

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHN A. PATTERSON, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 5:17-CV-00467
)	
DEFENSE POW/MIA ACCOUNTING)	
AGENCY, et al.,)	
)	
Defendants.)	

[PROPOSED] DEFENDANTS’ SUR-RESPONSE TO PLAINTIFFS’ ADVISORY TO COURT CONCERNING THE PRODUCTION AND EXAMINATION OF REMAINS

Defendants, the Defense POW/MIA Accounting Agency (DPAA), the U.S. Department of Defense (DoD), the American Battle Monuments Commission, and the heads of those agencies sued in their official capacity (collectively “Defendants”), respond to certain factual claims in Plaintiffs’ Reply in Support of Advisory to Court Concerning the Production and Examination of Remains (“Pls.’ Reply”), ECF No. 44 (Aug. 24, 2018).

Plaintiffs mischaracterize several of Defendants’ prior statements in this litigation. First, they assert that “the Government has admitted that most of the Families’ claims are likely true.” Pls.’ Reply at 1. This is not accurate. It has never been disputed that records associate four of Plaintiffs’ relatives with specific common graves. *See* Am. Answer ¶¶ 33-34, 37-38, 41-42, 45, ECF No. 26. What is disputed is Plaintiffs’ actual claim—that this association alone is sufficient to consider these individuals “identified” or to demand disinterment of the remains. *See* Defs.’ Rule 12(c) Mot. at 10-11, ECF No. 31 (explaining numerous reasons that the original records cannot provide certainty about the current location of any specific remains). Neither Defendants’

statement that these common graves were the “likely original location” for four of Plaintiffs’ relatives remains, *id.* at 11-12, nor the Department of Defense’s (DoD) recent approval of disinterment of graves associated with Cabanatuan Common Graves 704 and 822 once DoD’s threshold for disinterment had been met, *see* Defs.’ Response to Pls.’ Advisory at 4 n. 2, ECF No. 43 (noting recent disinterment approvals), undermine Defendants’ reasoning.

Second, Plaintiffs assert without support that “[PVT Kelder’s] family has only received three bones.” Pls.’ Reply at 3. This is contradicted by DPAA’s identification documents in 2015. These documents explain that Plaintiff Douglas Kelder received more remains of PVT Kelder—specifically six arm or leg bones and a significant portion of PVT Kelder’s skull:

- Cavarium (skullcap)
- Fragmentary maxilla (upper jawbone)
- Fragmentary mandible (lower jawbone)
- Left femur (thighbone)
- Right humerus (upper arm bone)
- Left humerus (upper arm bone)
- Right tibia (larger of two lower leg bones)
- Left tibia (larger of two lower leg bones)
- Right fibula (smaller of two lower leg bones)

See Am. Compl. ¶ 49; *id.* Ex. 50 ¶ 2(d); *id.* Ex. 51 ¶ 2(b). DPAA also explained that testing is ongoing and depends in part on disinterring the last set of remains associated with this common grave. *See* Am. Compl. ¶¶ 47, 49; Declaration of John Byrd ¶¶ 20-22, ECF No. 34-2.

Third, Plaintiffs assert that “the Government accepted the fact that the remains [of PFC Lawrence Gordon] had been identified by the independent researcher.” Pls.’ Reply at 4. To the contrary, the press release Plaintiffs cite does not suggest that remains were “identified by the independent researcher.” Rather, his “historical research led to the disinterment,” Pls.’ Reply, Ex. A, ECF No. 44-1, and DoD ultimately issued an official identification in May 2014 on the basis of DNA testing by the French national crime laboratory, the University of Wisconsin, and

Bode Technology, which adequately supported that conclusion. *See id.*; *see also* Jed Henry, et al., Presentation Abstract: The Identification of World War II Soldier PFC Lawrence S. Gordon, Int'l Symposium on Human Identification, 2014 ([link](#)); Chris Barncard, Long lost WWII soldier returned to family with help of UW-Madison scientists, *University of Wisconsin-Madison News*, June 10, 2014 ([link](#)). This incident does not undermine DoD's explanation that it cannot and will not outsource its identification authority for servicemembers. *See* Defs.' Response to Pls.' Advisory at 3. Moreover, this situation was distinct from what is at issue in this case because PFC Gordon's remains were not in DoD custody and were in a German cemetery on French soil.

