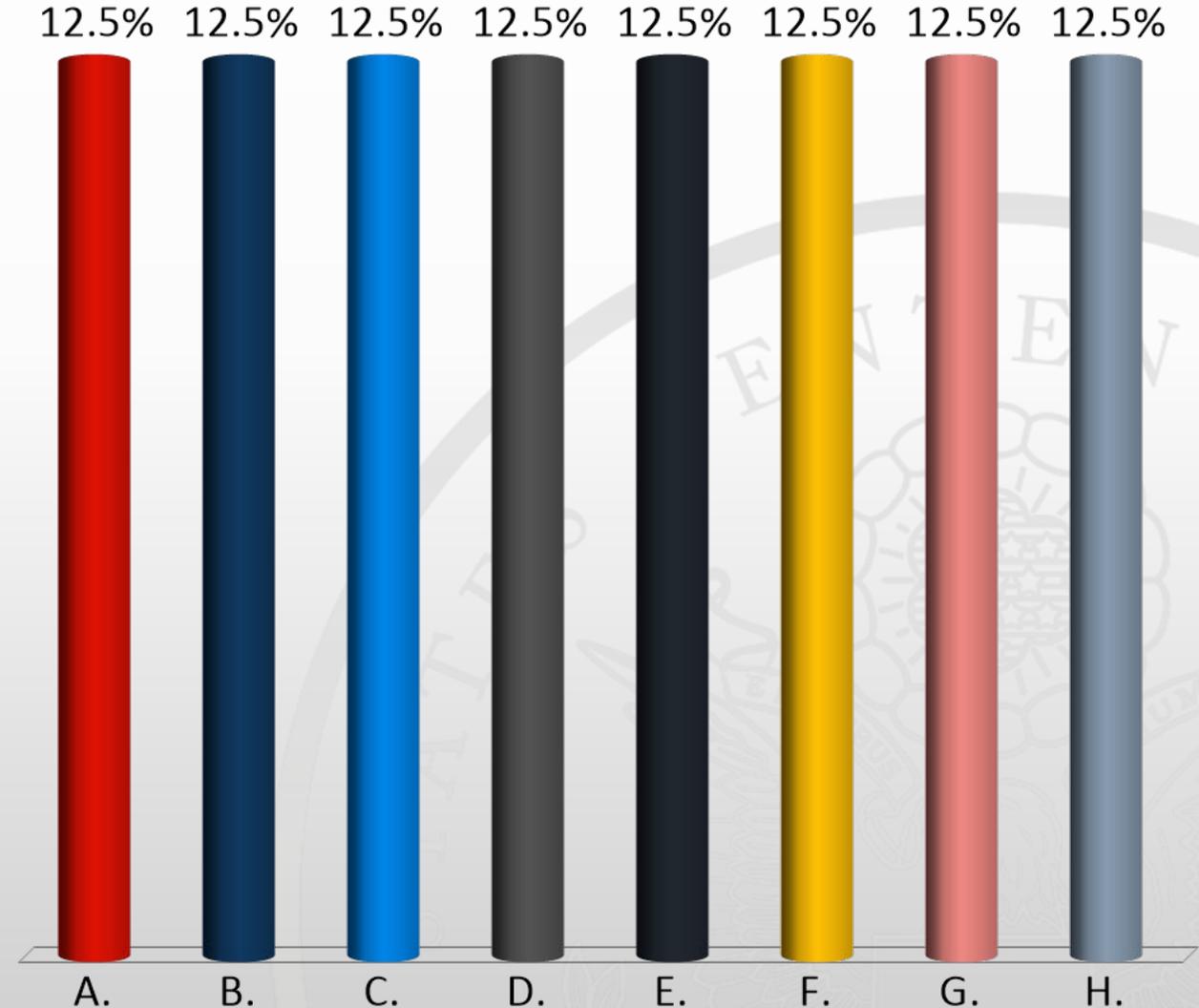
## **Rachel Pierce**

Senior Education and  
Sentencing Practice  
Specialist  
Office of Education and  
Sentencing Practice



