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## Hold'em or Fold'em? Placing Bets on LegalTech and Innovation

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**Business of Law**





## Want To Be a Great Trial Lawyer? Embrace Technology

By Stephen Embry, Writer and publisher of Tech-Law Crossroads, a blog devoted to law, innovation and technology, speaker, and lawyer

What is it about trial lawyers and technology in the courtroom? Ask most trial lawyers and they will tell you that, at least in more significant cases, they will always have someone in the courtroom to run whatever tech they are using.

And typically, that person picks the tech that the lawyer uses and designs how it will be used at trial. Indeed, many trial lawyers—even experienced ones—believe that presentation technology is just too complicated and that they just don't feel comfortable and capable running it. The view of most of these lawyers is why bother learning about the technology they use or could use in the courtroom or how to make it fit the story they are trying to tell.

### **Why Bother?**

But is this really true? Great trial lawyers are, at their core, storytellers. Great storytellers don't cede control of storytelling techniques to others; they embrace and use them. Trial lawyers that remain ignorant about tech don't know what tools there are to help tell the story they want to

tell. Trial lawyers that don't know how to use tech in the courtroom risk disrupting the telling of their story and distracting the jury as they fumble handoffs with their tech assistants (all too often disparagingly referred to as the "non-lawyers") sitting across the courtroom.

No trial lawyer really wants to be a fumbling bumbler who has to direct someone else to bring this up or bring that up punctuated with comments like "no not that, the other one." Most trial lawyers get the fact that a single lawyer on his or her feet with nothing than an iPad in their hands controls the courtroom and the presentation much like the captain of the ship controls their vessel.

But most of all, trial lawyers that dismiss technology and don't make it integral in the development of their case and presentation end up with their story being at the mercy of technology in the hands of others instead of using technology to support and enhance their story. In other words, bumlbers make the story fit the tech rather than the tech fitting the story.

But all this begs the question: can trial lawyers sufficiently master trial presentation technology to use it confidentially and enhance the stories they are trying to tell. As a [legal technology evangelist](#), I have always thought the answer should and has to be, yes.

### **Can Trial Lawyers Sufficiently Master Trial Presentation Technology?**

This hypothesis was recently put to the test at TechU, an intensive technology trial presentation course put on by the [Federation of Defense and Corporate Counsel](#). (TechU and the related [FDCC Evolve initiative](#) are described in a recent article in greater detail).

According to its [website](#), the Federation, or FDCC as its better known, is "composed of recognized leaders in the legal community who have achieved professional distinction, is dedicated to promoting knowledge, fellowship, and professionalism of its members." Membership is by invitation only, and the FDCC rigorously vets candidates.

Its members come mostly from small to mid-size boutique firms that typically handle the defense of high-end liability and coverage cases for insurance companies. In a nutshell, these lawyers try cases. All the time. The FDCC is a group of elite trial defense lawyers. (The group also counts among its members a good number of in-house insurance industry members as well).

### **The Idea**

TechU was the brainchild of the current FDCC President, [Scott Kraemer](#). It was Scott's view that not only can trial lawyers effectively use trial presentation technology, but mastery of trial technology is essential particularly for FDCC lawyers. By becoming more knowledgeable about and more effectively using technology tools to improve their storytelling abilities, thought Scott, FDCC lawyers would enhance their trial skills consistent with their reputation as the best of the best.

Scott came up with the idea of a course, later named TechU, which would culminate in the award of the Technology Master Advocate Certifications to the attendees and instructors. TechU graduated its first class over the weekend of April 7th. [Bob Christie](#), a Seattle lawyer, headed the instructional team, composed of [myself](#), [Jack Delany](#), a Philadelphia lawyer, and Tom Oakes, a legal technologist with [Veri-text Legal Solutions](#).

From Scott's idea, the FDCC also created the [Evolve website](#) where its members can go to find what technology is available, some background on that tech and some instruction on how to use it. The FDCC also partnered with [Traveling Coaches](#) to create training modules on various technologies.

## TechU

But there is nothing like hands-on experience which is where the crown jewel of this initiative, TechU, comes in. This 2 1/2 day intensive and immersive tech training was held in Philadelphia at Veritext's offices. The training was designed to provide participants the chance to learn the technology that's out there, have access to course instructors to help them with any and all questions and then actually use the skills they learned by making opening and closing statements to the other participants for feedback and constructive comment.

We deliberately kept the class size small so that everyone would have the chance to present. The participants themselves were a diverse group of lawyers ranging from those with 40 years' experience trying cases to those who had only a few. We had lawyers from small firms, large firms and in between firms. We had a number of women participants and those of different ethnic backgrounds. Many had minimal tech experience. Given this, we designed such that the participants could learn together in teams, collaborate and then talk in constructive terms about what they saw and heard.

The course was based, in large part, upon the use of the excellent [Lit Software](#) trial presentation products trio: [TrialPad](#), [TranscriptPad](#), and [DocReviewPad](#). We picked these products

in large part because they are intuitive to use and because they enable the use to do so much. The participants were instructed to come with an iPad with these three applications already installed.

