Learning Objectives

After studying this chapter you should be able to:

1. Understand the function of technology in the law office.
3. Appreciate the need to understand the language of technology.
4. Understand the role of the technology support staff.
5. Understand the ethical issues in the use of technology and the use of computer consultants in the legal environment.
6. Identify ways that technology can help the legal team.
OPENING SCENARIO

Mrs. Hannah had worked in large center-city law firms for twenty years, rising to the level of senior paralegal. In the course of working on a case for which she was responsible for technical support, she met Owen Mason, an attorney fresh out of law school, who, having just passed the bar, was clerking for a federal judge. After many months of sitting in on the judge’s cases and watching the trial attorneys in action, he confided to Mrs. Hannah that he had decided he wanted to open his own firm and try cases. Candidly he acknowledged to her that his greatest reluctance about going out on his own was that he didn’t know how much he didn’t know about setting up a law office until he started looking around at actual law offices in the area. He said, “I can do the law part, but the internal operations of a law office are something I never thought about or had to worry about when I was clerking for the judge. It certainly wasn’t something they taught in law school.”

He asked Mrs. Hannah if she would help him, offering her employment with his new firm. She agreed to leave the law firm—not only for the challenge of establishing a new office, but also for a chance to work closer to home, reducing her commute time.

The attorney’s first question to her was, “What do I need at the minimum, and what is essential if I am frequently out of the office trying cases?”

INTRODUCTION TO TECHNOLOGY IN THE LAW OFFICE

The increased use of technology and computers in the law office and the court system has changed the way many traditional procedures are performed. The computer and the Internet are increasingly used not just for traditional document preparation but also for maintaining client databases, keeping office and client accounting records, engaging in electronic communications, research, and filing documents with the court and trial presentation as shown in Exhibit 1.1.

Computer technology is used in many ways in the law office:

- **Word processing** – Document preparation
- **Electronic spreadsheets** – Financial calculations and financial presentations
- **Time and billing programs** – Record accurate client time and billing
- **Accounting programs** – Manage firm financial records, payroll, and client escrow accounts
- **Calendaring** – Deadlines, appointments, and hearing dates
- **Graphic presentation software** – Prepare persuasive presentations
- **Trial presentation software** – Organize trial presentations
- **Internet search engines** – Accurate and current legal information; factual information to support a case
- **Databases** – Maintain records and documents
- **Document scanning** – Convert documents to electronic format
- **Document search features** – Locate relevant material in documents and exhibits
- **E-mail and document delivery** – Electronic communications

Computers are also being used with greater frequency to share information in digital format between remote offices, courthouses, government agencies, and clients. Computer files are shared today more and more by the use of the Internet as well as in the form of CDs, DVDs, and as attachments to e-mails. In the past, paper had to be physically copied and sent, frequently by costly messenger service or express mail service. Today large files can be quickly, almost instantaneously, exchanged electronically,
Technology Most Often Used by Paralegals

In a survey by the International Paralegal Management Association (IPMA), the most frequently used programs as reported by respondents were:

**General**
- Microsoft Word: 99%
- Document management programs: 83%
- General Internet research: 74%
- Spreadsheets: 57%
- Databases: 57%
- Billing applications: 53%

**Litigation**
- Litigation support: 75%
- Electronic court filing: 42%
- Online docket programs: 33%
- Trial preparation: 25%

**Exhibit 1.1** IPMA survey results.
Source: 2005 Utilization Survey IPMA.

...anywhere in the world, without any paper (hardcopy). Whereas formerly the physical safety of the delivery of paper documents was a concern, today the security and confidentiality of documents sent in electronic format are increasing concerns.

The legal team is increasingly using the Web and the Internet for more than just pure legal research. Access to most government information is obtained online through Internet websites. Finding businesses and individuals through private service providers, such as the yellow pages and white pages, is now handled most efficiently through Web search engines such as Google and Yahoo!. Though legal firms are increasingly developing and using websites for their own businesses as shown in Exhibit 1.2, only the best of these sites are created in a way that effectively helps to retain clients and attract new clients.

The implementation of new federal court rules as they relate to electronic discovery, electronically stored documents, and case law is creating new demands for skills and knowledge of the technology in civil litigation. Increasingly the legal team must be able to interface with technology professionals in maximizing the efficiency of internal computer usage, and in obtaining and handling client and trial data electronically. Everyone on the legal team must now have a working familiarity with computers and the types of computer programs used in the law office. Not too many years ago, the average law office had a typewriter, an adding machine, and a duplicating machine of some type. Paper was king, with every document typed, edited, retyped—and frequently retyped again. In each instance, a paper copy was produced and delivered to the supervising attorney for review and additional changes. It then was returned for retyping and eventually sent to the client, to the opposing counsel, or filed with the court. File cabinets abounded in the law office, and the storage of paper files created back rooms, warehouses, and other storage locations filled with box after box of paper. The trend is toward eliminating paper in the law office through the use of computer technology and software.

