

**Garden State CLE Presents:**

**The First Torture Trial**



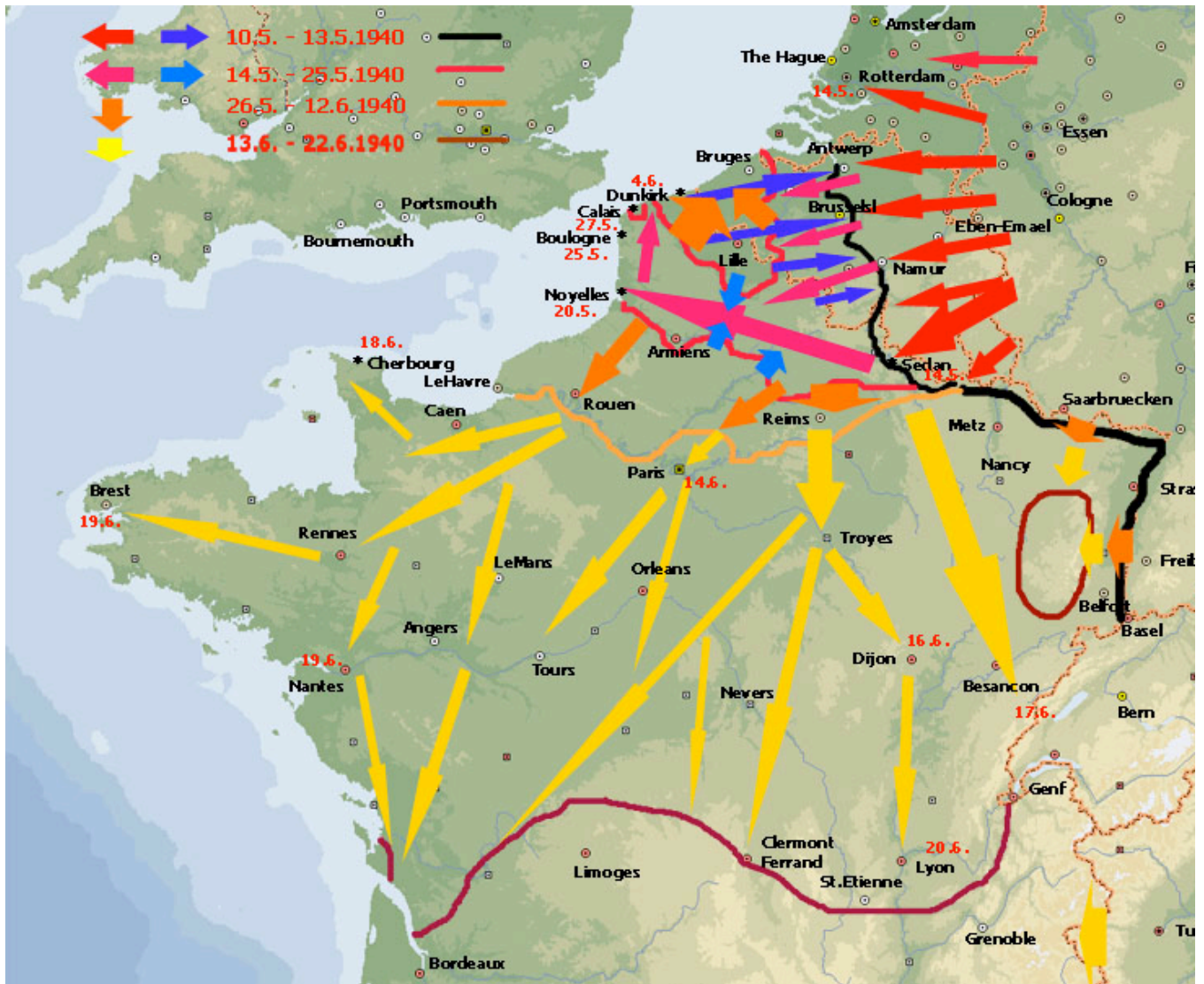
**Lesson Plan**

# 1. World War II Timeline

## a. War begins – September 1, 1939



## b. Invasion of France & the low countries - May 10, 1940 – June 22, 1940



### c. Invasion of Russia – June 22, 1941



**d. D-Day – June 6, 1944**



## e. Battle of the Bulge - December 16, 1944

### a. German Strategic Objectives



The massive German offensive in the Ardennes Forest of Luxembourg and Belgium lasted from Dec. 16, 1944, until Jan. 28, 1945. Its target was Antwerp, Belgium.



