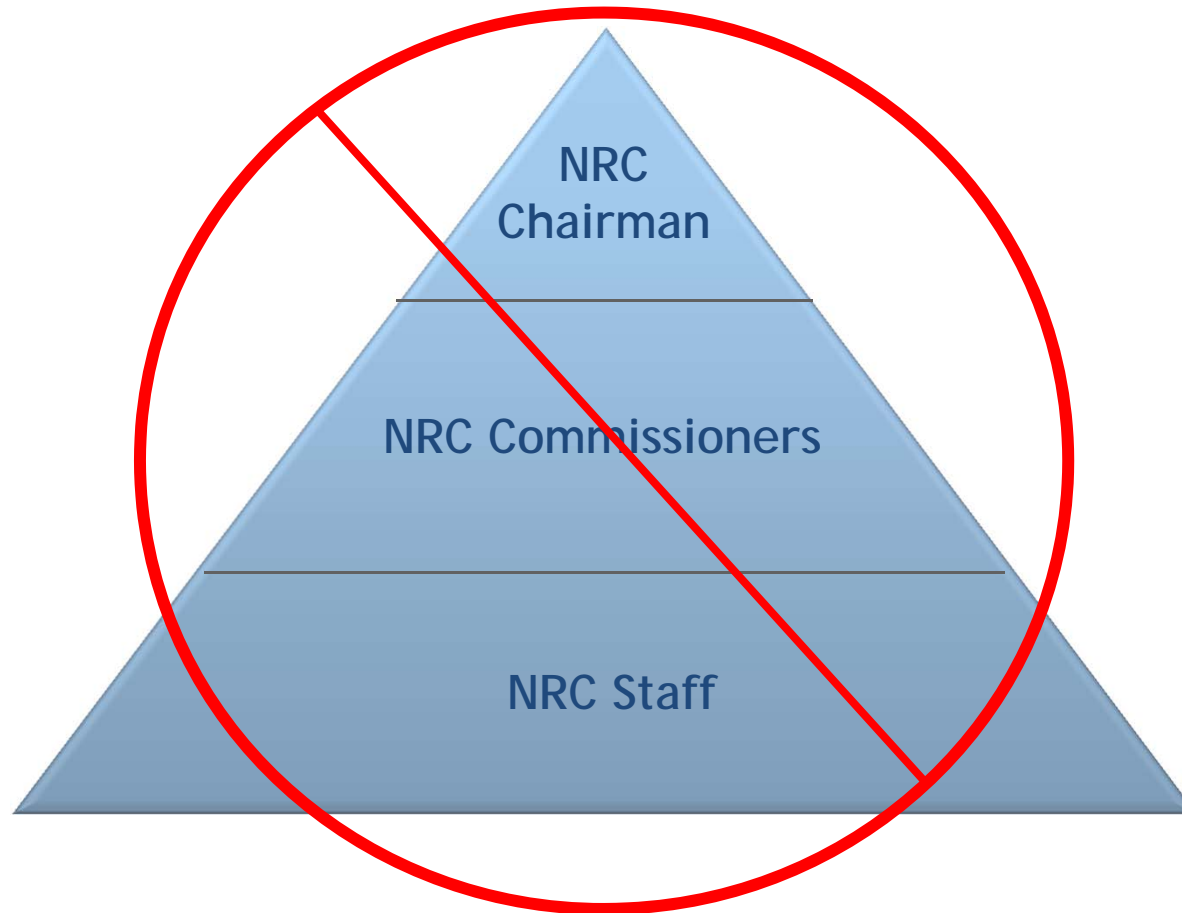


Making Unpopular Decisions: The U.S. Nuclear Regulatory Commission's Process for Separating Technical and Political Issues

Presented to
Japanese Atomic Industrial Forum

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Incorrect View of the NRC



Correct Structure of the NRC



NRC Commissioners Serve as Judges

- The Commission is an “appellate body” for decisions made by the NRC staff or licensing boards
- The Commissioners are **not** scientific peer reviewers
- The Commissioners do **not**
 - Conduct technical investigations
 - Routinely conduct licensing hearings
 - Manage the NRC staff
- The Commissioners’ most important duties are to
 - Settle disputes
 - Set policy for the NRC



