


The letter brief *amicus curiae* of the National Congress of American Indians presents Appellee an important opportunity to clarify points made in its brief on the specified issues, with which *amicus curiae* National Congress of American Indians takes issue.

Appellant's counsel has informed the undersigned that he consents to the filing of this motion and does not oppose the relief requested.

WHEREFORE, Appellee moves the Court to grant it leave to file the appended Response to Letter Brief of *Amicus Curiae*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent by electronic mail to Mr. Michel Paradis, detailed appellate defense counsel, on this 21st day of March 2011.



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terrorist groups. As the NCAI letter brief *amicus curiae* demonstrates, however, Appellee's brief on this point could have benefited from greater precision.

Putting aside, for the purposes of this case, the true facts concerning General Jackson's campaign into northern Florida in 1818, and his treatment of the Seminoles during that campaign, as we now understand them with the cool dispassion of nearly 200 years remove, the relevance of the Ambrister and Arbuthnot precedent for the second specified issue is that, *as justified at the time* by the commanding general, the Secretary of State, and the President of the United States, the conduct of Ambrister and Arbuthnot violated the law of war in that their conduct was viewed as aiding an unlawful belligerency and assisting the enemy to carry out war crimes. That modern historians now understand the facts to be otherwise does not undermine the precedential value of the Ambrister and Arbuthnot cases as an example of a U.S. military tribunal punishing conduct understood (at the time) to be in aid of what was then viewed as unprivileged belligerency carried out by unlawful means.

Appellee cites General Jackson's campaign and the tribunals he convened not as an example of moral right, but as legal precedent; the morality or propriety of General Jackson's military operation in Florida is irrelevant. In point of fact, and despite the repugnance with which Jackson's actions may be viewed today, the focus of Appellee's argument is on the criminal nature of the acts undertaken by Ambrister and Arbuthnot. General Jackson's treatment of those acts as violations of the law of war, and the contemporaneous approval of their military trial by the then-Secretary of State and then-President of the United States, provides the historical example necessary to defeat Appellant's *ex post facto* argument.

Respectfully submitted,

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