

His Honour Judge Storkey VC

By our defence correspondent

This is the 90th anniversary of the award of the Victoria Cross to Percy Valentine Storkey, a member of the New South Wales Bar and Bench. A second year law student at Sydney University, he enlisted in the Australian Imperial Force just three weeks after the Anzac landings at Gallipoli. He fought on the Western Front for three years where he was twice wounded. He earned the Victoria Cross on 7 April 1918, early in the decisive battles around Villers-Bretonneux in which Australian troops quenched the last great German offensive of the First World War. After repatriation he completed his studies and practised at the bar from 1921 to 1939 when he was appointed as a judge of the District Court.

The great American Jurist and Civil War combatant, Oliver Wendell Holmes, judged character according to an exacting standard. He said in a famous Memorial Day address to army veterans¹:

I think that, as life is action and passion, it is required of a man that he should share the passion and action of his time at peril of being judged not to have lived.

This brief account of the life and valour of Percy Valentine Storkey VC proves that he lived to Holmes's high standard as few others would dare.

Storkey was born in Napier, New Zealand on 9 September 1891. He was educated at Napier Boys Grammar School and Victoria College, Wellington. He migrated to Australia in 1911, initially working for the Orient Steamship Co. in Sydney. Within a year he joined the administrative staff of the University of Sydney. This background assisted him in 1913 to enrol in law at the university, where he completed first year in 1914. On 10 May 1915 he enlisted in the AIF as a private. Close to his 24th birthday in September of the same year he was commissioned as a second lieutenant in the AIF. In December 1915 he sailed to England via Egypt to join members of the 19th Battalion in training.

On 14 November 1916 he joined his unit in France. Within a week of arriving at the front he was wounded near Flers at the end of the Battle of the Somme. He was promoted to lieutenant in January 1917 and was wounded again on 10 October 1917 in the Third Battle of Ypres.

As he convalesced, events unfolding two thousand miles away to the east began to give shape to the final contest of the war in which he would be involved. After the October 1917 Bolshevik Revolution in Russia hostilities ceased on the Eastern Front, releasing almost a million German soldiers for transfer to the Western Front.

In early 1918 the German High Command calculated that the reconquest of Amiens would threaten Paris and force the Allies to seek an armistice before fresh US troops could influence the course of the war. Without warning on 21 March 1918, a mass of 47 German divisions moved against the British Third and Fifth Armies across an 80 mile front east of Amiens. The British Fifth Army collapsed under this pressure and a gap opened in the Allied lines. Australian troops under General Monash ultimately blocked the enemy thrust towards Amiens with a thin extended line which first began to hold on 27 March 1918.

The Germans renewed their attack in force on 4 April 1918 and threatened to encircle Villers-Bretonneux, an important gateway to Amiens and about 10 kilometres to its north-west. Their troops



Studio portrait of Captain Percy Valentine Storkey VC, 19th Battalion. Australian War Memorial Negative number: P02939.028

penetrated dangerously to the south-west of the town and infiltrated a strategic timbered rise, called Hangard Wood, just two kilometres to its south (see figure 1).

Australian infantry were ordered to counter-attack and to retake Hangard Wood on 7 April so as to remove the German threat south of Villers-Bretonneux. The 5th Brigade (2nd Division AIF) of which the 19th Battalion was a part led this counter-attack. Lieutenant Storkey was a platoon commander in the company at the very leading edge of the assault.

Even before it had begun, the military logic of the plan to take Hangard Wood was neutralised by faulty intelligence and artillery failures. Allied aircraft had reconnoitred the wood and intelligence had quite wrongly concluded that it was only lightly held by enemy forces and could be covered by a nearby allied field of fire. The planned 5.00 am infantry attack was to be supported by an artillery barrage to hold the enemy fast in their trenches. Instead, only a few random shells fell, prompting the Germans to prepare for the imminent assault.

