



UNIVERSITY SYSTEM OF GEORGIA

Hearing Panel Refresher Training

Na'Tasha Webb-Prather

Interim System Director for Equity & Investigations

Stephanie Hogue

Equity Compliance Investigator

Who's on the Panel?

- What's your day job?
- How long have you served as a Panelist?
- What has been your experience as a Panelist?
- What has motivated you to return as a Panelist?



What are you hoping to get out of today's refresher?





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Review of USG Sexual Misconduct Policy

Consent Recap

Evaluating Evidence & Decision Making Skills

Recognizing & Overcoming Bias

Case Studies



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System Wide Sexual Misconduct Policy

Primary Function of the Hearing Panel

- Be a neutral decision maker
 - Hear the facts and circumstances of an alleged policy violation
 - Review the information provided
- Determine whether a policy violation has occurred
- Decide whether/what sanctions and remedial actions are appropriate

Key Aspects in the Title IX Process

- Parties' right to an Advisor
 - May be an attorney
 - Purpose: provide advice and counsel
- Parties' right to remain silent or otherwise not participate
 - Non-response = general denial
 - Non-response ≠ adverse inference

Key Categories of Prohibited Conduct

Sexual
Misconduct

Dating Violence

Domestic Violence

Sexual Exploitation

Sexual Harassment

Stalking

Nonconsensual Sexual Contact



Dating Violence

Violence committed by a person who is or has been in a **social relationship of a romantic or intimate nature** with the alleged victim.

- Includes sexual or physical abuse
- Includes threats of such abuse

Domestic Violence

Violence committed by:

- a current **spouse**, former spouse or **intimate partner**
- a person whom **shares a child**
- a person who is **cohabiting** with or cohabitated with the alleged victim

Sexual Exploitation

Taking non-consensual or abusive sexual advantage of another for **one's own advantage or benefit**, or for the benefit or advantage of anyone other than the one being exploited.

Examples include:

- Non-consensual photos, videos, or audio of sexual activity
- Non-consensual distribution of photo, video, or audio of sexual activity, even if the sexual activity was consensual
- Intentionally and inappropriately exposing one's breast, buttocks, groin, or genitals in non-consensual circumstances

Stalking

Engaging in a **course of conduct** directed at a specific person that **would cause a reasonable person to fear for his or her safety** or the safety of others OR suffer **substantial emotional distress**.

- Can be direct actions or through third parties
- Could include the use of devices or other methods
- Includes following, monitoring, observing, surveilling, threatening, communicating to or about a person, or interfering with a person's property

Sexual Harassment

Unwelcome verbal, nonverbal, or physical conduct, based on sex or on gender stereotypes, that is

- Implicitly or explicitly a **term or condition of** employment status in a course program or activity
- **A basis for** employment or education decisions; OR
- Sufficiently severe, persistent, or pervasive to interfere with one's work or educational performance creating an **intimidating, hostile, or offensive** work environment

Examples of Sexual Harassment*

- Making sexual propositions or pressuring students for sexual favors;
- Touching of sexual nature;
- Using derogatory gender-specific slang, even if joking;
- Telling sexual or “dirty” jokes;
- Spreading sexual rumors or rating other students as to sexual activity or performance;
and
- Circulating or showing emails or websites of a sexual nature.

*Note: this list is NOT exhaustive

Nonconsensual Sexual Contact

Any **physical contact** with another person of a **sexual nature without the person's consent**.

Includes:

- Touching (or penetrating) of another's intimate parts (genitalia, groin, breasts, buttocks)
- Touching (or penetrating) a person with one's own intimate parts; or
- Forcing a person to touch his or her own or another person's intimate parts



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Consent Recap

Consent

- **Words or actions** that show a **knowing** and **voluntary willingness** to engage in a **mutually agreed upon sexual activity**
- Past consent \neq Present consent
- The scope of consent matters
- Can be invalidated by: force, intimidation, incapacitation, or withdrawal



Overview of the Construct

1. Was **force** used by the Respondent to engage in the sexual activity?
2. Was the Complainant **Incapacitated**?
 1. Did the Respondent know OR
 2. Should the Respondent have known that the Complainant was incapacitated?
3. What **clear words or actions** by the Complainant gave the Respondent indication that the **sexual activity was mutually agreed upon**?

