**Tip: Tab 5--Discovery**

- Trial counsel have a general obligation to provide all relevant evidence and government witnesses to the defense (see RCM 701); generally respond to defense request w/in two days

-- Err on the side of disclosure! Defense is entitled to equal access to all evidence that is relevant and necessary (RCM 703(f))

- Make Discovery and responses easier on yourself:

-- Use [Govt Discovery Memo for Preferral](Discovery%20Memo%20Templates/Govt%20Discovery%20Memo%20for%20Preferral.docx) and listing all info initially given to defense

-- Use [Govt Additional Discovery Response Memo](Discovery%20Memo%20Templates/Govt%20Additional%20Discovery%20Response%20Memo.docx) about every 1-2 weeks with newly discovered evidence and witnesses (see RCM 701(d) – continuing duty to disclose)

-- By using the above method, you may respond to most points in the Defense Request for Discovery by pasting “previously provided to defense on \_\_\_\_\_ date;” or “the Government is not aware of any such evidence;” or, “the request is overbroad/vague; we request a description of each item sufficient to show its relevance and necessity IAW RCM 703(f)(3)”

- Discovery is not the place to be coy; three questions to ask: Does the Government have the information; is it responsive to the request; and is it privileged or otherwise protected?

-- There is no trial by ambush in the military; failure to disclose relevant evidence – especially exculpatory evidence – is a professional responsibility violation

- The Discussion to RCM 701 lists the various Notices that may be necessary (see [Tab 7](../7.%20%20Motions,%20Notices,%20and%20Pretrial%20Restraint))

- When providing discovery to the defense, trial counsel lists items provided in a memorandum

-- Adjust the [response memo](Discovery%20Memo%20Templates/Govt%20Response%20to%20Standard%20Defense%20Discovery%20Request.doc) to answer the Defense Request paragraph-by-paragraph

-- For each piece of evidence provided, list the title, date, and number of pages

-- For each oral statement, list the person to whom the statement was made and whether there are notes (if so, provide them) and/or a recording (if so, provide it)

-- Identify / assert any applicable privileges if you’re withholding evidence

-- Send to defense using email delivery & read receipts; get email acknowledging receipt

- Create and send [additional memoranda](Discovery%20Memo%20Templates/Govt%20Additional%20Discovery%20Response%20Memo.docx) to the defense as you obtain additional evidence

- Send a discovery request to the defense; you may use the [Government Discovery Request](Discovery%20Memo%20Templates/Govt%20Initial%20Discovery%20Request.docx)

- Provide witness derogatory data to defense (see Tab 5a, [Derogatory Data Requests tip](Tip%20Tab%205a%20Derogatory%20Data%20Requests.docx))

- The [Subpoena/Admin Hold](Subpoena%20Documents%20and%20Admin%20Hold) subfolder has samples to use when/if needed in your case

- The [Discovery Management Course](JAG%20School%20Discovery%20Managment%20Course) subfolder has training for case paralegals to collect, scan, store, redact, label, and track documents; also, [see Tip](Tip%20Obtaining%20OSI%20Evidence.docx) on obtaining all evidence from OSI