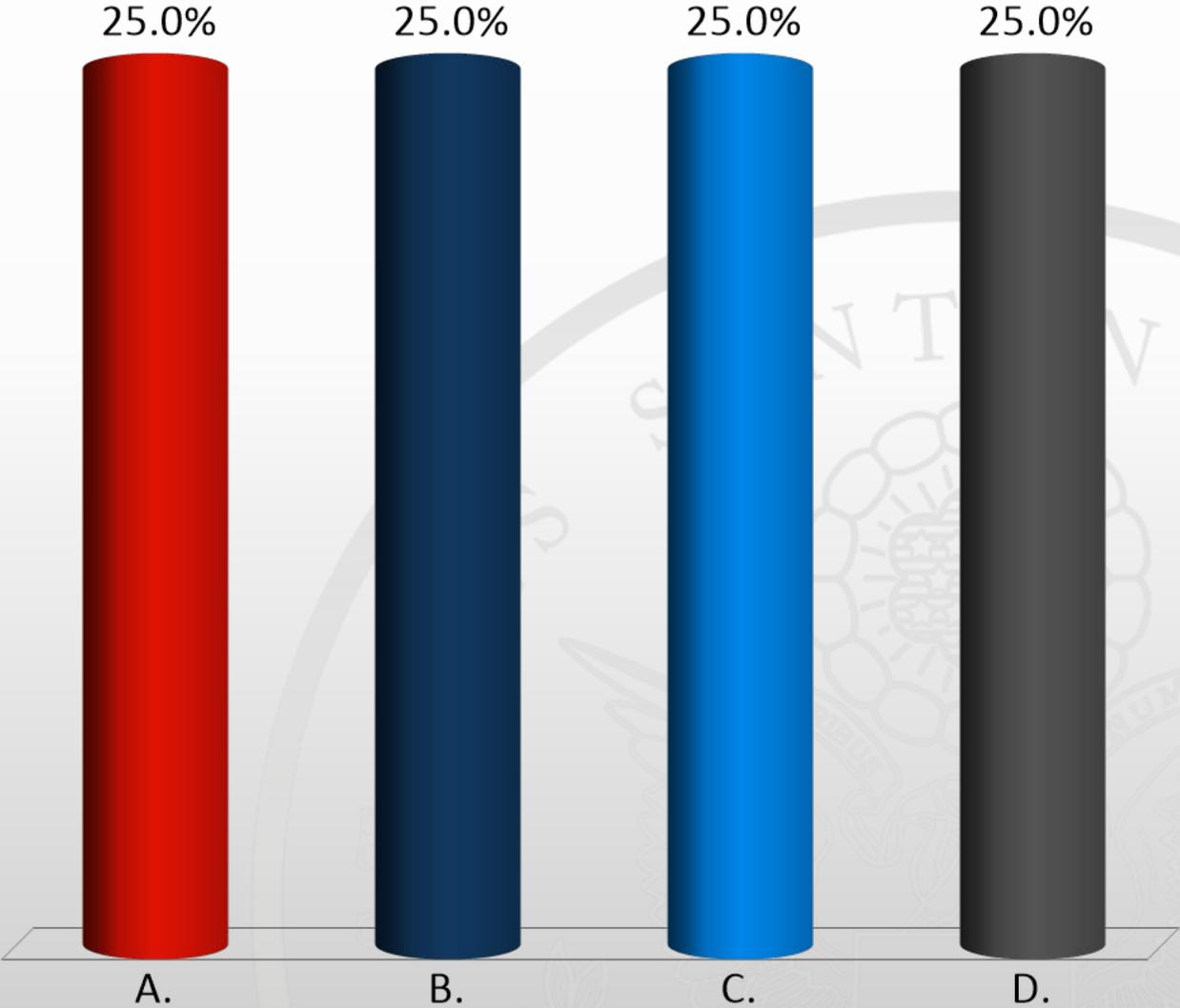
# Who is in the Audience?

