

# The Credibility Gap: Epistemic Injustice and Neurodivergence in U.S. Legal Contexts

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Hailey Van Vorce<sup>1</sup> , Katalin Parti<sup>2</sup> , Chelsea Armour<sup>1</sup>  and Jamie Edgin<sup>1</sup> 

## Abstract

Neurodivergent people, including individuals with intellectual and developmental disabilities, continue to face systemic barriers to meaningful and fair participation in the U.S. justice system. Legal standards governing competence, credibility, and culpability remain anchored in expectations of neurotypical communication and reasoning. These expectations do more than shape procedures; they define who is heard, believed, and ultimately brought to justice. This commentary examines *forensic ableism*, the privileging of neurotypical cognition and communication in legal contexts, through Fricker's framework of *epistemic injustice*, with a focus on *testimonial* injustice. In practice, credibility judgments are rooted in neurotypical norms that often devalue neurodivergent testimony. Across competency evaluations, credibility assessments, and capital sentencing decisions, disability-linked patterns of expression and interaction are frequently misinterpreted as signs of unreliability or diminished competence. Addressing forensic ableism requires the redesign of legal processes and broadened disability education to aid in the recognition of diverse cognitive and communication profiles as legitimate ways of knowing and participating. We call for reforms grounded in accessibility, epistemic humility, and collaboration with the neurodivergent community.

## Keywords

neurodiversity, criminal justice system, intellectual and developmental disabilities, forensic psychology, competency to stand trial, witness credibility, false confessions

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## Introduction

Despite the growing recognition of neurodiversity and barriers to access across sectors, including education, healthcare, and employment, the U.S. justice system continues to rely on neurotypical assumptions of communication, memory, and behavior in legal decision-making (Fricker, 2007; Holliday et al., 2023; Morgan, 2022). Courts often discount the credibility of people who communicate or remember differently, which constrains their access to justice (Holliday et al., 2023; Shelton, 2022). The application of neurotypical norms to neurodivergent people illustrates what scholars describe as *forensic ableism*, a systemic bias that excludes neurodiverse individuals, including those with intellectual and developmental disabilities (IDD), from equitable participation in legal processes by failing to

recognize how developmental differences influence behavior and communication (Baldry, 2025; Morgan, 2022). Further, society's expectations for assessment, patterns of assessment scores, or behaviors can leave life or death decisions up to a legal system or jurors, often based on their level of disability awareness and education. These harmful biases contribute to weak competency standards, restrictive courtroom demeanor expectations, and evidentiary rules

<sup>1</sup>Department of Psychology, Virginia Tech, Blacksburg, VA, USA

<sup>2</sup>Department of Sociology, Virginia Tech, Blacksburg, VA, USA

### Corresponding Author:

Hailey Van Vorce, Department of Psychology, Virginia Tech, 890 Drillfield Dr, Room 309, Blacksburg, VA 24060, USA.

Email: [hvanvorce@vt.edu](mailto:hvanvorce@vt.edu)



that further privilege neurotypical expectations. Forensic ableism extends beyond individual bias in the courtroom; it is embedded within the structural design of the U.S. legal system (Fricker, 2007; Shelton, 2022; Wood et al., 2019).

To situate this commentary, we adopt neurodiversity as a framework that accounts for cognitive and behavioral differences (including autism spectrum disorder, attention-deficit/hyperactivity disorder, intellectual disability [ID], and other neurodevelopmental conditions) as natural human variation rather than deficit (Botha et al., 2024; Dwyer, 2022). Within this framework, we draw on epistemic injustice as an overarching concept, focusing specifically on testimonial injustice as one significant mechanism through which forensic ableism operates in the U.S. legal system. We draw on Fricker's (2007) account of *testimonial injustice*, which occurs when prejudice yields an unfair credibility deficit. In legal contexts, testimonial injustice arises when credibility is implicitly tethered to neurotypical norms of communication, memory, affect, and reasoning. Under these conditions, differences in communication and memory are frequently mistaken for unreliability or incompetence, resulting in testimony that is discounted, disregarded, or deemed unusable in court (Brown et al., 2017; Schatz, 2018). Assessments of an individual's guilt can also increase when testimony fails to produce expected content. In this sense, forensic ableism represents the legal system's structural enactment of testimonial injustice, elevating neurotypical norms as benchmarks for truth and credibility while systematically marginalizing neurodivergent testimony (Morgan, 2022).

