

# **Percy Valentine Storkey: The Sydney Law Student Who Won a Victoria Cross**

by Rear Admiral the Hon. Justice M.J. Slattery RANR, Judge Advocate  
General of the Australian Defence Force

at Sydney Law School – 11 April 2018

**(Slide 1)** Until you received the flyer for tonight's event I suspect many of you were unaware that a law student from this University, and later a barrister and District Court Judge, had won one of Australia's 64 World War I Victoria Crosses.

I too was not aware of this until recent years. I learned of it a few years ago in conversation with my late father, who practised at the New South Wales Bar between 1946 and 1969 and who served on the Supreme Court between 1970 and 1993. He said to me that he could remember appearing as a young barrister before a District Court judge in the early 1950s, who had won a Victoria Cross.

Intrigued by my lack of knowledge of this judge, I went searching, and found out about him. The need for that search, and what I found, revealed to me an immense gap in our knowledge of the many law students and members of the legal

profession who fought, and many of whom were killed or wounded, in World War I, in World War II and in subsequent conflicts. That gap has since been made up by historians such as Tony Cunneen and Philip Selth.

The stories of these veterans are now being told more widely. For reasons that are not wholly clear to me, until the laudable initiative of Chief Justice Bathurst on 11 November 2016 for this State's Supreme Court to celebrate Remembrance Day, it had not annually done so. In contrast, for example, the Supreme Court of Victoria has always held such an annual commemoration within the living memory of Victorian lawyers.

Many of us were law students once. Many of you still are. In early 1915 Percy Storkey faced all the usual course choices of an early third year law student at this University. But the outbreak of WWI presented to him yet another, far tougher, choice: would he enlist? He did. He joined the First Australian Imperial Force just three weeks after the Anzac landings at Gallipoli.

He fought on the Western Front for two years where he was twice wounded. He earned the Victoria Cross in an action exactly 100 years ago last Saturday, on 7 April 1918. His action was early in the decisive battles around Villers-Bretonneux, battles in which Australian troops bridged the line to stop 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.

Percy Valentine Storkey has significance for us at many levels. First and foremost he believed his story should be told to the general public for the benefit of all veterans. His early years after the war are filled with his journeys in New Zealand and Australia, speaking to community groups on behalf of veterans.

But at yet a second level Storkey reminds us of the heroism and willingness to volunteer in both World Wars of members of the legal profession.

At the risk of being accused of suggesting that lawyers were over-represented among the ranks of VCs in World War I, may

I tell you there was in fact another. His name was Arthur Seaforth Blackburn, a newly admitted Adelaide solicitor about the same age as Storkey, who was decorated for his extraordinary bravery in the Battle of Poizeres in July 1918. His grandson, Tom Blackburn SC, now practises at the New South Wales Bar.

Storkey made firsts wherever he went within the legal profession. He was not the first lawyer to win a VC; that honour went to Blackburn. But he was certainly the first barrister and the first District Court judge and the first and only member of the Australian Judiciary to hold such an honour. Only one other judge in the British Commonwealth ever held a VC: Lord Justice Sir Tasker Watkins, who earned his VC for action in Normandy in August 1944, was appointed to the High Court in 1971 and later became Deputy Lord Chief Justice of England.

A third reason why Storkey is important, every military officer in this room will immediately recognise. Despite the Storkeys and the Blackburns and the leadership of General Monash, himself a lawyer, there can at times be an undercurrent within the ADF that sounds like this – “well, why do we need lawyers in the military anyway?” But to that kind of carping my constant

answer in recent years has been, “let me tell you about Percy Storkey, a lawyer who won the Victoria Cross”. This has been very effective in silencing critics.

Finally, and most importantly, Storkey is also important because he represents the large number of students who volunteered from this Law School for WWI service. In the Law School’s Jubilee history (for the period 1890 – 1940) the Honourable Sir Thomas Bavin puts the number of law students volunteering for active service in WWI at just over 100. Of those, 11 were killed in action. Their names appear among those on the Roll of Honour under the Carillion Tower. I will speak of them later.

So let me tell you Percy Storkey’s story now. It is, as I will show you, a story not only about outstanding human courage, but a story showing a deeply human response to the sacrifice of the soldiers around him. Let me begin.