- 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

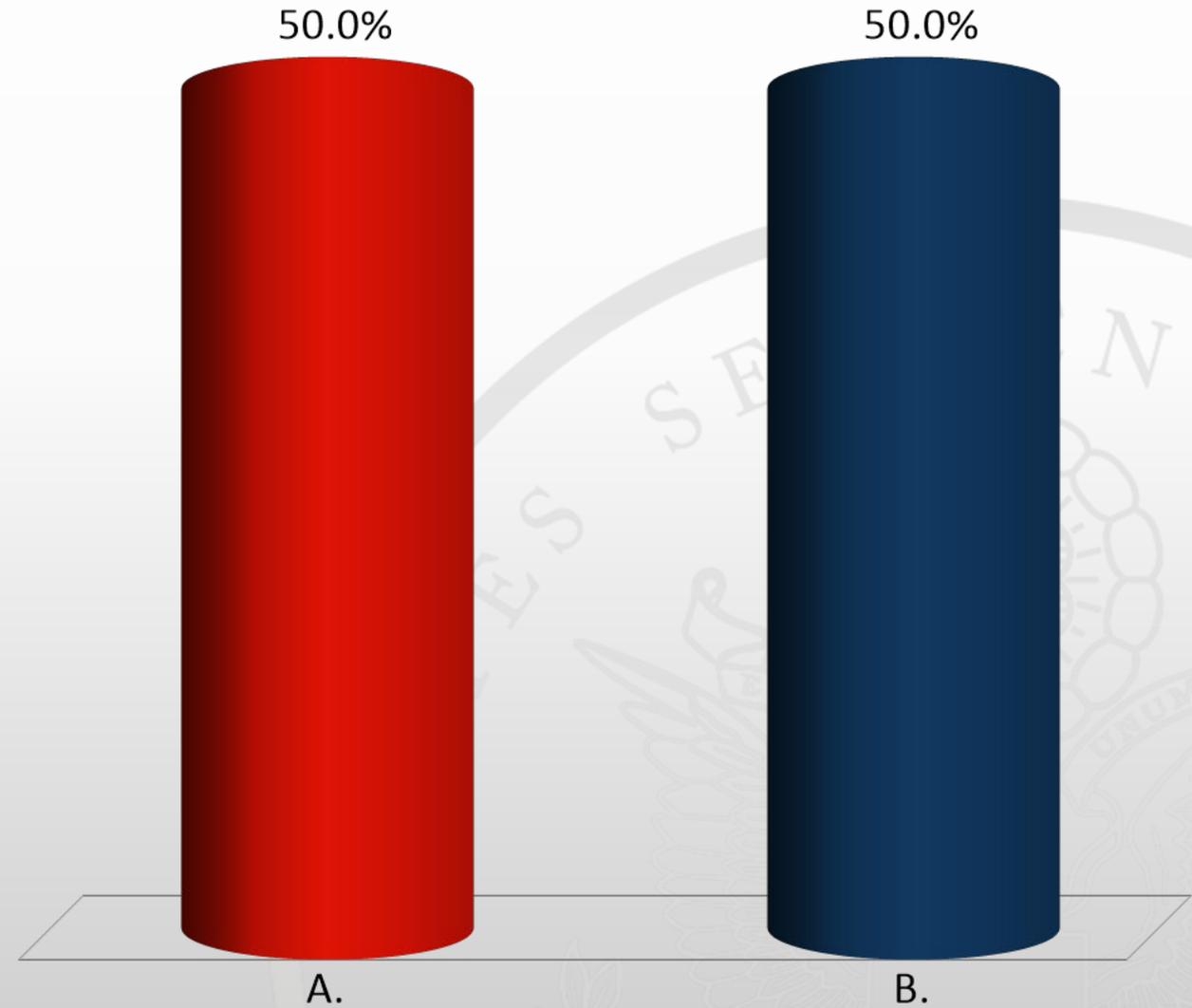


# SCENARIO #1



# Is a hearing required to obtain additional information regarding drug quantity?

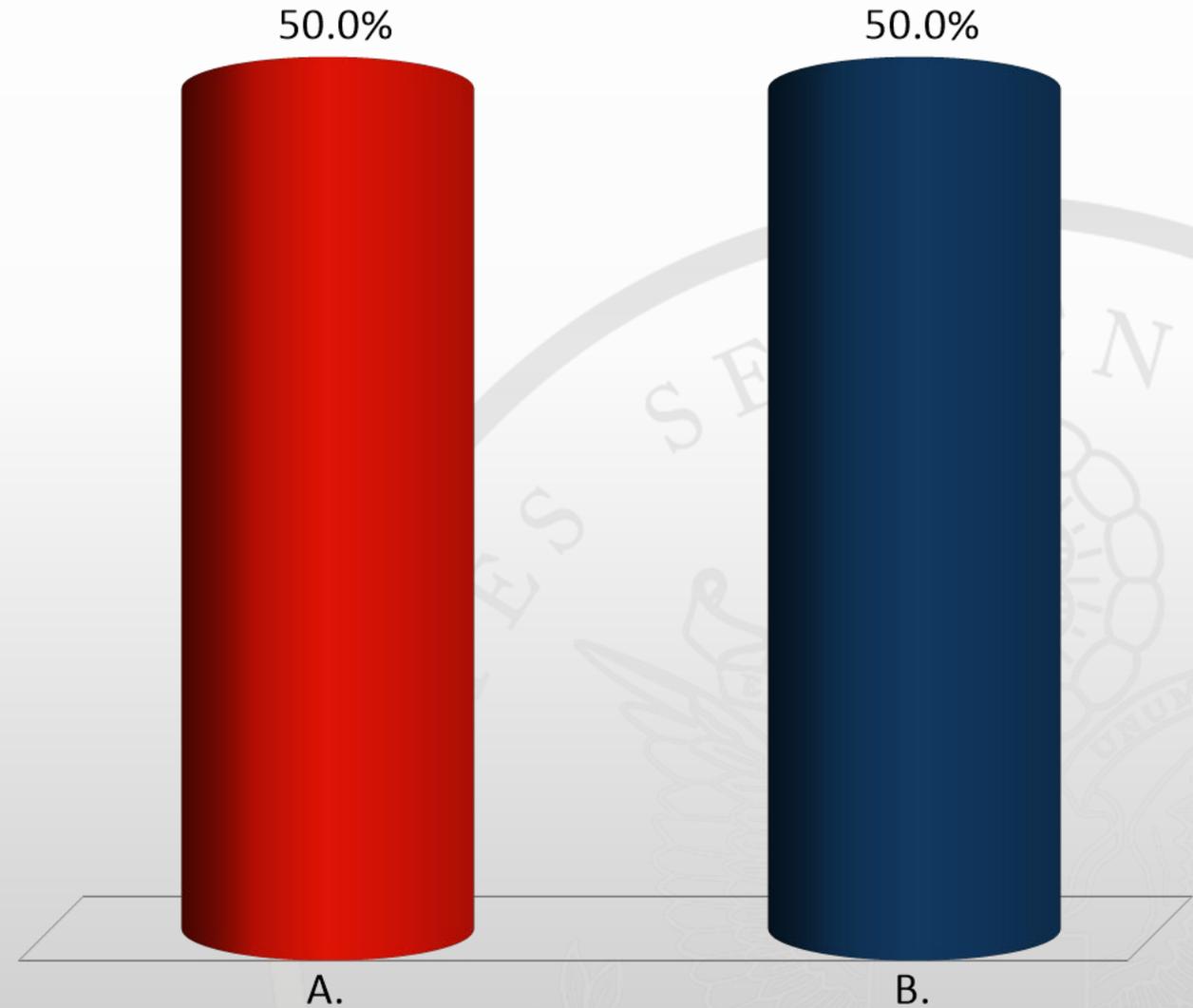
- A. Yes
- B. No



# Can the agent swear out an affidavit?

A. Yes

B. No



## 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

Drugs = “Expanded Relevant Conduct”