The participants were also required to complete online training using a Traveling Coaches program developed for the FDCC. Then, using a hypothetical case, the participants created their opening and closing statements using TrialPad and incorporating other various technologies such as [Stage Pro](#), [TimeLine 3d](#), [Teleprompter +3](#), [PowerPoint](#) and [Body Anatomy](#).

To get everyone thinking about the importance of storytelling in the courtroom and how technology in the could enhance that, we kicked off Friday night with a lecture from [Bob Mongeluzzi](#), a well known and highly successful plaintiffs' lawyer. Mongeluzzi entertained and impressed the group by doing some of his actual opening and closings in well-known cases. He showed how technology and storytelling skills could be effectively married to obtain some of the largest verdicts in the nation.

The next day, Judge Linda Caracappa, Chief Magistrate Judge for the Eastern District of Pennsylvania told her story of how the Courts in her jurisdiction became a model for the rest of the country for technology hardware available in the courtroom. Borne out of a desire to "level the playing field," the Courts in the Eastern District of Pennsylvania have state of the art tools available to all practitioners. We also heard from Chris Espinosa of Exponent who told us about the latest tech tools for visualization methods in the courtroom such as augmented and virtual reality.

## The Result

But while these lectures were enlightening, the highlight of the TechU was the presentations by the participants. To prepare for their presentations, the participants underwent almost a day of intensive hands-on use of the technology with the instructors and their colleagues, one on one to gain an understanding of what the technological tools available could do, how to use them and how to better tell stories with the aid of tech tools. The lead instructor, Bob Christie, perceptively understood that the ability for everyone to collaborate was critical to this process and created an atmosphere where learning and doing without fear of either failure or criticism could occur, allowing remarkable growth.

Interestingly, the majority of the questions and concerns centered on how to get data into the various programs like trial pad and then how to connect the iPad to a projector so that the images could be seen on the screen. Consistent with other experiences (and for that matter, my own), once the participants started using TrialPad and other Litsoftware programs, they very quickly caught on and became skillful at leveraging this technology demonstrating once again how intuitive these programs, as well as other courtroom technologies, really are.

And the opening and closing statements created by this hands-on marriage between technology and storytelling were in a word: incredible. It was remarkable how far and how fast the participants came in mastering the skills. But more importantly, they recognized that this marriage opened up whole new worlds of storytelling capabilities.

## What Did We Learn?

So, what are the takeaways? Here are five:

- Lawyers should not and need not be dependent on tech assistants to run tech in the courtroom. When they do, they disrupt the flow of the story they are trying to tell, and the jury loses attention.
- Lawyers must know and understand technology and how to tell stories with it. Again, stories developed by lawyers that depend on third parties not immersed in the story results in stories fit around the technology instead of technology being used to enhance the story.
- Lawyers must know what technology there is out there and stay current. Without training like TechU, it's hard to know what's available and how it can enhance storylines.
- Collaboration around tech and storytelling is a phenomenal tool. Many times during the course, someone would offer a suggestion or way to accomplish something that solved a problem. And a diverse group coming at a story of a case in different ways unquestionably improves the product.
- Lawyers of whatever age, skill and knowledge level can very quickly master the technology that can improve their presentations and trial mastery. It need not be complicated or hard.

In short, the training was a rousing success. We kept getting comments like “best seminar I’ve been to in 10 years”, “it was a game changer,” “I can’t believe I came so far so fast.”

The TechU graduates came away from the course with an appreciation of what technology can do to enhance storytelling and persuasion. They came away with not only the confidence to begin using technology in the courtroom but to themselves decide what and how to use it.

And most importantly, they saw and experienced the power of trial presentation technology when it resides not in some third party but in the palm of their own hands.

So yes, trial lawyers can sufficiently master trial presentation technology to use it confidentially and to better persuade and communicate the stories they want to tell. And if they want to be competitive, they'd better.

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#### **About the Author:**

[Stephen Embry](#) is a frequent speaker, blogger and writer. He is publisher of [TechLaw Crossroads](#), a blog devoted to the examination of the tension between technology, the law and the

practice of law. He is also co-author of a book entitled *Mass Tort Claims Resolution Facilities* and the 2017 and 2016 editions of the American Bar Association's *TechReports*.

Formerly a member of Frost Brown Todd LLC and the Firm's class action, privacy and mass tort groups, Stephen is a national litigator and advisor who is experienced in developing solutions to complex litigation and corporate problems. His mission is to find simple, successful and elegant solutions to civil litigation problems and dilemmas primarily in the mass tort, business and consumer class action, and privacy and data breach arenas.

Stephen recently successfully completed the certification program to earn the title of Technology Master Advocate by the Federation of Defense & Corporate Counsel. He now practices with his own firm, *embryLaw LLC*.

In addition to practicing law, Stephen's passions include education, officiating swimming on national and local levels and all things tech and travel related.