

QUALITY STANDARDS FOR LAWS

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GOAL

**EXCELLENCE IN
GOVERNANCE**

PROBLEM

**POOR PERFORMANCE
OF LAWS**

RESEARCH PROJECT

FIND CAUSE FOR
POOR PERFORMANCE

RESEARCH PROJECT

FIND A PATH TO
EXCELLENCE

INVESTIGATION

BILL DRAFTING MANUALS

U.S. STATE GOVERNMENTS

CONCLUSION

EXISTING BILL
DRAFTING DESIGN
PROCESS FLAWED
AND INCOMPLETE

CONCLUSION

OPPORTUNITY TO IMPROVE
PERFORMANCE OF
LAWS / GOVERNMENT

RECOMMEND
GOVERNMENTS
ESTABLISH QUALITY
STANDARDS FOR
LAWMAKING

DISCUSSION POINTS


- **ENGINEERING**
- **GOVERNMENT**
- **RESEARCH PROJECT**
- **RESULTS**
- **CONCLUSION**
- **RECOMMENDATIONS**

ENGINEERING

(CREATIVE SCIENCE)

CREATIVE SCIENCE

Knowledge + Tools +

Method  New Tools

 Problem Solution*

CREATIVE SCIENCE

SUCCESSFUL

- GROWTH OF KNOWLEDGE
- NEW TECHNOLOGIES

RULE OF ENGINEERING

**Change Is Always
Characterized By
Improvement**

CREATIVE SCIENCE

BASIS OF SUCCESS

PROBLEM SOLVING

METHOD (PSM)

PROBLEM SOLVING METHOD

**Only Reliable Method for
Solving Complex Problems***

PROBLEM SOLVING METHOD

- Problem definition & analysis
- Priority & purpose statement
- Search best solution
- Modelling* (costs, risks, ...)

PROBLEM SOLVING METHOD

- Testing and refinement
- Implementation
- References / Signature
- Follow up evaluation

PSM SUCCESS

- **Problems being solved
by ever-improving means**

PSM SUCCESS

- Problems of next higher order of complexity in process of being solved

GOVERNMENT

**DISCUSSION FOCUSED
ON UNITED STATES
FEDERAL / STATE
GOVERNMENTS**

DECLARATION OF INDEPENDENCE

PURPOSE OF GOV'T:

SECURE THE RIGHTS AND
LIBERTY OF THE PEOPLE

RIGHTS - LIBERTY

- **HUMAN RIGHTS**
- **LIVING STANDARDS**
- **QUALITY OF LIFE**

GOVERNMENT OBLIGATION

Solve Problems That Degrade
or Threaten to Degrade
Rights and Liberty

LAWS

- PROBLEM SOLVING
MEANS OF GOV'T
- TOOLS - USEFUL

LEGISLATURE ("LAWMAKING")

LEGISLATURE

PURPOSE

SOLVE PROBLEMS

LEGISLATURE

MEANS

CREATE LAWS*

**LEGISLATURE
MEANS AND ENDS***

BODY OF LAWS



**SATISFIES PURPOSE
OF GOVERNMENT**

LEGISLATIVE PROCESS

Ideas + Method

 New Laws

 Solve Problems

(THEORY)

LEGISLATIVE PROCESS

TWO PRINCIPAL STEPS

1) Bill Drafting*

2) Legislative Session

LEGISLATIVE PROCESS

Idea → (1) Bill Drafting

Bill → (2) Legislature*

→ New Law

RESULT

LEGISLATIVE PROCESS

SUCCESS

- **Many New Laws**

(California = 8879 Statutes; Years 2000 – 2009)

RESULT OF LEGISLATIVE PROCESS:

FAILURE

- PROBLEMS NOT SOLVED

FAILURE OF LAWS

- **Illiteracy, Pensions,**
- **Homelessness, Poverty*,**
- **Unemployment, Debt...**

LEGISLATIVE PROCESS

Ideas + Method

 New Laws

 ~~Solve Problems~~

(REALITY)

PRESENT RULE OF LAW

-- FAILS --

PURPOSE OF GOVERNMENT

CONTRAST*

**CREATIVE SCIENCE
SUCCESSFUL**

**LAWMAKING
NOT SUCCESSFUL**

REASON FOR FAILURE OF LAWS?