But before I do so, I wish to acknowledge the extensive and original research undertaken by my acting associate Imogen Yates (also a graduate of this Law School) in the preparation of

this speech and the sourcing the images that accompany it. I also wish to thank Mr Phillip Rankin, Archivist at Napier Boys High School, and Ms Jane Myers of the school's staff for important source materials from New Zealand and Tony Cunneen and Philip Selth for their scholarly assistance with Australian-based historical research.

Storkey was born in Napier, New Zealand on 9 September 1891. Here is a present day photograph of that beautiful coastal city on the North Island (**slide 2**). He attended the Napier Main School (a primary school) between 1897 and 1906 and from there he attended Napier Boys High School.

His leadership skills and intelligence showed early. In his final year at Napier Boys High School, 1910, he became a prefect and was dux of the high school (**slide 3**).

He had a full classical and scientific education taking latin, heat and mechanics (what we would call "physics") algebra, history and English. He did so well academically that he became dux of the school and only just missed out on a scholarship to University. He then went on to Victoria College, Wellington.

But, like many of the best soldiers, he was both adventurous and successful on the sporting field. He made the first XV as a full back in his final year at school and the first XI cricket team the same year. His school reports showed, according to one former Headmaster, Mr M Spackman, "Percy was mad about his cricket". When he later toured and gave speeches later as a Victoria Cross winner in Australia and New Zealand he could often be later found at nearby cricket fields watching local cricket games.

Storkey had an early association with citizens' militias. By the time he left Napier Boys High School his interest in the military was clear. Through the schools cadets, he had risen to the rank of colour sergeant. Before migrating to Australia, he had already spent five years in the New Zealand militia.

Percy, his brother and three sisters, lived with their parents, Sam and Edie Storkey, in Milton Road, Napier until 1911. The house was still there in the 1970s (**slide 4**), when this photograph was taken. They migrated that year as a family to live in Australia. His father worked for the Daily Telegraph in Napier. He continued to work in the newspaper industry here in

Sydney. The rest of the Storkey family returned to live in Napier a few years later. But Percy remained in Sydney. He had already started his law studies.

After migration to Australia, Percy Storkey initially worked for the Orient Steamship Co. in Sydney. By 1912 he had joined the administrative staff of the University of Sydney. This background assisted him in 1913 to enrol at the University Law School (**slide 5**). By the end of 1914, he had completed his first two years of study. He began final year in 1915.

On 10 May 1915 he enlisted in the AIF as a private. The date of his enlistment is itself a remarkable part of Australian legal and military history. In August 1914 (**slide 6**) Colonel Henry MacLaurin, then a Senior Junior at the New South Wales Bar, had organised a battalion of troops, who embarked for Gallipoli in October 1914. But on the second day of the Gallipoli campaign, Colonel MacLaurin was tragically killed. The Chief Justice, Sir William Cullen, held a special sitting of the Supreme Court on Wednesday, 5 May 1915 to mourn the loss of the first war casualty from the legal profession.

The news of MacLaurin's death swept down Phillip Street. Percy Storkey had not yet joined any Australian civilian militia, it



can confidently be inferred that this final year law student decided that this was the moment to put his training into practice. He was no doubt aware of, and perhaps prompted just a little, **(slide 7)** by the major recruitment poster campaign that was launched in Australia after the Gallipoli landing.

It perhaps may surprise you to know that, in its own way, this Law School obliged the war effort. The Jubilee History of the Sydney University Law School shows that in 1914 and 1915, the end of term examinations were advanced, so students could complete exams before they enlisted. I hope the examiners were merciful.

But University journals of the day also encouraged enlistment **(slide 8 + 9)**. It is clear from the May 1915 edition of *Hermes*, the University's literary journal that a competitive spirit for enlistment existed among the faculties of Medicine, Engineering and Law, others among them. By August 1915 **(slide 10)** *Hermes* was making a direct appeal to the spirit of students to "do their duty" and enlist.