**THE IMPACT OF THE FEDERAL RULES OF CIVIL PROCEDURE**

The revision to the Federal Rules of Civil Procedure that became effective December 2006 has had a major impact on the thinking about technology in the practice of law. Members of the legal team who had ignored or only given passing notice to the inroads...
Chapter 1

Smoking Gun

Document, such as an e-mail, hidden in the old files that would conclusively impeach or destroy the credibility of a witness or be evidence that conclusively determines an issue.

of computers and electronic documents replacing paper realized they could no longer ignore the impact of technology on the practice of law. For many it appeared that there were suddenly new rules in both the state and federal courts. What had been a patchwork of court rules and some case law was now in an organized form, formalized in the new federal rules on electronic discovery.

The new rules specifically address the issue of the increased use of electronic stored documentation regularly found in all aspects of business and personal life. Where people formerly used pen or typewriter and ink to write letters, today the method of choice is more likely e-mail or text message. The federal courts have, with the adoption of the new rules of civil procedure, acknowledged the role of electronically stored information and the impact it has on litigation. The state courts are also looking at the issue and many have or are implementing their own rules, frequently fashioned after the federal rules.

For the legal team, technology and its impact on the documents created and stored by clients must be addressed in litigation, but they must also address the impact potential litigation has on the rules for document retention. The retention of paper documents has frequently been a function of the available storage space. The more space available, the more documents that can be stored for longer periods of time. For the litigator this represents a source of a potential “smoking gun” document—a document on which the case hinges that may be introduced into evidence. For example, this could be a document that admits a course of conduct, such as removing a safety feature for the sake of saving money (even after netting out the costs of paying the costs of lawsuits for injuries), which is the cause of injury to a plaintiff. A document potentially “hiding” in a maze of potentially thousands of pieces of paper, if the other parties can find it, is a risky proposition at best. In some classic litigation cases, tractor-trailer loads of documents were produced, such as in the Ford Pinto case or the IBM antitrust case.
In the Ford case, the smoking gun was a report of the cost tradeoff of the savings from eliminating a gasket and the potential monetary damage from lawsuits found by the plaintiffs’ team—some might say found serendipitously, like finding a needle in a haystack.

With technology and a big enough budget for discovery, all of the paper documents in a case can be scanned electronically in a form that allows an electronic search for the smoking gun. Even easier is the ability to search electronic files of the opposing side when delivered in a searchable electronic format as the result of a proper discovery request.

With the potentially massive delivery of documents in electronic form comes the concern that these electronic documents may have privileged or confidential information. These documents may be delivered to the opposing side in compliance with an electronic discovery request without the opportunity to check each document before delivery for the privileged or confidential material.

No longer can the legal team ignore the role of technology in use by clients or in litigation, whether the legal team is a sole practitioner with just a legal secretary, or a mega-member international law firm with in-house technical support. Everyone on the legal team must understand the role of the various technologies in counseling and representing clients.

**LEARNING THE LANGUAGE OF TECHNOLOGY**

An understanding of the terminology of technology is a prerequisite to understanding the technology found in the law office, the courthouse, and the clients’ business. Law has developed its own lexicon of terms that enables those in the legal community to communicate effectively and with precision. The technology world also has developed its own lexicon. The legal team and the technology support team must learn the language of the other to communicate the needs and solutions to each other. Each group thinks it is communicating, but the meaning of the words used sometimes overlap with different meanings.

For example, the word *protocol*. To the legal team protocol is defined as “a summary of a document or treaty; or, a treaty amending another treaty, or the rules of diplomatic etiquette” (*Black’s Law Dictionary*—West Group).

To the technology specialist, protocol is defined as “A set of formal rules describing how to transmit data, especially across a network. Low level protocols define the electrical and physical standards to be observed, bit- and byte-ordering and the transmission and error detection and correction of the bit stream. High level protocols deal with the data formatting, including the syntax of messages, the terminal to computer dialogue, character sets, sequencing of messages etc.” (Free On-Line Dictionary of Computing [http://foldoc.org/]).

Another example is the word *cell*. To the criminal lawyer, a cell is a place where clients are held in jail. To the computer support staff, it is a space on a spreadsheet where a piece of data is displayed. Lawyers, paralegals, and other members of the legal team, and the members of the technology support team must learn each other’s language in order to effectively meet the needs of clients and work together effectively.

