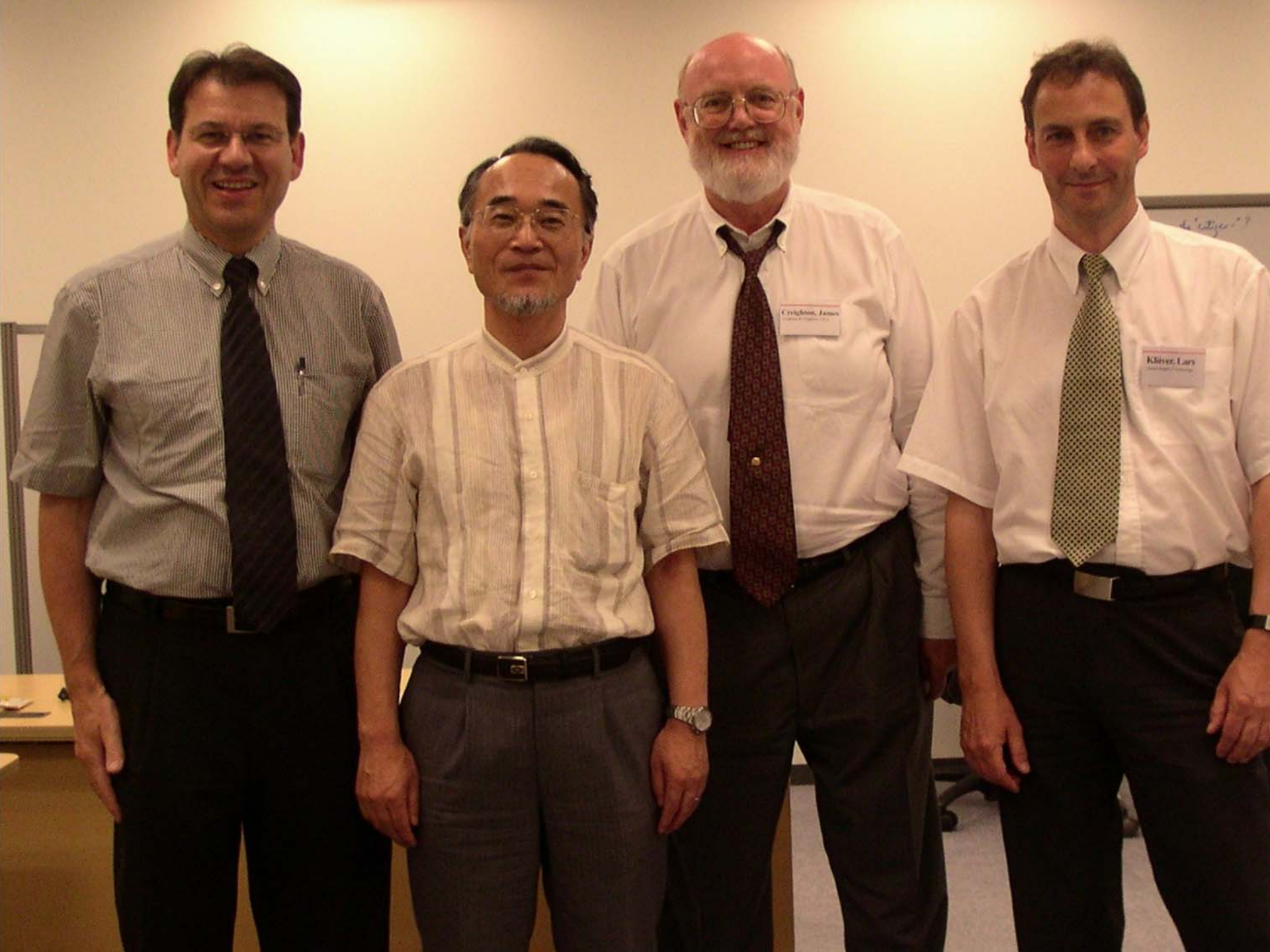
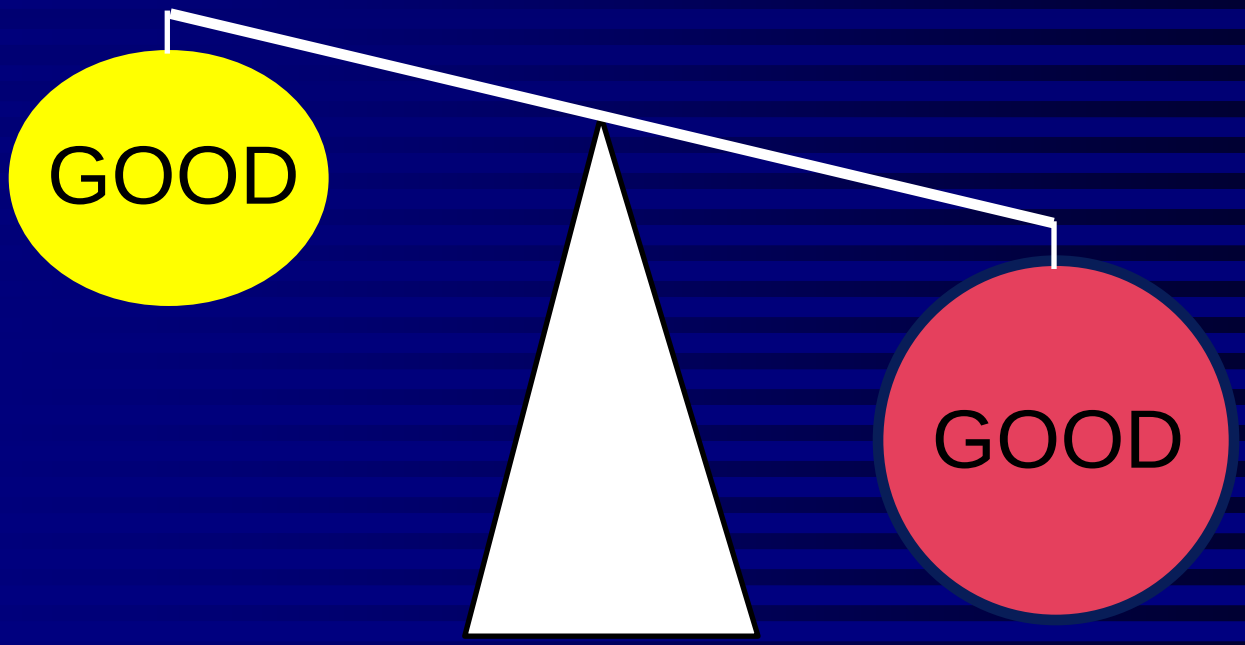
U.S. EXPERIENCE WITH PUBLIC PARTICIPATION AND DISPUTE RESOLUTION