Close to his 24th birthday in September of that same year, Storkey was commissioned as a second lieutenant in the AIF. His university education, his age, his character, and his prior military experience marked him for promotion from private soldier to officer within just four months. The photograph (**slide 11**) of him taken in the uniform of a 2<sup>nd</sup> Lieutenant about that time, gives colour to a comment that was made about Storkey in his last year of school. One of his teachers, a Mr Spriggs, described him as, “a fine gentleman; a person full of confidence and sparkle”. Storkey was keen to go overseas. The words he has written across the photo say, “Thank goodness I will be off soon”.

In December 1915 he sailed to England via Egypt to join members of the 19th Battalion in training. As he sailed from Australia his background alone could predict much about what was to come. It was a background of extraordinary intellectual and sporting achievement and fine character. He was not untypical of many young officers in the First AIF.

What do you do with a Second Lieutenant, third year law student, in the AIF in Egypt? Of course, you put him in charge

of Courts-Martial. And that is what Storkey was drafted to do during the long months of training in Egypt and then in England.

Storkey's exercise of courts martial jurisdiction in July 1916 in Egypt and then in England intersected with a simmering but now long-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 rugby 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 as missing in action. My source for that was Rugby league's own historical account of its players in WW1 (<http://www.rl1908.com/Rugby-League-News/Anzacs.htm>, 'Rugby League ANZACS of World War One').

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. Percy Storkey's service records are now all online (**slide 12**) courtesy of the Australian War Memorial. From what I can work out from the records, he suffered two wounds during his service before his heroic action on 7 April 1918, he had a bullet wound to the thigh and a badly

damaged ankle. But subject to convalescence, and some leave back in London, he fought continuously on the Western Front for the 22 months from November 1916 until September 1918.

He was promoted to lieutenant in January 1917 and was wounded for the second time, on 10 October 1917 in the Third Battle of Ypres.

But we all know October 1917 for a different reason, the Bolshevik Revolution. As he convalesced, events unfolding two thousand miles away in Russia began to give shape to the final contest of the war in which he would win his Victoria Cross.

Let me step back for a moment and give you a bigger picture. After October 1917 hostilities ceased on the Eastern Front between Germany and the new Soviet State. This released almost a million German soldiers, for transfer to the Western Front – a barely imaginable number, even today.

In early 1918 the German High Command planned a massive offensive on the Western Front based on a simple calculation.

The United States had entered the war in April 1917. But the additional strength from US troops was only just starting to be felt on the Western Front. Action before that was indicated.

Amiens was the major railway junction behind allied lines. The German High Command planned that a conquest of Amiens would threaten Paris and force the Allies to seek an armistice before the 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. Their counter attack threatened to encircle Villers-Bretonneux, a critical gateway to Amiens and about 10 kilometres to its north-west. A regiment of German troops penetrated dangerously to the south-west of Villiers-Bretonneux. Its three northern companies infiltrated and occupied a strategic timbered rise,

called Hangard Wood, just two kilometres to its south and just outside the little village of Hangard (**slide 13**).

“Hangard” had been so named since the middle ages: ironically, given what was about to follow, its name is derived from two words of Germanic origin, meaning “Hano’s Garden”.

Australian infantry were ordered to counter-attack and to retake Hangard Wood on 7 April so as to reduce the German threat south of Villers-Bretonneux. The 5th Brigade (2nd Division AIF) of which Percy Storkey’s 19th Battalion was one 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 allied intelligence and artillery failures. Allied aircraft had reconnoitred the wood. The resulting intelligence had 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.

Storkey's company launched east from a small covered area just to the west of Hangard Wood, across several hundred metres of open ground, from where it was hoped the company would penetrate the wood and mop up the few German soldiers thought to be inside. But exhausted from continuous battles since 21 March, Lieutenant Storkey had dozed off. He awoke to see his company 100 yards ahead of him, crossing the open country and already coming under fire.

As he re-joined his company on the open ground, it was caught in a murderous fire from unseen machine guns from inside Hangard Wood. The company commander, Captain Wallach, was hit through both knees. Two other lieutenants were killed. Twenty five percent of the company were hit. The remainder of the company was pinned down in the open. Storkey now became the company's senior surviving officer, and therefore its commanding officer. He was assisted by another surviving officer, Lieutenant Lipscomb.