Force

- Was force used by the Respondent to engage in the sexual activity?
- Because consent must be voluntary (an act of free will) consent cannot be obtained through use of force
- Types of Force to consider:
 - Physical violence -- hitting, restraint, pushing, kicking, etc.
 - Threats -- anything that gets the other person to do something they wouldn't ordinarily have done absent the threat

Force Continued

- **Intimidation** - an implied threat that menaces and/or causes reasonable fear
- **Coercion** – the application of an unreasonable amount of pressure for sexual access
 - Consider:
 - Frequency
 - Intensity
 - Duration
 - Isolation

Force Analysis

- Did the Respondent utilize force or intimidation to engage in the sexual activity with the Complainant?
 - If yes = policy violation -> Sanction
 - If no = Move on with the analysis

Incapacitation

- Physical and/or mental inability to make informed, rational judgments
 - Could the Complainant make rational, reasonable decisions ?
 - Could the Complainant appreciate the situation and address it consciously?
- More than mere intoxication or drunkenness



Determining Incapacitation

- Incapacitation is a determination that will be made after the incident in light of all the facts available
- Assessing incapacitation is very fact dependent
- Various forms of incapacity
 - Alcohol or other drugs
 - Mental/cognitive impairment
 - Injury
 - Sleep

Two-Part Incapacitation Analysis

Part One

- Was the Complainant incapacitated?

Subjective analysis based on the facts surrounding the incident

Part Two

- Did the Respondent know of the Complainant's incapacity?
 - Or would a Reasonable Person have known?

Objective analysis based on the facts surrounding the incident

Common Intoxication Factors

- Rate of consumption
- Strength of drink
- Food in the stomach
- Body Weight
- Body Type – body fat percentage
- Gender
- Enzymes, hormones, water in body
- Medications
- Illness & dehydration
- Fatigue
- Caffeine
- Genetics

Possible Signs of Incapacitation

- Lack of control over physical movements
 - Ex. Inability to dress or walk without assistance
- Lack of awareness of circumstances or surroundings
- Inability to communicate coherently
- Vomiting
- Total or intermittent unconsciousness



Respondent's Awareness

- The Respondent [or a Reasonable Person] must have been aware of the Complainant's incapacity
- The Respondent's own intoxication does not mitigate their obligation to comply with policy standards

Incapacitation Analysis

- If the alleged victim was not incapacitated, move on in the analysis to determine if consent was given
- If the alleged victim was incapacitated, but:
 - The accused individual did not know it = policy not violated
 - The accused individual should not have known it = policy not violated. Move on to 3rd question.
- If the alleged victim was incapacitated, and:
 - The accused individual knew it = policy violation. Sanction accordingly.
 - The accused individual should have known it = policy violation. Sanction

Consent

- Question 3 is the Consent question:

What clear words or actions by the complainant gave the accused individual permission for the specific sexual activity that took place?



Consent Is...

- Informed (knowing)
- Voluntary (freely given)
- Active (not passive)
- Clear words or actions
- Indicates permission to engage in mutually agreed upon (sexual) activity

Rules to Remember

- No means no, but nothing also means no. Silence and passivity do not equal permission
- To be valid, consent must be given prior to or contemporaneously with the sexual activity
- Consent can be withdrawn at any time

Withdrawal

- Consent can be withdrawn at any time
- Clearly communicated by the person withdrawing it [words or actions]
- Other person is required to cease sexual activity until consent is regained

