

# LAB EXERCISE 5: REVIEW TWO ETHICAL RISK CASES

(5 MARKS ASSIGNMENT)



## Instructions:

Read the two short case caselets:

**Case Study 1 – Loomis vs Wisconsin – Bias in Risk Assessment Algorithm**

**Cast Study 2 - Robert McDaniel – Algorithm Classification – Freedom Impact**

## **Group Discussion to Follow with Questions to Answer**

- 1.) What are some of the challenges that AI will pose in the judicial system based on these two cases?
- 2.) What is the impact of algorithms on fundamental liberties and
- 3.) How do you think we can make ‘algorithms designers and developers (People) more accountable’?

## **Learning Outcome:**

Increase appreciation of the ethical risks of Bias in AI Algorithms and the responsibility designers and developers need to have to create a responsible and Trusted AI System that is ethical responsible and also is aware of the legal risks when thoughtful design is not a priority.

# LAB EXERCISE 5:CASE STUDY 1: LOOMIS VS WISCONSIN



denied, 137 S. Ct. 2290 (2017), was a Wisconsin Supreme Court case that was appealed to the United States Supreme Court. The case **challenged the State of Wisconsin's use of closed-source risk assessment software in the sentencing of Eric Loomis to six years in prison.**

In the American context, which is where most actual employment of AI systems in criminal justice has so far occurred, the decision on a risk assessment algorithm in the judgment in *Loomis v. Wisconsin* (2016), entitled **Correctional Offender Management Profiling for Alternative Sanctions (COMPAS)**, was a sobering one.

## READ:

Criminal Justice AI and Human Rights, February, 2020, Springer Link

<https://link.springer.com/article/10.1007/s12027-020-00602-0>

Read Harvard Law Review.

<https://harvardlawreview.org/2017/03/state-v-loomis/>

<https://www.equivant.com/wisconsin-vs-loomis-court-affirms-the-use-of-compas-in-sentencing/>

- The COMPAS algorithm identified Loomis as an individual who presented a high risk to society due to a high risk of re-offending and the first instance court decided to refuse his request to be released on parole.
- In the appeal, the Supreme Court of Wisconsin decided that the recommendation from the COMPAS algorithm was not the sole grounds for refusing his request to be released on parole and hence the decision of the court did *not* violate Loomis's due process right. By confirming the constitutionality of the recommendation risk assessment algorithm, the Supreme Court of Wisconsin neglected the strength of the 'automation bias'.
- By claiming that the lower court had the possibility to depart from the proposed algorithmic risk assessment, the Court ignored the social psychology and human-computer interaction research on the biases involved in *all* algorithmic decision-making systems, which show that once a high-tech tool offers a recommendation it becomes extremely burdensome for a human decision-maker to refute such a 'recommendation'.
- Decision-makers regularly rate automated recommendations more positively than neutral despite being aware that such recommendations may be inaccurate, incomplete, or even wrong.



# LAB EXERCISE 5:

## CASE STUDY 2 : ROBERT McDANIEL

### Presumption of Innocence

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- Besides affecting many dimensions of inequality, AI decision-making systems may collide with several other fundamental liberties.
  - Similar to ‘redlining’, the ‘sleeping terrorist’ concept used in German anti-terrorist legislation infringed upon the presumption of innocence.
  - The mere probability of a match between the attributes of known terrorists and a ‘sleeping’ one directs the watchful eye of the state to the individual.
  - CASE: Robert McDaniel, a twenty-two-year-old high school student who received increased police attention due to a predictive programme’s analysis of his social network and residence in a poor and dangerous neighbourhood: ‘... he was unlucky.
  - He has been surrounded by crime, and many of his acquaintances have gotten caught up in it.
  - And largely because of these circumstances—and not his own actions—he has been deemed dangerous.
  - Now the police have their eye on him.

**READ:**

Research Source: Criminal Justice AI and Human Rights, February, 2020, Springer Link  
<https://link.springer.com/article/10.1007/s12027-020-00602-0>



# LAB EXERCISE 5:

## CASE STUDY – QUESTIONS

### Questions:

- 1.) What are some of the challenges that AI will pose in the judicial system based on these two cases?
- 2.) What is the impact of algorithms on fundamental liberties and
- 3.) How do you think we can make ‘algorithms designers and developers (People) more accountable’?
- 4.) Draw Ethical concerns from the literature in your case study analysis

### Concerns in the Literature are:

1. Fairness/Validity of Algorithms
2. Presumptions of Innocence
3. Right to a Fair Trial
4. Principles of Legality
5. Principles of Non Discrimination/Equality
6. Opacity of AI/Explainability/Transparency

# THANK YOU

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