

**CASES OF INTEREST**  
**October, 2011**

**People v. Dan Tabor**  
**Appellate Division, Fourth Department**  
**87 AD3d 829**  
**August 19, 2011**

In this case a charge of assault against a female was prosecuted, tried, and the defendant was convicted. Subsequently that case was reversed. The People then secured a second indictment against the defendant with respect to a male victim, and the two indictments were joined for trial. Both indictments charged the same crime during the same criminal transaction.

This Court **dismissed the second indictment** on the grounds that **the two offenses were joinable**, and the People possessed sufficient evidence to sustain those charges at the time of the first trial. In other words, the Court said, where evidence against a person is in the prosecutor's hands he may not, as a player in a game of chance, deal out indictments one at a time.

**People v. Eric Kenley**  
**Appellate Division, First Department**  
**87 AD3d 518**  
**August 25, 2011**

In this case the Court reversed the conviction which had been premised on a **lineup** wherein the body size difference between the defendant and the other lineup participants rendered that lineup **unduly suggestive**.

The Court found that although a defendant is not entitled to a lineup in which the fillers are nearly identical to him, a lineup **is** unduly suggestive when **only** the defendant matches a key aspect of the description of the perpetrator.

**People v. Jeffrey Houghtaling**  
**Appellate Division, Fourth Department**  
**2011 WL 4507357**  
**September 30, 2011**

In this case, although the Court had issued **Parker warnings** to the defendant, this Court found that alone to be **insufficient**. The opinion held that the trial court had failed to inquire into defendant's absence and to recite on the record the facts and reasons it relied on in determining that defendant's absence was deliberate.