AS 24.25.065, A Statute Devolved from Aristotle's Rhetoric

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ARISTOTLE’S RHETORIC
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ABSTRACT.
The legislative council shall annually examine, AS 24.20.065(a) provides in paraphrase, published opinions of state courts that rely on state statutes if the opinions indicate unclear or ambiguous statutes. Our Constitutional Logic examines the collaboration theory of lawmakers, on the codelaw and caselaw side of the ledger.

KEY WORDS. statutory interpretation, Legislative revision following judicial decision.

I’m in hot water again.
“If Aschenbrenner hadn’t pushed that lever,” The Whitecheese scowls, “we’d be slogging the battlefield at Bladensburg. That’s Maryland, 1814,” he adds.
“I’ll pass on the memories,” Jimmy sighs.
“Is this what you call ‘warp speed’?” Dolley Madison surveys the passing landscape. “How far into the future are we going?"
“Thanks to the Professor’s elbow, we’ll be touring downtown Anchorage, Alaska. It’ll be 2213. And here we are.”
We enter an ornate palace.
“The Temple of Karnak? The Baths of Maxentius?” the Governor studies her ‘architectural recognition’ software.
“It’s the Museum of Improbable Alaska Construction Projects. Only half completed, of course,” Mr. Whitecheese responds. “Magnificent and vaulted corridors lead into bowels of this marble palace.”
“How come,” I ask, “both the legislature and the court system occupy the same building?”
“It’s not a new idea,” Whitecheese answers me. “In fact, this edifice dates to the year 1963.”
“You rang?” Governor Egan appears. “I hope you like gubernatorial whites.”
“You were our first Governor of apothecarial provenance,” The Sarah confirms. “If anyone missed the last Bar Rag episode.”
“In the first year of my second term,” our first Governor guides our footsteps, “the legislature decided to take responsibility for the laws that it writes.”

“We’re speaking word-smithery?” our most recent, but one, Governor, asks.

“Allow me to introduce my companion on this tour,” our first Governor poses the question.

“The neatly trimmed beard! The dandified elegance!” I gasp. “It’s got to be Edouard Manet.”

“Where’d you pick up this bumpkin?” Aristotle drawls.


“The ‘purpose of the report is to advise members of the legislature on defects in the existing law’,” Dolley flips through its twenty-nine pages. “This is fascinating. In a criminal case the accused, claiming good moral fiber, makes this argument: altho’ he has been swept within the law’s semantic embrace, he does not deserve to be so treated.”

“The government,” Jimmy picks up the thread, “will argue that the morally bad man deserves to be punished, despite the legislature’s sloppy text-crafting, which apparently leaves him beyond the condemnation of its script.”

“And civil cases?” I blurt. “What about –?”


“‘Laws, properly ordained, should define the issue of all cases’,” Aristotle recalls his pseudo-Aristotle from memory, “‘and as far as possible leave the judges –’”

“Hey!” I interrupt. “You didn’t write that!”

“It’s attributed to The Master,” Dolley replies.

“‘Leave as little as possible to the discretion of the judges’,” he recites from memory. “‘Legislation is the result of long consideration, whereas judgments are delivered on the spur of the moment, so that it is difficult for the judges properly to decide questions of justice or expediency’.”

“Ah,” Governor Egan sighs his druggist’s memories. “Ancient wisdom floats our way. Like a scoop of vanilla ice cream on a tall glass of root beer.”
“The point is,” our almost current Governor returns us to the point, “that the legislature is responsible for the conundrums of logical provenance which bedevil appellate litigation.”

“Johnny Venn usually appears,” I gasp. “About this time.”

“You rang?” a gent of bespoke predicate minds his cue. “It’s my duty to elucidate.”

“The legislative council shall annually examine,” our first Governor cites us to AS 24.20.065(a), “published opinions of state … courts .. that rely on state statutes … if … the opinions … indicate unclear or ambiguous statutes ….”

“The year was 1828,” Jimmy recollects. “I blamed everything Hamiltonian on the ‘imperfections of language.’ Speaking of English, that is.”


“So you had to go for the Latin alphabet,” he sniffs.

“Some of the words have Greek origins,” I suggest.

“Name one,” The Master challenges me. “You do know that Justinian’s commission returned the Corpus Juris to Law Greek. The proper language for lawmakers and other dispensers of logos. The year was 533 AD,” he adds.

The Governors pore over the Introduction to the January 2013 Report.

“‘Defects in the existing law’,” Egan points out the passage to Palin. “What a concession!”

“And here’s Trudell v. Hibbert, 272 P. 3d 331 (Alaska 2012),” Palin goes to p. 13. “It’s a clear case for Venn diagrams, with the Supreme Court ‘clawing back’ an object within the class drawn by the legislators.”

“As opposed to a ‘carve out’,” Egan explains to the assembly.

“It has to be,” Aristotle points out, “one or the other. Johnny agrees with me on this point.”

“Alaskans got nothing on Johnny,” The Venn picks Whitecheese’s wallet and pockets the cash.

“But there is an advance here,” Palin nods to Egan.

“Indubitably,” Egan agrees. “And Aristotle didn’t see this coming. The legislature is taking responsibility for its drafting. If an ‘ambiguity’ exists, then the laws are not doing what they should, which is to ‘define the issue of all cases’, ” our first Governor adds.

“So what are you going to do about it?” Aristotle asks.
“We’ve already done it,” our most recent former Governor explains. “And it happens right here in this building. About one hundred and fifty years ago, the legislature – or a select committee, if not in session – was invited to attend oral arguments and receive the court’s proposed decision; on a 60% vote the legislators could ask the court for a brief stay of proceedings in which it might opine on whether a ‘claw back’ or ‘carve out’ was preferred.”

“But the parties –?” I gasp. “Don’t they have a say?”

“The parties don’t ‘own’ the result,” Egan guffaws. “The court system uses litigation as an excuse to write laws for non-parties. Unless you’ve been living under a rock.”

“He’s stuck in the twentieth century,” Palin makes my excuses for me.

“I am impressed,” Aristotle agrees. “You’ve taken what could have been a tedious report of judicial ‘hits, runs and errors’ and made the legislature revisit its own scorecard in text-crafting. The only thing missing are the Venn diagrams.”

“You can’t have judges sit in with the legislators while the laws are being drafted,” Jimmy nods. “But it’s quite another thing to make the legislators go back to work when their lines are crossed.”

“Let me see if I have this right,” Bill Egan flips through the Dummy’s Guide to Popular Culture in the USA. ‘Sitting on the Supreme Court means never having to say you’re sorry’.”

“The legislature’s doing all the apologizing,” Johnny Venn snorts. “If language is imperfect, then we’re all off the hook,” Jimmy exults.

“What would you have done at Bladensburg?” Aristotle asks Sarah Palin.

“Fight to the last man with Commodore Barney,” she replies. “I always keep my firearms handy. Second Amendment compliant, of course. Take a gander at my smooth-bore musket and brace of dueling pistols.”

“Now that’s a lesson for all of us,” Dolley enthuses. “As it was, I had to wait a quarter century to sell Jimmy’s Debates to Congress.”

“You’re saying,” Madison gasps, “I should have fought to the death at Bladensburg?”

“Your Vice-President Elbridge Gerry would have made a fine fifth President,” Palin consults her hand-held. “For the ninety-one days he had left to live!”

“Well,” Jimmy shrugs. “We all have to go sometime.”

“Or maybe not,” his widow winks her ‘goodbye’ Dolley.