**COMPARE BILL DRAFTING
PROCESS WITH PROBLEM
SOLVING METHOD**

RESEARCH

PROJECT

Bill Drafting

IDEA → BILL

How does this happen?

Legislator Sponsors Idea



**Office of Legislative Counsel
(OLC)**

Office of Legislative Counsel



**Lawyers at OLC Prepare Bills
for Presentation to Legislature**

BILL DRAFTING

**Lawyers at OLC use
Law-Drafting Manual as
Guide for Bill Design**

INVESTIGATION

BILL DRAFTING

MANUALS OF 32* STATE

GOVERNMENTS EXAMINED

Guidelines

FOR DRAFTING LEGISLATION

2014

House Bill Drafting Service
Florida House of Representatives



INVESTIGATION

**To What Extent Does The
Drafting Process Use PSM
To Design Bills?**

INVESTIGATION

**Content Of PSM Elements
In Bill Drafting Manuals**

INVESTIGATION

MANUALS: PSM CONTENT?

- **Problem Definition and Analysis**
- **Priority of Problem**
- **Purpose Statement (Measurable Goal)**
- **Review Existing Laws**
- **Search / Optimum Sanction**

INVESTIGATION

MANUALS: PSM CONTENT?

- **Cost Estimation**
- **Risk / Side Effects Estimation**
- **Performance Estimation**
- **References (Knowledge Base)**
- **Name of Designer(s)**
- **Follow Up Evaluation**

RESULTS

RESULTS – 33 Manuals

(% PSM Elements)

| | |
|-------------------------------|-------|
| Problem Definition / Analysis | 0 % |
| Priority of Problem | 0 % |
| Purpose Statement (Goal) | 0 % |
| Review Existing Laws | 100 % |
| Sanction Optimization | 0 % |

RESULTS

| | |
|-------------------------------|-------------|
| Total Cost Estimation | 0 % |
| Risk / Side Effects | 0 % |
| Performance Estimation | 0 % |
| Reference Citation | 0* % |
| Name of Law Designer | 0 % |
| Follow Up Measures | 0 % |

EXPLANATION OF RESULTS

PROBLEM DEFINITION

No requirement

**Designers “should” not “must”
understand problem (i.e., problem
definition optional)**

PROBLEM ANALYSIS

No requirement

PRIORITY OF PROBLEM

No requirement

PURPOSE STATEMENT

No requirement

Purpose statements “discouraged”

PURPOSE STATEMENT

When purpose statements are included, ...attach “ing” to verb describing action: “authorizing, requiring, exempting, altering, establishing...”

PURPOSE STATEMENT

Purpose statements substitute
means (the action / force applied)
for **ends** (the goal)**

CLAIM "SUCCESS" BUT
PROBLEMS NOT SOLVED

PURPOSE STATEMENT

Result of Substitution

Means for Ends:

100's - 1000's of "Successful" Laws

Problems Not Solved

v

PURPOSE STATEMENT

Substitute Means For Ends:

- Abrogate Legislative Duty
- Diminish “Liberty”
- Opportunity Cost

REVIEW EXISTING LAWS

Required: Evaluation of impact of new law on existing, similar laws

But not an evaluation of failure of existing laws to solve problems

OPTIMUM SANCTION

No requirement

“Educated guess” selection of
sanction (fine, jail, subsidy...)

COST ANALYSIS

**Analysis of costs limited to
drain from general fund and impact
on lower level (municipal) gov't's**

COST ANALYSIS

No requirement for analyses of other costs (R&D, promulgation, enforcement, courts, compliance...)*

RISK ANALYSIS

No requirement

**(No Equivalent of Environmental
Impact Statement...)**

PERFORMANCE ESTIMATE

No requirement

(e.g., Benefit / Cost - Risk Ratio)