**Drugs/Fraud/  
Firearms Offense**

Conduct from Offense of  
Conviction plus “expanded  
relevant conduct”



# Resolving Disputed Factors at Trial

## U.S.S.G. §6A1.3 (policy statement)

- Court may consider, “relevant information without regard to its admissibility under the rules of evidence applicable at trial, provided that the information has a *sufficient indicia of reliability* to support its probable accuracy”

# Resolving Disputed Factors at Trial

## U.S.S.G. §6A1.3 (policy statement)

- Party seeking the increase (or decrease) has the burden of proof
- Preponderance of the evidence standard



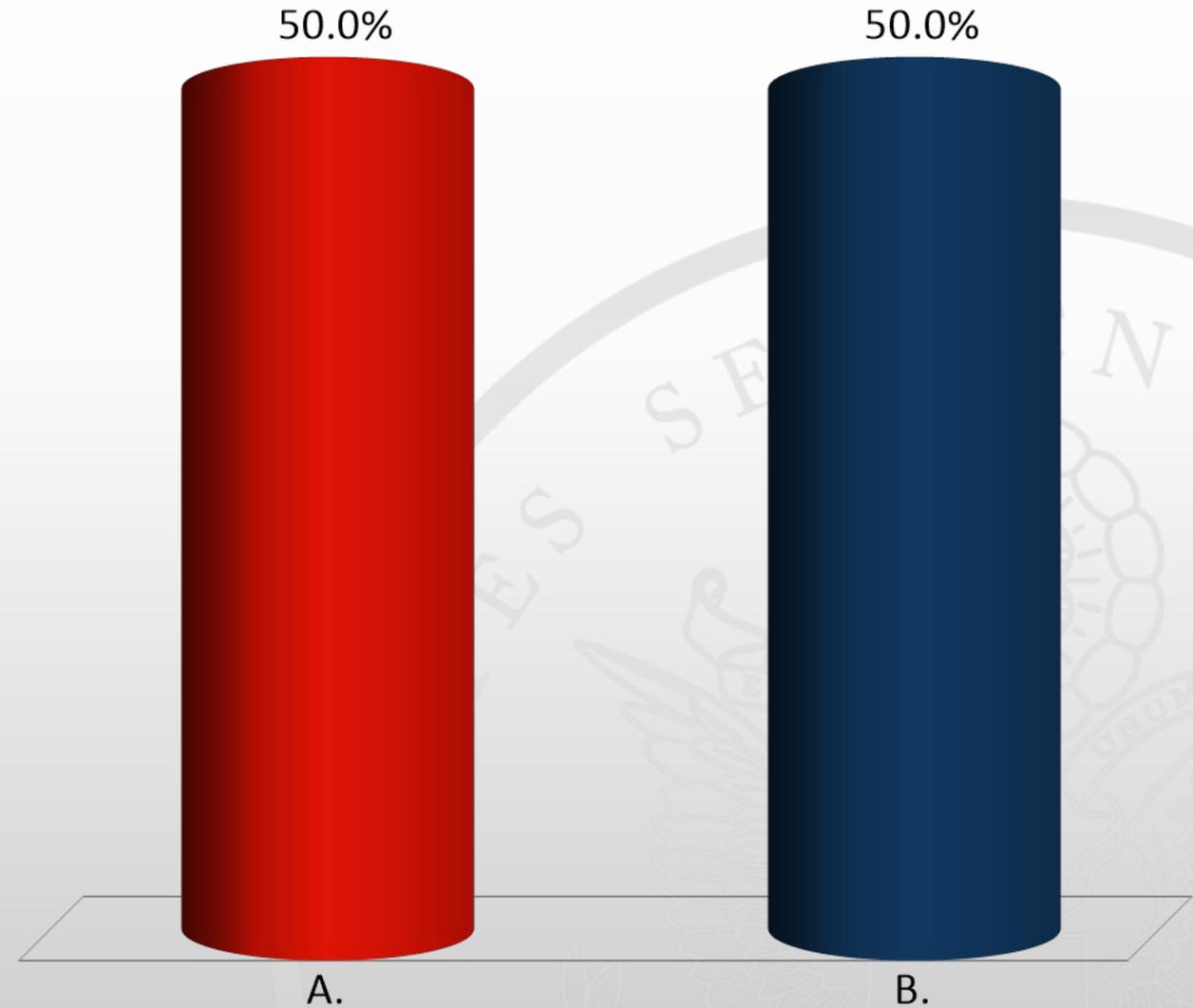
# SCENARIO #2



# Has this (or a similar) situation happened to you?

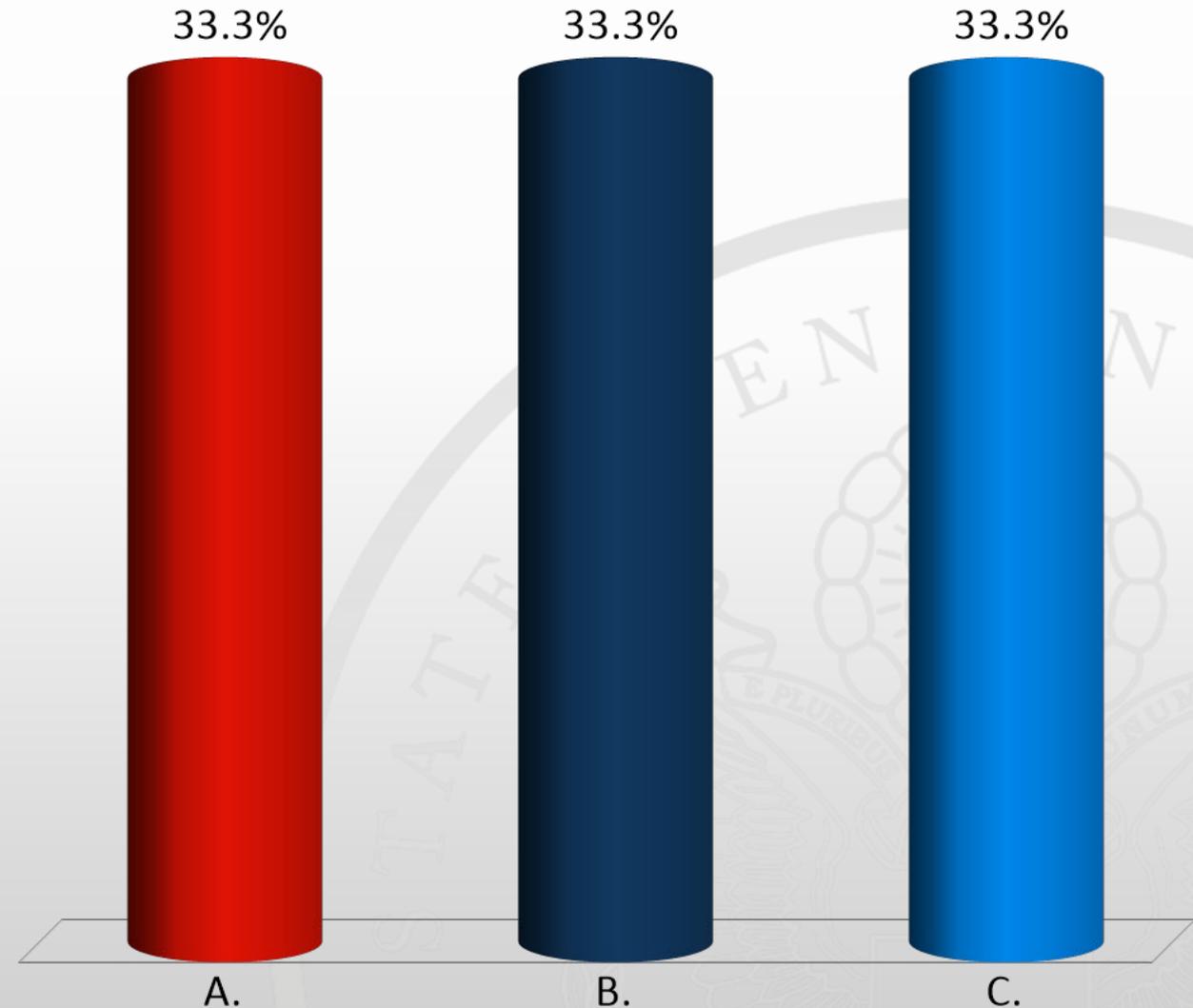
A. Yes

B. No



# For the POs in the room: have you ever allowed a defense attorney to ask questions?

- A. Yes
- B. No
- C. The defense attorneys don't (or rarely) attend the presentence interview