Structure of the Commission

- Five Commissioners with staggered 5-year terms; one new Commissioner appointed every year who cannot continue to serve unless reappointed
- All Commissioners have equal authority in all policy and adjudicatory matters
- The Chairman has greater authority in administrative issues including setting the agenda for the Commission
- The President appoints the Chairman from the sitting Commissioners



Commissioner Office Structure

Commissioner's Office	Chairman's Office
Chief of Staff	Chief of Staff Deputy Chief of Staff
1 Legal Counsel	1 Legal Counsel
1 Reactor Specialist	2 Reactor Specialists
1 Nuclear Materials Specialist	2 Nuclear Materials Specialists
2 Administrative Assistants	1 Budget Policy Specialist
X Special Assignees	1 Security Specialist
	1 International Specialist
	1 Communications Specialist
	3 Administrative Assistants
	X Special Assignees

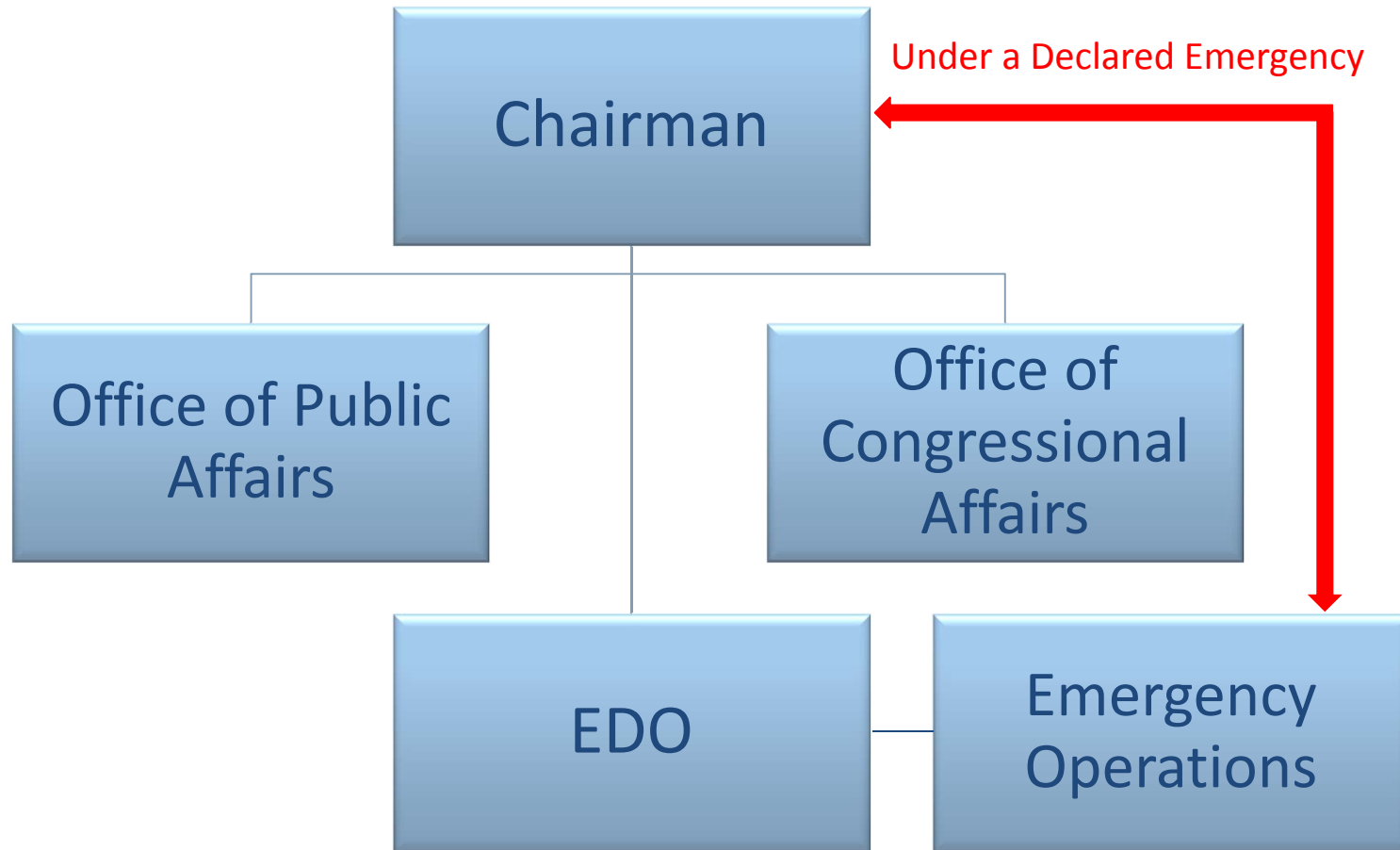
Total of staff at the NRC
Commissioner Offices is about 40
with special assignments from
regional offices and staff rotations