## **b. Rules of Engagement**

**On December 12th, it is said that Hitler had issued an order which stated that no prisoners were to be taken and that a "wave of terror" was to descend on the Allies who stood in the way of the offensive. However, in the trial at Dachau no written evidence was produced to substantiate this and, as evidence, the court ignored it.**

**During the proceedings, the prosecution contended that the officer in charge of the unit, Lt. Col. Jochen Peiper, had instructed his men to fight as they had fought against the Russians, disregarding international law about the treatment of prisoners of war. The defendants testified that they had been instructed to take no prisoners, but they understood this to mean that because they were fighting in a tank unit, they were supposed to send POWs to the rear to be picked up by infantry units.**

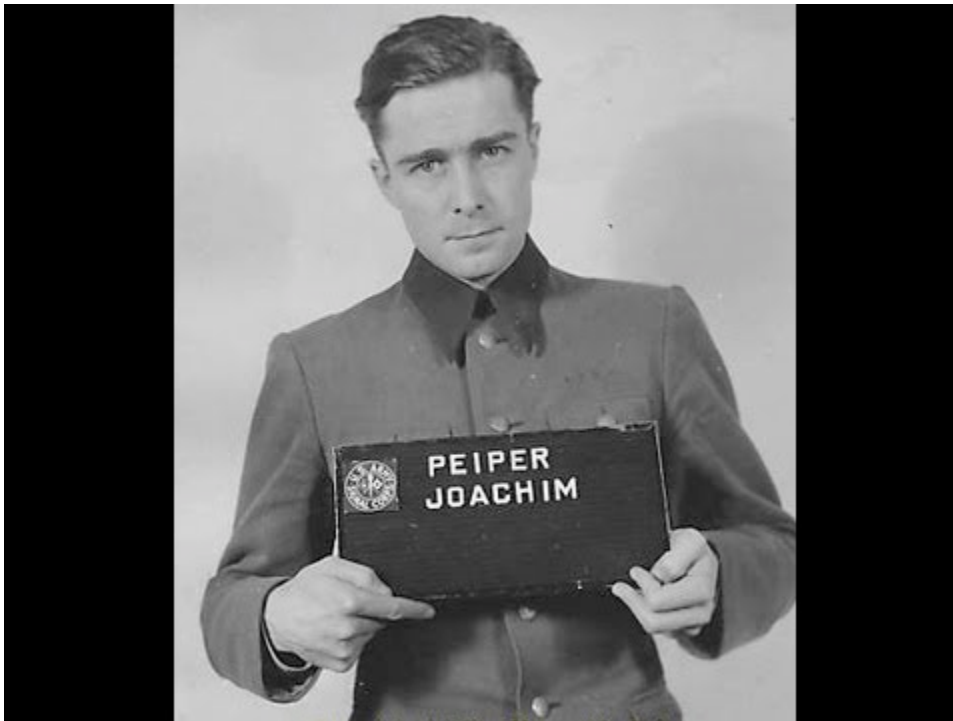
**The prosecution claimed that General Sepp Dietrich, the general in charge of the invasion force, on direct orders from Hitler himself, had urged the SS men to remember the German civilians killed by the Allied bombing, and to disregard the rules of warfare that were mandated by the Hague Convention of 1907 and the Geneva convention. This meant that all of the accused were charged with participating in a conspiracy of evil that came from the highest level, the moral equivalent of the Nazi conspiracy to exterminate all the Jews in Europe, which was one of the charges against the major German war criminals at Nuremberg.**

**At trial, Peiper raised the defense that as *Waffen-SS*, his troopers could expect no mercy from the enemy if capture and should conduct themselves accordingly.**

## 2. The massacre - December 17, 1944

### a. Units involved - background

On the second day of the 'Battle of the Bulge,' a truck convoy containing approximately 125 soldiers of Battery B of the 285th Field Artillery Observation Battalion was intercepted southeast of Malmedy by a regiment of the 1st SS Panzer Division of the Leibstandarte-SS, under the command of 29 year old SS Lt. Col. (*Obersturmbannführer*) Jochen Peiper. At that time, "*Kampfgruppe Peiper*" was spearheading the German armored assault toward the River Meuse with the strategic goal of capturing of the port of Antwerp. .



