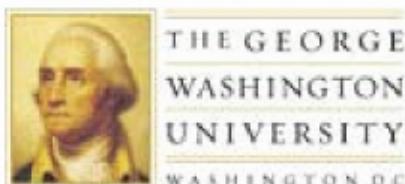


# The Burger Court Opinion Writing Database

*Lefkowitz v. Turley*  
414 U.S. 70 (1973)

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



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

CHAMBERS OF  
THE CHIEF JUSTICE

November 15, 1973

Re: 72-331 - Lefkowitz v. Turley

Dear Byron:

Please join me.

Regards,

*WSB*

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

November 5, 1973

Dear Byron:

In 72-331, LEFKOWITZ, ET AL. v. TURLEY,  
ET AL., please join me.

*W.O.D.*  
WILLIAM O. DOUGLAS

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

November 14, 1973

Dear Byron:

In 72-331, Lefkowitz v. Turley  
would you kindly add me to Bill Brennan's  
addendum at the end of your opinion?

William O. Douglas

Mr. Justice White  
cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

November 6, 1973

RE: No. 72-331 - Lefkowitz v. Turley, et al.

Dear Byron:

Will you please add the following at the foot of  
your opinion in the above.

"I concur in result. It is my view that immunity  
which permits testimony to be compelled "if  
neither it nor its fruits are available for . . .  
use" in criminal proceedings does not satisfy the  
privilege against self incrimination. "I believe  
that the Fifth Amendment's privilege against self-  
incrimination requires that any jurisdiction that  
compels a man to incriminate himself grant him  
absolute immunity under its laws from prosecution  
for any transaction revealed in that testimony."  
Piccirillo v. New York, 400 U.S. 548, 562 (1971)  
(Brennan, J., dissenting).

Sincerely,

*Brennan*  
7.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

November 5, 1973

72-331 - Lefkowitz v. Turley

Dear Byron,

I am glad to join your opinion for the  
Court in this case.

Sincerely yours,

C. S.  
W

Mr. Justice White

Copies to the Conference

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 11/5/73

No. 72-331

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

Louis J. Lefkowitz et al., On Appeal from the United  
Appellants, States District Court for  
v. the Western District of  
M. Russell Turley et al. New York.

[November —, 1973]

Mr. JUSTICE WHITE delivered the opinion of the Court.

New York General Municipal Law §§ 103-a and 103-b and New York Public Authorities Law §§ 2601 and 2602 require public contracts to provide that if a contractor refuses to waive immunity or to answer questions when called to testify concerning his contracts with the State or any of its subdivisions, his existing contracts may be cancelled and he shall be disqualified from further transactions with the State for five years.<sup>1</sup> In addition to

<sup>1</sup> N. Y. General Municipal Law, §§ 103-a and 103-b provide:

"Section 103-a. Ground for cancellation of contract by municipal corporations and fire districts:

"A clause shall be inserted in all specifications or contracts made or awarded by a municipal corporation or any public department, agency or official thereof on or after the first day of July, nineteen hundred fifty-nine or by a fire district or any agency or official thereof on or after the first day of September, nineteen hundred sixty, for work or services performed or to be performed, or goods sold or to be sold, to provide that upon the refusal of a person, when called before a grand jury, head of a state department, temporary state commission or other state agency, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with

✓ —

pp 10, 15

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: White, J.

3rd DRAFT

Circulated: \_\_\_\_\_

**SUPREME COURT OF THE UNITED STATES**

Circulated: 11-12-7

No. 72-331

Louis J. Lefkowitz et al.,  
Appellants, } On Appeal from the United  
v. } States District Court for  
M. Russell Turley et al. } the Western District of  
New York.

[November —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

New York General Municipal Law §§ 103-a and 103-b and New York Public Authorities Law §§ 2601 and 2602 require public contracts to provide that if a contractor refuses to waive immunity or to answer questions when called to testify concerning his contracts with the State or any of its subdivisions, his existing contracts may be cancelled and he shall be disqualified from further transactions with the State for five years.<sup>1</sup> In addition to

<sup>1</sup> N. Y. General Municipal Law, §§ 103-a and 103-b provide:  
"Section 103-a. Ground for cancellation of contract by municipal corporations and fire districts:

"A clause shall be inserted in all specifications or contracts made or awarded by a municipal corporation or any public department, agency or official thereof on or after the first day of July, nineteen hundred fifty-nine or by a fire district or any agency or official thereof on or after the first day of September, nineteen hundred sixty, for work or services performed or to be performed, or goods sold or to be sold, to provide that upon the refusal of a person, when called before a grand jury, head of a state department, temporary state commission or other state agency, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: White, J.

