Unlocking the Black Box

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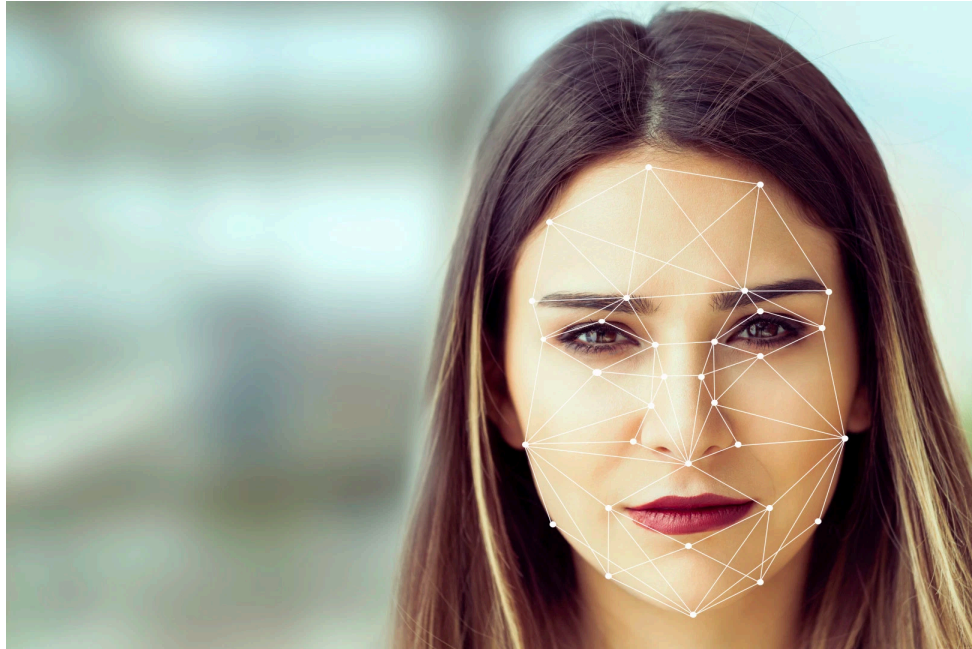
Where You See Black Box Algorithms
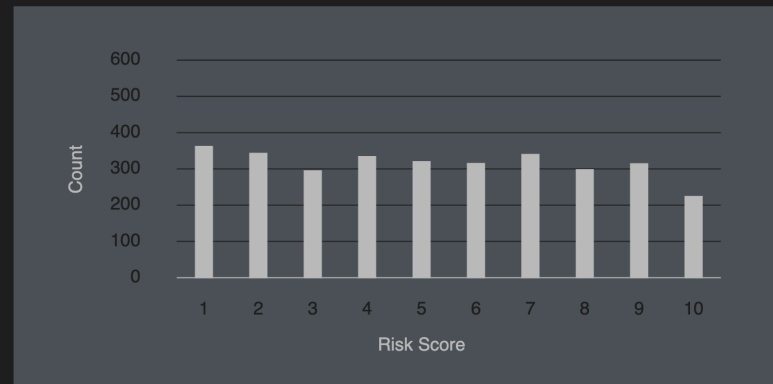
Crafting Challenges

Where You See Black Box Algorithms
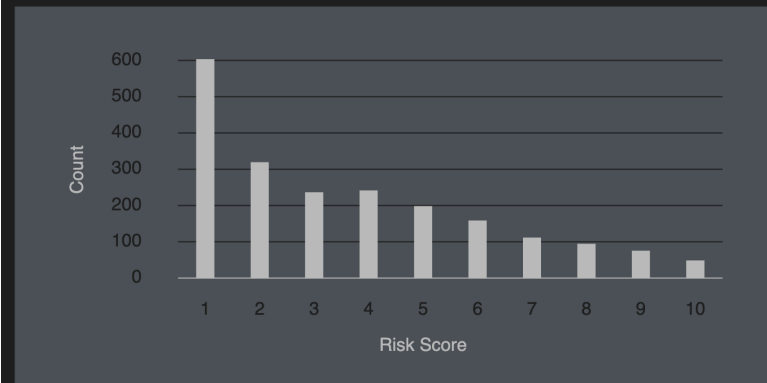
Crafting Challenges