At this moment we should pause, so we can begin to understand at the human level what happened next. Storkey was always very frank in the accounts that he gave after the war, that he had fallen asleep, and that he was behind his company's advance. He never sought to hide it. It appears in many contemporary accounts.

But think for a moment how he must have felt. Because he was asleep, his company had proceeded ahead of him; he had been left behind; over 20 of his fellow soldiers were dead, and he was alive. His immediate reaction was to prove himself worthy of his chance survival. He more than made up for his bad start.

Storkey detached six men from the company and headed north and west around the wood, trying to find the German machine guns. He was soon joined by Lieutenant Fred Lipscomb who had four men with him. Between them, there were two officers and ten soldiers, a group the size of a section, or just a third of a platoon. They struggled towards Hangard Wood. And in case you have some romantic ideas of a thick forested wood, like the Bois de Bologne – and perhaps it was in early 1918 – after the



war it appeared in Bean's Official History after many more battles looking like this (**slide 14**).

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 (**slide 15**) 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 eighty to one hundred Germans, riflemen and machine gun crews, all with their backs to Storkey's party. The heavily armed enemy outnumbering Storkey's party nearly ten to one, were still firing at what remained of his company. Conventional military theory of the time advised that an attacker should bring to bear a force three times the size of the force to be vanquished. Storkey faced a far greater ratio against him.

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

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.

We would now perhaps call this a sliding door moment. It was a moment when 80 plus Germans could have turned around and easily out-gunned the ten Australians. But with the bravado that makes VCs, Storkey led his men forward with such confidence that the entrenched Germans believed they were the leading edge of a much larger force. Contemporary newspapers recount that the attackers expressed this

confidence using what were described as “Australian oaths”. Bean’s Official History then continues as follows.

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. <sup>2</sup> (*Official History of Australia in the War of 1914 – 1918*, Vol 5, The AIF in France 1918, CEW Bean, pp 507 – 508.)

Storkey’s brave action cleared the defenders from the area and saved the lives of the rest of his company.

Histories of the 19<sup>th</sup> Battalion abound with stories of the amazement of fellow troops, as Storkey’s men marched their long column of German prisoners and captured machine guns back behind the battalion’s lines. As a result of the action, 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.

But what happened next takes Storkey's story to yet another level. Within an hour of proving his physical courage, Storkey's moral courage was tested to the limit. Storkey's view from inside Hangard Wood was that it could not be held. Concerned for his men's safety, he ordered their withdrawal back to allied lines with the prisoners. The history of the 19<sup>th</sup> Battalion records that his battalion commander ordered him back to Hangard Wood immediately. But Storkey refused. He thereby risked a serious charge of disobeying a lawful order.

He argued the wood was a death trap for his men. Gaining no traction with his colonel he appealed to the brigade commander. He then deployed his lawyer's skills to the full. He persuaded the Brigadier of the merits of caution. The Brigadier is said to have "gratefully received" Storkey's information about the numbers of enemy in Hangard Wood. The order to return was rescinded.

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. But in the meantime he had been recommended for the award of the Victoria Cross.

What character type wins the Victoria Cross? What character type threatens to disobey orders to save his men? One fellow officer described Storkey in these terms: “In any emergency, Percy Storkey was always as cool as an arctic iceberg, and always maintained a keen sense of humour – a priceless possession in war as well as in peace”.

His Victoria Cross was announced in the London Gazette exactly two months later, on 7 June 2018 (**slide 16**). It was awarded to him by King George V in a ceremony at Buckingham Palace in July 1918 (**slide 17**). The official photographic portrait of him at Buckingham Palace is perhaps the best known image of him (**slide 18**), after the Max Meldrum portrait with which this presentation opened.

But there is another less formal image taken outside Buckingham Palace that so very clearly conveys his character (**slide 19**). The photograph outside the Palace I believe to be the woman that became Storkey's wife, Minnie Mary Gordon, née Burnett. Every age has its contradictions, including ours. But when nearly 20,000 men could be killed on the first day of the battle of the Somme in July 1916, two years later Percy Storkey was being criticised for his romance with Minnie - on the simple ground that she was a divorcee.

