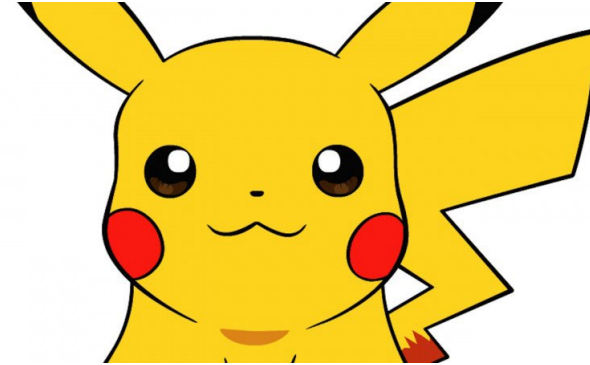




The Big Lie: *“The AI Made Me Do It.”*

Why the Disparate Impact Theory Matters Now More Than Ever

IAOHRA ~ NOLA 2026

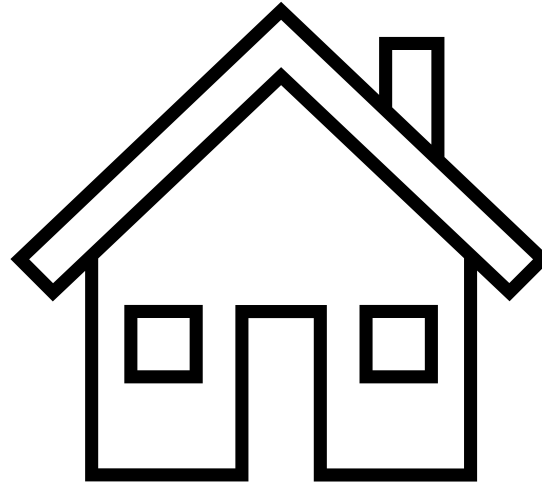
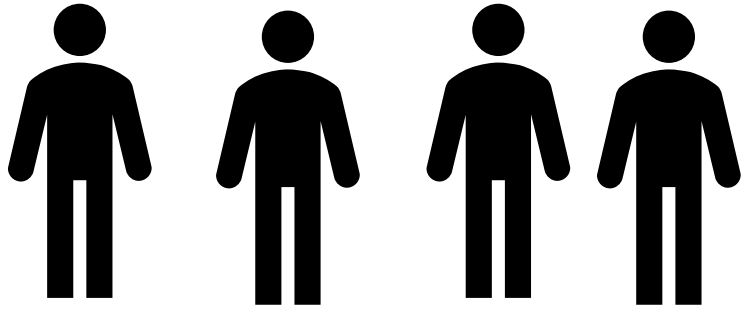
Christopher Brancart ~ cbrancart@brancart.com

Today's Housing Market

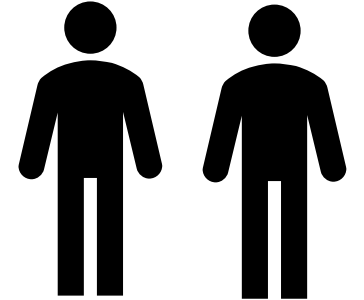
- Today's housing market is a **digital information** market
 - *Digital Information enables **machine automation***
- Housing decisions are executed pursuant to an **inputs/outputs processes**
 - *Every input/output process is a **Data Generating Process***
- There is at least one **decision-rule** in every housing market process
 - *The decision-rule determines the output of the process*
- Decision-Rule authorship – not machine processing – is determinative
 - *If a human picked the decision-rule, then it's not AI*