Fourth, Plaintiffs assert that "the Government has repeatedly advised that they intend to disinter all of the unidentified remains at Manila American Cemetery." Pls.' Reply at 6. They cite no source for this supposed statement. Instead, Defendants have explained "that DPAA has an ongoing project to identify unknown remains from Camp Cabanatuan interred in the Manila American Cemetery, and has been proposing the disinterment of Cabanatuan remains one common grave at a time . . . , provided that the standards set forth in Directive-type Memorandum-16-003 (DTM-16-003) are met; it is DPAA's intention to disinter all Cabanatuan remains in turn." Am. Answer ¶ 35. But Plaintiffs' Advisory seeks disinterment of remains *unrelated* to Camp Cabanatuan. Regardless, Defendants have explained that disinterment without the supporting historical research to identify appropriate candidates for testing and receipt of DNA samples from the relevant families is not only contrary to DoD regulation but also fruitless. *See* Defs.' Response to Pls.' Advisory at 12.

Finally, and most egregiously, Plaintiffs' counsel makes a new factual assertion "upon information and belief," without identifying any basis for the assertion. *See* Pls.' Reply at 8. They falsely claim that:

in October 2017, a person who identified himself as Roderigo D. Balagtas, Defense POW/MIA Field Investigation NCOIC, presented himself at the Catholic Church in Abucay, Bataan, Republic of the Philippines and removed remains from a tomb at the Catholic Church in Abucay, Bataan, Republic of the Philippines to Hawaii without proper permits and without the permission of the Church. The Government's subsequent analysis of the remains showed them to be of Filipino descent and not those of the American soldier awarded the first Medal of Honor of WWII. It appears that the Government's standards for disinterment are whatever they wish them to be at the time.

DPAA did send a field investigation team to Abucay in October 2017. *See* Memorandum for the Record, Results of the 18-1PH Field Forensic Review (FFR#2), Oct. 31, 2017 (attached as Exhibit 1). But DPAA acted with appropriate notice and participation and did not remove any remains from the churchyard. *See id.* at 1 (explaining that cemetery staff were present, along with the local health officer and a representative from the National Museum in Manila). Moreover, field investigations of remains not currently in a federal cemetery operate under different standards, and thus have nothing to do with DoD's disinterment standard that Plaintiffs seek to undermine. *See, e.g.*, Directive-type Memorandum (DTM)-16-003, ECF No. 31-1 (explaining that disinterment standard applies to "DoD disinterment from cemeteries administered by the Department of the Army (DA), the Department of Veterans Affairs (VA), and the American Battle Monuments Commission (ABMC), for identification purposes"); DPAA, Resources, FAQs, Process: How Many and What Types of Teams Does the Agency Send Out into the Field? ([link](#)) (describing field investigations). Plaintiffs had no reason to report this incident inaccurately because two documents produced to Plaintiffs in discovery on May 2, 2018 explained what actually occurred. *See* Case Summary, Alexander R. Nininger, Jr., Dec. 2017 at DPAA0002089 (stating that "[i]n October 2017, a DPAA team opened the crypt but did not observe any remains believed to be American"); DPAA Presentation, Dec. 20, 2017 at DPAA0002101 (stating that "[i]n October 2017, DPAA opened the crypt in the Abucay church

yard but did not find any remains believed to be American”) (attached as Exhibits 2, 3).

In sum, Plaintiffs’ mischaracterizations of the record and of Defendants’ statements are inappropriate and do not support their efforts to rebut Defendants’ Response to Plaintiffs’ Advisory.

CONCLUSION

For all these reasons, Defendants respectfully request that the Court deny Plaintiffs’ motion to compel and instead grant Defendants’ Motion for Judgment on the Pleadings.