**TECHNOLOGY SUPPORT IN THE LAW OFFICE**

In larger law offices, corporate legal departments, and government offices there is usually a technical support staff (frequently called the IT, or information technology, department). The IT staff handles questions and issues about the use and implementation
of technology in general, and computers and software in particular. In smaller offices there may be a person who is unofficially responsible for the same type of support. In many small offices the IT person may be one of the more knowledgeable members of the staff, either a lawyer, paralegal, secretary, a “friend” of the office, or a relative or child, sometimes referred to affectionately as the office “geek.”

**Working with In-House Technology Support Staff**

Support issues in the past were limited to in-house support of on-site computer systems and software. The advances in portable computers and wireless technologies have expanded the demand placed on IT departments to support the legal team outside the office. The issue has become, what is the range of services that can be supported outside the office? Litigation teams may require support for videotaping depositions at out-of-office or out-of-town locations. Trials may require the use of sophisticated presentation equipment. And all members of the legal team may need access to the home office files on the office file servers from remote locations on their wireless laptops.

The IT department may not have the resources in people or in the specialty hardware or software to support every demand. Frequently called in at the last moment, the IT staff may not have the time to gear up to support the immediate needs of the legal team. When the support staff has time to prepare, it can usually find a way to support potential applications, whether they are remote access issues or graphic-intense litigation needs. IT may be able to offer support and training to the legal team if they understand what the legal team needs in technical support or what the legal team needs to accomplish. For instance, calling in the IT person in the early stage of litigation when the use of a graphic simulation is considered for trial may save time and money. Outside consultants may offer a simulation that seems to the legal team as the way to present and win a case. To the IT staff, providing the same solution may be an issue of whether the courthouse has the necessary equipment to show the simulation or if specialty equipment must be obtained or used, or if the graphics will be delivered in a format compatible with the law firm’s trial presentation software or the courtroom equipment.

**Issues in Working with Outside Technology Consultants**

There are many independent computer, software, and multimedia consultants. Selecting the correct consultant is a matter of understanding what is needed from the consultant. It may be to fix a computer or other computer peripheral like a printer. Many outside companies are retained on a maintenance contract basis to provide coverage as needed for a period of time, or for a fixed rate for hardware issues or to support software used in the office. Others are hired as needed at an hourly rate for support or maintenance.

Media consultants are frequently called to assist in specific cases. Some are called upon to prepare graphic presentations ranging from individual exhibits to multimedia simulations, others to operate equipment and assist in trial presentations.

To obtain the service needed from the consultant, the legal team must speak the same language as the technical consultant in defining the scope and desired results. Hiring a consultant, no matter how good he or she is, who works on a different system that is incompatible with the system used by the legal team is potentially, at the least, a costly mistake, or at most a disaster—sometimes not discovered until the actual day of trial. For example, if the legal team is using PC-based hardware and software and the consultant is using a Mac platform (jargon for an Apple Macintosh system), the consultant might produce the final product in a version that works only on an Apple computer. Although such a gross oversight might seem unlikely, it has been known to happen. The ownership of graphic presentation must also be addressed. Is it a work for hire to be owned by the law firm or client, or is it a creative work owned by the consultant that the consultant may use in any way he or she wishes for other purposes?
Outsourcing

Outsourcing has become a buzzword for shipping work out of the office or overseas to save money. Some of the services that could be performed in-house may in fact be better outsourced. Many law firms have for years outsourced the payroll function instead of preparing payroll checks and tax returns. Computer software today makes the task easier than in the days when everything was done manually. In a law firm the confidentiality of information about salaries may dictate that an outside firm handle the payroll process with the fewest people in the office having access to the critical payroll information. In a similar vein the accounting functions may be outsourced to an outside bookkeeping or accounting firm.

Using an outside computer consultant to help with support for the hardware and software of the office is a form of outsourcing and may involve a help desk located in foreign locations to answer questions.

Training for Hardware and Software Support

To be efficient each user of the office computer system must be trained in the features and procedures of that system. The starting point may be the security features, including the password system used by the office. Each office tends to have its own method of filing documents, either on individual personal computer work stations or on the office computer network file server. In the ideal world a reference guide is available to each employee, where everything is documented, easy to read, and completely understandable. But in the real world, people need instruction in everything from the basics, like where the on-off switch is located, to the more sophisticated how to connect with a remote office file server and download a file. In between are questions like, how do I use this specialty software program?

Someone must do the training. Again, in the ideal world there is an IT person in-house to do that job. In the real world few offices have this resource. Often, some of the basics are taught by other, more-experienced people in the office. In most law
Attorney–Client Privilege

A rule of evidence permitting an attorney to refuse to testify as to confidential client information.

practices one or more outside sources are used. The person or company who sold or installed the hardware or software may also offer training. The manufacturers may offer online help or telephone support. In some cases classes may be offered at local educational institutions for credit or as noncredit offerings. Many specialty software vendors also offer training from basic level through certified trainer levels.