4th DRAFT

Circulated: \_\_\_\_\_

**SUPREME COURT OF THE UNITED STATES**

Recirculated: 11-14-73

No. 72-331

Louis J. Lefkowitz et al., On Appeal from the United  
Appellants, States District Court for  
v. the Western District of  
M. Russell Turley et al. New York.

[November —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

New York General Municipal Law §§ 103-a and 103-b and New York Public Authorities Law §§ 2601 and 2602 require public contracts to provide that if a contractor refuses to waive immunity or to answer questions when called to testify concerning his contracts with the State or any of its subdivisions, his existing contracts may be cancelled and he shall be disqualified from further transactions with the State for five years.<sup>1</sup> In addition to

<sup>1</sup> N. Y. General Municipal Law, §§ 103-a and 103-b provide:

"Section 103-a. Ground for cancellation of contract by municipal corporations and fire districts:

"A clause shall be inserted in all specifications or contracts made or awarded by a municipal corporation or any public department, agency or official thereof on or after the first day of July, nineteen hundred fifty-nine or by a fire district or any agency or official thereof on or after the first day of September, nineteen hundred sixty, for work or services performed or to be performed, or goods sold or to be sold, to provide that upon the refusal of a person, when called before a grand jury, head of a state department, temporary state commission or other state agency, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with

*M*  
p. 15

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
~~Mr.~~ Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: White, J.

5th DRAFT

Circulated: \_\_\_\_\_

Recirculated: 11-16-7

**SUPREME COURT OF THE UNITED STATES**

No. 72-331

Louis J. Lefkowitz et al. } On Appeal from the United  
Appellants. } States District Court for  
v. } the Western District of  
M. Russell Turley et al. } New York.

[November —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

New York General Municipal Law §§ 103-a and 103-b and New York Public Authorities Law §§ 2601 and 2602 require public contracts to provide that if a contractor refuses to waive immunity or to answer questions when called to testify concerning his contracts with the State or any of its subdivisions, his existing contracts may be cancelled and he shall be disqualified from further transactions with the State for five years.<sup>1</sup> In addition to

<sup>1</sup> N. Y. General Municipal Law, §§ 103-3 and 103-b provide:  
"Section 103-a. Ground for cancellation of contract by municipal corporations and fire districts:

"A clause shall be inserted in all specifications or contracts made or awarded by a municipal corporation or any public department, agency or official thereof on or after the first day of July, nineteen hundred fifty-nine or by a fire district or any agency or official thereof on or after the first day of September, nineteen hundred sixty, for work or services performed or to be performed, or goods sold or to be sold, to provide that upon the refusal of a person, when called before a grand jury, head of a state department, temporary state commission or other state agency, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 5, 1973

Re: No. 72-331 -- Lefkowitz et al., v. Turley et al.

Dear Byron:

Please join me.

Sincerely,



T. M:

Mr. Justice White

cc: The Conference

✓

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 15, 1973

Re: No. 72-331 -- Lefkowitz et al., v. Turley et al.

Dear Byron:

Please add my name to Bill Brennan's  
statement in your opinion.

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

November 12, 1973

Dear Byron:

Re: No. 72-331 - Lefkowitz v. Turley

Please join me. My initial reaction was the other way. Your opinion, however, greatly clarifies the holdings in the Garrity - Gardner - Sanitation Men line of cases. I feel that this is good and that it was due and, hence, I go along.

Sincerely,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 7, 1973

No. 72-331 Lefkowitz v. Turley

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 13, 1973

Re: No. 72-331 - Lefkowitz v. Turley

Dear Byron:

Although I voted the other way at Conference, I will probably join your proposed opinion for the Court. Would you have any objection, in the sentence on page 14 following the citation of Shillitani, to adding after the word "questions" the phrase "under oath"?

Sincerely,

*WW*

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 14, 1973

Re: No. 72-331 - Lefkowitz v. Turley

Dear Byron:

Please join me.

Sincerely,

*WR*

Mr. Justice White

Copies to the Conference