Peiper's troops had earned the nickname "Blowtorch Battalion" after burning their way across Russia and had also been responsible for slaughtering civilians in two separate villages

## **b. Why did the massacre occur?**

**The sheer number of prisoners almost certainly sealed the fate of the Americans. Over 100 prisoners could not be left where they were - in the field. But there was no spare capacity for the Germans to guard them as Peiper had ordered the SS units under his command to speed up their advance. They could not be sent marching back towards the German lines as Peiper only had control of one main road and his unit was using it. Any men marching in the opposite direction could easily clog up the road. Peiper's other worry was that he might be attacked by American units known to be in the area.**

**From the initial complement of 125 men in Battery B, an estimated 113 survived the initial fire fight and were captured. A total of 86 bodies were recovered from the massacre scene in the following months.**

**Two theories emerged from the trial testimony.**

## **Theory I**

**The men were deliberately murdered in cold blood. Certainly, the 1st SS Panzer Division had been responsible for routine atrocities in Russia and they had already shot captured Americans in their advance in the Ardennes Offensive - and more were shot (including many Belgian civilians) after Malmédy. It is possible that Major Werner Poetschke, who commanded the 1st SS Panzer Battalion (later KIA), gave the order. Several survivors testified to hearing someone shout the command "*Macht alle kaput!*" but no credible evidence at trial has proved this actually occurred.**

## **Theory II**

**A second theory put forward is that some Americans tried to escape and were fired on by the Germans. Other Germans heard the firing, but were not aware that the targets were three Americans as opposed to the entire group. Either trigger-happy or simply battle-hardened, the Germans opened fire on the group as a whole. In October 1945, an American soldier gave sworn testimony that he had escaped with two other men (who were killed) but he had survived and made it back to US lines. The law of war as it stood in 1944 would have allowed the Germans to shoot at escaping prisoners - but not at the whole group. It is possible that the attempted escape by this small group precipitated the shooting of the other men.**

### **c. Impact on troops in the field and the public.**

**The massacre occurred at approximately 1 p.m. on December 17th and the first survivors were picked up at 2:30 p.m. on the same day by a patrol of the 291st Engineer Battalion. Their story of the unprovoked massacre was immediately sent to General Eisenhower, the Supreme Allied Commander of the war in Europe, who made it a point to disseminate the story to the reporters covering the battle. One of the news reporters at the Battle of the Bulge was America's most famous writer, Ernest Hemingway, who was covering the war for Collier's magazine. When the gory details of the Malmedy Massacre reached the American people, there was a great outcry for justice to be done.**

**Word of the massacre provoked isolated instances of retaliation by American soldiers resulting in the execution of captured SS troopers and concentration camp guards.**

#### **d. Criminal Investigation ordered**

**Within hours, the decision was made by General Eisenhower to treat this incident as a war crime. As a result, the survivors were interviewed by army criminal investigators and their statements preserved.**



**Kenneth Ahrens demonstrates how he surrendered**

**e. Crime scene - January 13, 1945**

**Due to the nature of the fighting, the crime scene remained within a “no man’s land” during the next four weeks and could not be accessed. Finally, on January 14, 1945, crime scene and forensic investigators from the army were able to visit the scene. The extremely cold winter weather and abundant snow had preserved the crime scene in pristine condition. 72 bodies were initially recovered followed by 12 more in April.**



#### **f. Forensic examination of the evidence**

**Autopsies performed on the recovered bodies showed that all had died of gun shot wounds. Forty-five of the bodies revealed evidence of pistol shots to the head at close range. Several dozen also showed blunt-force trauma to the head, probably from rifle butts.**

**Testimony from several of the survivors who played dead revealed that the SS troopers walked among the victims, calling out in English to see if anyone was still alive, then promptly killing anyone who responded. The German executioners remained in the field for about 15 minutes to eliminate survivors.**