ETHICAL ISSUES IN USING TECHNOLOGY SUPPORT

Issues of ability and competency are important in choosing and using technical consultants and support staff. More important are the ethical and confidentiality issues in adding technical staff to the legal team. The technical staff and consultant are nonlegal staff that will or may have access to privileged or confidential client files and trial strategy. Technology staff must understand the nature of the confidentiality of the files on which they are working.

As more members are added to the legal team who do not fit within the traditional roles of lawyer, paralegal, legal assistant, clerk or legal secretary, the concern arises as to how the rules of confidentiality and privilege will be applied and enforced. The courts have recognized that the lawyer must engage others to help in the representation of clients, and numerous cases have explored the use of legal support staff like paralegals and investigators. The use of technology or computer consultants, however, may not be as clear. Certainly they are frequently essential where large volumes of e-discovery are involved. Most computer consultants are not adequately educated in the ethical rules of the legal profession and/or engaged in a manner that focuses their engagement on the specific case such as a paralegal might be when assigned or hired to work on a specific file.

CONFIDENTIALITY, PRIVILEGE, AND WORK PRODUCT

Technical support personnel and computer consultants must understand the nature and obligations of the legal profession with regard to confidentiality and the attorney client privilege. The differences and obligations imposed by these concepts can be confusing even to members of the legal team, let alone IT staff whose training and education were not in the law profession.

Confidentiality

The ethical obligation to keep client information confidential is founded on the belief that clients should be able to tell their attorneys everything about their case so the attorney can give proper legal advice to the client. For the attorney, the American Bar Association (ABA) Model Rules require, in Rule 1.6, that lawyers “not reveal information relating to representation of a client” until the client gives informed consent to the disclosure after being advised of the consequences of disclosure, except for disclosures that are “impliedly authorized.”

Attorney—Client Privilege

Any communications between the client and the lawyer for the purpose of obtaining legal advice is confidential. The attorney—client privilege is a rule of evidence that protects the client from the attorney being required to reveal the confidential information. Nothing more need be done unless and until the lawyer is questioned under oath, when the attorney must invoke the privilege, saying, “I refuse to answer because that is confidential information covered by the attorney—client privilege.” Only the client can
waive the privilege and allow the attorney to reveal the confidential information. It may not be waived by the attorney; it is the client’s right to preserve the privilege except in limited circumstances such as situations when the information is of a crime of violence that the client is about to commit.

“The attorney–client privilege is founded on the assumption that encouraging clients to make the fullest disclosure to their attorneys enables the latter to act more effectively. We have recognized that an attorney’s effectiveness depends upon his ability to rely on the assistance of various aids, be they secretaries, file clerks, telephone operators, messengers, clerks not yet admitted to the bar, and aids of other sorts. The privilege must include all the persons who act as the attorney’s agents.” (Von Bulow v. Von Bulow, 811 F. 2d 136 (2d Cir. 1987)

**Extension of Attorney–Client Privilege to Others**

It is now accepted that the efficient administration of justice requires lawyers to engage others, such as legal assistants, accountants, and other experts (see Exhibit 1.3). This would not be possible if the privilege did not extend to these agents of the attorney, including most recently public relations firms.

In the modern practice of law, the attorney must rely on others, such as paralegals, legal secretaries, investigators, law clerks, and the like, to assist in the vigorous representation of the client. These “agents” must also be covered by the attorney–client privilege; to do otherwise would obligate the attorney to guard every document, exhibit, and pretrial memorandum from the eyes of everyone on the legal team and perform every task personally, from interviews of clients and witnesses, to the typing of reports and memorandum of law, to the conduct of fact and legal research, to the preparation of trial exhibits and documents. This is clearly not desirable or cost effective for the client or the administration of justice.

**Work Product Doctrine**

The work product doctrine provides a limited protection for material prepared by the attorney, or those working for the attorney, in anticipation of litigation or for trial (Exhibits 1.4 and 1.5).