### Who Is Heard and Believed?

The urgency is clear: people with disabilities, particularly those with IDD, experience disproportionately high rates of violent victimization compared to their neurotypical peers. National data indicate that individuals with disabilities are more than three times as likely to experience violent crimes, and those with cognitive or intellectual disabilities are over seven times more likely to experience sexual assault (Harrell, 2021; Oudekerk et al., 2020; Thompson & Tapp, 2022). Recent analyses confirm elevated risk across victimization types, with sexual assault and exploitation being particularly prevalent (Stancliffe & Frantz, 2024). Yet even under these conditions, survivors with IDD are frequently denied justice as cases are dropped, testimony is discounted or never collected, and accommodations are withheld (Holliday et al., 2023; Shelton, 2022). Moreover, analyses of the National Crime Victimization Survey data further demonstrate that victimization risk among people with IDD varies across subgroups and that incidents involving individuals with cognitive disabilities are less likely to be reported to police, particularly when third-party reporting is required (Hayes & Powers, 2022; Powers & Hayes, 2022).

These biases also shape credibility judgments involving eyewitness accounts and personal reports in courtroom settings. Credibility assessments tend to privilege long, detailed, and coherent narratives as markers of truth, which people with IDD may not be able to provide. Witnesses with IDD may recall information in shorter segments, vary in responses when repeatedly questioned, or display emotional affect that diverges from courtroom expectations. Such differences are often misread as dishonesty rather than recognized as disability-linked communication styles (Morrison et al., 2021; Shelton, 2022). Similar patterns appear internationally: in Sweden, judges and prosecutors often equated credibility with detail and consistency, even when those standards were developmentally unrealistic for children with disabilities (Cederborg & Gumpert, 2010). Experimental research further shows that jurors evaluate witnesses with ID differently depending on disability type, which further confounds the assessment of credibility (Crane et al., 2020). Testimonial injustice emerges when courts and jurors misinterpret disability-linked behaviors: flat affect, limited eye contact, acquiescence under questioning, or variations in sequencing events are often misread as evasiveness or dishonesty (Brookbanks & Freckelton, 2018). As Coupens (2022) notes, this reliance on the hypothetical "reasonable person" standard reflects neurotypical norms, transforming these benchmarks into mechanisms of exclusion.

The vulnerability of episodic accounts from individuals with IDD during the forensic interviews further illustrate epistemic injustice. Research shows that children and adults with IDD can provide accurate accounts under open-ended questioning, yet their narratives often diverge from the story grammar structures that courts expect, such as chronological sequencing or references to internal states (Murfett et al., 2008; Yi, 2025). Interviewers frequently default to directive or option-posing questions despite evidence that these formats increase suggestibility and reduce accuracy (Brown et al., 2017, 2018). This mismatch between the forms of testimony courts privilege and the forms of testimony people with IDD can reliably provide creates predictable credibility gaps. The cumulative effect is a legal system that systematically devalues neurodiverse testimony. As Macdonald (2025) notes, this reflects a form of dis/ableist criminology: structural processes that normalize the silencing and misinterpretation of disabled voices. By enshrining neurotypical standards as the baseline for truth, credibility, and culpability, the U.S. justice system perpetuates epistemic injustices that are structural rather than incidental.

### Who Is Deemed Culpable?

At the same time, people with IDD are overrepresented as defendants in the U.S. criminal justice system. National data show that nearly 40% of incarcerated people in the

U.S. report a disability, including about 23% reporting a cognitive disability, the category that encompasses IDD (Bronson et al., 2015; Maruschak et al., 2021). Although only about 1–3% of the general population meet criteria for IDD, estimates suggest that 7–10% of individuals involved as defendants or offenders meet criteria for IDD, and one study found that up to 60% of detained youth for sex offenses may have met criteria for autism (Bronson et al., 2015; Stancliffe & Frantz, 2024; Sutton et al., 2012). These groups are also especially vulnerable to suggestive interviewing, coercive tactics, and false confessions, all of which have contributed to wrongful convictions (Kassin et al., 2010; Schatz, 2018). In court, individuals with IDD are more likely to be declared incompetent to testify, to have reports dismissed, or to be retraumatized by inaccessible procedures (Berryessa, 2021; Brown et al., 2017; Morrison et al., 2021; Shelton, 2022). Despite statutory protections such as the principal disability rights laws in the United States (i.e., the Americans with Disabilities Act [ADA]), practical enforcement is inconsistent and often reactive, leaving many without accommodations during interrogation, hearings, or incarceration (Holliday et al., 2023; Pappas, 2020; U.S. Department of Justice [DOJ], 2020).