James L. Creighton, Ph.D.
Creighton & Creighton, Inc.
Los Gatos, CA

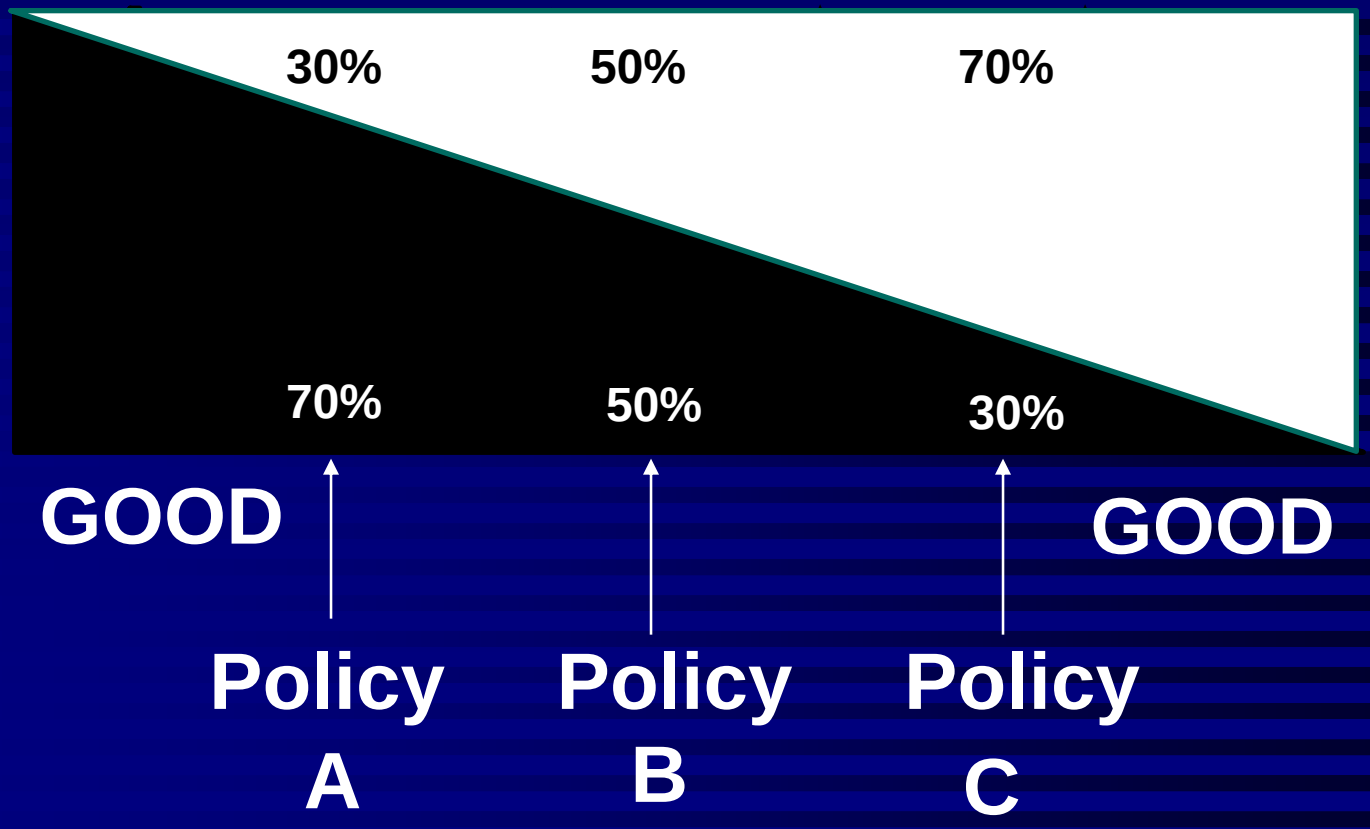
Wakamats, Yukio


Creighton, James
Klüver, Lars

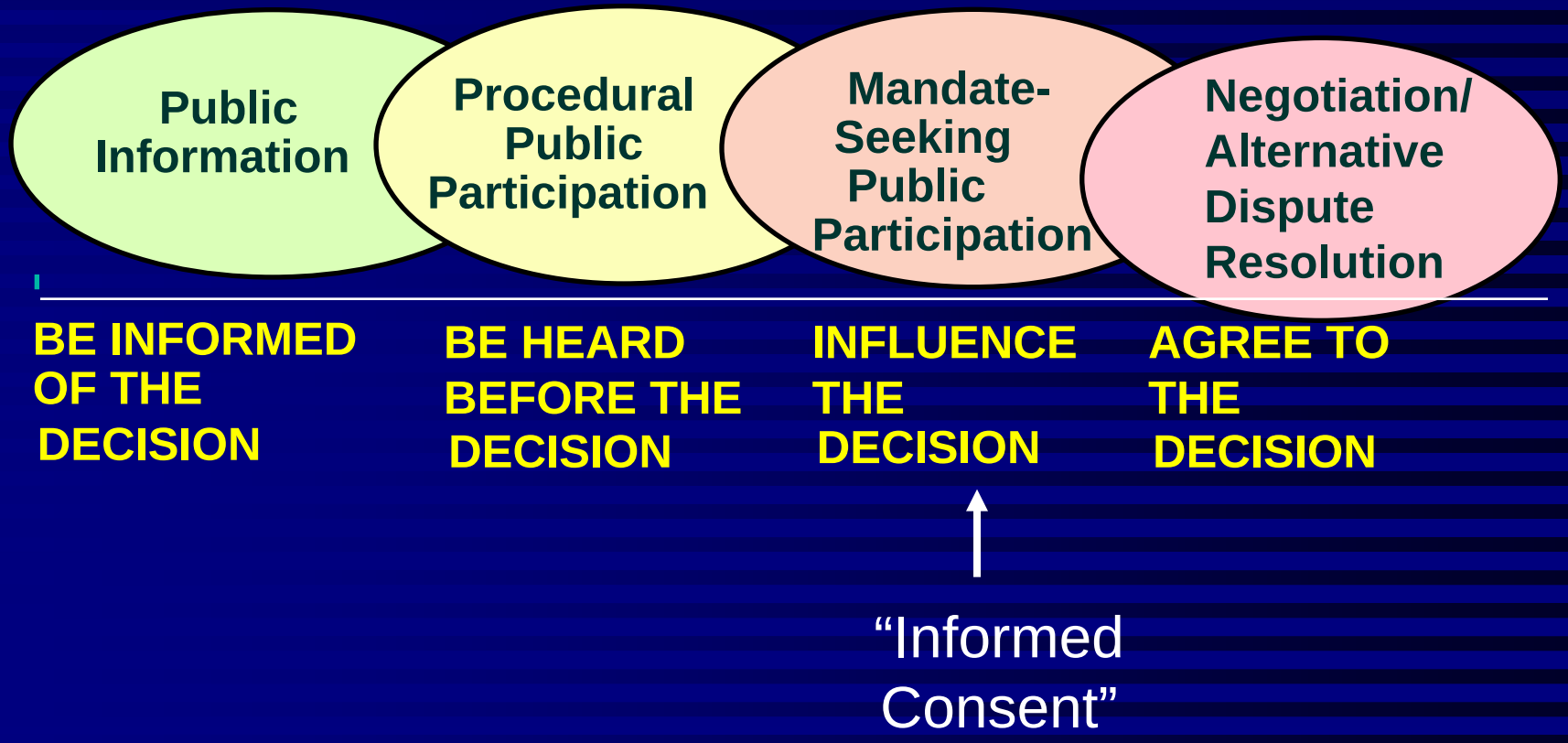
CHOOSING BETWEEN TWO "GOODS"



POLICY CHOICES ARE VALUES CHOICES



WHAT DOES IT TAKE FOR A DECISION TO COUNT?



WHY “PARTICIPATION” NOT CO-DECISIONMAKING

- Accountability to elected officials
- Legal constraints & contractual obligations
- Mandates & authorities
- The “public” that chooses to participate may achieve consensus because it isn’t paying the costs
- People who choose to participate are self-selecting
- Sometimes fundamental disagreement in public

FOUR APPROACHES FROM LATE 1960s – 1970s

- Public participation
- Environmental mediation, which becomes alternative dispute resolution, then consensus building
- Technology assessment
- Social impact assessment

PUBLIC PARTICIPATION

- 1970s - Requirements in National Environmental Policy Act and other environmental cleanup laws
- Agency remains the ultimate decision maker
- Minimum procedural requirements defined
  - Adequate information to public
  - Alternatives considered
  - Impacts disclosed
  - Pre-decision participation

ENVIRONMENTAL MEDIATION/ CONSENSUS BUILDING

- “Agreements” oriented
- Requires some mechanism for representation of interests
- Agencies are parties to the agreement, not the sole decision maker

TRENDS: PUBLIC PARTICIPATION

- Embedded in most governmental decision making
- Most effective agencies go beyond simply fulfilling requirements to “mandate-seeking”