**IN THE WORDS OF THE COURT**

The U.S. District Court for the Southern District of New York summarized the law stating:

“... the privilege in appropriate circumstances extends to otherwise privileged communications that involve persons assisting the lawyer in the rendition of legal services. [fn17] This principle has been applied universally to cover office personnel, such as secretaries and law clerks, who assist lawyers in performing their tasks. [fn18] But it has been applied more broadly as well. For example: In United States v. Kovel. [fn19] the Second Circuit held that a client's communication with an accountant employed by his attorney were privileged where made for the purpose of enabling the attorney to understand the client situation in order to provide legal advice. [fn20]” [IN RE Grand jury subpoenas dated March 24, 2003, directed to (A) Grand Jury Witness Firm and (B) Grand Jury Witness, M11-188 (USDC, S.D.N.Y.) (June 2, 2003)]

Exhibit 1.3 In this case, the court confirmed that the principle of privileged communications extends not just to the attorney, but to legal support staff who work on the team as well.
**IN THE WORDS OF THE COURT**

The work product doctrine is narrower than the attorney-client privilege in that it only protects materials prepared "in anticipation of litigation [Fed. R. Civ. P. 26(b) (3)], whereas the attorney-client privilege protects confidential legal communications between an attorney and client regardless of whether they involve possible litigation." (Electronic Data Systems Corporation v. Steingraber Case 4:02 CV 225 USDC, E.D. Texas, 2003)


**IN THE WORDS OF THE COURT**

The U.S. Supreme Court recognized the work product doctrine and its importance, saying:

Proper preparation of a client’s case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference. That is the historical and the necessary way in which lawyers act within the framework of our system of jurisprudence to promote justice and to protect their clients’ interests. This work is reflected, of course, in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways—aptly though roughly termed by the Circuit Court of Appeals in this case as the “work product of the lawyer.” Were such materials open to opposing counsel on mere demand, much of what is now put down in writing would remain unwritten. An attorney’s thoughts, heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing. And the interests of the clients and the cause of justice would be poorly served. . . . Where relevant and non-privileged facts remain hidden in an attorney’s file and where production of those facts is essential to the preparation of one’s case, discovery may be properly had.” [Hickman v. Taylor 329 U.S. 496 (1947), page 511.]

**Exhibit 1.5** In Hickman v. Taylor, the Supreme Court upheld the work product doctrine, which maintained that any documents prepared in anticipation of litigation are protected from disclosure to opposing counsel.

**Conflict of Interest**

Conflict of interest is clearly an issue for the lawyer on the legal team. But what about the nonlawyer members, the paralegals, and the computer and technology consultants? The line is not clear. If both sides of a case use the same paralegal, the answer to the conflict of interest question is probably the same as the lawyer’s: do not do it. For technology consultants, however, the distinction is less clear. Consultants are not offering legal advice. But they are privy to trial strategy and confidential information. The legal team should be certain the client’s rights are not jeopardized and obtain the same assurance from the outside consultants as they would demand of in-house staff supporting a case.

Loyalty to the client is the essence of Rule 1.7, Conflict of Interest, of the ABA Model Rules of Professional Conduct. A lawyer should not represent another client if “representation of one client will be directly adverse to another client” unless both
clients give their informed consent to the dual representation, and the consent is confirmed in writing. The lawyer's personal interests or that of third parties who are not clients, such as family members, may also create a risk of a conflict that must be avoided.

Clearly, a lawyer should not accept the engagement if the lawyer's personal interests or desires will, or if there is a reasonable probability that they will, adversely affect the advice to be given or services to be rendered to the prospective client. The client is entitled to independent advice from members of the legal team. The information that may be considered to create a conflict of interest is not limited solely to that of the attorney representing a client. It also includes the information held by another member of the legal team, including the legal assistant—and yes, the technology consultant.

**FUTURE TRENDS IN LAW OFFICE TECHNOLOGY**

The pressure on the legal team is to be more productive. The demand for speedy justice in the courts has resulted in less time to prepare and present cases, requiring the legal team to use technology to become faster and more productive with less time in which to do it. Advances in computer technology are providing solutions to the productivity issue.

Looking ahead to what's on the technological horizon is imperative to the smooth and profitable functioning of the law office. Anticipating change and incorporating it requires IT knowledge and savvy, whether it comes in the form of in-house staff or external technology consultants. Corporate law firms might have a chief information officer or chief technology officer whose role includes anticipating change and planning for it in concrete as well as visionary ways. Those responsible for IT at smaller firms, as well, have the responsibility to be well-informed of technology trends in order to assess when a new tool should be added to their technology repertoire—and when it should be avoided.

The following section describes emerging technology that is available now and in use at some law firms and technology that is available but not fully deployed. The list is not exhaustive but rather illuminative of what businesses might expect in the near and distant future. How soon is a matter of conjecture, but we know from recent technology trends that it will be sooner than we could have expected even a few years ago. As Raymond Kurzweil writes in his essay, “The Law of Accelerating Returns” (2001),

> An analysis of the history of technology shows that technological change is exponential, contrary to the common-sense “intuitive linear” view. So we won’t experience 100 years of progress in the 21st century—it will be more like 20,000 years of progress (at today’s rate). The “returns,” such as chip speed and cost-effectiveness, also increase exponentially. There’s even exponential growth in the rate of exponential growth.