These problems are amplified by the scale and incentives of the U.S. prison–industrial system, which often prioritizes custody and control over rehabilitation (Baldry, 2025; Macdonald, 2025; Morgan, 2025). Unlike many peer nations that emphasize diversion or community-based alternatives, the United States maintains the world’s highest incarceration rate, creating systemic conditions that magnify inequities for neurodiverse populations (Wagner & Sawyer, 2018). In this context, epistemic injustice is not accidental but predictable (Fricker, 2007; Morgan, 2022).

### Who Is Competent, Who Is Credible?

Structural ableism refers to the ways in which legal systems embed neurotypical norms into institutional standards, procedures, and expectations, systematically disadvantaging neurodivergent individuals. These injustices surface most clearly in U.S. competency and credibility standards. The foundational competency standard established in *Dusky v. United States* (1960) requires defendants to demonstrate both a “rational” and “factual” understanding of proceedings and the capacity to assist counsel. Although *Dusky* provides a baseline, individual U.S. states retain broad discretion in how these criteria are assessed, leading to procedural variation and inconsistent outcomes. Most competency evaluations continue to rely on neurotypical models of reasoning and communication. For example, defendants are commonly asked to define abstract legal concepts (e.g., plea bargain or testify), identify the roles of courtroom personnel, or reason through hypothetical outcomes. A neurodivergent individual may have an accurate, experience-

based understanding of these concepts but express it in concrete or literal terms, for instance, describing a judge as “the person who tells people when to talk.” A response of this nature is often interpreted as evidence of incompetence, even though it reflects comprehension filtered through a different communicative and cognitive style. Consequently, competency measures privilege abstract verbal and metacognitive explanations over genuine understanding (Brookbanks & Freckelton, 2018; NCCJD, 2017). As a result, defendants with IDD are disproportionately labeled incompetent under standards that fail to recognize disability-linked modes of communication and comprehension (Everington & Dunn, 1995; Morrison et al., 2021). Relatedly, diagnostic misrecognition within justice settings contributes to the overrepresentation of neurodivergent individuals in custodial environments, as Sutton et al. (2012) found that approximately 60% of adolescents adjudicated for sexual offenses in a state detention facility met criteria for autism following a comprehensive assessment.

These structural biases extend into capital sentencing. The U.S. justice system continues to struggle with integrating diagnostic standards into determinations of competency and death penalty eligibility. In *Atkins v. Virginia* (2002), the Supreme Court held that executing individuals with ID violates the Eighth Amendment. The Court later cautioned against rigid IQ cutoffs in *Hall v. Florida* (2014) and required reliance on contemporary clinical criteria in *Moore v. Texas* (2017). Yet lower courts continue to diverge. In *Harris v. Sharp* (2019), the Tenth Circuit upheld a death sentence despite evidence of ID, favoring lay observations of the defendant’s adaptive functioning, or the real-world ability to manage the functions of daily life, over other clinical evidence. Appellate courts very often interpret adaptive functioning, the ability to manage day-to-day situations, through neurotypical frameworks that constrain legal protections and disregard the diverse cognitive and behavioral profiles that exist within IDD. *Harris v. Sharp* (2019) illustrates how epistemic injustice operates through testimonial injustice, as the Tenth Circuit discounted expert clinical evidence of ID in favor of lay interpretations of adaptive functioning grounded in neurotypical benchmarks. This reasoning overlooks the heterogeneity of cognitive and behavioral profiles among people with IDD. For example, while Williams syndrome (WS) and Down syndrome (DS) are both defined as IDs, based on a clear genetic etiology and global assessments across all their skill domains, these two syndromes show divergent patterns of adaptive behavior profiles, with individuals with DS displaying higher adaptive behavior scores than those with WS when controlling for IQ (Edgin et al., 2010). Both syndromes show significant lifelong impairment, cognitive, and medical involvement, but each may be vulnerable to capital sentencing because of natural, but uneven, profiles of ability. Such variability raises critical questions about fairness and accuracy in the justice system: if adaptive functioning