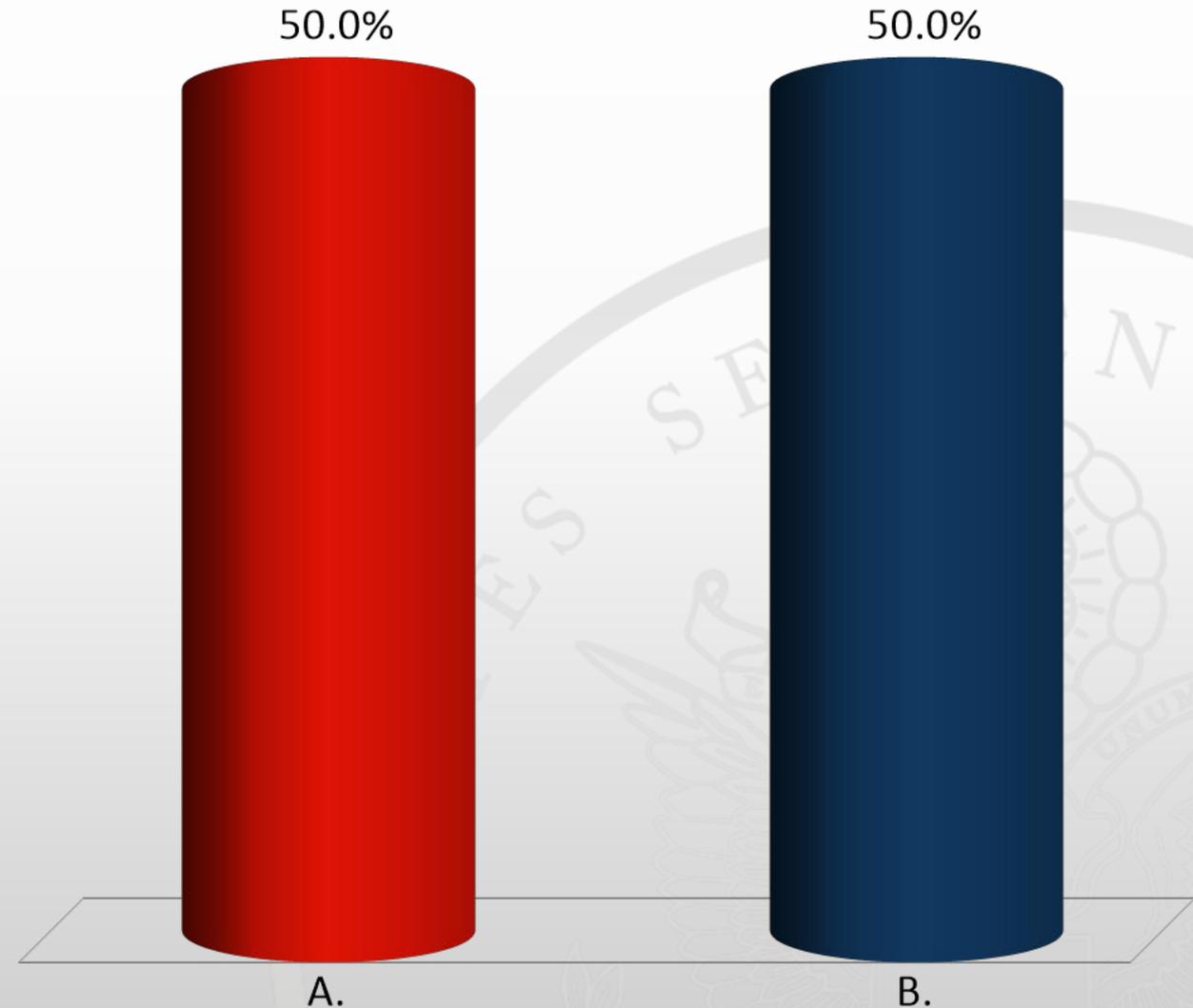


# SCENARIO #3



For the POs in the room: would you take away  
Acceptance in this situation?

- A. Yes
- B. No



# Acceptance of Responsibility

## U.S.S.G. §3E1.1

### Application Note 1

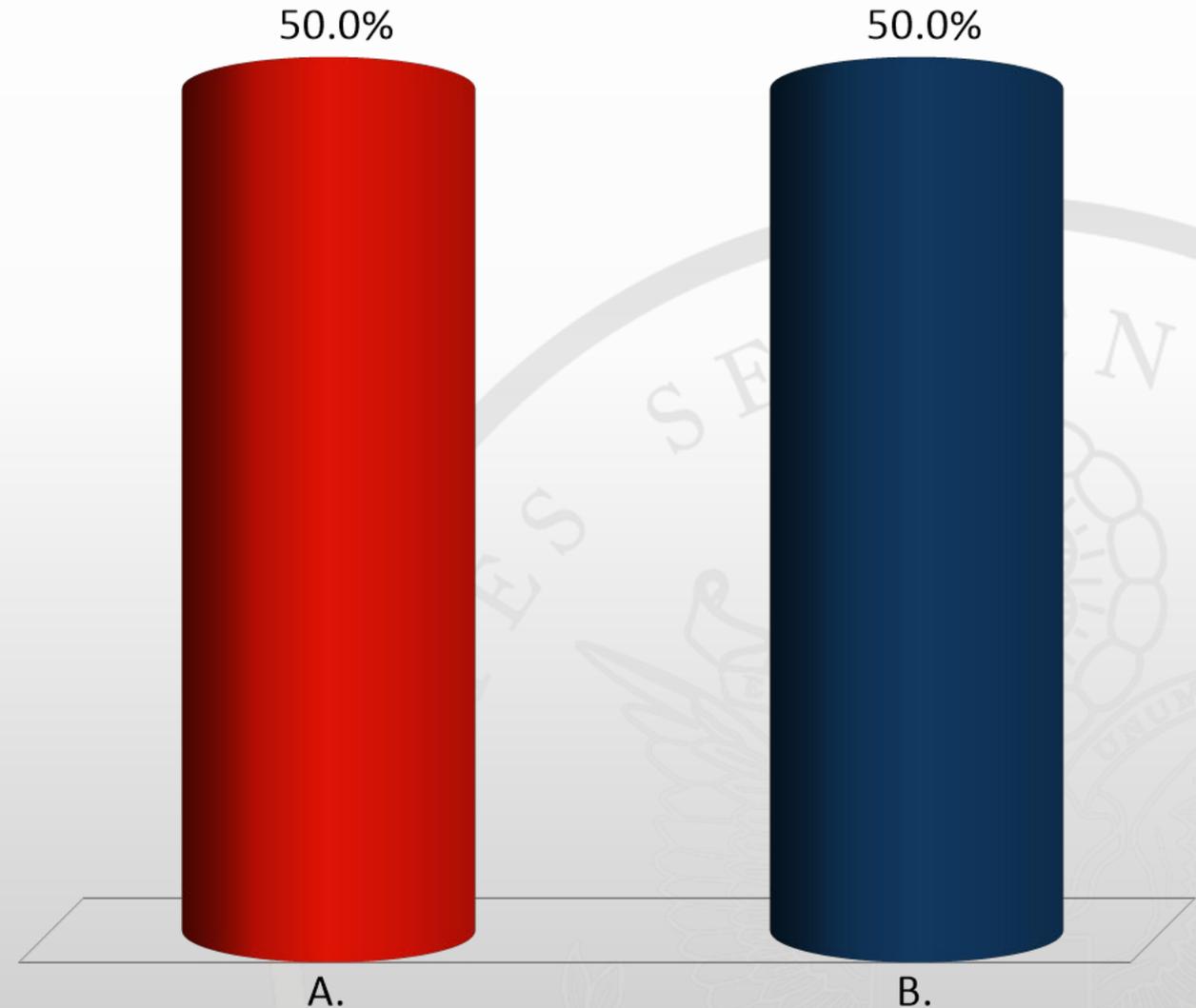
- (A) truthfully admitting the conduct comprising the offense(s) of conviction, and truthfully admitting or not falsely denying any additional relevant conduct for which the defendant is accountable under §1B1.3 . . .
- (B) voluntary termination or withdrawal from criminal conduct or associations; . . .