Dated: August 30, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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DEFENSE POW/MIA ACCOUNTING AGENCY

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31 October 2017

MEMORANDUM FOR RECORD, Science Director, DPAA CIL

SUBJECT: Results of the 18-1PH Field Forensic Review (FFR#2)

BACKGROUND:

On 22 October 2017, during DPAA field activity 18-1PH, Recovery Team One (RT1) conducted a forensic exploration of several above-ground mortuary crypt chambers in the St. Dominic de Guzman Church cemetery yard (site RP-00180), a cemetery burial site correlated with the WWII-01800-G loss incident (and possibly containing remains of 1st Lt. Alexander Nininger) in the Municipality of Abucay, Province of Bataan, Luzon Island, Republic of the Philippines. Under the supervision and direction of DPAA Scientific Recovery Experts (SRE; Dr. Denise To and Dr. Mary Megyesi) and with the assistance of the cemetery caretaker and his staff, RT1 opened five concrete mortuary chambers within an apartment-style crypt complex. The Excavation Proposal approved by DPAA (dtd 6 July 2017) erroneously indicated only four chambers, as two chambers were covered by a single plaque and appeared to be one. Of the five crypt chambers opened on 18-1PH, four chambers were found to contain possible human remains. A Field Forensic Review was conducted on the spot by the SREs with the following results:

1. Aside from the DPAA personnel, the following individuals were present: Mr. Eric Del Rosario (National Museum, Manila), Mr. Jeffrey Valentos (Abucay Health Officer).
2. The apartment-style crypt complex contained what originally appeared to be 10 mortuary chambers (with one section not counted as a crypt chamber by the cemetery staff, and one appearing to be a “double” due to the plaque placed in a centralized location between the two). See Figure 1.
3. All chambers were physically opened by hand tools by the cemetery staff.
4. Crypt chamber #5 (Figure 2) contained human skeletal remains, including cranial and post-cranial elements representing at least two individuals based on duplicated elements (one female and one older male). A male cranium was completely edentulous, and heavy lipping on the vertebral elements indicated an older individual. The morphology of the cranium was consistent with an Asian individual. The length and overall size of all the elements were consistent with individuals of short stature (inconsistent with un-accounted for Americans).
5. Crypt chamber #2 (Figure 3) contained human skeletal remains, including cranial and post-cranial elements representing at least two individuals based on duplicated elements. Both individuals were adults based on epiphyseal fusion. No other biological indicators could be determined, except that the length and overall size of all the elements were consistent with individuals of short stature (inconsistent with un-accounted for Americans).
6. Crypt chamber 10 was covered by a plaque (Figure 4) centered on two chambers (making it appear as a single chamber). The plaque was reportedly placed there sometime after 2006 by



relatives of 1st Lt Alexander Nininger and a group associated with the US Military Academy. Crypt chamber 10 was opened to reveal two chambers, discussed here as 10a and 10b.

7. Crypt chamber 10A (Figure 5) contained a plastic rice bag with remains and sediment, suggesting a previous subsurface burial. The remains included two pair matched tibiae, consistent with a single individual. No other biological indicators could be determined, except that the length and overall size of all the elements were consistent with individuals of short stature (inconsistent with un-accounted for Americans).
8. Crypt chamber 10B (Figure 6) contained human skeletal remains, including cranial and post-cranial elements representing at least one individual. Lipping on the vertebral elements and a complete upper denture (suggesting an edentulous maxilla) indicated an older individual. No other biological indicators could be determined, except that the length and overall size of all the elements were consistent with individuals of short stature (inconsistent with un-accounted for Americans).
9. Crypt chamber 9 was opened enough to identify that it was empty - no skeletal remains were present in this chamber.
10. In conclusion, all skeletal remains assessed were determined to be non-evidentiary and non-probative. No evidence was retained during this FFR.
11. This is Field Forensic Review #2 in the Philippines.

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Denise To, PhD, D-ABFA, RPA
Forensic Anthropologist
Field Sciences Laboratory Manager
Defense POW/MIA Accounting Agency
Scientific Analysis Directorate

FIGURES



Figure 1. Apartment-style crypt complex at the Abucay Church identified by cemetery caretaker as possibly containing human remains belonging to an American (specific crypts that may contain American remains are circled in red). Crypt numbers were established by the cemetery caretaker.

