

# The Burger Court Opinion Writing Database

*Colombo v. New York*

405 U.S. 9 (1972)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University





Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

February 18, 1972

Re: No. 71-352 - Colombo v. State of New York

Dear Byron:

Please join me.

Regards,

WSB

Mr. Justice White

cc: The Conference

5th DRAFT

SUPREME COURT OF THE UNITED STATES

JOSEPH COLOMBO *v.* STATE OF NEW YORK  
*Recirculated.*  
ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF  
APPEALS OF NEW YORK

No. 71-352. Decided November —, 1971

MR. JUSTICE DOUGLAS, dissenting.

On October 14, 1965, petitioner refused to testify when called before a Kings County, New York, grand jury. When, on December 15, after a grant of immunity and a judicial inquiry into the validity of the grand jury investigation under state law, the petitioner persisted in his refusal to testify, the presiding judge cited him for contempt and imposed a sentence of 30 days and a fine of \$250.<sup>1</sup> Despite petitioner's later willingness to testify, the sentence was executed.

The grand jury then returned an indictment against petitioner charging him with criminal contempt for his refusal to testify.<sup>2</sup> Petitioner successfully moved to quash the indictment, but on appeal it was reinstated and upheld against petitioner's contention that it put him twice in jeopardy for the same offense in violation of the Fifth Amendment. *People v. Colombo*, 25 N. Y. 2d 641, 306 N. Y. S. 2d 258, 254 N. E. 2d 340. We granted the petition for certiorari, vacated the judgment of the New York Court of Appeals and remanded for consideration in light of *Waller v. Florida*, 397 U. S. 387, 400 U. S. 16. On remand, however, the Court of Appeals adhered to its earlier decision reasoning that the first citation was for civil contempt while the indictment charged a criminal

<sup>1</sup> This contempt citation rested upon § 750 of the New York Judiciary Law.

<sup>2</sup> The present indictment is founded upon the former § 600 of the New York Penal Law.

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6th DRAFT

SUPREME COURT OF THE UNITED STATES

JOSEPH COLOMBO v. STATE OF NEW YORK

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF  
APPEALS OF NEW YORK

No. 71-352. Decided November —, 1971

MR. JUSTICE DOUGLAS, dissenting.

On October 14, 1965, petitioner refused to testify when called before a Kings County, New York, grand jury. When, on December 15, after a grant of immunity and a judicial inquiry into the validity of the grand jury investigation under state law, the petitioner persisted in his refusal to testify, the presiding judge cited him for contempt and imposed a sentence of 30 days and a fine of \$250.<sup>1</sup> Despite petitioner's later willingness to testify, the sentence was executed.

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<sup>2</sup> The present indictment is founded upon the former § 600 of the New York Penal Law.

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. January 27, 1972

RE: No. 71-352 - Colombo v. New York

Dear Byron:

I agree with the Per Curiam you  
have prepared in the above.

Sincerely,

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

January 31, 1972

71-352, Colombo v. N. Y.

Dear Byron,

I am glad to join the Per Curiam  
you have circulated in this case.

Sincerely yours,

C. S.

Mr. Justice White

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To: The Chief Justice  
Hon. Justice Douglas  
Hon. Justice Black  
Hon. Justice Stewart  
Hon. Justice Marshall  
Hon. Justice Black  
Hon. Justice Powell  
Hon. Justice Rehnquist

From: White, J.

Circulated: 1-27-1

Recirculated: \_\_\_\_\_

2nd DRAFT  
**SUPREME COURT OF THE UNITED STATES**

**JOSEPH COLOMBO v. STATE OF NEW YORK**

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF  
APPEALS OF NEW YORK

No. 71-352. Decided February —, 1972

PER CURIAM.

Despite a grant of immunity in response to the assertion of his Fifth Amendment privilege not to be a witness against himself, petitioner refused to answer questions put to him before a Kings County, New York, grand jury. On December 8, 1965, a trial judge found that the questions put had been proper and directed petitioner to answer them. Petitioner refused; the trial court, after allowing petitioner a week's time to change his mind, signed a commitment order stating that by "his contumacious and unlawful refusal after being sworn as a witness to answer any legal and proper interrogatories and for his wilful disobedience to the lawful mandate of this Court" petitioner had "committed a criminal contempt of court in the immediate view and presence of the Court and that said contempt was wilful and unlawful and in violation of Section 750 of the Judiciary Law of the State of New York . . ." Petitioner was sentenced to 30 days and fined \$250.

Appellate proceedings proved fruitless. Petitioner then offered to testify, the offer was refused and petitioner paid his fine and served his sentence. On October 10, 1966, petitioner was indicted under § 600, Subdivision 6 of the New York Penal Law "for his contumacious and unlawful refusal, after being duly sworn as a witness, to answer legal and proper interrogatories." The trial court dismissed the indictment on double jeopardy grounds but the appellate court reversed. The reversal was sustained by the Court of Appeals, which

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 8, 1972

Re: No. 71-352 - Colombo v. N. Y.

Dear Byron:

Please join me in your Per Curiam.

Sincerely,

  
T.M.

Mr. Justice White

cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 27, 1972

Re: No. 71-352 - Colombo v. New York

Dear Byron:

You may join me in your proposed Per  
Curiam circulated today.

Sincerely,

*HAB*.

Mr. Justice White

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 11, 1972

Re: No. 71-352 Colombo v. State of New York

Dear Byron:

Please join me in your proposed Per Curiam.

Sincerely,

L. F. P.

Mr. Justice White

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 28, 1972

Re: No. 71-352 - Colombo v. New York

Dear Byron:

I join in your proposed Per Curiam.

Sincerely,

*bill*

Mr. Justice White

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