How we see housing decisions

INPUT



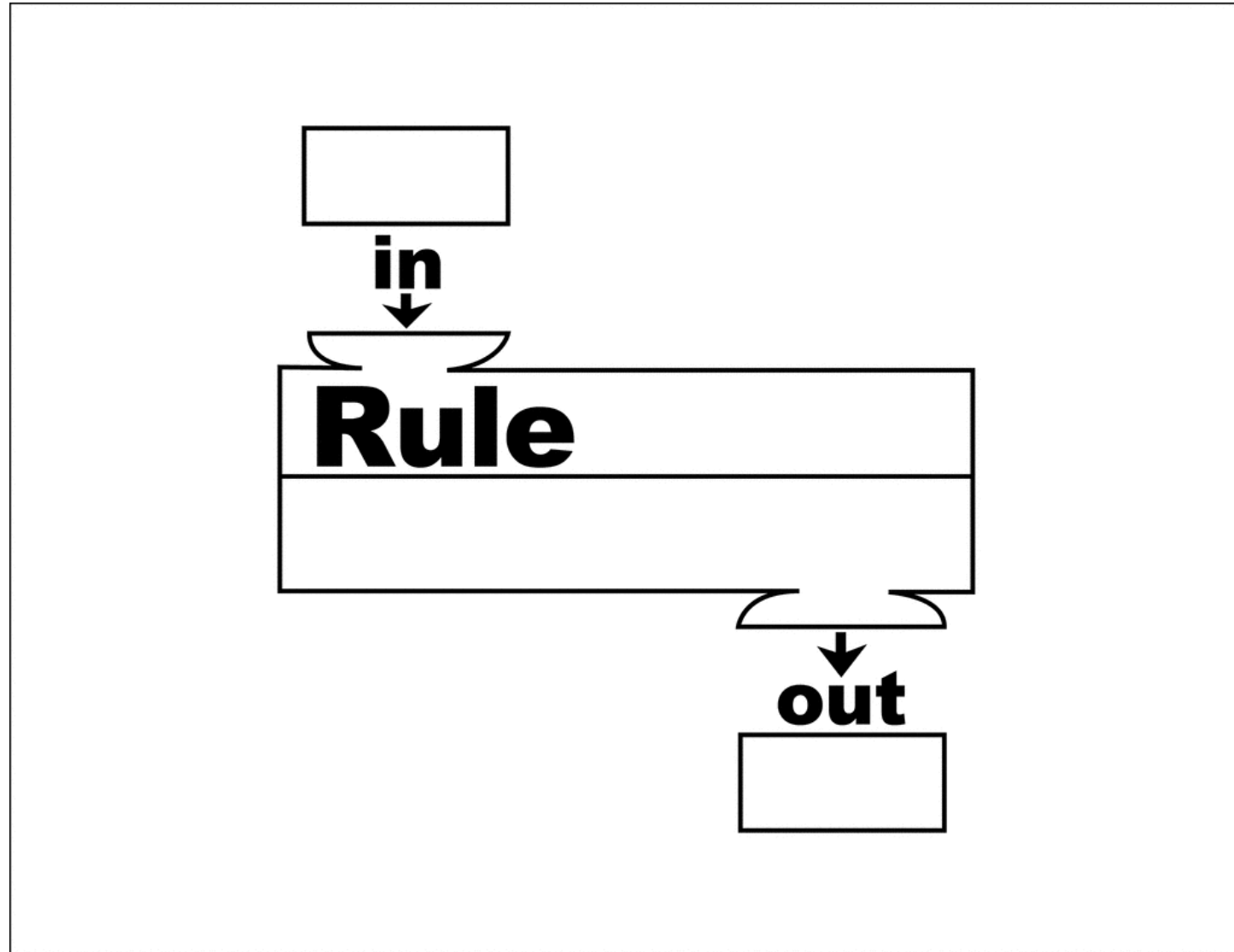
OUTPUT



Applications

Accepted

How Machines See Housing Decisions



Rules: Practices, policies, requirements, qual . . .

- **Rule Operations = Command**

- Prohibit
- Mandate

- **Rule Triggers = Application**

- Ex Ante
 - If/Then
- Ex Post
 - Then/If

Rule Operations: *What we see*

- Rules by their operation:
 - *Threshold or Cutoff Rule*
 - *Per Se Rule*
 - *Indexed Rule*
 - *Hierarchical Rule*

Rule Operations: *What the Machine Sees*

- When a Decision-Rule fires, the Machine reads this:
 - *Threshold Rule* ($\geq$), e.g., 3x rent, 600 credit score, job duration
 - *Per Se Rule* ($\neq$), categorical, e.g., no eviction, convictions, BK, Sec 8
 - *Indexed Rule* ($\times, \div$), combining scores, e.g., income x credit score
 - *Hierarchical Rule* ($n1, n2, n3$), order of operations, e.g., Per Se Rules, then Threshold Rules

Law Talk: *Rules are “causal mechanisms”*

- **Machine Automation MIRRORS Disparate Impact Analysis**

- Process
- Inputs
- Rule
- Outputs

Rule operations: Picking Winners and Losers



Rule Operations: Distributing Benefits and Burdens

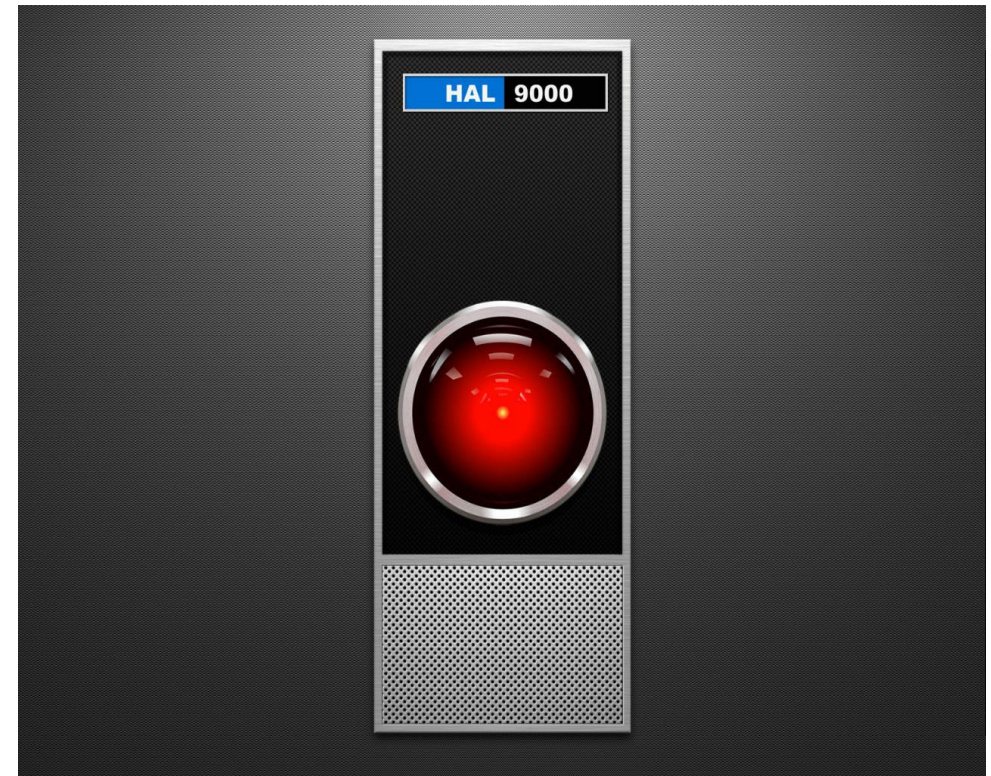


So, who's responsible for the Rules that pick winners in today's digital housing market?

