



## ► HER War

# Clara Judd and the **laws of war**

By Stephanie McCurry

▲ **Provosts** examined Clara Judd, “a lady of middle age and fine personal appearance”—and a Confederate spy.

**One of the most important legacies** of the American Civil War was a new codification of the laws of war that the conflict introduced. Drawn up for the Lincoln administration by German-American jurist Francis Lieber, it was a set of instructions designed to govern the conduct of armies in the field. Issued in April 1863, Lieber’s code laid down rules about what was permissible—and what was not—in the behavior of the U.S. Army toward the enemy. It earned the respect of generations of international lawyers and served as the foundation on which all subsequent laws of war, including the Hague and Geneva conventions, were built.

Lieber’s code was written in the midst of war and, in no small measure, to accompany the Emancipation Proclamation and the U.S. government’s decision to recruit black men as soldiers.

In that sense it reflected new circumstances, including the government’s responsibility to protect black prisoners of war held by the Confederacy.

But there was another set of circumstances that informed Lieber’s Code, and that was the Union Army’s repeated encounters with enemy women. Deep inside the code is the fossilized remains of that hidden history—the Union military’s bitter experience with openly pro-Confederate women in the path of its armies and, more specifically, the story of one particular enemy woman: Clara Judd.

Judd’s arrest in January 1863 proved the straw that broke the camel’s back, provoking a new hard line policy against Rebel women in the border states and occupied parts of Confed-

erate territory. When Lieber revised his draft code at Maj. Gen. Henry Halleck’s request in early 1863, Judd’s case was making its way through the military court system. The newly harsh view of enemy women took lasting form in Lieber’s code, permanently narrowing the protections automatically extended to women noncombatants.

Clara Judd, a widow, was arrested in Mitchellville, Tenn., sometime before January 13, 1863, on charges of being a smuggler and a spy. She had raised suspicion by repeatedly passing through the lines despite warnings that she would be arrested. When the provost marshal finally arrested her, she was carrying contraband goods, including a variety of drugs (quinine, morphine, nitrate of silver) and the pattern

to a knitting machine, all of which she was attempting to take to Atlanta. She was also privy to information about the movements of Confederate raider John Hunt Morgan. She knew of his plans to attack the road above Gallatin, which, when carried out, put her under suspicion of being a spy for Morgan’s camp.

Judd was taken to Nashville where she appeared before Provost Judge John Fitch. Fitch explained her arrest to his superiors, describing her as “a dangerous person,” but was confused about what to do. Union officers in the border states and occupied territory had been contending with an onslaught of similar cases of enemy women engaged in openly hostile, some thought treasonous, activity. In Missouri the previous winter, Halleck had been shocked to discover the extent of women’s involvement in Confederate guerrilla activity. Women had been apprehended cutting telegraph wires. One had been sentenced to hang. They were caught running Rebel spy networks, including in Union refugee camps. They were caught with saddlebags full of mail for illegal Confederate units. And they were arrested for smuggling military supplies, including medicine and cloth. They had been arrested for harboring Confederate guerrillas and bushwhackers. And their activities verged sometimes directly into military action. In southern Missouri, Union troops had to launch a manhunt for Kate Beattie; she had tried to free a Confederate officer



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from a St. Louis prison. Women participated in ambushes, luring Union cavalymen into houses where they were attacked by Confederate guerrilla bands. And some women even rode with the guerrillas, in the odd case cross-dressing as men.

As Union soldiers had learned by hard experience, some women posed a clear military danger. It had become a matter of survival to make sharp distinctions between civilians who posed a danger and those who did not. New orders in February and March 1862 had acknowledged as much, authorizing soldiers to treat noncombatants as “belligerents” if they were found aiding and assisting the enemy.

By the time Clara Judd was arrested, Union officers were ready to confront the problem head on. As Fitch wrote to his superior, “cases of this sort by females” were of “such frequent occurrence that examples should be made.” For Judd, he said, “the only adequate punishment was death...but

the person implicit was a woman,” and reverence for the sex prohibited such an extreme penalty. Judd offered a rambling defense at her trial, but despite her protests that “I never had anything to do with political affairs,” she was committed to the military prison in Alton, Ill.

As Clara Judd’s case progressed, Halleck issued a new policy that authorized “a more rigid treatment of all disloyal persons behind the lines.” Now general in chief of the Union Army, Halleck pioneered some startlingly new definitions of crimes subject to military trial, including the crime of “war treason”—the proper punishment of which, he made clear, would include women. The party who committed the transgression, he wrote, “subjects himself or herself, to be punished as a spy or a military traitor.... our treatment of such...offenders has ...been altogether too lenient.”

As the official records make clear, the actions of enemy women—and

Judd in particular—were a critical part of the new accounting and narrowing of protections automatically extended to noncombatants. When Lieber released his code, the one that would shape the laws of war into the 20th century, it authorized an awesome use of force unconstrained by any limits except military necessity. It formalized Halleck’s earlier explicit inclusion of women in the definition of spy, war traitor and war rebel, and in the section on the rules of war in civil war, insurrection or rebellion—clearly most relevant—it narrowed severely the protections automatically accorded “noncombatant enemies,” and exposed women as well as men to the harsh new law of war. Clara Judd had left her mark. □

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#### **Cherchez la femme**

Rebel women are caught smuggling goods for Confederates. “Cases of this sort” happened all too frequently, Union officers said.

