**Tip: Stip of Fact**

- Think of your stipulation of fact as an opening statement for sentencing

-- Draw from your opening statement/case narrative content

-- Fully present the facts of the case and circumstances of the offense

-- Organize the facts--including aggravating facts--so the sentence is well-supported

-- After completing the story, add paragraphs covering the elements/jurisdictional data

- A good stip of fact will raise concerns from the Defense…and it should

- When Defense wants to negotiate (and eviscerate) the stip, stick with a few standards:

-- Facts and circumstances of the offense are admissible in sentencing

-- Litmus test: Ask Defense two questions about facts they want to exclude. 1) Is it a fact? and 2) Is it relevant? If so, it’s proper for the stip

-- Explain that one of the benefits of the PTA for the Government is not having to bring witnesses to prove the case

--- If Govt must bring witnesses to prove the case, then you might as well litigate

--- If Defense wants the benefit of the bargain, then the facts need to be in the stip

--- Identify genuinely disputed facts (they can’t stip to what they believe is not factual); distinguish those few issues from well-settled facts

--- Get top cover from your SJA…then tell Defense, if they won’t agree to include relevant facts and circumstances, then there’s no agreement

- You can bring a witness or two…discuss with SJA (esp. if traveling witnesses)

- Tell Defense that the stip must be negotiated and signed before the PTA goes up for approval

-- Include the signed stip of fact with the PTA to the SJA and Convening Authority

-- Once the PTA is signed, you lose your leverage to negotiate a strong and fair stip

-- If you start negotiations with an emaciated stip comprised of skin and bones, negotiation will leave you with a bare bones stip

-- If you start negotiations with a hefty stip, you should be left with a meaty stip; even if it’s a bit lean, there’s still meat on the bone

- When the members or the military judge read the stip, they should have a solid understanding of the offenses and a good sense of where you are going with the sentencing argument