MBAs?



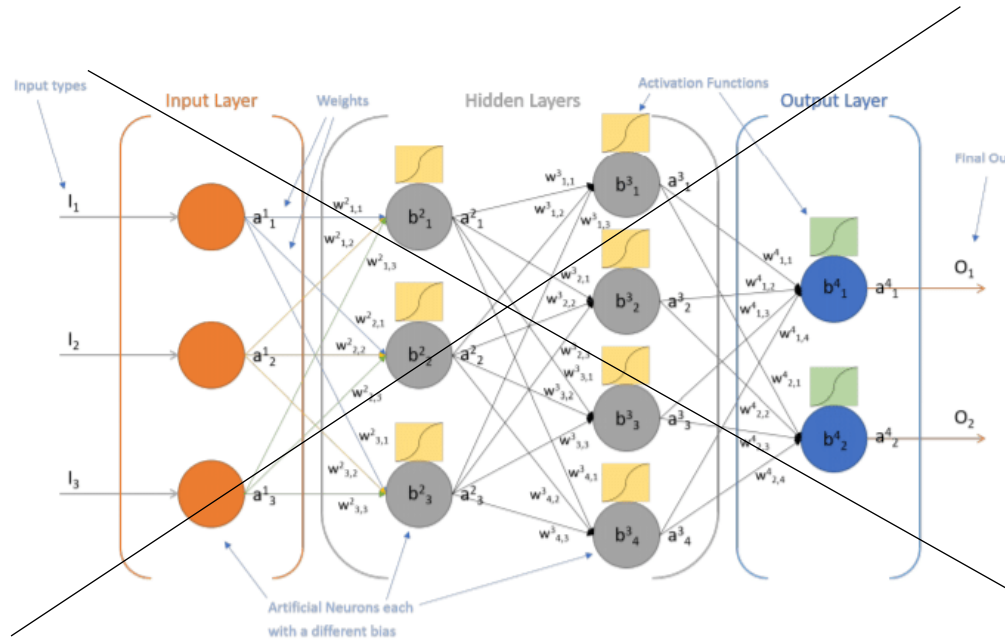
HAL?



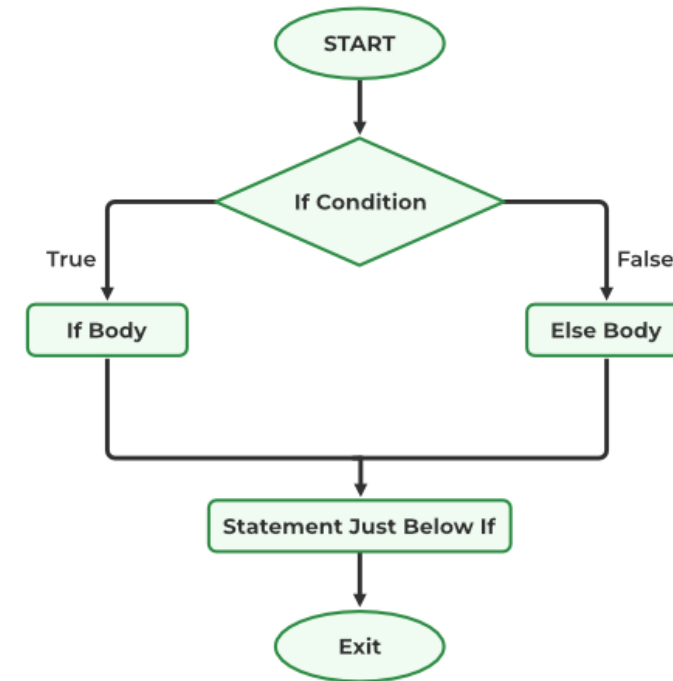
There's a Wizard behind ~~every curtain~~ in our
Digital Oz