Role of the Chief of Staff

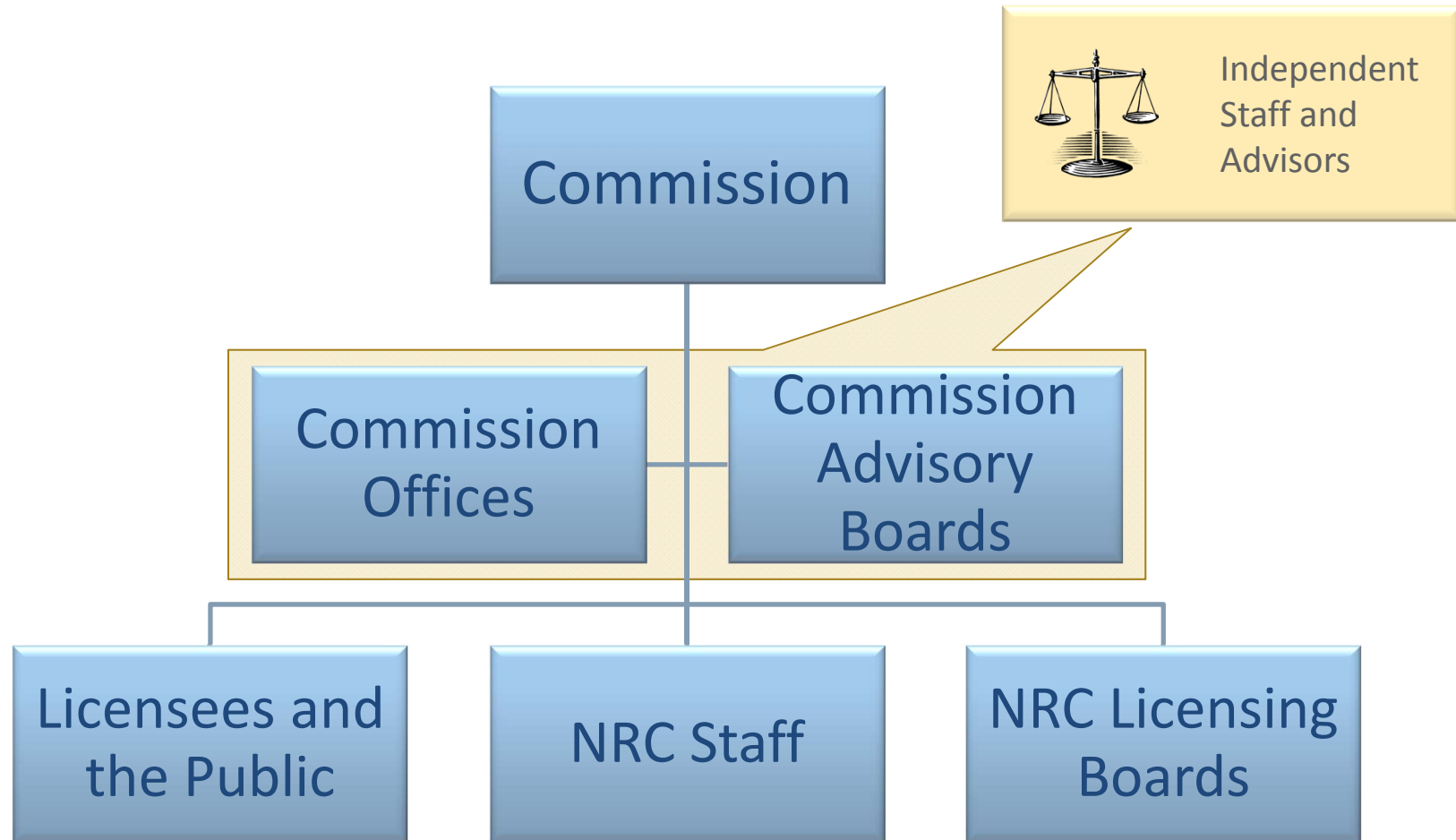
- The “Sunshine Act” requires that all meetings which may result in policy development be held in a public and transparent manner
- Only two Commissioners can meet at anytime to discuss policy matters in private; if three Commissioners are present at meetings where any policy issues may be discussed, a public notice must be given
- The Chiefs of Staff for the Commissioners can meet collectively without public notice to negotiate positions between the Commissioners’ Offices
- The primary role of the Chairman’s Chief of Staff is to
 - Coordinate policy
 - Keep the other Commissioner Offices *fully informed*