#### **g. Identification of perpetrators**

**The Battle of the Bulge degenerated into a rout for the Germans. Of the 5,000 men in Peiper's group, all but 800 were killed or captured. Interviews of captured SS troopers by criminal investigators quickly identified the precise unit responsible as well as its commander. Peiper soon became public enemy number 1 and was aggressively sought following the German capitulation on May 8, 1945. He was apprehended near his home town in Germany later in the year.**

## **h. Arrests and preliminary interrogations**

**Army investigators were hindered by several factors following the end of hostilities. First was a lack of experienced CID personnel, many of whom had returned to the United States. Secondly, the defendants were scattered among a wide array of prisoner of war camps within Germany and other liberated nations. Typically, a suspect would be interviewed and then returned to the general population where he could share his interrogation experience with other suspects.**

**Ultimately, those prisoners who were still suspect were evacuated to an interrogation center at Schwabisch Hall, where they were housed in an up-to-date German prison, and where during investigation they were kept in cells by themselves. They remained there from December 1945 until April of 1946. They were then removed to Dachau for the war crimes trial which lasted from May 16<sup>th</sup> until July 16<sup>th</sup>.**

**Initially there were over 400 of these prisoners evacuated to Schwabisch Hall, and from time to time others were transferred to the prison. It was here that the allegations of torture and mistreatment allegedly occurred.**

### **3. War Crimes Prosecution**

#### **a. The charges**

**Besides the killing of 72 American soldiers at the Baugnez Crossroads, near the village of Malmedy, there were many other charges against the 73 accused. The charge sheet specifically stated that the 73 accused men**

*"did....at, or in the vicinity of Malmedy, Honsfeld, Büllingen, Lignauville, Stoumont, La Gleize, Cheneux, Petit Thier, Trois Ponts, Stavelot, Wanne and Lutre-Bois, all in Belgium, at sundry times between 16 December 1944 and 13 January 1945, willfully, deliberately, and wrongfully permit, encourage, aid, abet, and participate in the killings, shooting, ill treatment, abuse and torture of members of the Armed Forces of the United States of America, then at war with the then German Reich, who were then and there surrendered and unarmed prisoners of war in the custody of the then German Reich, the exact names and numbers of such persons being unknown aggregating several hundred, and of unarmed civilian nationals, the exact names and numbers of such persons being unknown."*

**In all, the accused were charged with murdering between 538 to 749 nameless Prisoners of War and more than 90 unidentified Belgian civilians in the locations mentioned on the charge sheet, which is quoted above. The accused SS men claimed that the civilians, who were killed, had been actively aiding the Americans during the fighting....**

## **b. The Trial**



**The trial of the 73 defendants was conducted en masse with a half-dozen defense attorneys given only 4 weeks to prepare. The vast majority of the evidence was supported by purported confessions and eye witness identifications. As the trial unfolded, conflicts abounded as the defense urged most of the defendants to decline to testify.**

**One of the complaints made by the defense counsel in this matter was that the court did not allow a severance of the various defendants in this case. A motion of severance was filed with the court which was denied. The granting of such a motion was, of course, within the discretion of the court, and the subcommittee does not feel that it has the authority to serve as an appellate court to judge the ruling in this particular case.**

**When so many accused, of varying ranks, are being tried together on a single charge, there must be some conflict of interest between the superiors and the subordinates. On the other hand, it is recognized that the scarcity of officers, and the time elements that are involved in matters of this kind, made it extremely difficult to conduct large numbers of trials for separate defendants.**

**Although not present at the scene, Peiper attempted to take full responsibility for the acts of the men under his command at trial.**



**c. Verdict & pronouncement of sentence**

**Given the confessions and eye-witness testimony, the verdicts were never in doubt. Only July 16, 1946, following 2 ½ hours of deliberation, the military commission returned guilt verdicts for all 73 defendants based upon a 2/3 majority.**

- 43 sentenced to death by hanging, including Peiper**
- 22 sentenced to life imprisonment**
- 2 sentenced to 20 years imprisonment**
- 1 sentenced to 15 years**
- 5 sentenced to 10 years**

