



Clausewitz and eDiscovery

The principles of war in relation to the eDiscovery process.

A Short Overview from Orange Legal Technologies

Preface: Who is Clausewitz?

Carl Phillip Gottfried von Clausewitz (1780-1831), Prussian soldier and intellectual.

Clausewitz came from a middle-class social background, though his family claimed noble origins and these claims eventually received official recognition. He served as a practical field soldier (with extensive combat experience against the armies of the Revolutionary France), as a staff officer with political/military responsibilities at the very center of the Prussian state, and as a prominent military educator.

Clausewitz first entered combat as a cadet at the age of 13, rose to the rank of Major-General at 38, married into the high nobility, moved in rarefied intellectual circles in Berlin, and wrote a book which has become the most influential work of military philosophy in the Western world.

That book, *On War* (in the original German, *Vom Kriege*) has been translated into virtually every major language and remains a living influence on modern strategists in many fields. *On War* serves as the basis for many of today's modern principles of war.



What is war?

**War is an act of violence (physical force)
to compel our opponent to fulfill our will.**

Prussian General Carl Von Clausewitz, *Vom Kriege*



eDiscovery through the lens of “war”.

eDiscovery is the process of collecting, preparing, reviewing, and producing electronic documents in the context of the legal process* to compel a decision that fulfills our will**.

* The Sedona Conference 2005 Glossary

**Prussian General Carl Von Clausewitz, *Vom Kriege*



What provides guidance for the conduct of war?

The principles of war provide general guidance for the conduct of war at the strategic, operational, and tactical levels.

U.S. Army, Field Manual 100-5, 1994 (Unclassified)



The principles of war and eDiscovery “guidance”.

The principles of war can provide a framework of general guidance for the evaluation and conduct of eDiscovery processes.



Principles of War and Processes of eDiscovery

Principles of War*

- Objective
- Offensive
- Mass
- Economy of Force
- Maneuver
- Unity of Command
- Security
- Surprise
- Simplicity

Process of eDiscovery**

- Collection
- Preparation
- Review
- Production

* U.S. Army, Field Manual 100-5, 1994 (Unclassified)

** The Sedona Conference 2005 Glossary



What is the principle of “Objective”*?

Direct every military operation toward a clearly defined, decisive and attainable objective.

* U.S. Army, Field Manual 100-5, 1994 (Unclassified)

Principle of “Objective” redefined for eDiscovery.

Direct every eDiscovery task toward a clearly defined, decisive and attainable objective.



What is the principle of the “Offensive”?

Seize, retain, and exploit the initiative.

* U.S. Army, Field Manual 100-5, 1994 (Unclassified)

Principle of “Offensive” redefined for eDiscovery.

Seize, retain, and exploit the initiative in the collection, preparation, review, and production phases of eDiscovery by proactively taking advantage of advanced and proven legal technology advances.



What is the principle of “Mass”?

Mass the effects of overwhelming combat power at the decisive place and time.

* U.S. Army, Field Manual 100-5, 1994 (Unclassified)

Principle of “Mass” redefined for eDiscovery.

Mass the effects of all available eDiscovery capabilities to deliver individual and collective process results at the decisive place and time.



What is the principle of “Economy of Force”?

Employ all combat power available in the most effective way possible; allocate minimum essential combat power to secondary efforts.

* U.S. Army, Field Manual 100-5, 1994 (Unclassified)

“Economy of Force ” redefined for eDiscovery.

Employ all eDiscovery resources available in the most time, cost, and risk efficient way possible.



What is the principle of “Maneuver”?

Place the enemy in a position of disadvantage through the flexible application of combat power.

* U.S. Army, Field Manual 100-5, 1994 (Unclassified)

Principle of “Maneuver” redefined for eDiscovery.

Maintain a position of proactive advantage through the early and flexible application of eDiscovery resources.



What is the principle of “Unity of Command”?

For every objective, seek unity of command and unity of effort.

* U.S. Army, Field Manual 100-5, 1994 (Unclassified)

“Unity of Command” redefined for eDiscovery.

For every collection, preparation, review, and production objective, seek unity of command and unity of effort. If at all possible, centralize and minimize eDiscovery processes and resources.



What is the principle of “Security”?

Never permit the enemy to
acquire unexpected advantage.

* U.S. Army, Field Manual 100-5, 1994 (Unclassified)

Principle of “Security” redefined for eDiscovery.

Never permit opponents to acquire an
unexpected advantage through a procedural,
process, or technological compromise of relevant
electronically stored information (ESI).



What is the principle of “Surprise”?

Strike the enemy at a time or place or in a manner for which he is unprepared.

* U.S. Army, Field Manual 100-5, 1994 (Unclassified)

Principle of “Surprise” redefined for eDiscovery.

Prepare in a manner that ensures a full understanding of available data sets to ensure that you are prepared for any potential eDiscovery related event.



What is the principle of “Simplicity”?

Prepare clear, uncomplicated plans and concise orders to ensure thorough understanding.

* U.S. Army, Field Manual 100-5, 1994 (Unclassified)

Principle of “Simplicity” redefined for eDiscovery.

Prepare clear, uncomplicated plans and processes for all eDiscovery activities and provide concise guidance to all leaders involved in the execution of the plans and processes to ensure thorough understanding.



New Principles/Current Processes of eDiscovery

New Principles

- Objective
- Offensive
- Mass
- Economy of Force
- Maneuver
- Unity of Command
- Security
- Surprise
- Simplicity

Current Processes*

- Collection
- Preparation
- Review
- Production

* The Sedona Conference 2005 Glossary



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