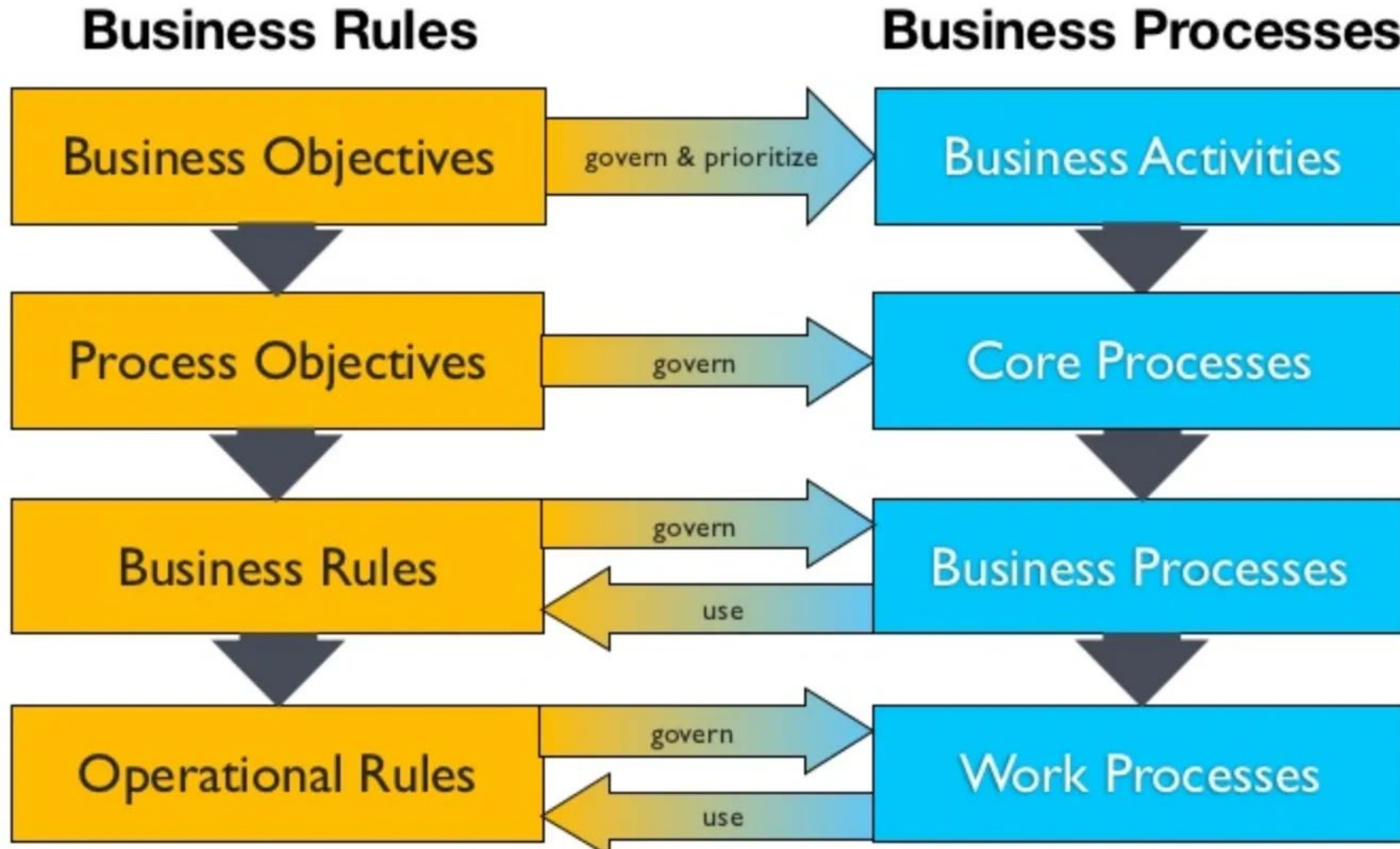
What's behind automated housing decisions

AI Picked Rules: Not Yet



Human Picked Rules: Right Now





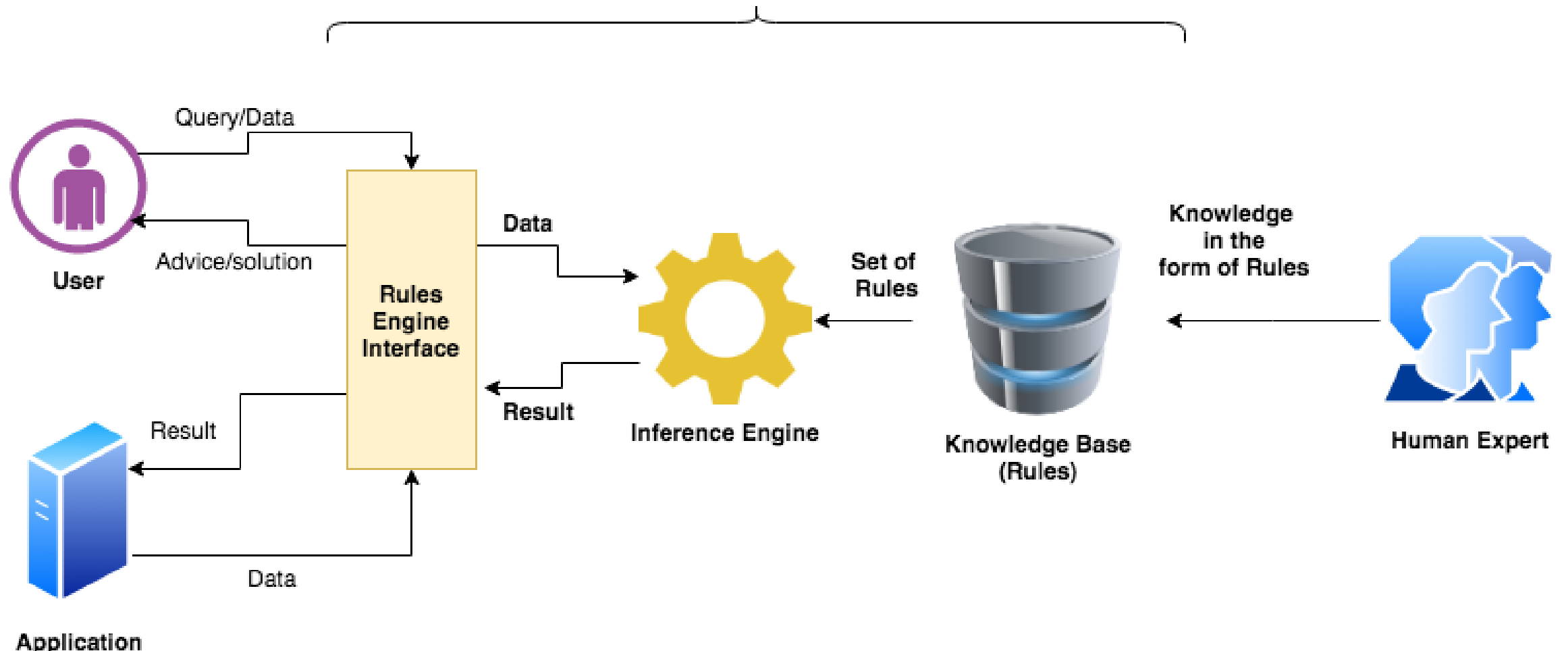
Pick "Good"
Tenants



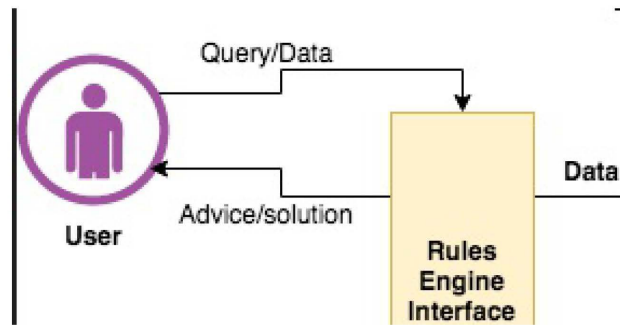
Reject Section 8, Criminals, Single
Parents, Immigrants, Complainers