But this photograph and her presence and her dress all help us to realise that at the time of his heroism many glimmers of our recognisably modern world were already starting to appear. In New South Wales the debates that led to the passing of the Women's Legal Status Act later that year had already commenced. Women over 30 had just been granted the right to vote in England. The Austrian symbolist painter Gustav Klimt had just died. Let me show a few of the others to you (**slides 20 + 21**).

But I hear you ask: what happened to Lieutenant Lipscomb, Storkey's companion. He was awarded the Military Cross for the same action. But wounds to his knee that day forced him

out of active service. He was nursed back to health in England, where he met an English nurse, Isobel May Ward, and they married. He returned to Australia and settled back in Goulburn, where he died in 1952.

Storkey returned to Australia on 26 November 1918. His AIF appointment ended in January 1919. Thereafter he was allocated to the Army Reserve on 1 July 1920. According to Storkey's relatives who were interviewed by newspapers in Napier after the war, Storkey decided to settle in Australia because he considered there was more scope for him to further his legal career here.

But he always remained very attached to his city of birth. Upon his return to Napier in late January 1919 after the war there were many parades and celebrations in his honour. He was hoisted shoulder high and marched around the band rotunda. In his reply to speeches on these occasions, witnesses recall him saying, "this is Napier's VC".

Like so many veterans, Storkey wrote nothing of his war experiences that survives. But one of the speeches he made

back in Napier in January 1919 was recorded by a local paper and speaks eloquently to his fundamental modesty. Reported in the third person this is what he said in reply to a welcome by the Mayor of Napier:

“After a number of welcoming speeches Captain Storkey took the stand in reply and the Telegraph reported:

‘Because he had won the VC it was not because he was any braver than any other soldier, nor because he was a warlike person who liked fighting. As a matter of fact he disliked fighting very much and was a peace-loving person.

He had only tried to do his duty and had taken the opportunity when it arrived. A man did not have to be a hero when the opportunity showed and he had only to keep his head and do his duty when it did.

Up till this welcome he had not been proud, and they would forgive him if he was now. He had been pleased to gain the honour but until now had not felt anything more.

He did not want them to run along with the idea that it had made him swell-headed’,

The report said.”



Though born in New Zealand, he has always been counted among Australia's VC winners as he was a member of the AIF. But trans-Tasman rivalry abounds in every sphere. It will not surprise you that the New Zealand tabloid press have commonly claimed him as "a Kiwi VC".

Storkey went back to law school in 1919 and 1920 and completed the remainder of his degree whilst acting as the associate to Sir Charles Wade, a puisne justice of the Supreme Court. His employment as associate with Sir Charles represents part of a deep tradition of support for WWI veterans within the Supreme Court, led by Chief Justice Cullen, Justice Ferguson, and others.

The same thing happened after WWII. The Commander of HMAS Australia in the battle of the Coral Sea, Admiral Harold Farncomb, left Navy in the 1950s and became the associate to the Chief Judge in Equity, David Roper, before going to the Bar.

Storkey 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.

On 15 April 1922 he married Minnie at St Stephen's Presbyterian Church, in Sydney. They made their home in Vaucluse (<http://adb.anu.edu.au/biography/storkey-percy-valentine-8687>).

Storkey commenced a common law and criminal law practice from the old Selborne Chambers, at a time when Phillip Street looked more like this **(slide 22)**.

It was the custom of the bar in the 1920s for new barristers to nominate their availability to practise on one of five country circuits. Storkey selected the South Western Circuit, covering a vast 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 (later Chief Justice of New South Wales) and one J G Latham, from Melbourne (later Sir John Latham, Chief Justice of the High Court of Australia).

He continued in private practice from Selborne Chambers for only four years until 1925, when he was appointed a crown

prosecutor for the South Western District. He moved to Crown Prosecutors Chambers and spent the next 14 years until 1939 prosecuting mainly on the South Western Circuit. One contemporary newspaper estimated that he travelled some 30,000 miles each year on circuit.

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 illustrates this characteristic with a story ((H TA Holt, A Court Rises, The Law Foundation of New South Wales, p.225). 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 may perhaps have 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 in reassurance to the judge, 'Well judge, how else were they to get the money out?'

