



NORTH AMERICAN CONSTRUCTION SUMMIT

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Construction Claims in the Wake of AI



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Perrin Construction Summit – February 9, 2026

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INTRODUCTION

Artificial intelligence is reshaping construction law claims, construction site accident claims, and claims for professional malpractice and breach of contract against design professionals.

From a legal perspective, the impacts are most visible in:

- **evidence creation and analysis on projects**
- **discovery and expert practice**
- **evolving standards of care and contract allocation.**



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INTRODUCTION cont'd.

On the Court front, published decisions addressing AI tools in construction disputes are still very limited, but courts in New York and New Jersey are already shaping the rules for discovery, admissibility, and professional conduct around AI generated materials.

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INTRODUCTION cont'd

How AI is changing the facts and theories in construction disputes

AI has moved upstream into project planning, execution, and documentation, which is altering the evidence set and the narratives parties can advance.

- Schedule forecasting, risk modeling, and critical path analytics increasingly rely on machine learning techniques, changing how delay and disruption are proven or refuted.
- AI enabled computer vision from drones and site cameras produces contemporaneous progress data that can corroborate or undercut daily reports, time impact analyses, and change order causation. AI is also automating routing construction tasks as you will see.
- In design and coordination, AI enhanced BIM tools (for clash detection, quantity takeoffs, and automated code checks) affect the definition of scope, the allocation of responsibility for defects, and the timing of when issues should have been discovered and flagged.



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INTRODUCTION:

How AI is changing the facts and theories in construction disputes

On the documentation side, generative AI is now used to draft RFIs, daily logs, and change-order narratives. That creates new questions about **authorship, authenticity, and completeness**, while also giving opponents additional angles to challenge credibility if **human review is weak**.

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Workplace Transformation: AI at the Helm

- Knowledge Worker revolution!
- McKinsey - 70% of office tasks.
- More profound impact on humanity than fire, electricity and the internet – Pichai, CEO Google
- ...best or worst thing to happen to humanity. – Steven Hawking
- ...faith in people...give them tools, they'll do wonderful things with them. –Steve Jobs



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AI in Action: Practical Use Cases for Designers

- Building design and details
- Specifications
- QA/QC
- Construction Administration
- AI for efficient note-taking
- Material Research

