

4-15-1981

04-15-1981 Justice Correspondence

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Recommended Citation

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Mr. Justice:

Re: Flynt v. Ohio, No. 80-420

Justice White's opinion reaches the proper result in this case. It might have been better to discuss Abney v. United States, which holds that rejections of double jeopardy claims are immediately appealable in federal cases because the Clause protects against being subjected to a trial. Abney relied in part on Harris v. Washington, 404 U.S. 55 (1971), which held that state court rejections of double jeopardy claims are "final" within the meaning of 28 U.S.C. §1257. I think the opinion is O.K. as it is, however. It is possible that a dissent, if there is one, will rely upon Abney, giving the majority an opportunity to discuss it.

4/15/81

JD

P