- Agencies go through cycles, highly supportive, then less interested, then highly supportive

CRITIQUE OF PUBLIC PARTICIPATION

- Some agencies just fulfill procedural requirements – little impact on decision making
- Some people believe that agency retaining power is not “real” participation

CRITIQUE OF CONSENSUS-BUILDING

- People who are “represented” don’t always believe they are adequately represented
- Some interests, e.g., “environmental community,” not well defined
- Some parties unable to make binding commitments
- Inequalities both in power and what people bring to the negotiating table
- Often requires an external authority to “bind” the agreement

OVERALL TRENDS

- Overlapping of public participation and dispute resolution – points on the same continuum
- Consultants move back and forth between the two fields
- Both currently in decline in the Federal sector under Bush Administration (also happened under Reagan Administration)

CHANGE IN THE ROLE OF THE MANAGER

- Old view: Make a “sound” decision base on good science and a full assessment of costs and impacts
- New view: Must also get a “mandate” that permits implementation
- “Legitimacy” implies both good science and public acceptance

Information-Providing Techniques

- Briefings
- Exhibits/Displays
- Feature stories
- Hotlines
- Information repositories
- Internet/web pages
- Mailings - technical reports/ environmental reports
- News conferences
- Newsletters
- Newspaper inserts
- News releases
- Paid advertisements
- Press kits
- Public service announcements
- Speaker’s bureau
- Web pages