BASIS IN KNOWLEDGE

No requirement

**(References to interaction
with existing laws cited)**

DESIGNER NAME

No requirement

**(Legislator cited as “author”
Bill designer unknown)**

FOLLOW UP EVALUATION

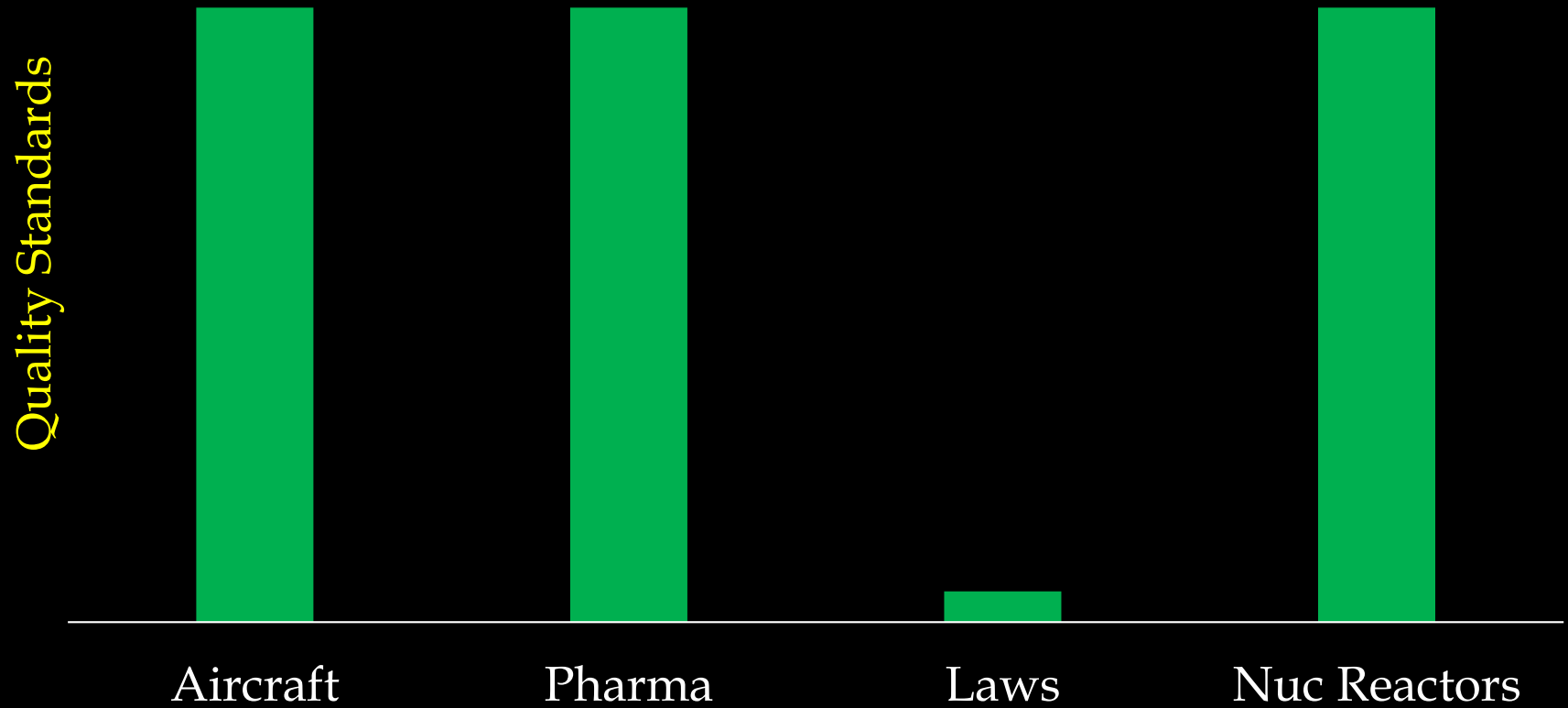
No requirement

(No QA)

RESULTS

Essential elements of Problem Solving Method are absent or incomplete in bill-drafting process.

Performance



RESULTS

Bill Presented to Legislature*:

No Problem Definition / Priority

No Purpose Statement

No Cost / Risk Analyses

No Basis in Knowledge

No Follow Up Evaluation

RESULTS

**Bills Enacted By Legislature,
Public Placed At Risk by Laws:**

- **Incapable solving problems**
- **Costs and risks unacceptable**
- **No follow up evaluation / repeal**

CONCLUSION

CONCLUSION

**The Bill Drafting Process Is
Not Capable Of Producing Bills
That Satisfy The Purpose
Of Government**

CONCLUSION

**By Its Lack of Standards, the
Bill Drafting Process Poses a
Threat to the Public from the
Production of Defective Bills**