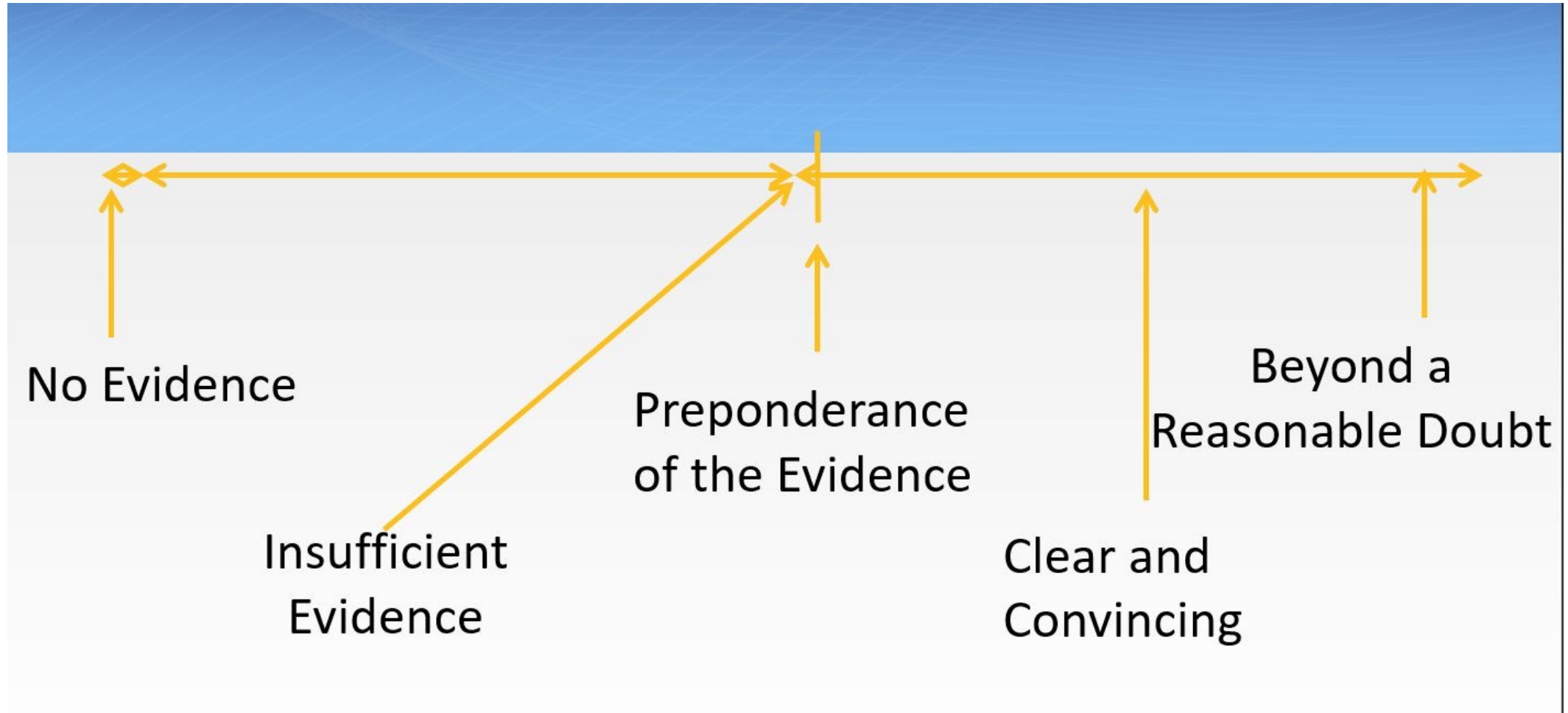




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Evaluation of Evidence and Decision-Making Skills

Understanding Evidence Thresholds



Types of Evidence

- **Documentary** evidence (supportive writings or documents)
- **Electronic** evidence (photos, text messages, videos)
- **Real** evidence (physical object)
- **Direct** or testimonial evidence (personal observation or experience)
- **Circumstantial** Evidence (not eyewitness, but compelling)
- **Hearsay** Evidence (statement made outside the hearing, but presented as important information)
- **Character** Evidence (generally of little value or relevance)

Weighing Evidence

- Weighing evidence means assessing the impact of the information
- The following factors impact the assessment:
 - Relevance
 - Reliability
 - Persuasiveness
 - Bias



Weighing Evidence: Impact Factors

- **Relevance**

- Must relate to the incident at issue and be of sufficient value in the overall determination
- Must be offered by an individual with actual knowledge of the event

- **Reliability**

- Information that can be trusted
- Comes from individuals who are able to have assumed the role they claimed to have or those with actual training or experience to support their claim of expertise

Weighing Evidence: Impact Factors

- **Persuasiveness**

- Induces others to believe through understanding; tries to convince
- Must be believable, consistent, and establishes a dependable narrative
- **Note:** be mindful of the rehearsed narrative