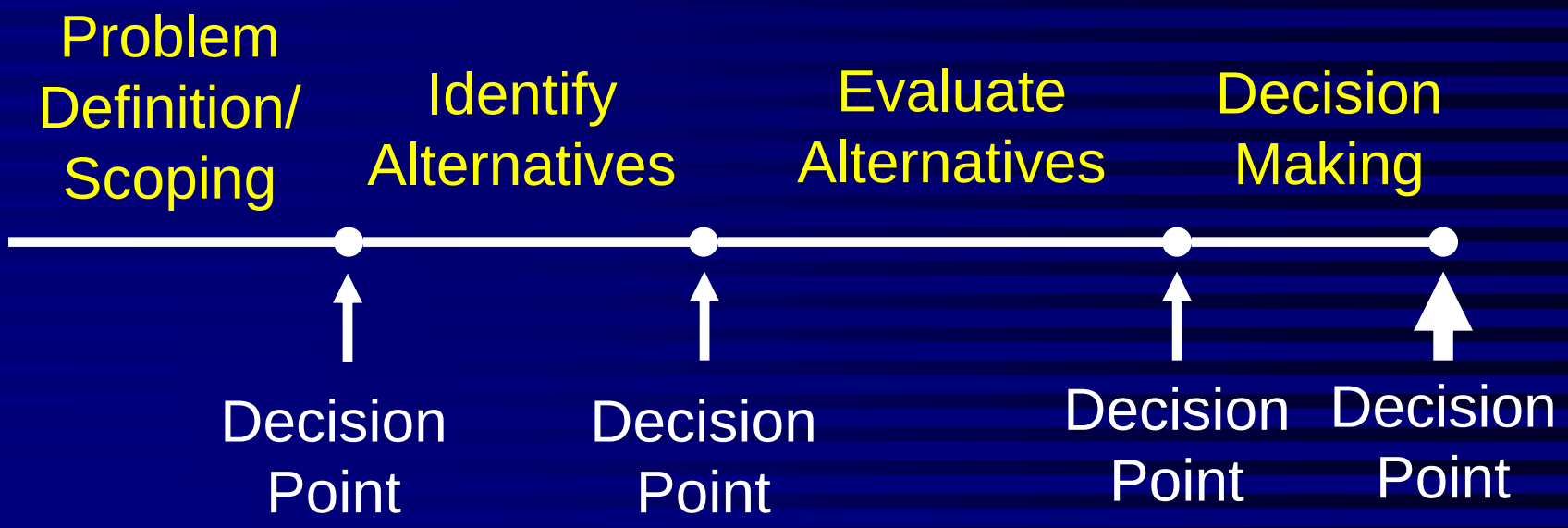
Interaction/Information Exchange Techniques

- Advisory groups/task forces
- Citizen Jury/Consensus conference
- Focus groups
- Interviews
- Open houses
- Polls, surveys, questionnaires
- Participatory television
- Plebiscite
- Polls, surveys, questionnaires
- Public hearings
- Public meetings
- Retreats
- Web-based conferencing
- Workshops
  - Nominal group process
  - Samoan Circle

AGREEMENT-SEEKING TECHNIQUES

- Mediation
- Arbitration – Non-Binding
- Arbitration – Binding
- Disputes Review Panel
- Negotiated Rulemaking
- Mini-Trial
- Partnering

TYPICAL DECISION MAKING PROCESS



TYPICAL POINTS AT WHICH PUBLIC PARTICIPATION MAY BE REQUIRED

For each step in decision making process:

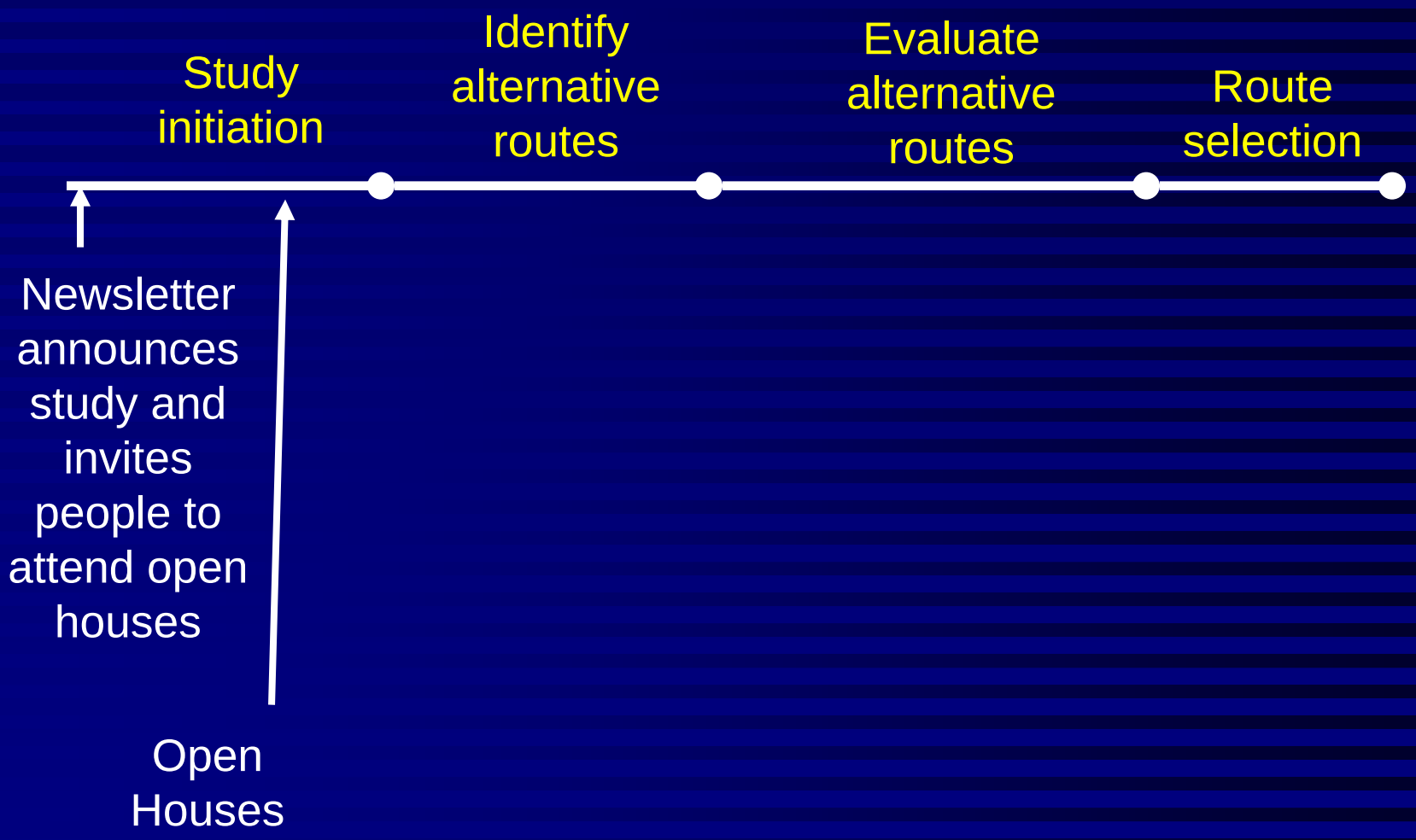
Techniques to initiate this step/inform public of what occurred during the prior step