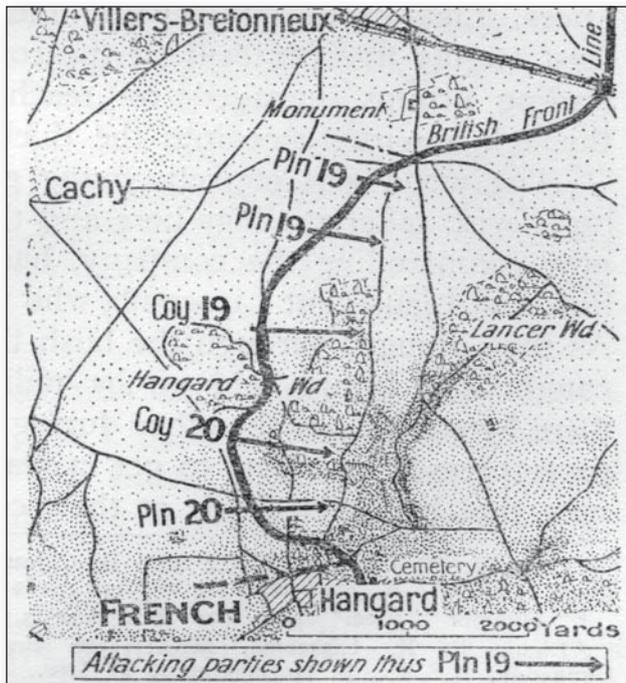


Figure 1: CEW Bean, *Official History of Australia in the War of 1914-1918*, Vol. V, *The AIF in France 1918*, p. 505.

The company launched from a small covered area just west of Hangard Wood, across open ground, from where it was hoped the company would penetrate the wood and mop up the few German soldiers thought to be inside. Exhausted from continuous battles since 21 March, Lieutenant Storkey had dozed off and awoke to see his company 75 yards ahead of him, crossing the open country.

Just as he rejoined his company on the open ground, it was caught in a murderous fire of unseen machine guns from inside Hangard Wood itself. The company commander, Captain Wallach, was hit through both knees. Two other lieutenants were killed. Twenty five percent of the company were hit before Storkey and the small leading party of the company could make it to the northern perimeter of Hangard Wood. Storkey, now the company's senior surviving officer and its commanding officer, was assisted by another surviving officer, Lieutenant Lipscomb. They struggled through the wood. Apart from Storkey, Lipscomb and the ten men with them, the rest of the company had gone to ground, to avoid further casualties from the machine gun bullets raking the ground around them.

The 12 Australians made their way around to the east and then pressed south (see Figure 2) trying to get to the rear of the machine guns. Suddenly they burst into a small clearing where just ahead they saw half a dozen short enemy trenches, each one a machine gun post, manned by a hundred Germans, riflemen and machine gun crews, all with their backs to Storkey's party. The heavily armed enemy outnumbering Storkey's party ten to one, were still firing at what remained of his company.

What then followed can be no better described than in war historian C E W Bean's own words:

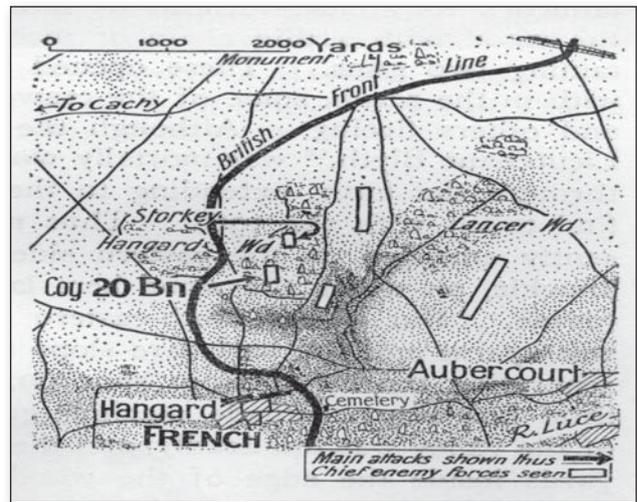


Figure 2: CEW Bean, *Official History of Australia in the War of 1914-1918*, Vol. V, *The AIF in France 1918*, p. 507.