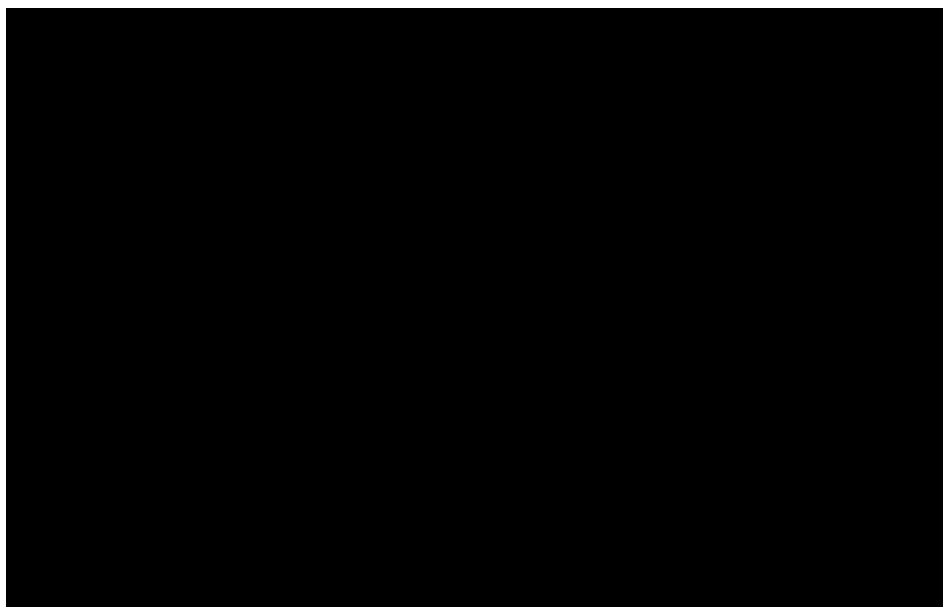


Figure 2. Human remains found within Crypt Chamber #5.

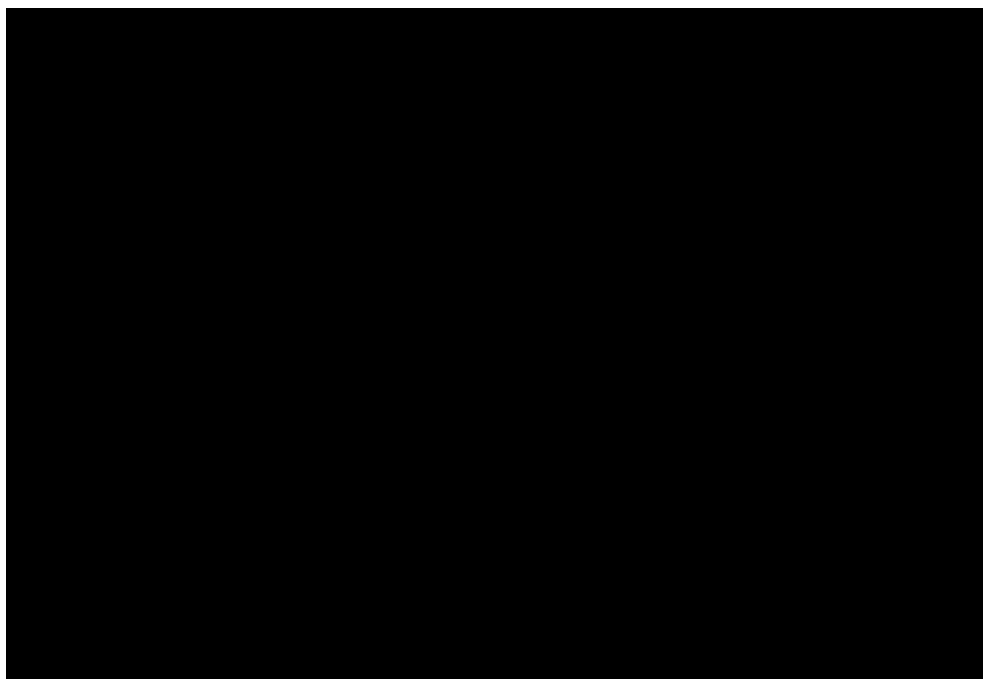


Figure 3. Human remains found within Crypt Chamber #2.