Techniques for maintaining visibility (particularly if this period is more than a few months)

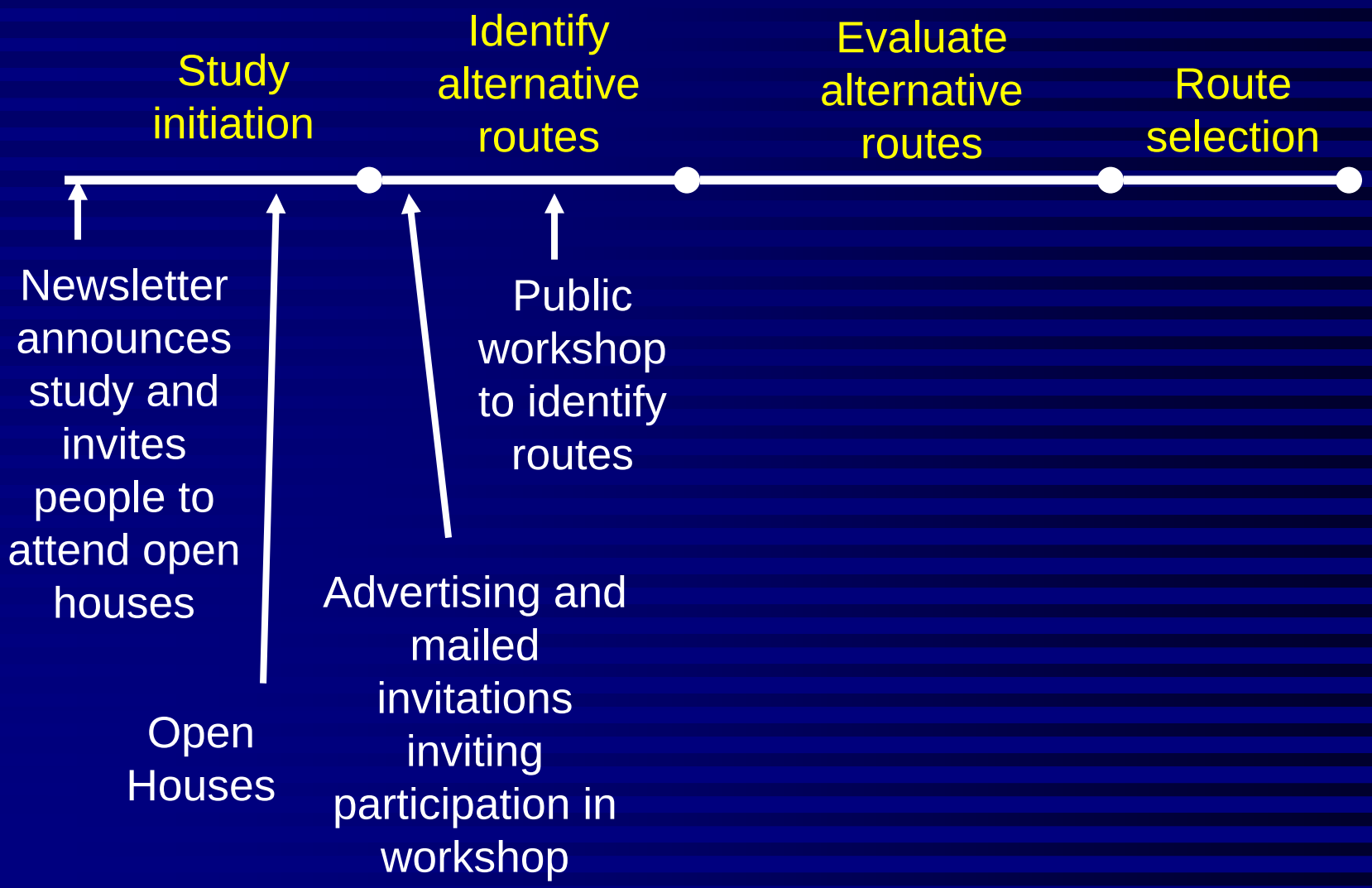
Techniques for informing the public prior to pre-decision involvement

Techniques for involving public prior to decision (most important)