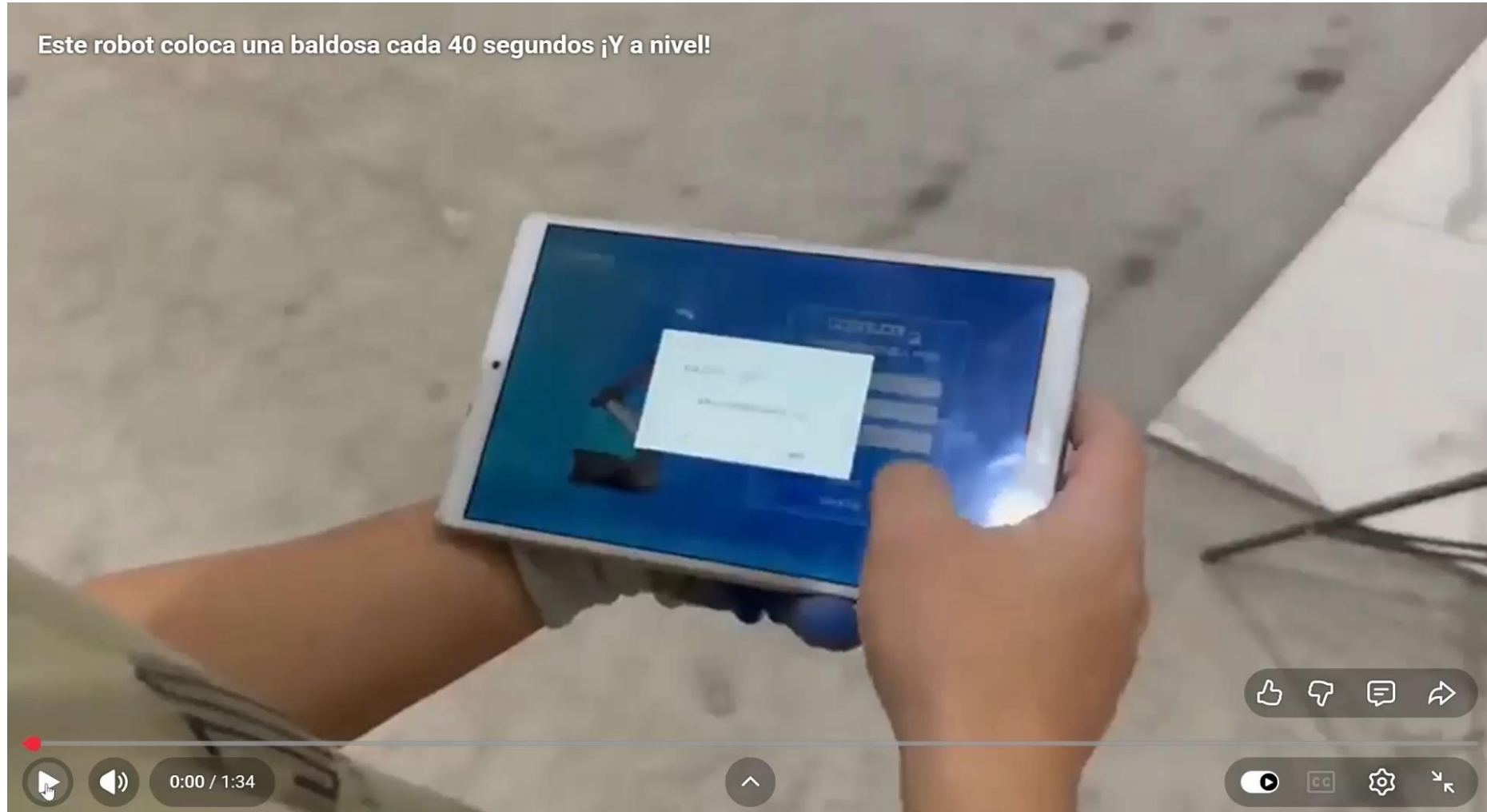
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February 9-10, 2026 – “Automation”



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Progress Tracking: Computer vision, often via drones or 3D scanning, measures installed quantities and compares them to the project schedule, providing automated updates on construction milestones.

Quality Control: Algorithms automatically detect structural defects such as cracks, rust, or misaligned, rebar, reducing the need for manual inspection and costly rework.

Site Security & Asset Management: Systems monitor sites to track expensive equipment and prevent unauthorized access to restricted areas.

Safety Monitoring: AI analyzes camera feeds in real-time to detect if workers are wearing PPE (helmets, vests) and identify unsafe actions, preventing accidents.

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Risk Mitigation & Scheduling: AI analyzes schedules, weather, and external factors to identify potential delays and bottlenecks, allowing for proactive schedule adjustments.

Cost Estimation & Budget Control: By comparing current project data against historical project records, AI forecasts cost overruns and improves the accuracy of budget estimates.

Predictive Maintenance: Sensors on machinery and building systems (elevators, HVAC) feed data into AI to predict failures before they happen, reducing downtime.

Resource Optimization: AI analyzes past resource usage to optimize labor allocation and material delivery, minimizing waste and shortages.

Safety Monitoring: AI monitors site footage and data in real-time to predict and prevent potential safety hazards, reducing accidents.

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February 9-10, 2026 – “The Black-Box Problem”



The “black box” problem in artificial intelligence refers to the difficulty—or impossibility—of understanding how complex AI systems reach their outputs. When a model’s internal logic is opaque, users, regulators, courts, and affected parties cannot readily determine why a decision was made, whether it is reliable, and who is accountable for errors. This opacity complicates trust, auditability, legal compliance, and dispute resolution.

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What creates the black box

Modern AI systems—especially deep neural networks and large ensemble models—are highly nonlinear and operate in high-dimensional spaces. Several factors drive opacity:

Model complexity: Millions to billions of parameters interact in ways that defy intuitive, human-scale reasoning.

Data-driven behavior: Learned patterns reflect correlations in training data rather than explicit, human-written rules.

Proprietary constraints: Vendors often restrict access to model internals, training data, or evaluation artifacts.

Dynamic evolution: Models can drift as data, prompts, and fine-tuning change; versioning and reproducibility are often weak.