### Voice Recognition

**Voice recognition** software has been around for a number of years. Many will remember trying out an earlier version of a speech recognition program as a possible alternative to typing. More computer technology has brought this software to the point of accuracy approaching, and in some cases exceeding, the accuracy of typing. Speech-enabled devices include cell phones, personal digital assistants (PDAs), and other handheld devices. It is now possible with programs like Dragon Naturally Speaking Legal Version (see Exhibit 1.6) to dictate working drafts of legal documents directly into almost any program, including word processors, spreadsheets, and databases.
Exhibit 1.6  A paralegal using The Boom from UmeVoice, a high quality noise reduction microphone with Dragon Naturally Speaking to achieve high accuracy speech recognition.

without touching a computer keyboard, and send the document to another member of the legal team electronically over a network or by e-mail. So advanced have the systems become, portable dictation devices can be used out of the office and then connected to the office computer, on which the speech recognition program has been installed, and the documents transcribed without the intervention of a typist. At up to 160 words a minute for speech input, for the average typist on the legal team the savings are significant.

Miniaturization and Portability

The trend in computers and related computer devices has been toward miniaturization and portability. Smaller devices are becoming more powerful than some desktop systems. Even the telephone has been reduced to a pocket-sized wireless communication device that is also capable of taking and displaying photo images, documents, and e-mails—many functions that formerly were reserved to large hardwired computer devices.

Wireless Technology

Hardware in many offices today includes the wireless telephone and the laptop computer with wireless capability. These tools allow constant communication and enable work to be performed virtually anywhere—home, courthouse, airport lounge, or coffee shop. The connection to the office may be by wireless network using the cell phone, or by a wireless connection with built-in wireless network hardware on the computer, or using an adapter card plugged into the computer that uses a wireless Internet connection.

Unlike a few years ago, wires are not necessary to access networks or to set up network connections. Today they may be set up using wireless technology in a wireless network. Just as the cell phone has enabled communications without wires, so has wireless technology allowed networks to be set up where workstations, servers, and peripherals connect over a wireless connection. Remote access is also possible by the
use of wireless Internet connection using laptops and other personal computing devices including cell phones with built-in Web or Internet access.

Remote Access

**Remote access** allows members of the legal team working on cases out of the office to connect with the office file server to retrieve documents, work on them, and send them to other members of the team anywhere in the world. If hardcopy is needed, documents may be printed on any printer accessible over the Internet, including printers in remote office locations, public access points in airports, clients' offices, and courthouses.

Remote Collaboration

**Remote collaboration** means that members of the team can work collaboratively from multiple locations as if in the same physical location. This is possible through software conferencing programs that allow the sharing of files while communicating and seeing each other on the same screen using small desktop cameras or cameras built-in to laptop computers. The same remote access technology allows for the taking of witness statements from remote locations while the parties can see each other or view exhibits on the computer screen.

With higher-speed Internet connections the reality of true real-time videoconferencing will become a reality. Today limited-speed connections restrict how much information can be transmitted. In the simplest form, slower speed increases the time to send a document. If not fast enough it prevents full-motion, full-screen video. With videoconferencing from multiple locations, a high-speed Internet connection is required to simultaneously transmit both the sound and the images.

Wireless Computer Networks

**Wireless computer networks** are like cell phone networks in that both use radio waves to transmit signals to a receiver. Cell phone systems use cell towers located at strategic points all over the world to receive the signals from the cell phone subscriber's cellular device. The wireless network uses wireless access points, which are essentially receivers of radio signals that convert them so they can be transmitted over a connecting wire to a computer or other connection to the Internet.

Unlike cell phone towers, these access points are more limited. With the exception of a few cities that have access points over a large portion of the city, such as San Francisco, New Orleans, and Philadelphia, these access points are local, often with a range limited to a few hundred feet. Many of these access points are provided in coffee shops, airport lounges, hotels, libraries, and bookstores without charge or at a nominal fee to encourage customers to use the facility instead of a competitor's.

With the growth of wireless “hot spot” locations, the wire connection has been cut. Lawyers and their paralegals may be connected anywhere in the world and send documents electronically back and forth with the same ease as sending them within the same building.