# SCENARIO #4



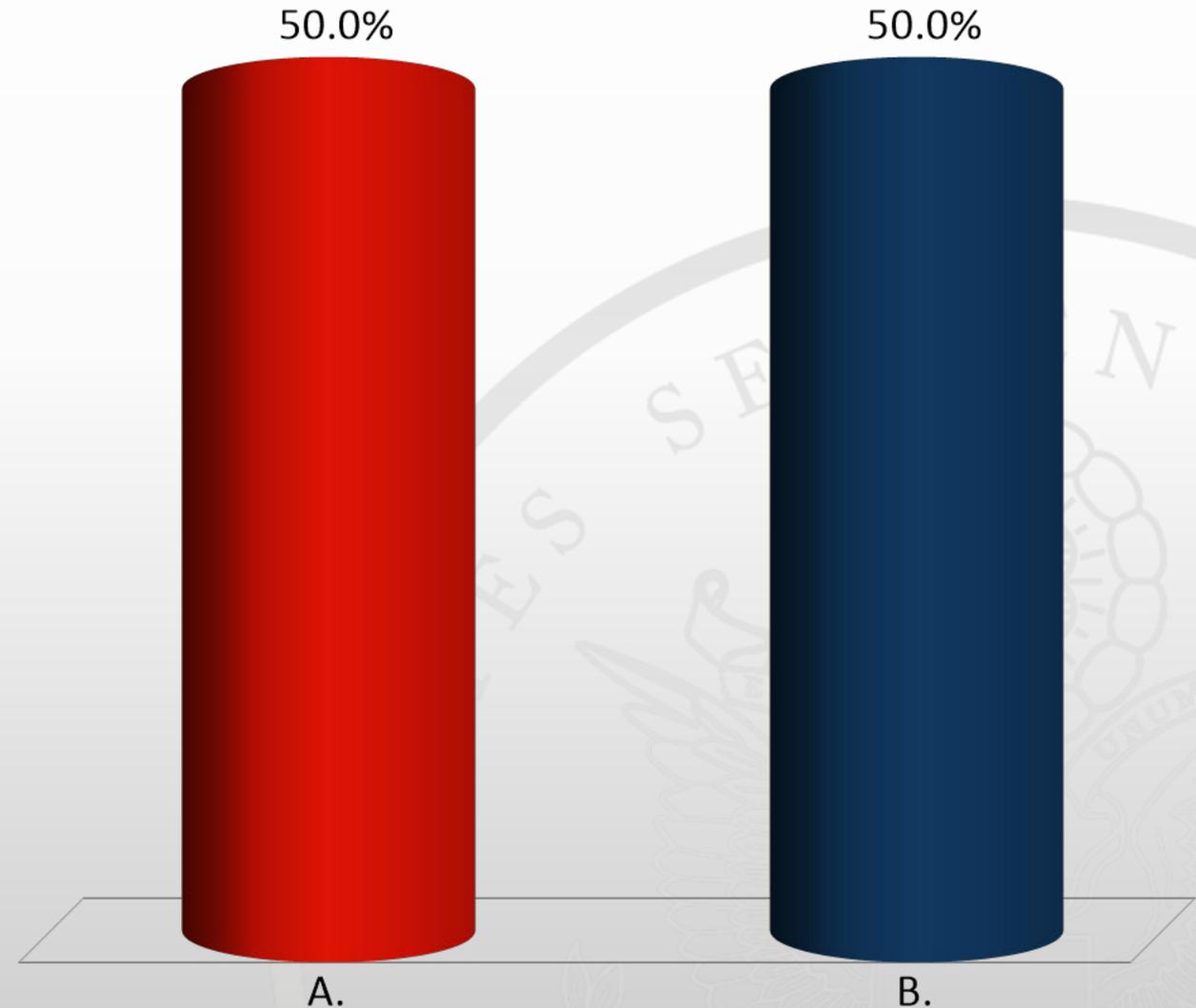
In your district, do the parties get the sealed portion of the PSR with sentencing recommendations?