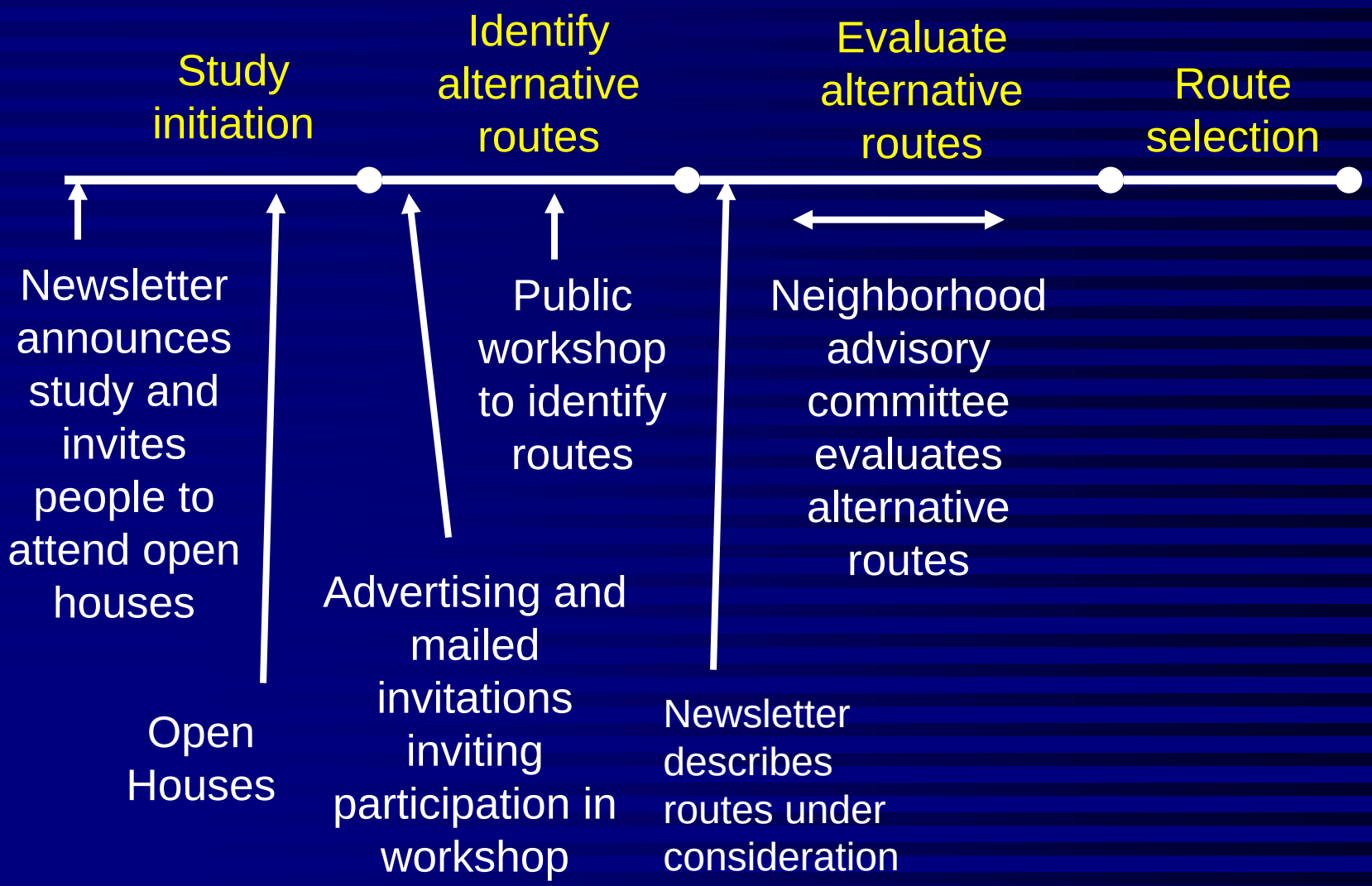
A “SIMPLE” ROUTE SELECTION PROCESS



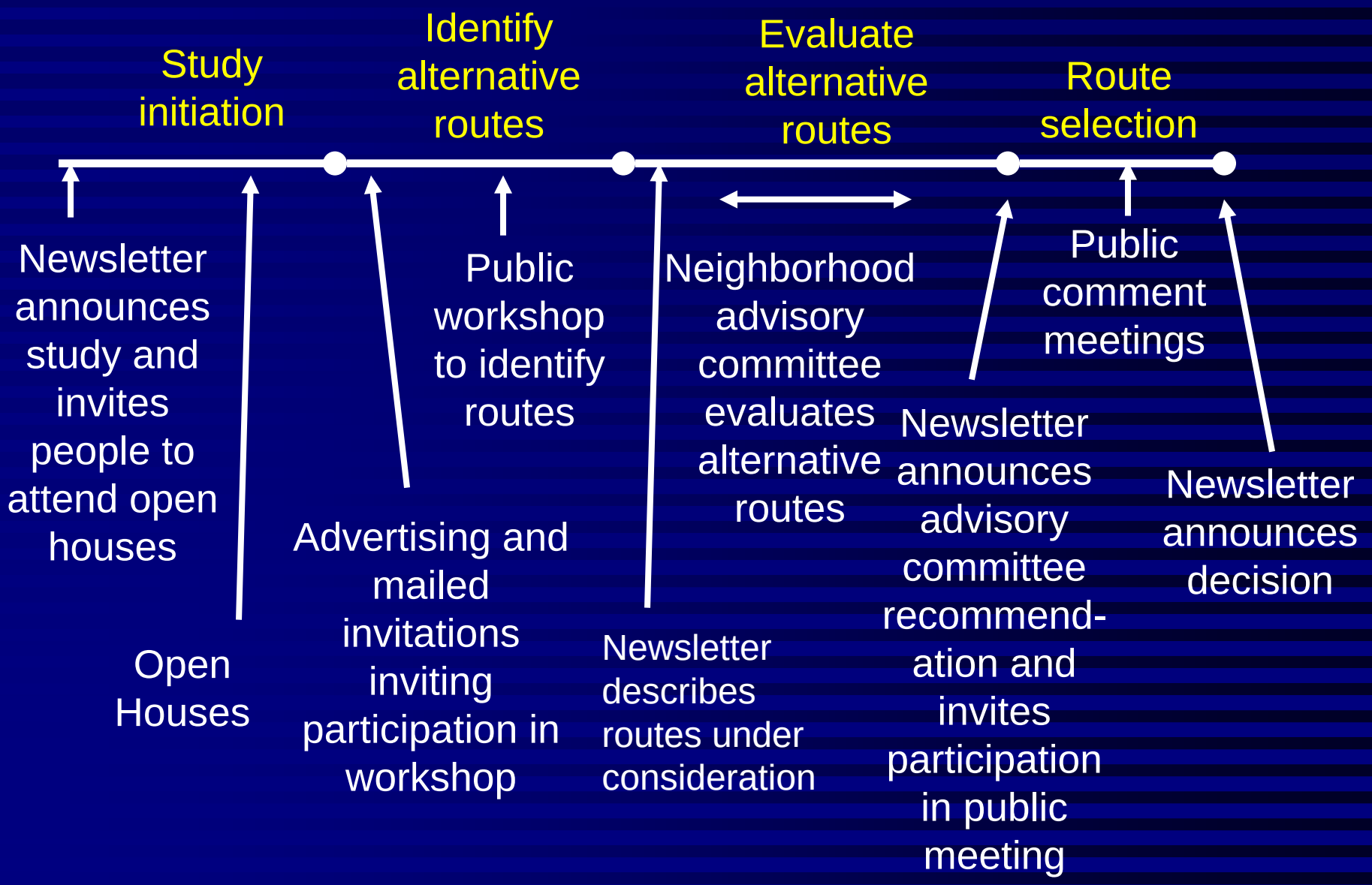
A “SIMPLE” ROUTE SELECTION PROCESS



A “SIMPLE” ROUTE SELECTION PROCESS



A “SIMPLE” ROUTE SELECTION PROCESS



WHAT DOES A PUBLIC PARTICIPATION PROGRAM LOOK LIKE?

- Columbia River System Operations Review – very large scale, mix of public comment and consensus seeking
- Sanibel Island Wetlands Permit – smaller scale, consensus-seeking

©2001, Encyclopaedia Britannica, Inc.

Columbia River Watershed

Columbia River
Columbia River
Kootenai River
Skagit River
Pend Oreille River
Spokane River
Columbia River
Clearwater River
WASHINGTON
MONTANA
Cowlitz River
Toutle River
Lewis River
Hood River
Columbia River
Sandy River
Willamette River
Deschutes River
John Day River
Snake River
Salmon River
OREGON
IDAHO