As the Germans were seen there was a yell, and some of the enemy, looking round, caught sight of the Australians emerging into the open behind them. The situation called for instant action – either attack or be annihilated – and Storkey's decision was immediate. Shouting as if the whole battalion was following, he at once led a charge upon the rear of the Germans, himself at one flank of his ten men, Lipscomb at the other. The Australians had only twenty yards to go. Before the nearer Germans could realise what was happening, the New South Welshmen 'got in quickly,' as Lipscomb wrote, 'with bombs, bayonet, and revolver'. The Germans in the nearer trench at once put up their hands, but those in the farther ones hesitated. They had only to swing round one of their machine guns and the Australians standing close above the northern part of their line could have been annihilated. But Storkey's confident manner made them uncertain as to what forces might not be in the surrounding bush. On the first sign of hesitation to obey his order to surrender and climb out of the trench, he immediately shot three with his revolver (which then jammed) and some of his men slipped the pins from their bombs, rolled a couple into the trenches, and then ducked away to avoid the explosion. In all 30 Germans were killed, and the remainder, three officers and about 50 men, were made prisoners and were at once sent to the rear, the two escorting Australians carrying back one of the machine guns.²

Storkey's brave action cleared the defenders from the area and saved the lives of the rest of his company. As a result, Australian infantry took Hangard Wood and secured the southern side of Villers-Bretonneux. Only two weeks later the town would be lost by the British and then famously retaken by Australian troops in an audacious attack on the third anniversary of Anzac Day.

Storkey continued to fight with 19th Battalion throughout the Australian advance to the Hindenburg Line after the exhaustion of the German Spring Offensive. In May 1918, Storkey was appointed company commander and promoted to the rank of captain. On 10 June 1918 he was confirmed in that rank. His Victoria Cross was awarded to him by King George V in a ceremony at Buckingham Palace in July 1918.

Storkey returned to Australia on 26 November 1918 and his AIF appointment ended in January 1919. Thereafter he was allocated to the Reserve on 1 July 1920. He went back to law school and completed the remainder of his degree whilst acting as an associate to Sir Charles Wade, a puisne justice of the Supreme Court.

He was called to the bar on 8 June 1921, a memorable year for new admissions. Also admitted in 1921 were the powerful common law advocate, J W Shand (father of Alec) and Ada Evans, the first woman barrister in New South Wales (although she never practised).

Storkey commenced a common law practice from the old Selborne Chambers. It was the custom of the bar in the 1920s for new barristers to nominate their availability for practise on one of five country circuits. Storkey selected the South Western Circuit, covering an area bounded by Goulburn, Albury, Deniliquin, Hay, Wyalong and Broken Hill. The *Law Almanac* for 1921 shows that also at least nominally practising on the Southern and South Western Circuit were one F R Jordan, one J G Latham (from Melbourne) and one C Gavan Duffy. He continued to practise from Selborne Chambers until 1925 when he was appointed a crown prosecutor for the South Western District and moved to Crown Prosecutors Chambers.

Perhaps not surprisingly, given all he had been through, as a prosecutor Storkey was regarded as practical and realistic and had an outlook tempered by humour and compassion. Judge H T A Holt illustrates³ this characteristic with a story. Having prosecuted two men on circuit for theft for removing a safe, blowing it open with explosives and then stealing its contents, Storkey later fell into private conversation with the judge who expressed some doubts that he had sentenced too leniently. The judge said: 'Dangerous men Storkey, using explosives like that...'. The prosecutor, who had seen more explosives than either of these criminals is said to have replied rather mildly, 'Well, how were they to get the money out?'

