



# MondayMonday

## The Secret Language of Law

September 22, 2014

If we chase it so often; if it rules so much of our lives; if it so elusive, what is the symbol of success? We suggest this morning that the answer is a simple one and lies in the eyes of an 11-year old girl, living in Canarsie in 1967.

That daughter of a personal injury lawyer, she was walking home from school one day with a friend. Rounding the corner of her block, she saw that a crowd had formed in front of her house. Scared at first, she gingerly approached the group of neighbors, worked her way through the bodies, and found all her neighbors gawking at the most beautiful car she had ever seen.

It was a brand-new, 1967 Jaguar XKE convertible. Her father's friend, legendary New York trial lawyer Ivan Schneider, had driven the car, the result of large trial fee, to Canarsie to show it to his colleague.

One might have just as well landed a flying saucer in the little girl's driveway as that Jaguar. No one had ever seen a real, live XKE in Canarsie; a car that Schneider recalls as the love of his life; a car that could do 100-mph on the Belt Parkway; a car that looked as good coming as it did going; a car that



screamed "success." The little girl never forgot that car and neither did Ivan Schneider. When it was stolen not six months later, it stayed firmly in his dreams . . . and hers. Who cares that it was British Racing Green with tan upholstery in her dreams (and red in her mother's) and its true color, shiny gray, in Schneider's?

Now, 46 years later, the Jaguar has returned, found at an L.A. pier by Customs agents as it was being packed and readied for shipment overseas. Instead, it will be headed for Schneider's home in Florida, where he lives in retirement. However, for the little girl (who sleeps beside us every night,) the Jaguar never really left its rightful place, as a symbol of success.

It's bad enough that, as lawyers, we have a jargon all our own. Yet, we add to the problem that creates by sometimes not being terribly sure ourselves what that jargon means. Witness the term "stare decisis." We're all on the same beam when it comes to that term, right?

Just in case we're not, we offer

*D'Allessandro v. Carro*, 2014 NY Slip Op 06246 (2d Dep't 9/18/14), a terribly complicated case with oodles of neat procedural stuff — and this gem.

Supreme Court is bound to apply the law as promulgated by the App Div in which department it sits. However, "where that issue has not been addressed within the Department, Supreme Court is bound by the doctrine of stare decisis to apply precedent established in another Department, either until a contrary rule is established by the Appellate Division in its own Department or by the Court of Appeals." However, the doctrine does not require one Supreme Court justice to follow the decision of another Supreme Court justice in another department. As to justices in their own department, well, they are of equivalent jurisdiction and can ignore each other as easily as they ignore us (just kidding, Your Honor.)

So, now you know precisely what stare decisis does, though you still might have no idea what stare decisis is. But we'll never tell.

In passing, we also note this gem in *D'Allessandro*: Even if an appeal is dismissed for failure to prosecute, the AppDiv has the discretion to reconsider an issue on a subsequent appeal notwithstanding the rule that such abandoned issues are, er. Abandoned. But you knew that.

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