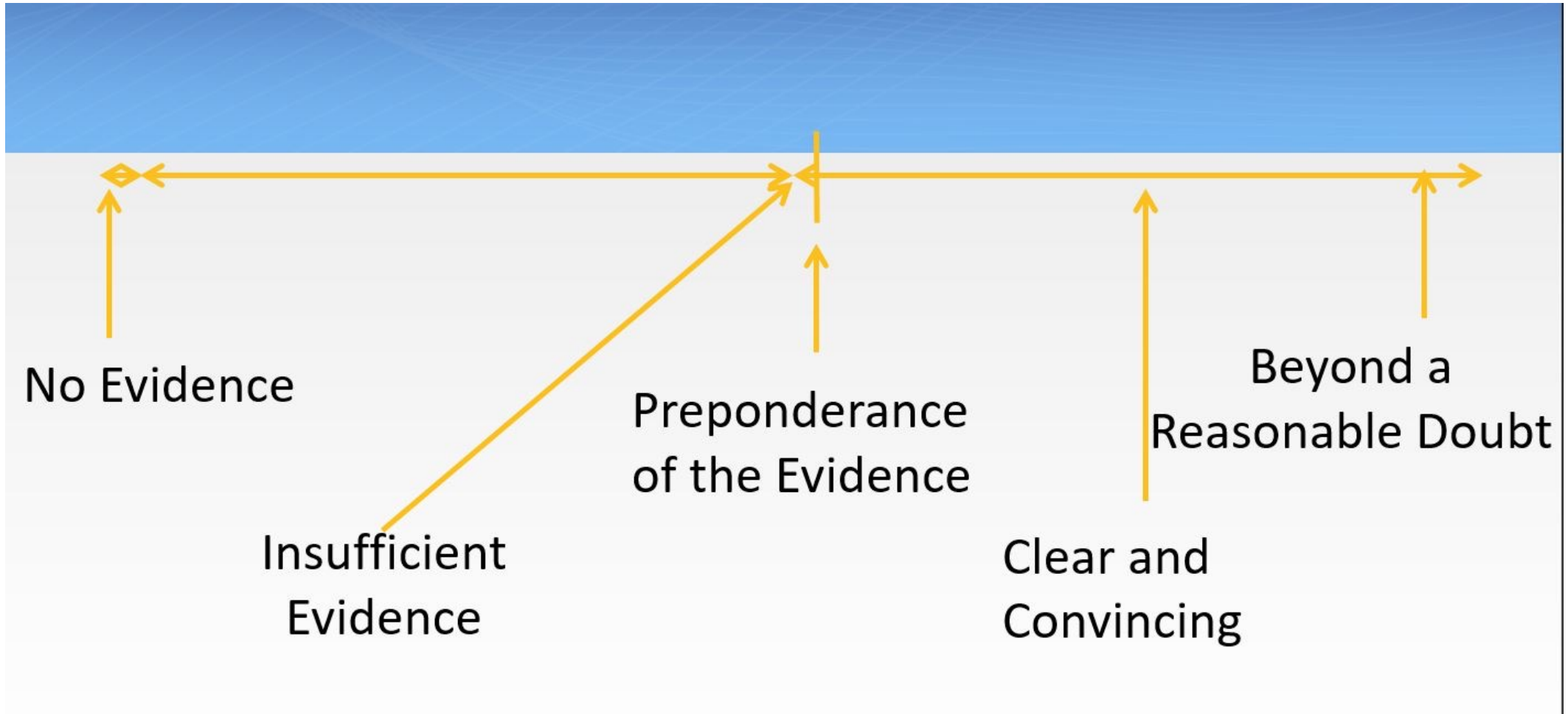
- **Bias**

- Understand who the person is and their relationship to the parties and incident at issue
- Bias can manifest in multiple ways:
 - Towards the parties
 - Towards the incident
 - Towards the process

Credibility

- “To assess credibility is to assess overall the **extent to which you can rely** on a witness’ testimony to be accurate and helpful in your understanding of the case”
 - Credible is not synonymous with the absolute truth
 - Memory errors do not necessarily destroy a witness’ credibility, nor does some evasion or misleading
 - Refrain from focusing on irrelevant inaccuracies and inconsistencies
- Potential Assessment Factors
 - Demeanor
 - Non-cooperation
 - Logic/Consistency
 - Corroborating evidence

Understanding Evidence Thresholds



Determining Appropriate Sanctions

- “Must be made as a proportionate response to the violation.”
- Should prevent the recurrence of sexual discrimination
- Should remedy the effects of sexual discrimination



Common Student Sanctions

- Warning
 - Probation
 - Loss of Privileges
 - Counseling
 - No Contact
 - Residence Hall Relocation, Suspension or Expulsion
 - Limited Access to Campus
 - Service Hours
 - Online Education
 - Alcohol & Drug Assessment and Counseling
 - Discretionary Sanctions
 - Suspension*
 - Expulsion*
- *Must be supported by **substantial evidence** at the hearing



Understanding Substantial Evidence

- Required to suspend or expel a student
- Panel **MUST** be able to clearly state what evidence exists to support the finding
- Cannot be merely a feeling!





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Recognizing & Overcoming Bias

Role of Hearing Panel

- Follow the Policy
 - Standard of proof
 - Avoid burden shifting
- Make a determination regarding the violation(s) and sanction(s)
- Fair and unbiased review of matter



What is Culture?