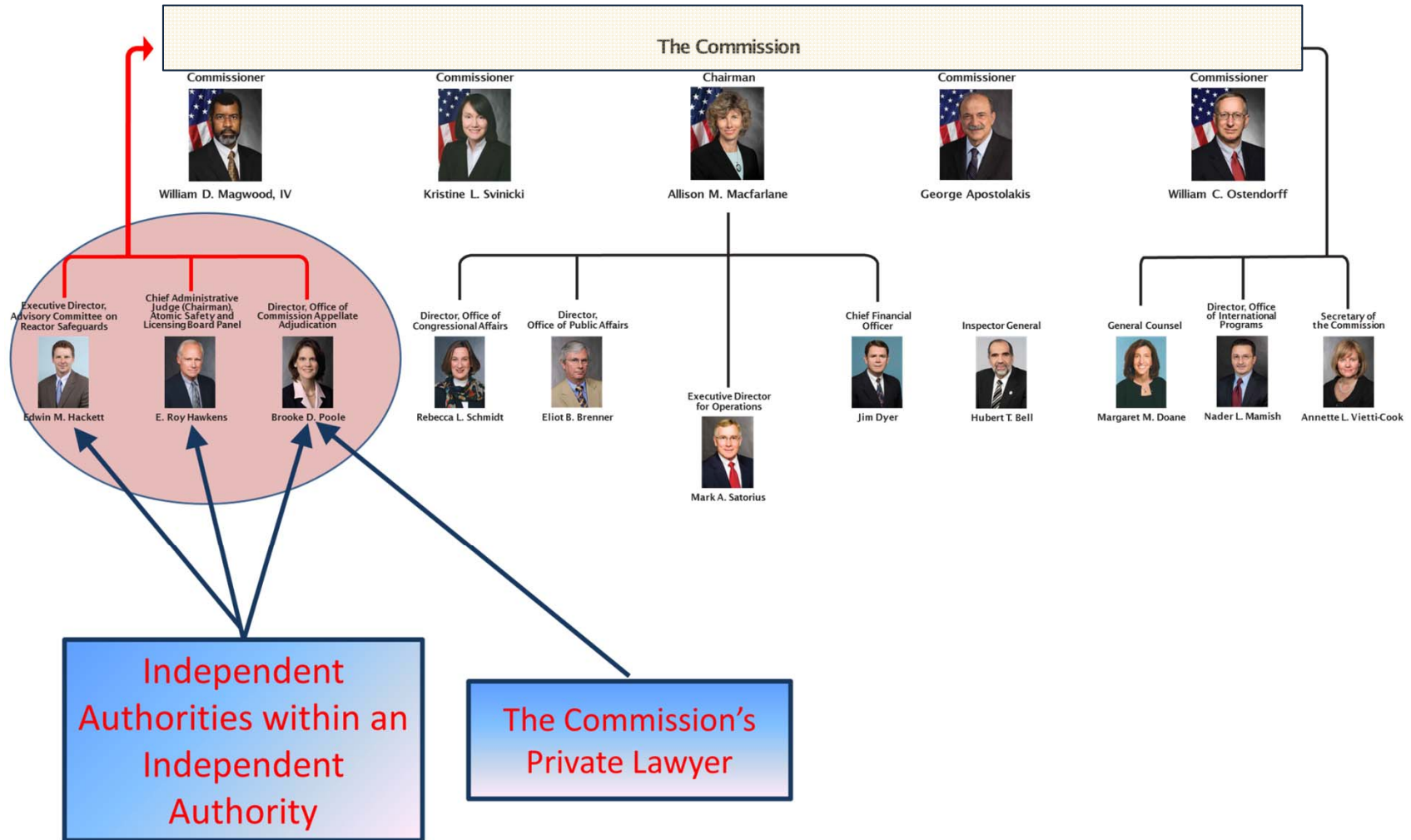
Chairman as Spokesperson for the Commission