is assessed through a single neurotypical lens, individuals with different cognitive-behavioral profiles may be judged inconsistently. Focusing on one adaptive outcome, one set of scores (IQ; *Hamm v. Smith*, 2025) or behavioral presentation is therefore insufficient for equitable adjudication, as detailed in amicus briefs from the American Psychological Association and advocacy organizations (APA, 2025; ARC, 2025) commenting on the case currently active in the U.S. Supreme Court (*Hamm v. Smith*, 2025), where narrow definitions of IDD are again in play. Individualized, syndrome-informed clinical assessment, with a comprehensive set of outcomes, is essential to ensure that disability determinations reflect clinical reality rather than lay perceptions or the inherent faults of measures based on neurotypical expectations.

Further, unlike many peer nations, the United States places these determinations in the hands of jurors. Roughly one-third of death penalty jurisdictions require juries, often exposed to highly prejudicial crime details, to decide whether a defendant has ID and is therefore ineligible for execution (Shaw et al., 2018). Research shows jurors are less likely than judges to recognize ID, particularly when confronted with courtroom evidence that heightens perceptions of culpability and competence. Between 2002 and 2014, juries rejected ID claims in 96% of capital cases, compared to 43% of judicial findings (Blume et al., 2014). This procedural design, which merges disability determinations with sentencing, uniquely exposes U.S. defendants to credibility judgments clouded by emotion, a feature less often found in other Western legal systems.

This risk is amplified by the U.S. practice, uncommon in other legal systems, of requiring jurors exposed to emotionally charged crime details to decide whether a defendant meets the criteria for ID in capital cases. As Blume et al. (2014) observe, placing disability determinations before jurors during sentencing encourages stereotypes to override clinical evidence. In many other jurisdictions, such determinations are reserved for judges or clinical experts, underscoring that the American approach is an international outlier (Holliday et al., 2023). This variation is further exacerbated by the *Atkins* ruling, which prohibited the execution of individuals with IDD but left the method of determining ID up to individual states, resulting in inconsistent standards and procedures nationwide.

## Intersectionality and Compounded Barriers

Collectively, the previous examples illustrate how forensic ableism permeates across multiple layers of the legal system. Forensic ableism does not operate in isolation. Many people with IDD also navigate the justice system as members of other marginalized groups, and these overlapping

identities shape how discrimination is experienced and interpreted. Intersectional perspectives highlight how disability-related biases interact with racism, sexism, and classism to deepen credibility gaps and increase vulnerability to both victimization and criminalization. Research on victimization highlights how disability-related risks compound across identities. People with disabilities experience violent crime at over three times the rate of their nondisabled peers, and individuals with cognitive disabilities are over seven times more likely to experience sexual assault (Harrell, 2021; Oudekerk et al., 2020; Thompson & Tapp, 2022). Studies show that over 70% of people with disabilities report abuse, with women with intellectual disabilities disproportionately targeted for sexual assault and exploitation (Baladerian et al., 2013; Hughes et al., 2012; Stancliffe & Frantz, 2024). These disparities reflect intersecting vulnerabilities shaped by gender, race, and socioeconomic inequities.

Structural inequities in case processing further magnify these disparities. Survivors with IDD often face skepticism from police and prosecutors, and those who are women or members of marginalized groups encounter compounded barriers to being believed (Hughes et al., 2012; Shelton, 2022). Black autistic boys are particularly vulnerable, as studies show they are disproportionately perceived by police as threatening, with communication differences misinterpreted as aggression or defiance (Yates Flanagan et al., 2025). Research further indicates that race influences how autistic traits are perceived, with Black autistic youth more likely to be viewed as oppositional or aggressive, reflecting implicit diagnostic and credibility biases (Obeid et al., 2021). Likewise, Black and Latinx individuals with IDD are overrepresented in arrests, pretrial detention, and competency evaluations, reflecting how racial profiling and disability-linked vulnerability intersect within the justice system (Bishop et al., 2020; Johnson et al., 2019; Olley & Cox, 2021). Regarding capital sentencing, IQ score cutoffs have been modified in cases of Black defendants based on expert testimony of the racial bias in IQ scores, with courts adding 5–15 points to a measured score and qualifying the individual for the death penalty (Sanger, 2015).