Storkey was often briefed by the Crown and quickly appeared in reported cases. He appeared as junior counsel to the

attorney general in *Ex parte Attorney-General, Re Cohen* (1922) 23 SR (NSW) 111 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 Ead* (1923) 24 SR (NSW) 117, 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* (1932) 33 SR (NSW) 17, 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* (1933) 55 CLR 182 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. He had remained in the Army Reserve. He re-enlisted in the army in October 1938 along with the mass transfer of reserve lawyers into the fledgling Australian Army Legal Department (AALD). He became Legal Staff Officer to 2<sup>nd</sup> Division, based in Sydney, under the command of the

Judge Advocate General. However, in May 1939, before the outbreak of war, he was elevated to the District Court at the age of 48, and he 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' (*Australian Dictionary of Biography*, Online Edition, Percy Valentine Storkey (1893 – 1969) Warren Derkenne).

I asked my father about Storkey, the judge. He remembered him as 'always courteous and efficient, whilst running his courtroom with great decorum'.

Phillip Selth has given me an interesting example about Storkey as a judge on the Northern Circuit that also shows he was practical and a realist. His cases were often reported in the (Taree) Northern Champion and the Manning River Times. He was commonly described in the press as Judge Storkey VC, giving additional weight to his judicial office. Let me give you examples of his work from just one circuit. He presided over the March 1947 Taree Quarter sessions. Emerton of counsel

appeared for a butcher, George Bulley, appealing a conviction and fine of £5. Bulley's lorry had run into some cows at John's River bridge coming home early in the morning after fishing. Judge Storkey dismissed the appeal, saying that no one travelling in a reasonable manner should run into a wall of cows without seeing them. Emerton also acted for Victor Lyne, who was appealing a conviction of driving a motor lorry under the influence of liquor. His Honour said that the sooner people realised that they must leave liquor alone if they were to drive cars, the better it would be for them.

Judge Holt's history and other contemporary sources recount another story about Storkey that deserves to be told. District Court judges on circuit were entitled to a full compartment to themselves on trains no matter how crowded the rest of the train was, in case they were by chance to encounter circuit litigants in the same carriage. During WWII, Storkey's train stopped on one occasion at Whittingham Station, the entraining point for Singleton army camp. A battalion of soldiers piled on. They quickly became resentful that Judge Storkey had a compartment all to himself. Some banged on the door and demanded to be let in. It is said that the battalion's Colonel even sought to commandeer Judge Storkey's compartment. Storkey's associate quietly took them aside and said, "Do you

know you're making trouble for a man who won a Victoria Cross in WWI?" Before the train arrived at Central Station, the Colonel had made formal apology to the Judge. (see also *District Court Judges at War*, Brian Herron QC, Bar News – Summer 2009.)

Storkey retired from the bench in 1955 and went to live in England, where he lived in Teddington, Middlesex, with his wife. He died on 3 October 1969 at the age of 76. He bequeathed his Victoria Cross to his old school in Napier.

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* (1950) 50 SR (NSW) 210. 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 within case reports. In *Waugh v Waugh* a notable reported exception to this convention was made for Storkey (**slide 23**). 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 to honour Storkey, is especially understandable in Justice Owen's case. Owen had enlisted underage just after Storkey and had served for almost the same period as Storkey on the Western Front. Justice Owen 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.

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 veterans (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.):

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. He now inspires us all and helps us remember the many others who did not return **(slide 24)**.

May I now turn to them, and recite in conclusion for you, in commemoration of their sacrifice, the names of the eleven law students killed in action in WWI and the dates of their deaths: Laurence Whistler Street (19 May 1915) and Charles Bernard Donaldson (20 July 1915) died at Gallipoli. All the others on the Western Front: Arthur Gardere Ferguson (14 June 1916), Francis Maxwell Barton (11 August 1916), Alan Russell Blacket (16 August 1916), James Blackwood (2 December 1916), Thomas Storie Dixon (8 December 1916 in training accident), Harold Robertson Blanksby (12 February 1917), Adrian Consett Stephen (14 March 1918), Morven Kelynack Nolan (26 March 1918), and Lancelot Vicary Horniman (1 September 1918).

Percy Storkey reminds us of them all, and all who served.

**LEST WE FORGET (slide 25).**