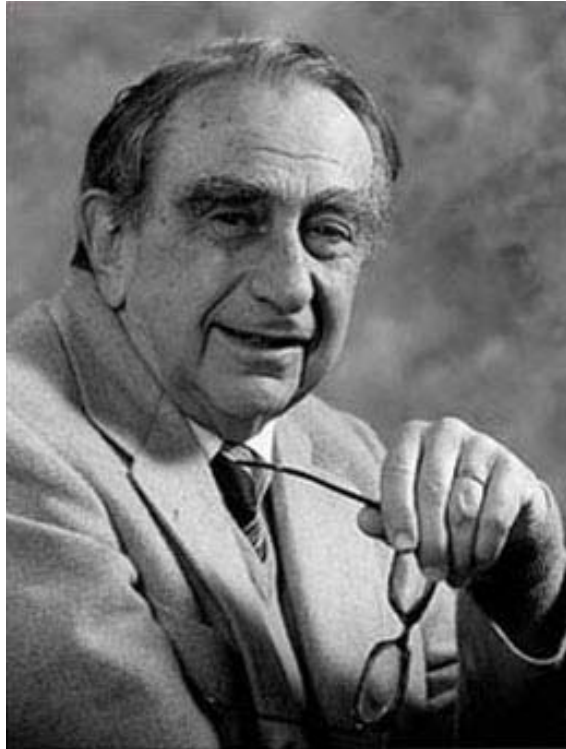
The Commission Must Balance All Views from All Sources



U.S. Nuclear Regulatory Commission



Advisory Committee on Reactor Safeguards (ACRS)



Edward Teller

- Prestigious body of technical experts first created in 1955, and chaired first by Edward Teller
- The ACRS was established by statute in the Atomic Energy Act of 1954; it is the most influential technical body dealing with nuclear safety in the U.S.
- The Committee is independent of the NRC staff and reports directly to the Commission, which appoints its members



Functions of the ACRS

- The Committee has four primary purposes:
 - Review and report on safety studies and reactor facility license and license renewal applications
 - Advise the Commission on the hazards of proposed and existing production and utilization facilities and the adequacy of proposed safety standards
 - Initiate reviews of specific generic matters or nuclear facility safety-related items
 - Provide advice in the areas of health physics and radiation protection
- Reviews the NRC's research activities and provides a biannual report to the Commission



Relationship of the ACRS to the Commission

- ACRS is much more than an advisory board; it may pursue lines of inquiry relevant to advancing safety within limits established by the Commission
- Routinely challenges the views of NRC staff and external organizations
- Provides independent assessment of complex technical issues for the Commission
- Serves as scientific “peer review” body for the Commission

The Commission must consider the views of the ACRS when reaching decisions.



Atomic Safety Licensing Board (ASLB)

- Independent *trial*-level adjudicatory body of the NRC
- Conducts public hearings on contested issues that arise in licensing and enforcement proceedings
- Provides licensees and the public an opportunity to challenge proposed licensing and enforcement activities
- Decisions of the ASLB are final unless appealed to the Commission

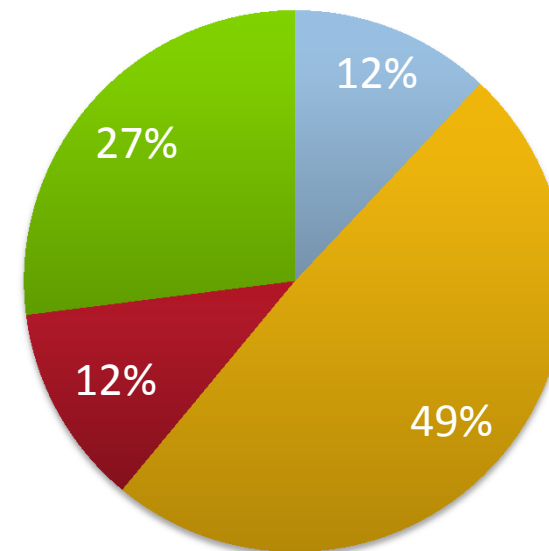


ASLB Composition

- Three full time judges:
 - Chief Administrative Judge who serves as Chairman
 - Associate Chief Administrative Judge for Legal Matters
 - Associate Chief Administrative Judge for Technical Matters
- 32 part-time judges, most at PhD level
- 37% of ASLB members hold **both** advanced technical and law degrees