Socioeconomic status further exacerbates these disparities. Underfunded public defense systems, which disproportionately serve low-income defendants with IDD, often lack access to disability specialists or expert evaluations. Because disability screening is not routine and accommodations remain discretionary, access to support often depends on advocacy networks and individual initiatives, rather than consistent policy (NCCJD, 2017; Sarrett, 2017). Defendants without such networks are therefore less likely to receive necessary accommodations, resulting in uneven protections and variable justice outcomes. Viewed through the lens of epistemic injustice, these intersecting inequities further exacerbate testimonial injustice by further distorting

how credibility is assessed across race, gender, and social class.

## Toward a Reimagined Justice

The systemic barriers faced by neurodivergent people in U.S. courts are not accidents of circumstance but products of institutional design. The U.S. legal system emphasizes one-size-fits-all procedures, with little room for adequate treatment of individual differences. Competency standards, credibility assessments, and courtroom procedures are all built on neurotypical expectations that leave neurodivergent individuals structurally excluded. Addressing these inequities requires embedding accessibility into the justice system itself through universal designs rather than ad hoc accommodations. Four areas are especially urgent: disability-informed interviewing and evaluation, courtroom accessibility, cross-professional training, and systemic policy grounded in epistemic humility.

First, interviewing and evaluation, as forensic practices, should be redesigned to reflect the communicative strengths of people with IDD. Research shows that when witnesses are given open-ended prompts and narrative practice, they provide accurate and detailed accounts (Brown et al., 2017; Yi, 2025). Standard practices, however, still rely on directive or repetitive questioning, which heightens suggestibility and the risk of false confessions (Schatz, 2018). Murfett et al. (2008) similarly found that children with intellectual disabilities produced accurate narratives that diverged from the conventional story grammar courts expect. The National Center for Criminal Justice and Disability (NCCJD, 2017) recommends routine disability screening in all criminal proceedings, an approach mirrored in Canada and the United Kingdom, where screening tools are increasingly standardized.

Second, regarding courtroom accessibility, U.S. courts must move beyond minimal compliance with the ADA to implement meaningful accessibility. Current enforcement is inconsistent and complaint-driven, leaving many without accommodations during interrogation, hearings, or trials (Pappas, 2020; U.S. DOJ, 2020). In our own work, we have received reports that the inflexible procedures of the reporting systems implemented by school law enforcement officers led to abuse reports that were never received (Armour et al., submitted). Holliday et al. (2023) emphasize that effective supports, such as plain-language jury instructions, communication aides, and flexible testimony formats, are rarely implemented. Yet, there are promising models. Emerging initiatives such as disability-informed diversion courts and specialized prosecution units, complemented by supportive decision-making frameworks piloted in Texas and Delaware mirror reforms in Canada and Australia that integrate these models into guardianship and civil law systems (Holliday et al., 2023). Though

uneven, such efforts demonstrate the U.S. potential to embed individual agency within supportive legal structures.

Third, cross-professional training and specialized units or taskforces focused on people with IDD are essential. Sustained change requires systematic training across law enforcement, courts (jurors), and corrections. Currently, most U.S. officers receive little or no mandated training, and when training exists, it is typically brief and disconnected from broader curricula (Holliday et al., 2023; Richardson et al., 2024). Focus groups confirm this gap, with officers acknowledging that disability-awareness training is rare and insufficient to guide practice (Gulati et al., 2021). Pilot studies show that even short programs improve officers' disability knowledge and communication strategies (Gulati et al., 2021). However, as Richardson et al. (2024) emphasize, lasting reform depends on embedding disability competence into national standards, with train-the-trainer models and disability response teams. Officers in Gulati's study reported concrete changes, such as not only slowing down interviews and ensuring support persons were present during custody but also stressed that one-off sessions were insufficient. Internationally, countries such as Ireland and Australia have already mandated disability-awareness modules into police training, demonstrating that systemic implementation in the United States is achievable (Richardson et al., 2024).