Thin Client

A trend called “**thin client**” is developing to use computer systems where everything (programs and files) is maintained on a centralized server and each user has access through a dumb terminal (one without programs or data). The thin client model offers some additional level of control and prevents loss of information through the loss of a computer.
Chapter 1

INTRODUCTION TO TECHNOLOGY IN THE LAW OFFICE

Computer technology is used in many ways in the law office:
- Word processing
- Electronic spreadsheets
- Time and billing programs
- Accounting programs
- Calendaring
- Graphic presentation software
- Trial presentation software
- Internet search engines
- Databases
- Document scanning
- Document search features
- E-mail and document delivery

Checklist

Use the following checklist as a tool to assess how your firm uses technology and to discover areas you might want to address in the future.

- Which functions are automated now; which additional functions do you wish to automate?
- Are existing pieces of equipment mutually compatible?
- Does everyone in the office use the same software?
- Are word processing procedures standardized?
- Is the billing system interfaced with accounting?
- Are the accounts payable checks computer-generated or prepared manually?
- Are you keeping track of client expenses (e.g., copies, fax, long distance, postage)?
- Are you getting telephone messages delivered accurately and in a timely manner?
- Does the office get flooded with interoffice memoranda?
- Is the payroll prepared in-house? Manually?
- Do the attorneys carry boxes to the courthouse?
- Do the paralegals spend hours preparing manual document index systems?
- How do you check for conflicts of interest?
- What type of calendaring system do you use for docket control purposes?

Source: http://www.texasbar.com/lomp/links.htm

Summary
## Technology in the Law Office

### IMPACT OF THE FEDERAL RULES OF CIVIL PROCEDURE

Effective December 2006 the Federal Rules specifically address the issue of the increased use of electronic stored documentation.

### LEARNING THE LANGUAGE OF TECHNOLOGY

An understanding of the terminology of technology is a prerequisite to understanding the technology found in the law office, the courthouse, and the client's business.

### TECHNOLOGY SUPPORT IN THE LAW OFFICE

In larger law offices, corporate legal departments, and government offices there is usually a technical support staff.

**Working with In-House Technology Support Staff**

Litigation teams may require support for videotaping depositions at out-of-office or out-of-town locations. Trials may require the use of sophisticated presentation equipment. All members of the legal team may need access to the home office files on the office file servers from remote locations on their wireless laptops.

**Issues in Working with Outside Technology Consultants**

Outside companies are retained on a maintenance contract basis to provide coverage as needed for a period of time, or for a fixed rate for hardware issues or to support software used in the office. Others are hired as needed at an hourly rate for support or maintenance.

### OUTSOURCING

Shipping work out of the office or overseas to save money.

### TRAINING FOR HARDWARE AND SOFTWARE SUPPORT

To be efficient each user of the office computer system must be trained in the features and procedures of that system.

### ETHICAL ISSUES IN USING TECHNOLOGY SUPPORT

The technical staff and consultant are nonlegal staff that will or may have access to privileged or confidential client files and trial strategy. Technology staff must understand the nature of the confidentiality of the files on which they are working.

**Confidentiality, Privilege, and Work Product**

Technical support personnel and computer consultants must understand the nature and obligations of the legal profession with regard to confidentiality and the attorney–client privilege.

**CONFIDENTIALITY**

Attorneys have a duty to treat client information obtained in the course of representation of a client in confidence under ABA Rule 1.6.

**ATTORNEY–CLIENT PRIVILEGE**

The attorney–client privilege is a rule of evidence that protects the client from the attorney revealing the confidential information.

**EXTENSION OF ATTORNEY–CLIENT PRIVILEGE TO OTHERS**

“. . . the privilege in appropriate circumstances extends to otherwise privileged communications that involve persons assisting the lawyer in the rendition of legal services. . . .” (U.S. District Court for the Southern District of New York)

(continued)
## Work Product Doctrine

Limited protection for material prepared by the attorney, or those working for the attorney, in anticipation of litigation or for trial.

## Conflict of Interest

A lawyer should not accept the engagement if the lawyer’s personal interests or desires will, or if there is a reasonable probability that they will, adversely affect the advice to be given or services to be rendered to the prospective client.

## Future Trends in Law Office Technology

### Voice Recognition

Speech-enabled devices include cell phones, personal digital assistants (PDAs), and other handheld devices.

### Miniaturization and Portability

The trend in computers and related computer devices has been toward miniaturization and portability.

### Wireless Technology

Wires are not necessary to access networks or to set up network connections. Today they may be set up using wireless technology in a wireless network.

### Remote Access

The legal team working on cases out of the office can connect with the office file server.

### Remote Collaboration

The legal team can work collaboratively from multiple locations as if in the same physical location through software conferencing programs that allow the sharing of files while communicating and seeing each other on the same screen using small desktop cameras or cameras built-in to laptop computers.

### Wireless Computer Networks

Wireless computers use radio waves to transmit signals to wireless access points, which are essentially receivers of radio signals that convert them so they can be transmitted over a connecting wire to a computer or other connection to the Internet.