Highest Degree

■ Natural Sciences ■ Engineering
■ Earth Sciences ■ Law



ASLB Organization and Structure

- Each Board is comprised of three administrative judges:
 - One attorney skilled in the conduct of administrative hearings, and
 - Two experts in scientific or technical areas relevant to the subject matter of the dispute

This scientific enhancement of the adjudicatory function is statutorily mandated.



Role and Relationship of the ASLB

- Independent from the NRC staff; it reaches objective decisions based on the record
- Acts as a lower court to the Commission's role as the appellate body
- Filters issues of technical and substantive merit and denies intervention on political motivations
- ASLB decisions are final and can only be overturned by the full Commission

The Commission must publically state why it agrees or disagrees with the ASLB on any appeal.



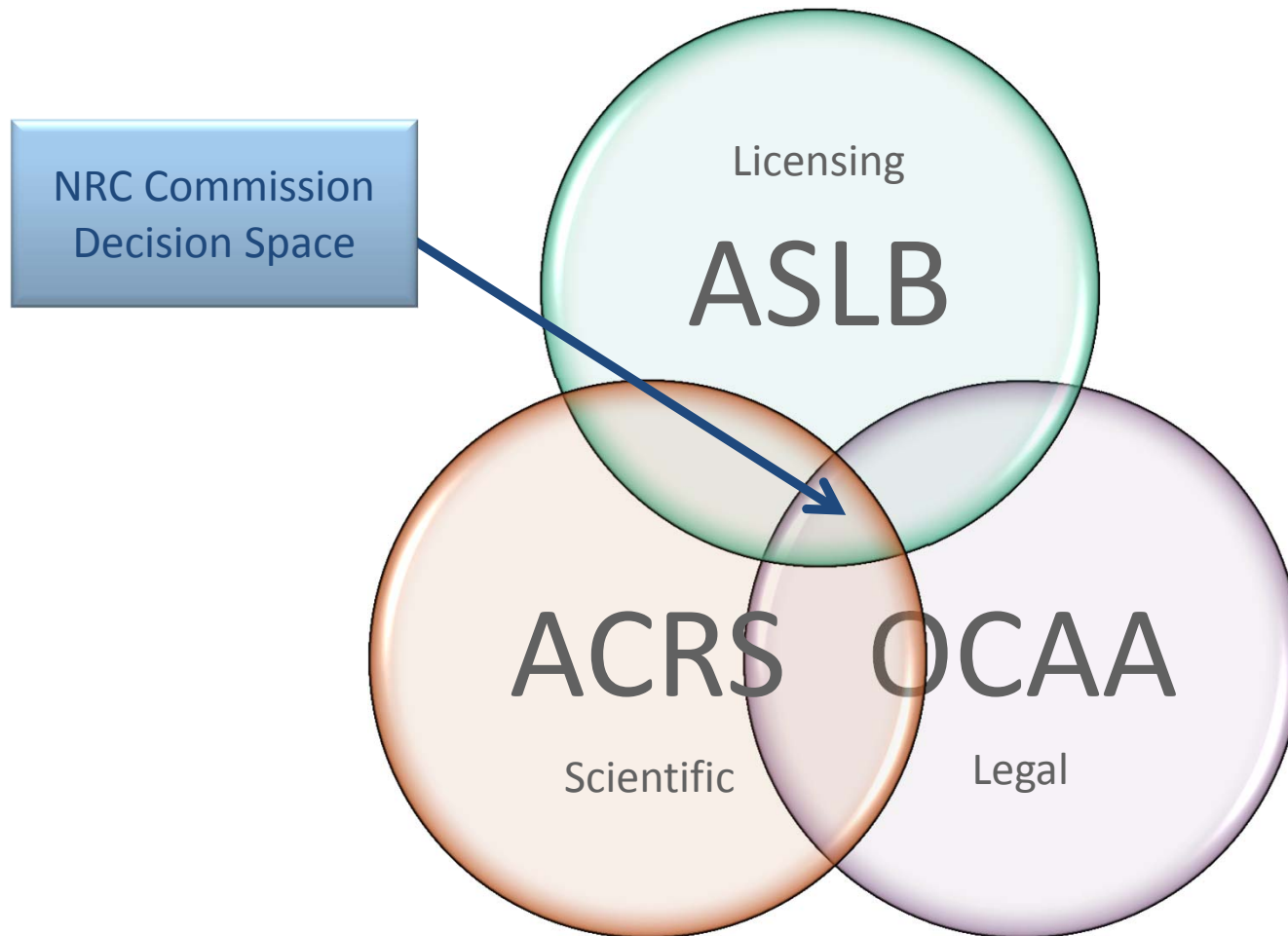
Office of Commission Appellate Adjudication (OCAA)