Figure 4. Plaque located on Crypt Chamber #10A and 10B.

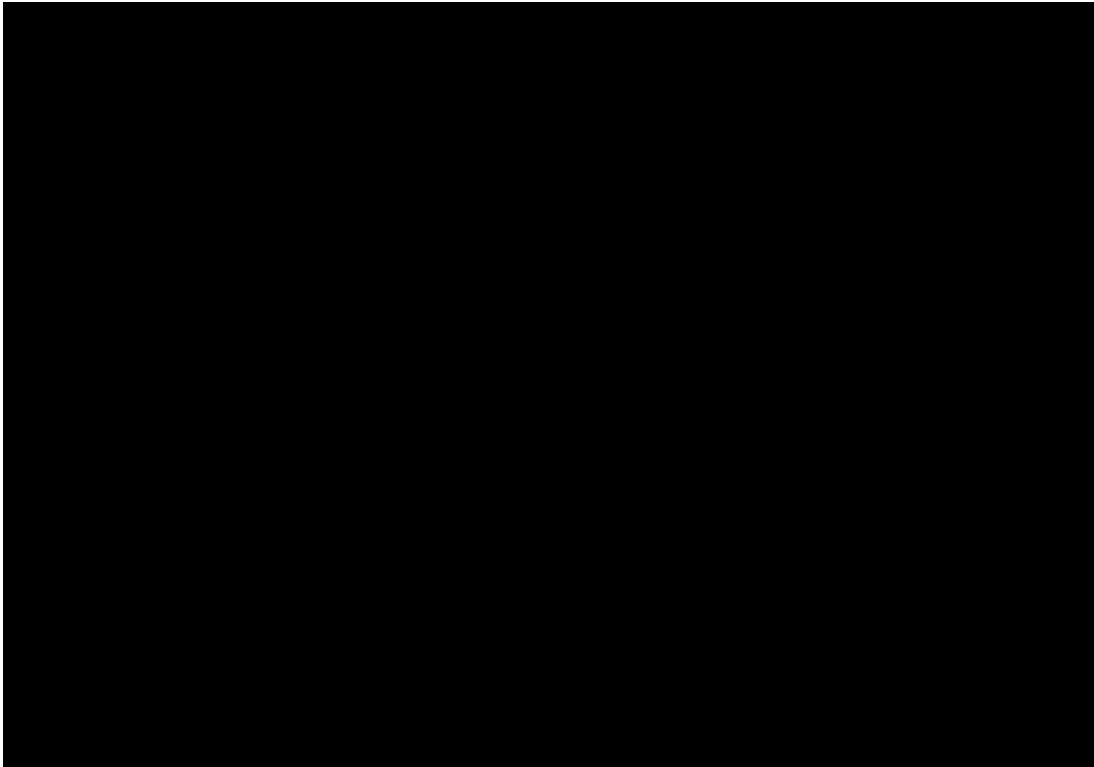


Figure 5. Human remains found within Crypt Chamber #10A.