- A. Yes
- B. No



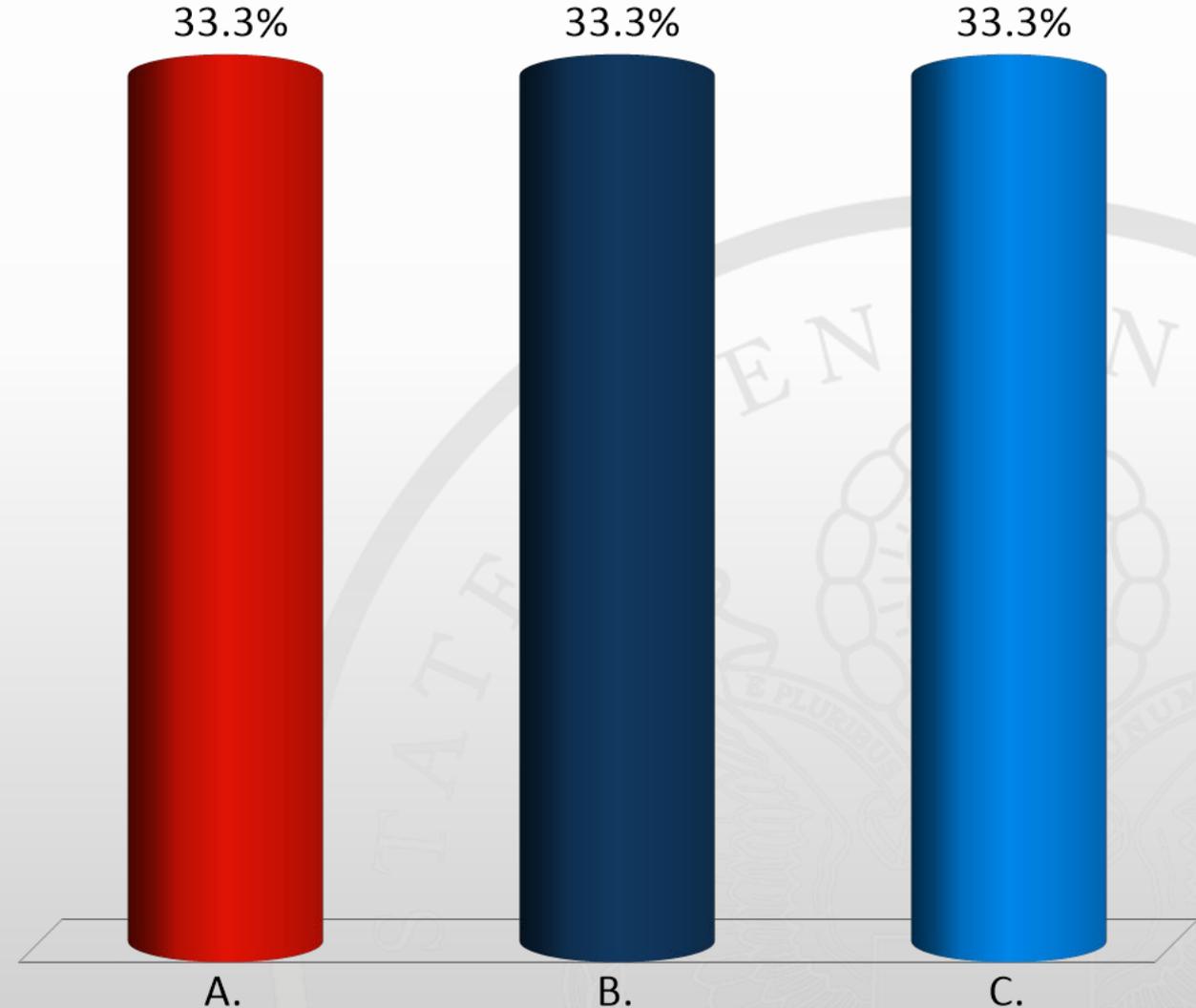
In your district, does the PO always recommend a sentence within the guidelines?

- A. Yes
- B. No



# In your district, does the PO speak with the judge before sentencing?

- A. Yes
- B. No
- C. Sometimes, it depends on the case



# 18 U.S.C. § 3553(a) Factors

- Nature and circumstances of the offense and history and characteristics of the defendant
- Reflect seriousness of the offense, promote respect for the law, and provide just punishment for the offense
- Adequate deterrence to criminal conduct
- Protect the public from further crimes of the defendant
- Provide defendant with needed education or vocational training; medical care; and other correctional treatment.
- To avoid unwarranted disparities among defendants

# Relief from Mandatory Minimums

## • Substantial Assistance:

- U.S.S.G. §5K1.1 and 18 U.S.C. § 3553(e)
- Relief from any mandatory minimum sentence
- Government must make motion

## • Safety Valve

- U.S.S.G. §5C1.2 and 18 U.S.C. § 3553(f)
- Only certain drug offenses
- Must meet all five criteria
- Recently expanded under the First Step Act