- OCAA serve as the Commission's private lawyers
- Reviews appeals to ASLB decisions
- Provides analysis and options of adjudicatory matters requiring a Commission decision (e.g., appeals, petitions for review of ASLB decisions, certified questions, referred rulings and stay requests)

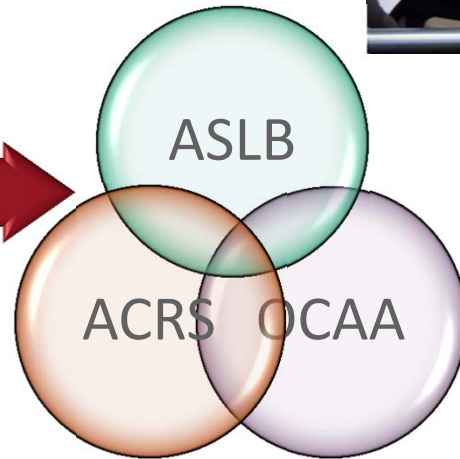
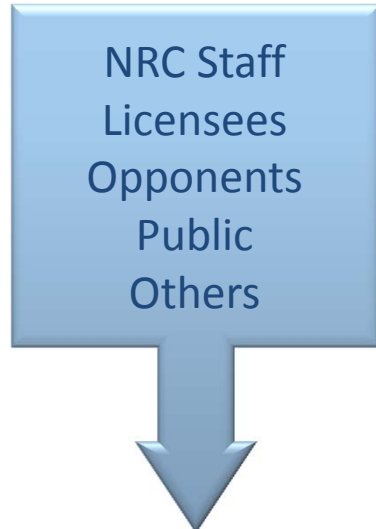
Provides first draft of the final decision to be proposed to the Commission.



Independent Authorities Constrain the Decision Space of the Commission



Filtering Out What is Important



Case Study: ASLB and Yucca Mountain

- President Obama ordered DOE to terminate the Yucca Mountain licensing for political, not technical purposes
- The NRC's ASLB denied the request stating the Administration did not have the authority under the law or a technical basis or safety consideration
- The NRC Commission was split 2-2 on DOE's appeal, therefore the ASLB decision was final
- Former Chairman Jaczko illegally shut down the NRC's Yucca program and was sued by several states
- U.S. Court of Appeals agreed with the states and ordered NRC to resume review of Yucca license; issued a 'writ of mandamus'—the first time in U.S. history an independent regulatory body had done so



Case Study: ASLB and Yucca Mountain

Three part-time NRC ASLB judges—a lawyer, a marine geologist and a civil engineer—***disagreed with and defeated*** the political efforts of the President of the United States, the Secretary of Energy, the Majority Leader of the U.S. Senate and the Chairman of the NRC.

Science, not politics, won!



Final Remarks and Recommendations

- The Japanese NRA should create a structure similar to the NRC decision making structure
- The NRA cannot decide everything, it must decide ***only the most important things***
- Release of slightly contaminated water at Fukushima Daiichi is ***not a public safety issue*** and should be considered as part of the site license.
- 1F original license conditions allow for release of low-level contamination; NRA staff should defend these license conditions as limits during decommissioning operations
- NRA Commission should only review appeals of NRA staff decision and only in the context of existing regulations and accepted international health and safety considerations



Thank You for Your Attention!



ご清聴ありがとうございました