Break it Down: Mechanical Application of Human Rules to Digital Information

Rules Based System



Input: *What Applicants See*



The screenshot shows a web application for reviewing tenant applications. The header includes a "Back to applicants" link and a user profile for "Tatiana Rosser" at "123 Main St". Action buttons include "Decline", "Shortlist", "Select as tenant", and "Archive".

The main content area is divided into a left sidebar with a "Summary" tab and a right pane showing application details.

Summary

- Application
- TransUnion Report
- Criminal
- Eviction
- Income+
- Current Landlord
- Previous landlord
- Identity

Application [View application >](#)

Income	\$87,000
# of pets	1 Rottweiler, 4 yrs., 55lbs.
Does applicant smoke?	No
# of vehicles	0

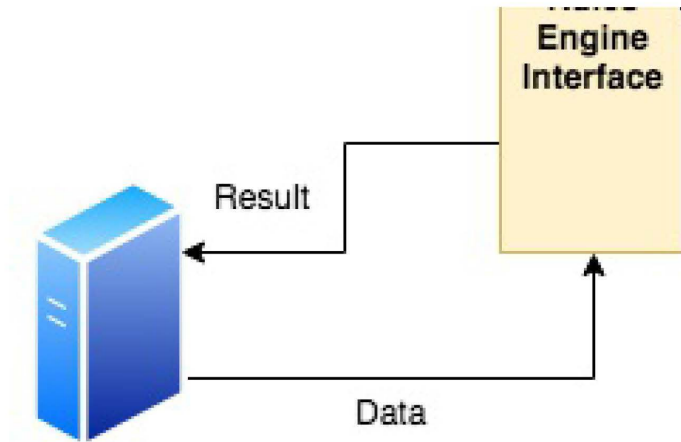
Credit ✓ready [View report >](#)

Credit score	760
Number of tradelines in collection	0
Total debt	\$1,000

Employment ✓verified [View report >](#)

Employer name	Council of Ricks ✓
Position	Janitor ✓
Income	\$37,286 ✓

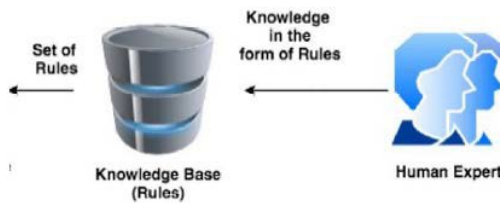
Output: *What Applicants Receive*



DENIED

What Happens between Input and Output?

Business Rules



Commits

Manage

Push Pull Files Content

Commits Views

Date	Description	Author	Revision	Filename	Path
4/22/2024 9:53...	Driver Age Category DT adding ...	AzureAD\RajithaAbe...	91410fbe	AutoInsurance.frpj	
4/22/2024 9:47...	chang DB	AJ	cf8bdb63	Driving Record Category.he...	Logic Documents
4/22/2024 9:42...	Chnagne the Manual Underwriti...	AzureAD\RajithaAbe...	07c6f91e	Driving Record Category.xml	Logic Documents
4/22/2024 9:35...	change DT and NL	AJ	298e2209	Potential Theft Category-NL...	Logic Documents
4/22/2024 9:17...	Latest Changes	AzureAD\RajithaAbe...	276e3cf9		

94.74% | Ln 2, Col 1

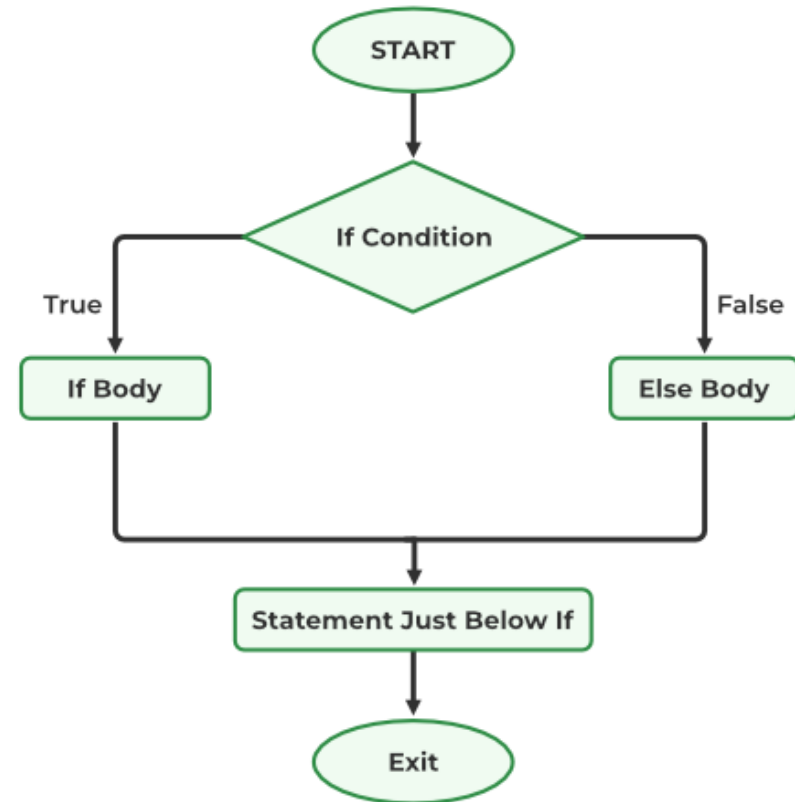
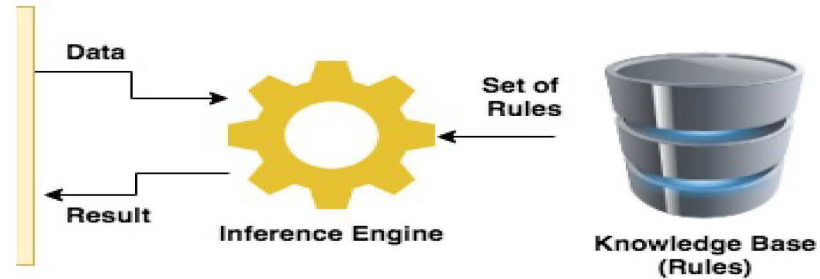
20	<Value></Value>	20	<Value></Value>
21	<Value>>2</Value>	21	<Value>>1</Value>
22	<Value></Value>	22	<Value></Value>
23	<Value>High Risk</Value>	23	<Value>High Risk</Value>
24	</Row>	24	</Row>