Beyond general disability awareness, several jurisdictions have developed autism-specific training initiatives that illustrate how such education can be institutionalized rather than left to individual discretion. In the United States, Pennsylvania's *Autism and the Courts* initiative provides targeted education for judges, attorneys, and court staff focused on communication differences, sensory sensitivities, and appropriate courtroom accommodations for autistic individuals (Unified Judicial System of Pennsylvania, n.d.). For law enforcement, programs such as the International Board of Credentialing and Continuing Education Standards' Autism Certification and Police Autism Community Training emphasize de-escalation strategies, adapted interviewing practices, and community-based response when interacting with autistic individuals (IBCCES, n.d.; PACT, n.d.). Similarly, the United Kingdom developed a model for national guidance through the National Autistic Society to support police and judicial professionals in working effectively with autistic people, demonstrating that scalable models are feasible at a national level (National Autistic Society, 2020). While these programs are autism-specific, they provide a framework for broader neurodiversity-informed training focused on core competencies such as flexible communication, recognition of sensory and cognitive differences, and avoidance of misinterpreting behavior that deviates from neurotypical norms. Existing continuing legal education requirements for justice professionals (e.g., attorneys, judges) provide a preestablished mechanism for embedding

this content into professional standards, shifting neurodiversity competence from an optional training to an obligatory component of justice system practice.

Finally, systemic change requires epistemic humility. Legal standards for competence and credibility are not universal truths but reflect neurotypical norms (Fricker, 2007). Policy must shift from reactive accommodations to proactive system design: routine disability screening, systematic data collection on prevalence, accommodations, and case outcomes, and diversion programs that recognize disability as a mitigating factor. As Morgan (2020) argues in *Expecting Difference*, decarceration strategies must anticipate disability from the outset rather than treat it as an exception. Several U.S. states have already begun implementing with disability-informed diversion courts and specialized units in prosecutors' offices, efforts that resemble specialized problem-solving courts in Canada and the United Kingdom. Following such practices nationally would move the United States closer to international best practice while addressing the unique structural inequities created by its prison-industrial system. Taken together, these reforms offer a vision of justice that is not only accessible but also participatory. By drawing on both U.S. innovations and international parallels, the justice system can begin to dismantle entrenched forensic ableism and affirm neurodivergent individuals as full epistemic agents whose voices belong in the legal record.

## Conclusion

The U.S. justice system embeds neurotypical norms into the very standards that govern participation and the pursuit of justice. Competency tests, credibility assessments, and courtroom practices routinely privilege linear narratives, court-preferred affect, and specific styles of memory reports. These ingrained biases result in epistemic injustice for people with IDD, operating primarily through testimonial injustice. Compounding this issue is the structure of the U.S. legal system, which privileges states' rights in setting the standards of law, and placing decisions into the hands of those particularly vulnerable to bias due to lack of education. These dynamics are structural rather than incidental, and they intensify when disability intersects with race, gender, and class.

Reform is both necessary and feasible. Disability-informed interviewing and evaluation improve accuracy without pathologizing difference. Although persistent diagnostic biases, which are shaped by race, gender, and socioeconomic context, must also be addressed to ensure equitable identification and treatment. Courtrooms can move beyond minimal ADA compliance by adopting plain-language instructions, communication supports, and flexible testimony formats. Cross-professional training should shift from sporadic modules to embedded national standards. Policy should reflect epistemic humility by treating

disability as an expected aspect of human diversity, ensuring routine screening, systematic data collection on disability prevalence and outcomes, and expansion of diversion programs that recognize disability as a mitigating factor.

Taken together, these steps reorient the system from retrofitting access to designing the system for participation. They also align U.S. practice with international models while addressing inequities distinct to the American context. A justice system that anticipates neurodiversity and measures credibility without defaulting to neurotypical benchmarks moves toward a realization of full and fair participation for neurodivergent individuals.


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## ORCID iDs

Hailey Van Vorce  <https://orcid.org/0000-0002-1917-3361>

Katalin Parti  <https://orcid.org/0000-0002-8484-3237>

Chelsea Armour  <https://orcid.org/0009-0006-7563-6507>

Jamie Edgin  <https://orcid.org/0000-0002-4141-2904>

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Not applicable, no datasets were generated or analyzed for this work.

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