Facial Recognition

Risk Assessment Scores

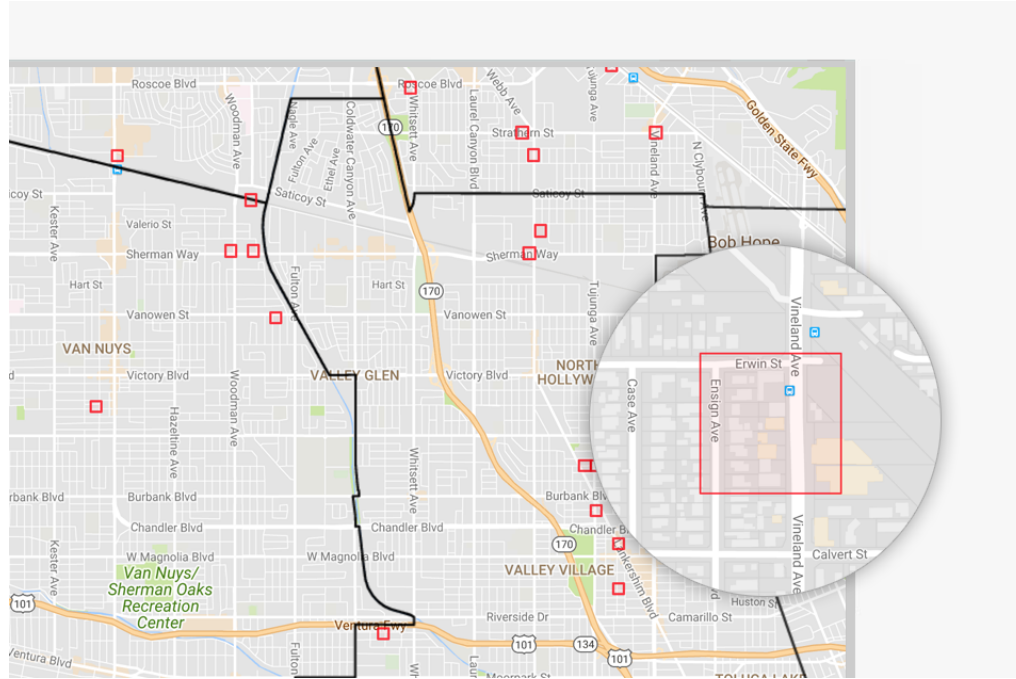Source: Julia Angwin et al., *Machine Bias*, ProPublica (May 23, 2016),
https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing

Predictive Policing Algorithms

Probabilistic Genotyping

Where You See Black Box Algorithms

Crafting Challenges

Challenges Can Take Many Forms

- Discovery request + related motion to compel

- Pre-trial motion to exclude evidence

- *Daubert*/*Frye* motion

- Requests for jury instructions & adverse inferences

- Challenges via objections or experts during trial

Discovery Requests & Motions to Compel

Motions to Exclude Evidence

Daubert, *Frye*, and Rules of Evidence

- *Daubert*
  - Scientific theory can be and has been tested
  - Has been subjected to peer review and publication
  - Known or potential error rate
  - Generally accepted in the relevant scientific community [the *Frye* standard]
  - Standards that control operation + were they used

- FRE 702
  - (a) specialized knowledge will help trier of fact understand the evidence or determine a fact in issue
  - (b) testimony is based on sufficient facts or data
  - (c) testimony is product of reliable principles/methods
  - (d) principles/methods were reliably applied in the case

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Other Types of Challenges

Kaboom! You've been lawyered.

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How to Tackle These Issues in Your Cases

- Experts

- The Law (at least kind of)

- Foundational **AND** as applied challenges

- Build a record

- Don't forget the non-tech arguments!

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