21<Value>>2</Value>
21<Value>>1</Value>

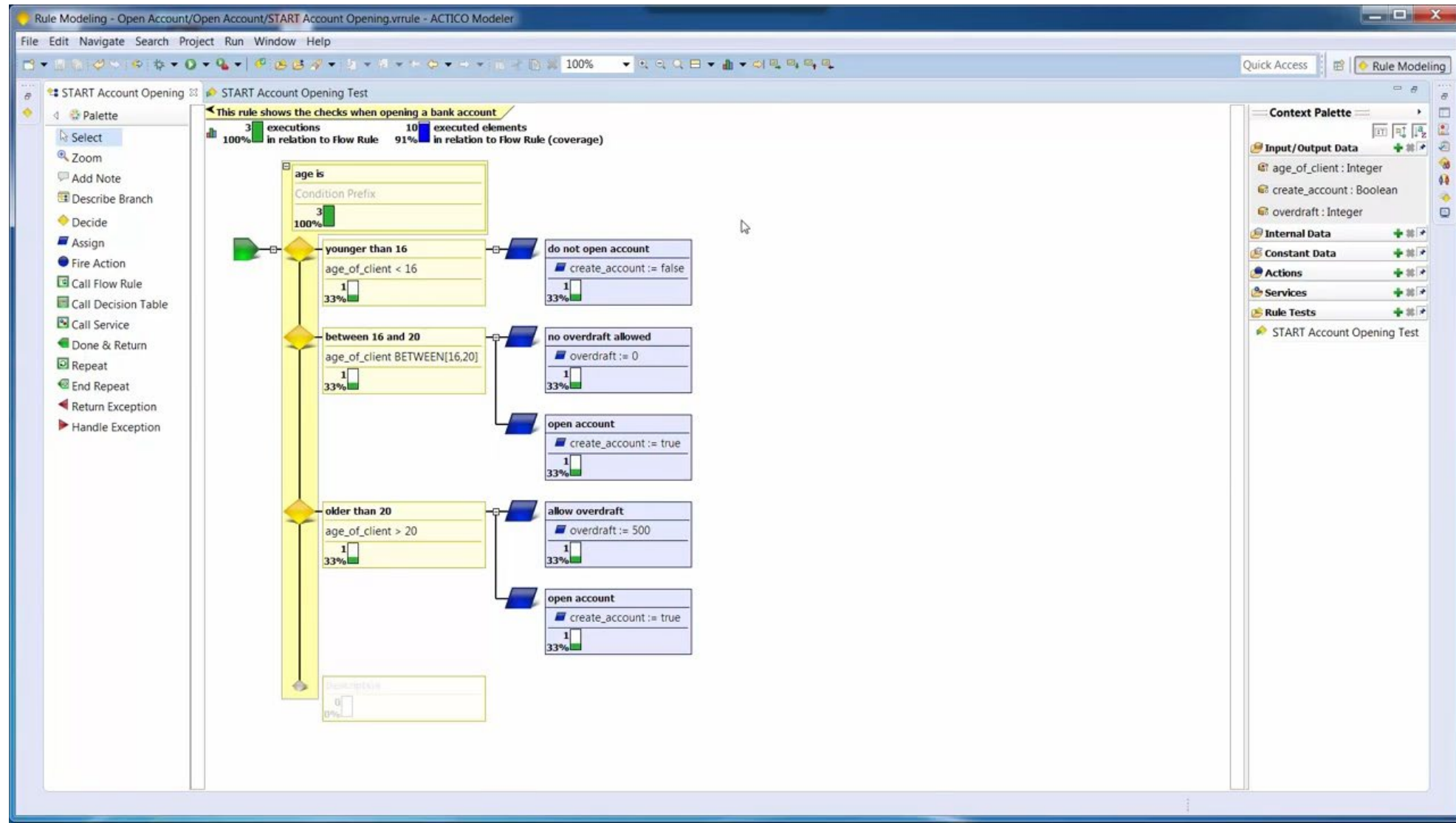
master: 241 commits.