Snake River
Rogue River
CALIFORNIA
NEVADA
UTAH

COLUMBIA RIVER SYSTEM SYSTEM OPERATION REVIEW

- The Challenge:

  Rethink the operations of the entire Columbia River System and get agreement between government agencies on a future operating regime

- Anadramous fisheries showing significant decline

THE PLAYERS

- Agencies: Bureau of Reclamation (irrigation water), Army Corps of Engineers (flood control), Bonneville Power Administration (hydropower)
- Later: U.S. Fish & Wildlife (endangered species, Marine Fisheries Service (commercial fisheries)
- Four states: Oregon, Washington, Idaho, Montana (Major cities – Portland & Seattle)
- Regional Power Council
- Tribal nations
- Numerous environmental groups – “Ecotopia”

COLUMBIA RIVER SYSTEM SYSTEM OPERATION REVIEW

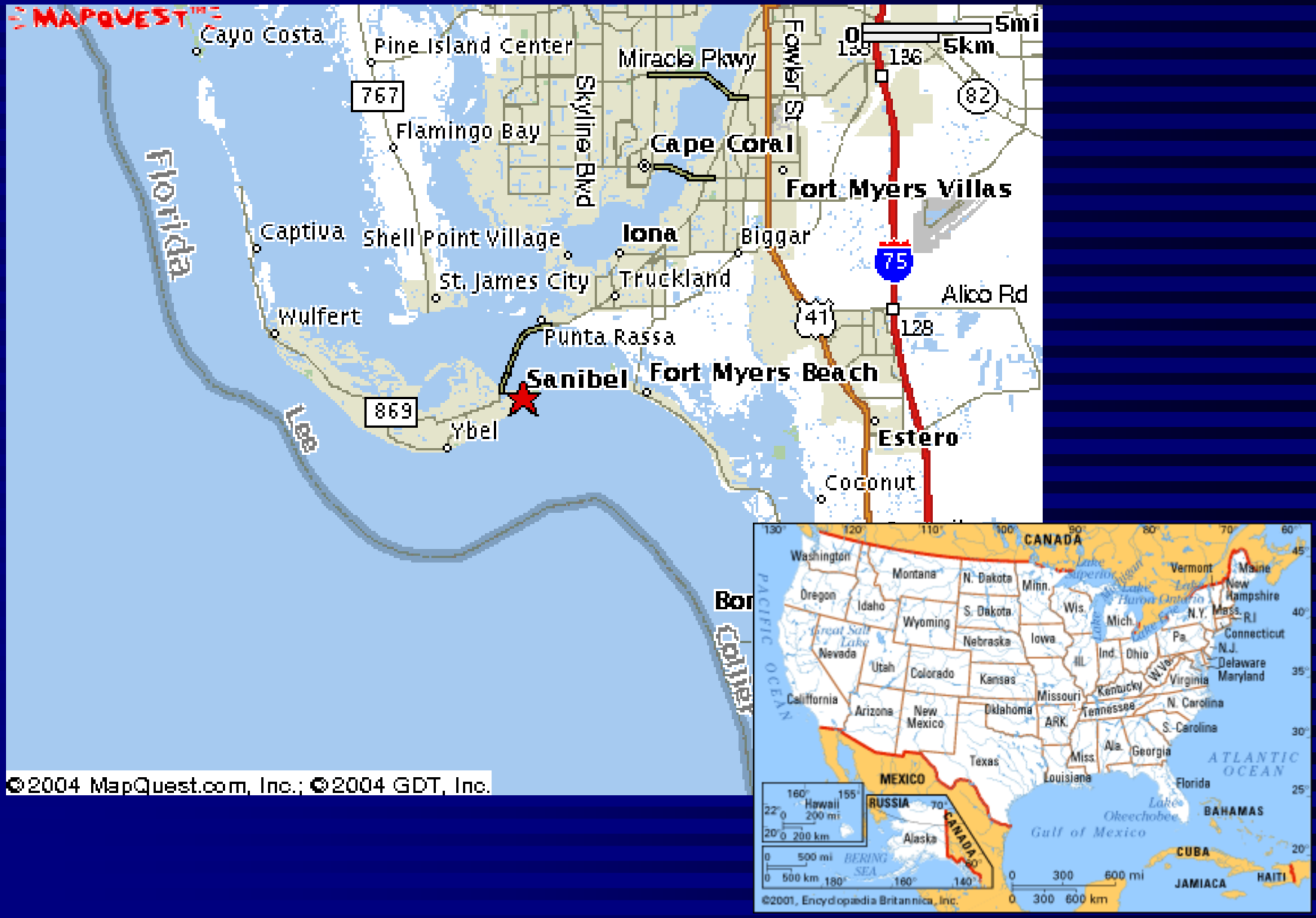
Techniques used:

- Newsletters: Direct mail to 10,000 people – bi-monthly
- Three rounds of workshops/meetings (about 10 meetings each round) – during scoping/identification of alternatives, alternatives review, selection of operating plan
- Five working groups: Made up of representatives of agencies, tribes, and NGOs. Reviewed methodology and advised within their subject area.
- Peer Review Panels: Made independent review of study methodology
- Decision maker: Interagency Policy Committee

COLUMBIA RIVER SYSTEM SYSTEM OPERATION REVIEW

Significant events:

- Need to consider new institutional arrangements (stakeholder workshops)
- Declaration of fisheries as “endangered species” – Fish agencies assume a dominant role in operations planning
- “Designer” species
- Agreement reached on operating plan and mechanisms for update


MAPQUEST
Cayo Costa
Pine Island Center
767
Flamingo Bay
Miracle Pkwy
Skyline Blvd
Cape Coral
Fowler St
0
5mi
5km
136
82
Fort Myers Villas
Florida
Captiva
Shell Point Village
Iona
Biggar
75
St. James City
Truckland
Alico Rd
Wulfert
41
128
Punta Rassa
Sanibel
Fort Myers Beach
869
Ybel
Lee
Estero
Coconut
©2004 MapQuest.com, Inc.; ©2004 GDT, Inc.
CANADA
Washington
Montana
N. Dakota
Minn.
Vermont
Maine
New Hampshire
Oregon
Idaho
S. Dakota
Wis.
Mich.
N.Y.
Mass.
R.I.
Wyoming
Connecticut
Nebraska
Iowa
Pa.
N.J.
Nevada
Utah
Colorado
Kansas
Ind.
Ohio
Delaware
Maryland
Virginia
Kentucky
California
Arizona
New Mexico
Oklahoma
Missouri
Tennessee
N. Carolina
S. Carolina
ARK.
Texas
Miss.
Ala.
Georgia
Louisiana
Florida
MEXICO
RUSSIA
Alaska
BAHAMAS
CUBA
JAMAICA
HAITI
PACIFIC OCEAN
ATLANTIC OCEAN
Gulf of Mexico
Lake Okeechobee
BERING SEA
©2001, Encyclopædia Britannica, Inc.

SANIBEL ISLAND WETLANDS PERMIT

- Army Corps of Engineers must grant a permit for any development in a wetlands area.
- Sanibel Island is a famous resort area in the State of Florida - but also full of wetlands
- 500 individual permits a year – very costly
- Corps has the authority to grant a “general permit”

SANIBEL ISLAND WETLANDS PERMIT

- District Engineer established a panel representing all key stakeholders on island
- Gave them a choice: (1) Corps could write the terms of the permit; or (2) Panel could write the terms and he would sign them – if there was consensus in the group
- Panel reached consensus on terms
- District Engineer issued the permit using their terms
- Permit in force for five years; no protests during the entire period

SANIBEL ISLAND WETLANDS PERMIT

Follow-Up:

- District Engineer tried the same approach in a large urban area (Miami)
- Panel representing all interests
- Panel about ready to reach agreement, environmental groups showed up and demanded changes
- Consensus reached, including regional office of U.S. Environmental Protection Agency
- National HQ of Environmental Protection Agency overruled the permit

HIGHLY EFFECTIVE PUBLIC PARTICIPATION PROGRAMS

- Provide genuine opportunities to influence the decision
- Are well integrated into the decision-making process
- Have a clearly defined expectation for what they hope to accomplish with the public
- Are targeted at those stakeholders most likely to see themselves as impacted by the decision

HIGHLY EFFECTIVE PUBLIC PARTICIPATION PROGRAMS - Continued

- Involve interested stakeholders in every step of decision making, not just the final stage
- Provide alternative levels of participation based upon people's level of interest, and reflecting the diversity of the people participating
- Take into account the participation of internal stakeholders as well as external stakeholders

"I know of no safe repository of the ultimate powers of society but the people themselves, and if we think them not enlightened enough to exercise their choice with a wholesome discretion, the remedy is not to remove their choice but to inform their discretion."

THOMAS JEFFERSON