### Thin Client

Everything (programs and files) is maintained on a centralized server and each user has access through a dumb terminal.

## Key Terminology

- **Agent**
- **Attorney–client privilege**
- **Attachments**
- **Confidentiality**
- **Conflict of Interest**
- **Digital format**
- **Hard copy**
- **Hot spot**
- **IT**
- **Outsourcing**
- **Remote access**
- **Remote collaboration**
- **Smoking gun**
- **Thin client**
- **Videoconferencing**
- **Voice recognition**
- **Wireless computer network**
- **Work product doctrine**
**Concept Review Questions and Exercises**

1. Prepare a detailed list of the ways technology is used in the law office and courts.
2. Explain, with examples, how the Internet is used today by law offices and the courts.
3. Why does the legal team need to have a working familiarity with computers and the different types of computer software programs? Give examples.
4. How have the new Federal Rules of Civil Procedure impacted the legal profession?
5. Explain why the legal team must be able to speak the language of technology.
6. What is the role of the Information Technology department in a law office?
7. What role do passwords play in computer security?
8. Why is conflict of interest an issue for the legal team?
9. What are the ethical issues in a law firm using outside computer or technology consultants?
10. What is required to invoke the attorney–client privilege? Explain sufficiently for a nonlegal team member to be able to understand.
11. What is covered under the work product doctrine?
12. Should a technology consultant be considered an "other representative" under the Federal Rules of Civil Procedure, Rule 26? Why or why not?
13. Describe the application of legal ethics in the use of technology.
14. Why is it necessary for the members of the legal team to be able to communicate with others in a support or user position about technology as it relates to the legal community? Give examples.

**Internet Exercises**

1. Find a copy of the most current version of the Model Rules of Professional Conduct as published by the American Bar Association.
2. Find a copy of the most current version of the ethical rules as used in your jurisdiction.
3. Find an article on the use of outsourcing in the legal community.
4. Review the latest version of the technology survey of the International Paralegal Management Association.

**Portfolio Assignments**

1. Prepare an office memo on computer security related to the computer virus.
   a. Describe what a computer virus is and does.
   b. Describe the potential danger to the enterprise.
   c. What can a law office do to protect the firm against computer viruses?
2. Prepare a presentation on how the IT department can aid the paralegal support staff.
Scenario Case Study

Use the opening scenario for this chapter to answer the following questions. The setting is the discussion between a new attorney and an experienced paralegal who has agreed to help him open an office.

1. What are minimum computer needs for a start-up law office?
2. Are the minimum needs different if the attorney is frequently out of the office trying cases?
3. What issues are there in using an outside software, hardware, or Internet consultant in setting up a law office?
4. What, if any, additional minimum needs exist for a trial attorney regarding office set-up?
5. Prepare a checklist of minimum requirements and a second of recommended technology needs for the start-up office. Be specific. Print out and save a copy for future reference.

Continuing Cases and Exercises

1. Internet Resources

Start a list of resources available on the Internet as you progress through the chapters and complete assignments. To get you started, the Internet resources from Chapter 1 have been inserted. Remember that Web addresses change; update your list regularly.

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2. Keep a log of the time you spend in this course. Record the actual time spent (you can round to 1/10 of an hour) for:
   a. Class attendance (Conference with supervising attorney)
   b. Travel to and from class (Travel)
   c. Time reading and researching material (Research)
   d. Time preparing assignments (Drafting documents)
   e. Time spent preparing for tests (Preparation)
   f. Time taking tests (Trial)
   g. Other miscellaneous items (Miscellaneous)
3. Prepare a list of calendar items for the course including times and locations for class, library sessions, tests, assignment deadlines, and other class-related calendar items.

4. Design a Web page

5. Owen Mason, Esq., a young technology-aware attorney, just starting out in a new legal practice, thought the World Wide Web was a good source of potential business. As a clerk in the Federal Court he had not had an opportunity to look at many law office websites. He asks your help in designing his Web page.
   a. Locate the websites of law firms in your area as well as around the country using the Internet search tools available to you. Make a list of the best and the worst features of these websites.
   b. Prepare your recommendations for Mr. Mason, including details and, if possible, screen printouts. Make a list of the Web addresses for each of the sites that you feel demonstrate the good, the bad, and the ugly.
   c. Prepare a list of website designers in your immediate area.
   d. What are the ethical issues and potential UPL issues in the use of a website in your jurisdiction?
   e. ADVANCED STUDENTS. Create a website using available resources and software.

Note: A number of lawyers use the Web to promote their specialty practices. Use the generic terminology—civil litigation—to locate other Web pages of attorneys specializing in civil litigation.