Human Rules Determine Machine Outputs:

It's Not AI (yet)



Just because a Rule is executed by a computer, *doesn't make it AI*



These machine-automated rental, sales,
lending decision-making system . . .

FileEditSource

Status: [Draft]

AttributesEdit

Load Template Data

WHEN

There is an Applicant with:

1.

age

less than

\$max_age

age

greater than or equal to

\$min_age

creditRating

equal to

\$cr

2.

There is a LoanApplication [\$a]

THEN

1.

Modify value of LoanApplication [\$a]

approved

false

(show options...)

... Mechanically apply Rules written, picked, decided by humans to Digital Information to Make Housing Decisions

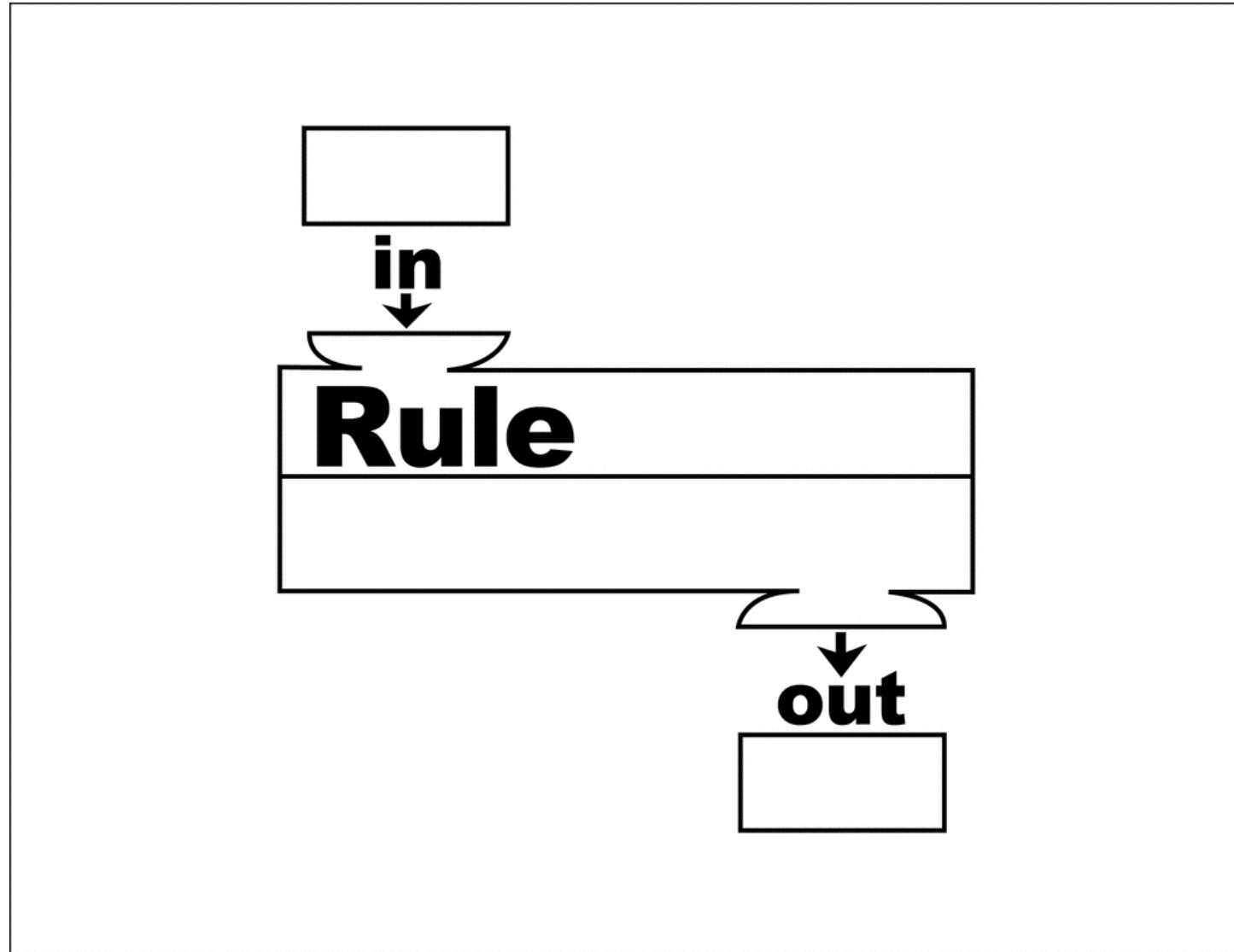
The screenshot shows the 'Commits' window in Visual Studio. The top section has a 'Manage' tab with 'Push', 'Pull', 'Files', and 'Content' buttons. Below this is a table of commits. The bottom section shows a diff view comparing two versions of a file, with line 21 highlighted in green.

Date	Description	Author	Revision	Filename	Path
4/22/2024 9:53...	Driver Age Category DT adding ...	AzureAD\RajithaAbe...	91410fbe	AutoInsurance.frpj	
4/22/2024 9:47...	chang DB	AJ	cf8bdb63	Driving Record Category.he...	Logic Documents
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4/22/2024 9:17...	Latest Changes	AzureAD\RajithaAbe...	276e3cf9		

Line	Left	Right
20	<Value></Value>	<Value></Value>
21	<Value>>2</Value>	<Value>>1</Value>
22	<Value></Value>	<Value></Value>
23	<Value>High Risk</Value>	<Value>High Risk</Value>
24	</Row>	</Row>