Storkey was often briefed by the Crown and quickly appeared in a number of reported cases. He appeared as junior counsel to the attorney general in *Ex parte Attorney-General, Re Cohen*⁴ before the full court, a case dealing with the availability of the writ of *certiorari* against inferior courts. He appeared as junior counsel for the appellant in *R v Eade*⁵, a case dealing with what evidence might constitute corroboration of the unsworn evidence of a child. As many crown prosecutors did in those days, he maintained a right of private practice at the common law bar and also appeared in negligence cases, such as *Barton & Jamieson v Transport Commissioners*⁶, a cause concerning the duty of railway authorities to fence property to prevent injury to straying stock. He appears in the *Commonwealth Law Reports* only once in *R v Porter*⁷, before Sir Owen Dixon sitting as a single judge exercising the original jurisdiction of the High Court in the Australian Capital Territory before the creation of the ACT Supreme Court.

As the Second World War approached, Storkey again felt the call of duty and re-enlisted in the army in October 1938. However, in May 1939 he was elevated to the District Court and relinquished his army service. He became chairman of Quarter Sessions for the Northern District of New South Wales. There it is said that he 'became an identity making many friends and being recognised for his quick assessment of character and for his sound commonsense'.⁸ The Hon John Slattery AO QC, who was interviewed for this article, came to the bar in 1946 and still remembers Storkey, the judge, as 'always courteous and efficient, whilst running his courtroom with great decorum'.

Curiously, Storkey's appointment to the District Court was not his first exercise of judicial functions. Officers in the AIF maintained disciplinary jurisdiction over their men. Storkey's exercise of this jurisdiction in July 1916 in England intersected with a simmering but now forgotten Australian wartime dispute – the alleged failure of significant numbers of rugby league players to enlist in the AIF. Storkey sentenced Bob Tidyman, one of the few league players who did enlist, to four days confinement to barracks for being late on parade. Tidyman, who played for Easts before the war, was later listed missing in action⁹.

Storkey retired from the bench in 1955 to England, where he lived in Teddington, Middlesex, with his wife Molly. He died on 3 October 1969. He bequeathed his Victoria Cross to his old school at Napier, New Zealand.

Whilst he was a District Court judge only one appeal from Judge Storkey to the full court was reported in the *State Reports*, the matter of *Waugh v Waugh*¹⁰. It is a convention of legal reporting that post-nominals and the decorations of judges and counsel, which are unconnected with the law, are not included in case reports. In *Waugh v Waugh* a notable reported exception to this convention was made for Storkey. The appeal came before Chief Justice Sir Kenneth Street and justices Maxwell and Owen in May 1950. Only Justice Owen referred to the trial judge by name, describing him by his full title as 'His Honour Judge Storkey VC'. This departure from convention, quite apparently to honour Storkey, is especially understandable in Justice Owen's case.

Sir William Francis Langer Owen, who was later appointed to the High Court, had run away from Shore School in 1915 at the age of sixteen to join the AIF. Just six months after Storkey's enlistment, Owen himself enlisted, claiming to be eighteen. He served on the Western Front from September 1916 until he was gassed in May 1918. Sir William Owen had the clearest possible understanding of Storkey's heroism. He ensured that the judge's Victoria Cross was referred to in his judgment and hence in the *New South Wales State Reports*. In doing so he saluted a great Australian.

Endnotes

1. Memorial Day Address delivered 30 May 1884, at Keene New Hampshire, before John Sedgwick Post No 4, Grand Army of the Republic, in R.H. Posner, *The Essential Holmes*, University of Chicago Press, 1992, page 82.
2. *Official History of Australia in the War of 1914 – 1918*, Vol 5, The AIF in France 1918, CEW Bean, pp 507 – 508.
3. H T A Holt, *A Court Rises*, The Law Foundation of New South Wales, p.225.
4. (1922) 23 SR (NSW) 111.
5. (1923) 24 SR (NSW) 117.
6. (1932) 33 SR (NSW) 17.
7. (1933) 55 CLR 182.
8. *Australian Dictionary of Biography*, Online Edition, Percy Valentine Storkey (1893 – 1969) Warren Derkenne.
9. <http://www.rl1908.com/Rugby-League-News/Anzacs.htm>, 'Rugby League ANZACS of World War One'.
10. (1950) 50 SR (NSW) 210.