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Why it matters – opponents argue unverifiable and lacking methodology transparency

Accountability and causation: Without clear reasoning, it's hard to attribute fault, negligence, or apportion liability when AI-assisted decisions cause errors, delays or safety incidents.

Bias and fairness: Hidden biases in training data or features can systematically disadvantage groups; without visibility, parties cannot effectively test, refute, or remediate bias.

Reliability and safety: Opaque models may fail unexpectedly (out-of-distribution inputs, adversarial cases), and stakeholders cannot predict failure modes or set appropriate safeguards.

Evidentiary hurdles: In litigation, parties must establish reliability, authenticate outputs, and explain error rates. Black-box models raise challenges under expert-evidence standards (e.g., general acceptance, testability, known error rates).

Compliance and governance: Risk management, internal controls, and regulatory reporting depend on explanation, documentation, and audit trails that black-box systems often lack.

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Implications for litigators and risk managers

Discovery and preservation: Seek or preserve model versions, training data summaries, prompts, inference logs, validation studies, and error analyses. Anticipate protective-order terms for trade secrets.

Admissibility and weight: Build or attack foundations with evidence of validation, error rates, general acceptance, and reproducibility; be prepared to explain methodologies and limitations in plain language.

Standards of care: As explainability and governance practices become common, failure to implement them may inform negligence or professional-malpractice theories; conversely, documented controls can support a reasonableness defense.

Remedies and compliance: Where full transparency is infeasible, propose practical alternatives—third-party audits, structured disclosures, or testing protocols—to balance fairness, IP, and safety.



How are construction companies addressing these concerns?

RAG (Retrieval-Augmented Generation); AI that looks only at the resources you specify

These models do not access the web at all. They only learn from the project docs fed in. Like asking the project questions about itself.

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Contractual & Performance Issues:

Inaccurate cost projections and scheduling errors, or failures in BIM-integrated tools, can trigger litigation over delays.

- claims for additional work/costs
- "acceleration" charges (working faster to make up time)
- “escalation” charges (costs up)
- liquidated damages (e.g., pre-determined daily rate or sum that a contractor pays to an owner for failing to finish a project by a specific, agreed-upon date)

That leads to disputes over whether AI-generated schedules reflect actual project conditions, and whether algorithmic “what-ifs” are speculative.

- Owners argue AI proves contractor inefficiency;
- contractors argue AI ignores field realities.

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Allocation of Risk in Contracts

Contracts are lagging behind technology, but claims are exploiting that gap.

Common contract-based issues:

- **Who bears risk for AI errors?**
- **Is AI a “means and methods” tool?**
- **Are AI outputs “instruments of service”?**
- **Are AI tools approved, prohibited, or silent?**

Where contracts are silent, courts fall back on:

- **Traditional risk allocation**
- **Control**
- **Reliance**
- **Foreseeability**

****This ambiguity fuels disputes.**

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AI Safety/Drone monitoring can:

- Detect PPE violations
- Identify fall hazards
- Flag unsafe sequencing

Exposure Scenario:

- AI flags hazards but PM fails to act
- Accident occurs
- Plaintiff argues actual notice via AI alerts
- Improper Training
- Improper Operation
- “Going cheap” on delayed system

Escalates:

- Negligence claims
- Contractual safety breaches
- Indemnification obligation



How AI Is Creating New Vehicles for Liability (cont'd) – Legal Perspective

An architect or engineer's failure to use AI at all, or properly, will be the new vehicle for professional liability and other claims.