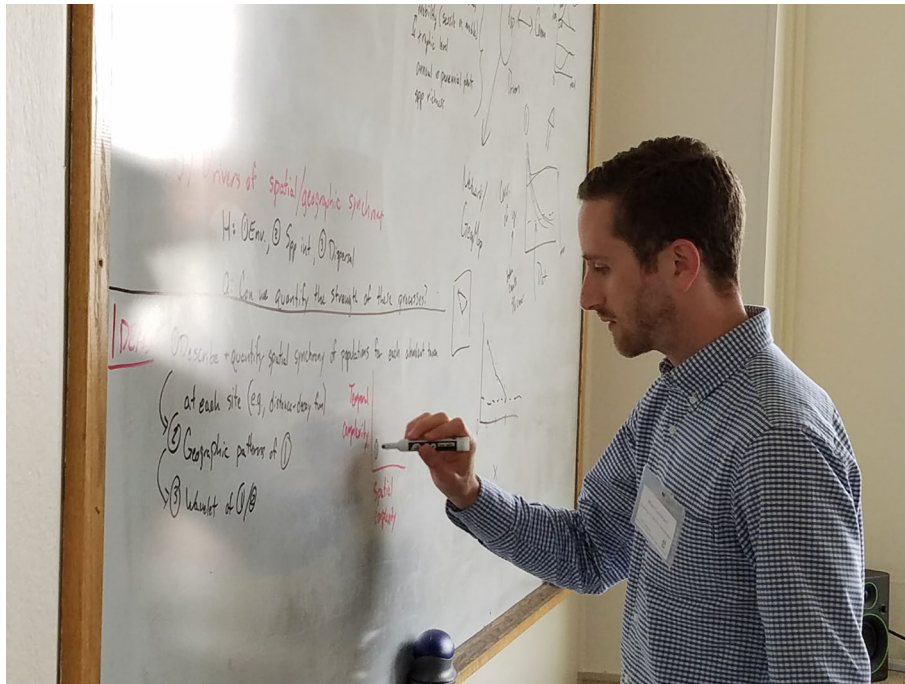
master: 241 commits.

What machines see

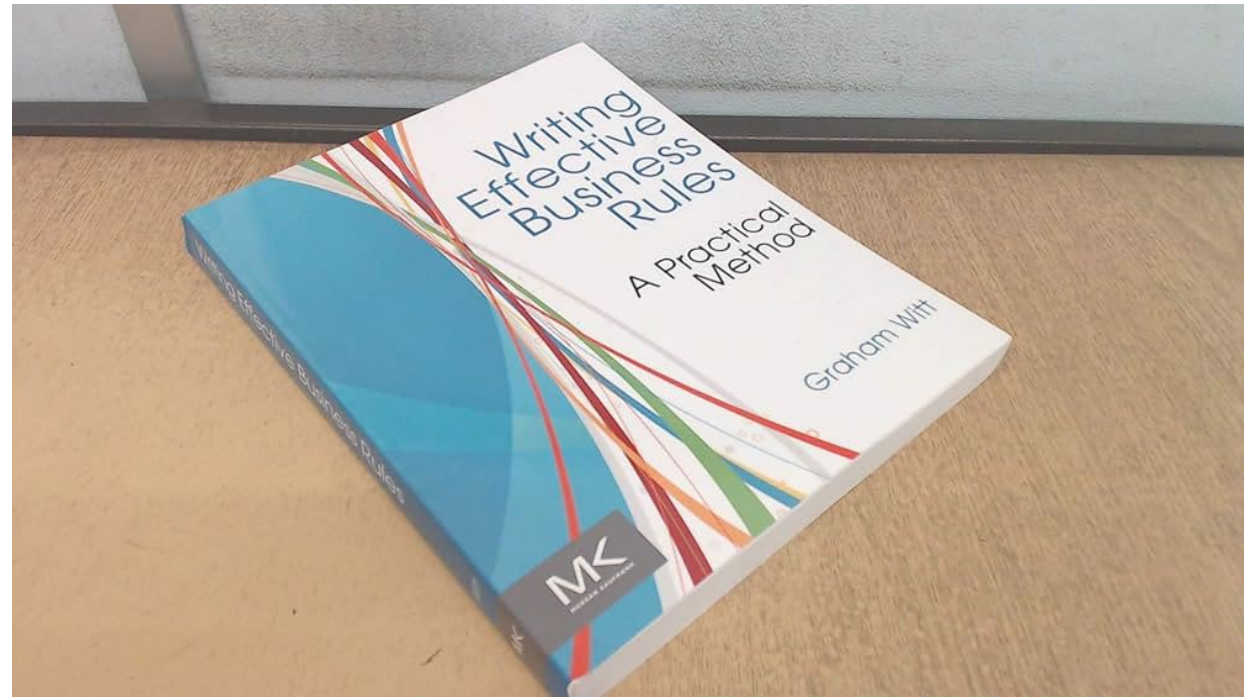


What machines do . . . *What they're told*

The Wizard



His wand



Why Disparate Impact Theory Matters Now More Than Ever



**EQUAL HOUSING
OPPORTUNITY**

Law Talk: By Mapping Automated Housing Decisions to Disparate Impact Theory

- Machine Automated Housing Processes are Data Generating Processes (**DGPs**)
- DGPs are **input/output** Processes
- Inputs and Outputs are expressed in **variables**
- Variables reflect **data**
- Data is **computable**
- Computations reveal **disparities**
- Disparities determined by **Rules**

Law Talk: Causality and Responsibility

Determined

- *Robust Causality*: The **Rule** generates, produces, causes, results in the actual or predictable discriminatory effect
 - Rules link inputs and outputs
 - Rules determine winners and losers (accept/reject)
- *Proper Respondents*: Who's responsible for the discriminatory effect?
 - **Rule** writers
 - **Rule** users