MondayMonday

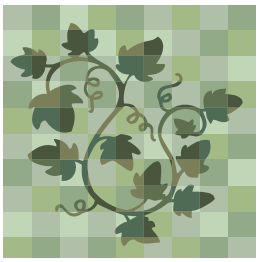
Responsibility and the Ivy League

July 21, 2014

Stritch. There are discrete times in one's life where something happens, but its full moment is not recognized until years later. In 1970, we were a college radio theater critic, a scam invented so that multiple times during the week, we would receive the ultimate New York perk: Two tickets, on the aisle, one for the reviewer and one for his coat, to virtually every Broadway theater production. One of the productions that year was Sondheim's *Company*, best described as "not your average Broadway musical."

We were impossibly young then, and while we were wowed by Pamela Myers and fell in love with Donna McKechnie, we couldn't understand Elaine Stritch's character at all. Now we can.

Unlike every other actor on that stage, Stritch wasn't acting. She was being Stritch. We didn't need her then, in our 20's, but we need her now. Rather than the anti-hero, Stritch was the real hero; surviving with her intelligence intact and stories to tell. Like our old trial briefcase, the leather showed age, but also had the character of something that had actually been there. On the floors of filthy courtrooms, in the luggage racks of countless railroad



cars, softly cossetted in the backseats of leased cars we couldn't afford to buy. The truth may hurt, but that makes it even more beautiful, at least once you get beyond it.

Stritch. "So here's to the girls on the go—/Everybody tries/Look into their eyes, And you'll see what they know:/ Everybody dies." As did Elaine Stritch, this past week, at 89.

When you are 19-years old and at college, with a few drinks in you (or whatever is your culture's alternative,) walking with your friends to a fraternity house on campus is not the functional equivalent of "hiking." Apparently, the Third Department agrees.

Last week, that court affirmed the holding of a Tompkins County court which found that GOL 9-103, which grants immunity to property owners who do not keep their properties safe, where those properties are opened to the public for specified recreational activities, would not save Cornell in the matter of *King v. Cornell University*, 2014 NY Slip Op 517931 (3d Dep't, 7/17/14).

Steven King was a 19-year old sophomore at Cornell in 2010, when he fell to his death in one of Cornell's signature gorges. In the darkness of the wee small hours, King, intoxicated, began to run on a path to a fraternity house for no apparent reason. While his companion stopped, King did not. He was found dead the next day at the bottom of the gorge bordering the path where his companion had last seen him alive.

Cornell argued to Supreme Court that it was not liable, as King had been "hiking" and under the rubric of GOL 9-103, the university was immune from any duty to keep the gorge safe. AD3 was having none of that, holding that "hiking" might be many things, *e.g.*, "traveling through the woods on foot'", but was not what King was doing when he fell, nor what the Legislature intended to protect when it passed 9-103.

With 9-103 out of the mix, Cornell next argued that the gorges were an "open and obvious" danger of which Cornell had no duty to warn and had taken all reasonable measures to maintain in a safe condition. But that is a question of fact, for "open and obvious" *as a matter of law* means that it could not be overlooked by anyone using ordinary abilities. The situation here, however, "is not quite so clear-cut," and Cornell had failed to warn of the proximity of the edge of the gorge to the trail. SJ denied.