- Shared system of meanings, beliefs, values and behaviors
- Culture is collective
- Culture is learned
- Culture is not static



Cultural Competence

- Develop awareness of cultural values, beliefs and biases
- Continued education on cultural norms
- Honor diversity and acknowledge differences as assets to an organization or institution



Cultural Humility

- Cultural humility is a life long learning process of engaging in critical self reflection, and self critique, requires individuals and their respective institutions to be actively accountable for inclusivity
- Individuals who practice cultural humility increase their self-awareness of their own biases and perceptions, which enhance their experiences with others

Tervalon & Murray-Garcia (1998)



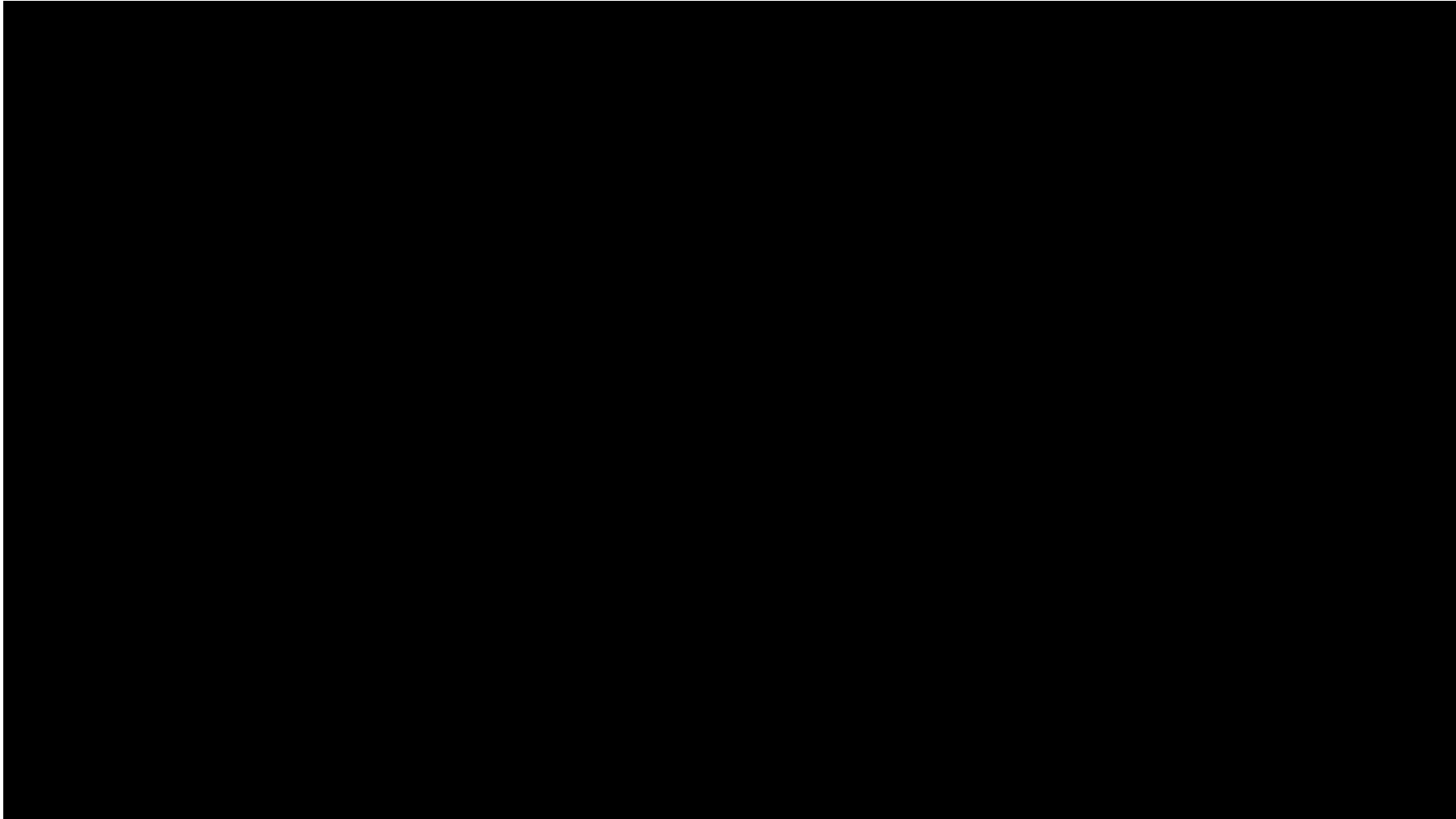
Importance of Identities



“Our minds automatically organize items into categories. Chairs, stools and sofas are used for sitting. This idea is not only true for items but also for people. These categories can include gender, race, and age. When this happens, the categories that we have associated with that person can automatically be activated and have an influence on our interaction with that person.” Jerry Kang, UCLA

Personal Identity Activity





Applying Cultural Humility to Hearing Panels

- Recognize unconscious biases that may arise
- Consider how your identities are presented
- Avoid the single story –
Assess the information from all angles

