



TO THE BAG

ANTI-PASSIVITY

Thank you for publishing Professor Coordes's incisive discussion of *Bartenwerfer v. Buckley*,¹ in the Summer 2023 issue of the *Bag*. In it, she reminds us that the passive voice is not only “the bane of English teachers and writers everywhere” but “when used in legislation, it often generates confusion.” True that!

But I had to chuckle after reading the Professor's piece, as it reminded me of a quip leveled at me by the late, great Chief Justice Ralph T. Gants in a statutory construction case I was privileged to argue in our court of last resort, *DiCarlo v. Suffolk Construction Co.*²

More so in the briefing but to some extent in my argument, I was (gently) chiding the authors of Massachusetts General Law c. 152, § 15 for their, ahem, opaque work product and the confusion it generated. When written in 1911, Section 15 had but three declarative sentences; today, it is a hodgepodge of nine sentences replete with amendments inserting qualifiers, conditions, and subordinate clauses which even the best English teacher would never be able to diagram. During the argument the Chief interrupted me with one of his characteristically cogent questions, premised by the quip – in a tone insinuating that his point should be obvious to all of us – “But Mr. Murphy, this is the Legislature you are talking about.” :-)

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¹ 143 S. Ct. 665 (2023).

² 473 Mass. 624 (2016).