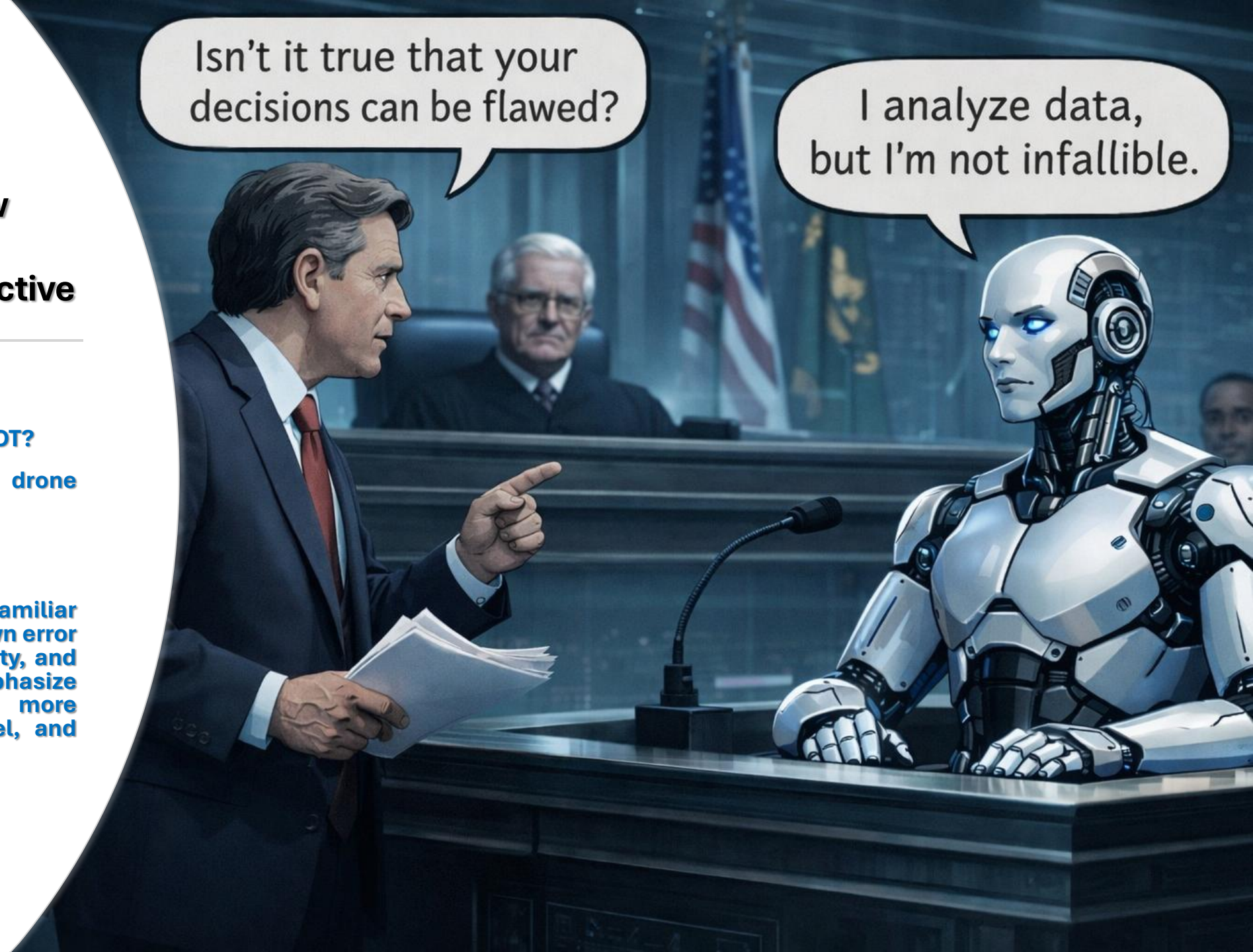
- AI will become the Standard of Care, or at least an integral part of it
- Failure to Use
 - Primary
 - Secondary
- Negligent Training
 - Lesser Algorithms
- Negligent Use
- Confidentiality/Copyright/Ethics



How AI Is Creating New Vehicles for Liability (cont'd) – Legal Perspective

"Black Box" Problem:

- Can You cross-examine a ROBOT?
- Cross-examine construction drone operator or purveyor
- Reliability-Transparency-Accountability
- Cross should tie opacity to familiar evidentiary concepts like known error rates, testability, reproducibility, and the sufficiency of data. Emphasize that an output cannot be more reliable than the data, model, and controls that produced it.

A lawyer in a dark suit and red tie stands on the left, pointing his right index finger towards a robot. The robot, a sleek silver and black humanoid figure with glowing blue eyes, sits at a witness stand on the right. In the background, a judge in a black robe sits on a bench, and an American flag is visible. The scene is set in a courtroom with a blue and grey color palette.

Isn't it true that your decisions can be flawed?

I analyze data, but I'm not infallible.