RECOMMENDATION

RECOMMENDATION

Engineering Community

Establish Working Group To

Develop Quality Standards

For Laws And Lawmaking

RECOMMENDATION

Legislative Counsel Offices

Adopt QD / QA Standards

For Laws And Lawmaking

PREDICTION

PREDICTION

Quality Standards Will
Bring Science into Arena
of Laws and Lawmaking

PREDICTION

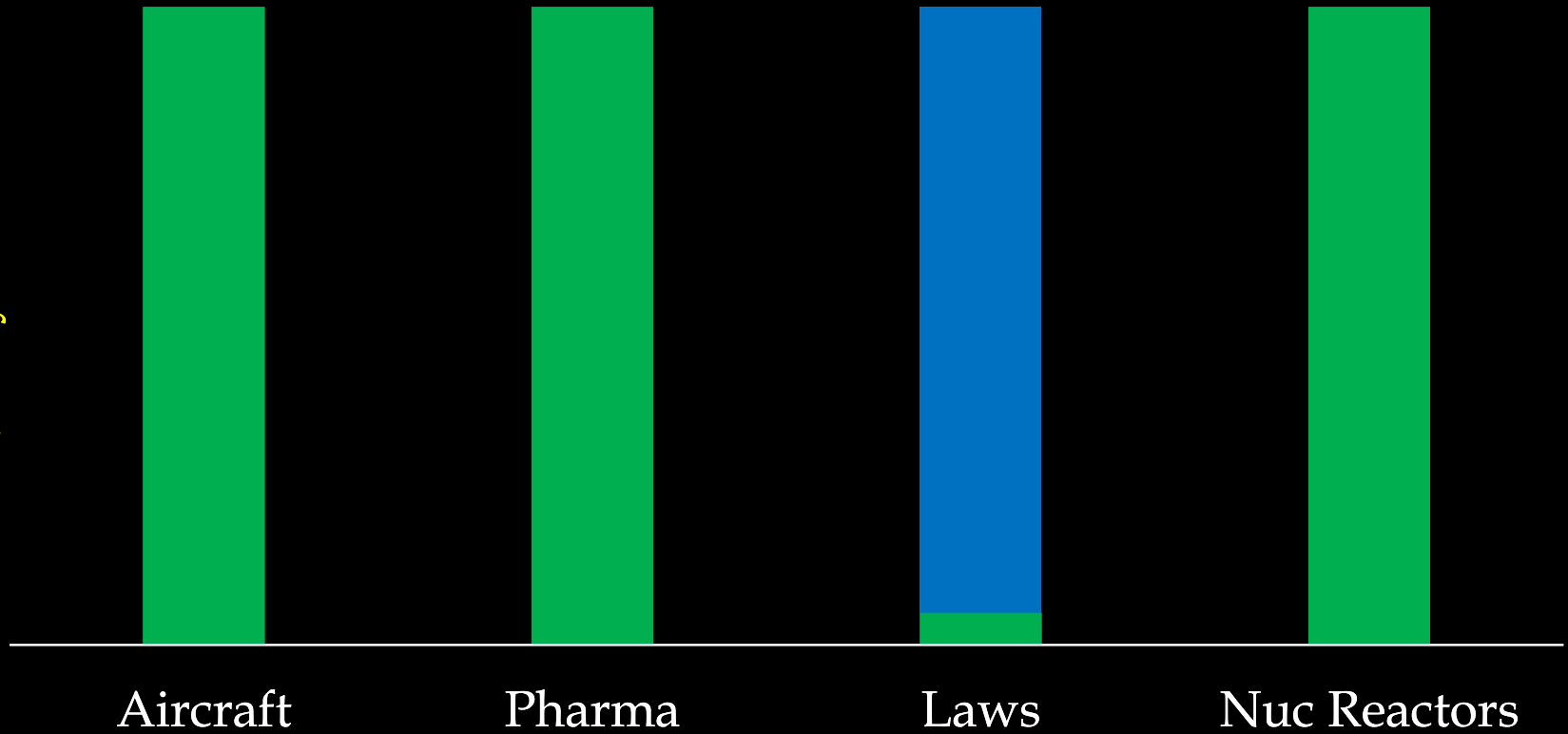
**Quality Standards Will
Enable Laws To
Solve Problems**

PREDICTION

**Quality Standards for
Laws Will Enable
Excellence in Governance**

Performance

Quality Standards



THANK YOU