## 4. Outrage

**Lead counsel for the defense, Lt. Col. Willis M. Everett from Atlanta immediately began an aggressive campaign to reverse the verdicts, based upon the unfair nature of the trial and the purported torture of the defendants while in pre-trial custody. When these allegations became public in the United States and Germany, they caused a firestorm of revulsion and protest which quickly became highly politicized. Among these allegations were the following:**



**Defense attorney Lt. Col. Everett (l), Trial Judge Advocate Lt. Col. Ellis (r)**

**a. Mock Trials (Senate subcommittee report)**

**There was a table within a room, which was covered with a black cloth and on which was a crucifix and two lighted candles. Behind this table would be placed two or three members of the war crimes investigation team, who, in the minds of the suspects, would be viewed as judges of the court. A prisoner would be brought in with his hood on, which was removed after he entered the room. Two members of the prosecution team, usually German-speaking members, would then begin to harangue the prisoner, one approaching the matter as though he were the prosecutor or hostile interrogator, and the other from the angle of a defense attorney or friendly interrogator.**

**The subcommittee could find no evidence to support the position that the suspect was told, specifically in so many words, that anyone was his defense attorney. However, there is no question that the suspect quite logically believed that one of these persons was on his side, and may have assumed that he was his defense counsel." The Senate subcommittee does not believe that these mock trials were ever carried through to where a sentence was pronounced, nor was any evidence found of any physical brutality in connection with the mock trials**

**themselves. In fact, one witness who was attacking the war crimes investigation team procedures testified that there was no brutality in connection with a mock trial at which he had served as a reporter. When these mock trials had reached a certain point they would be disbanded and the prisoner taken back to his cell, after which the person who had posed as his friend would attempt to persuade the suspect to give a statement.**

**The subcommittee feels that the use of the mock trials was a grave mistake. The fact that they were used has been exploited to such a degree by various persons that American authorities have unquestionably leaned over backward in reviewing any cases affected by mock trials. As a result, it appears many sentences have been commuted that otherwise might not have been changed. It is interesting to note why such a procedure was started. Lieutenant Perl, one of the interrogators, stated that the so-called mock trials were his suggestion, and had been patterned after German criminal procedure with which the suspects were familiar. Since he was a native-born Austrian, and a continental lawyer, the procedures seemed proper to him.**

**Other allegations discussed in Senate subcommittee report:**

- b. Solitary confinement**
- c. Bread and water diet - starvation**
- d. Lack of drinking water**
- e. Use of hoods**
- f. Burnings through use of matches under fingernails**
- g. Beatings and kicking**
- h. Posturing as priests**
- i. Inadequate medical facilities**
- j. Threats against accused families**
- k. Fraternizing with accused wives**
- l. Use of secret informants**
- m. Tricks and mental duress**
- n. Promises of acquittal**
- o. Fake hangings**
- p. Unfair trial procedures**

**Discussion – The secretary of the Army quickly became aware of these allegations and ordered a stay of all executions. He then convened a commission headed by the Chief Justice of the Texas Supreme Court and two other justices from other states. (The Simpson Commission). The Commission traveled to Europe and conducted an independent investigation which found to support some of the allegations, especially those related to beating and last damage to the testicles of many of the defendants.**

**One of the Commission members made a variety of public statements and speeches which described the lurid details of the purported torture. In addition, by now, the controversy had become political as a result of:**

**Cold war concerns and the Berlin blockade**

**Need for alliance**

**Political agitation from Senator Joseph McCarthy (R-Wi)**

**Republican gains in 1948 election**

**A measure of anti-Semitism among trial critics (e.g Chief interrogator Lt. Perl)**

**As a result of the public outcry, the Senate convened a subcommittee to study the trial and the conclusion of the Simpson Commission. Their report largely exonerated the Army, an outcome that McCarthy attempted (unsuccessfully) to impugn on the floor of the Senate. To this day, many critics consider it a whitewash of the entire affair.**

## **5. Aftermath**

**As a result of the efforts of Lt. Col. Everett, the Simpson Commission Report and the Subcommittee findings, eventually all the death sentences were commuted and by 1956, all of the defendants had been released, the last being Peiper.**

**Following a successful career as a Volkswagen salesman, Peiper was murdered in his home in France on July 14, 1976 (Bastille Day). This crime has never been solved.**