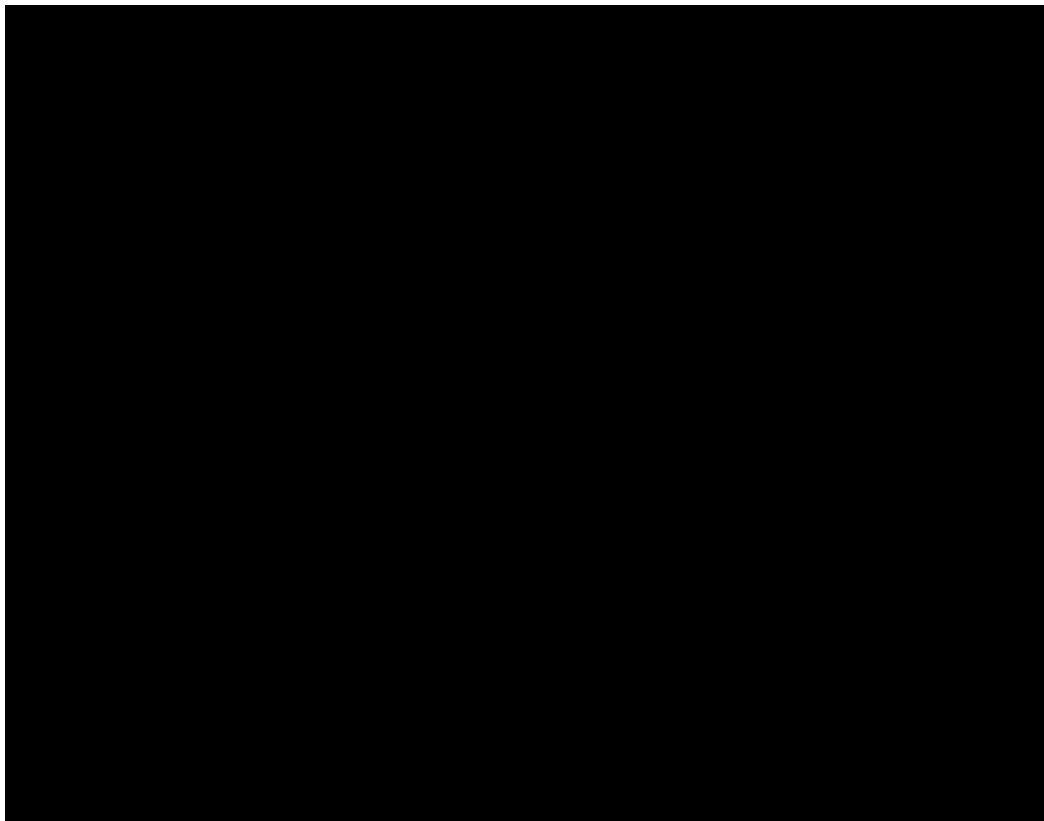


Figure 6. Human remains found within Crypt Chamber #10B.



ALEXANDER R. NININGER, JR.
First Lieutenant (1st Lt), U.S. Army

PERSONAL INFORMATION: First Lieutenant Alexander “Sandy” R. Nininger, Jr., service number O-23761, entered service from Florida. He served in the 1st Battalion, 57th Infantry Regiment, Philippine Scouts, in the Pacific Theater during the Second World War. On 12 January 1942, 1st Lt Nininger died during a ground battle with Japanese forces near Abucay, Bataan Province, Luzon Island, Philippines. For his actions in service, 1st Lt Nininger received the Congressional Medal of Honor, Bronze Star and the Purple Heart with two Oak Leaf Clusters. Today, he is memorialized on the Tablets of the Missing at the Manila American Cemetery, Manila, Philippines.¹ Details of 1st Lt Nininger’s loss are recorded in his Individual Deceased Personnel File (IDPF).²

CIRCUMSTANCES OF LOSS: On 8 December 1941, Japanese aircraft bombed and strafed airfields on the island of Luzon, Philippine Islands. They were followed on 10 December by the first Japanese ground forces landing on the northern shores of Luzon. From 8 through 23 December, the Japanese continued to launch air strikes against Naval and Army Air Forces assets on the island and to build up ground forces which came ashore and established bases largely unopposed by U.S. and Filipino troops.³

On 23 December 1941, General Douglas MacArthur, commander of U.S. Army Forces in the Far East, ordered the withdrawal of all U.S. and Filipino forces to the Bataan Peninsula.⁴ American commanders had quickly realized that their forces were unprepared to keep the Japanese from seizing the Philippines and chose instead to enact a plan that they hoped would buy enough time to withdraw troops from the islands in an organized fashion which minimized overall losses of personnel and equipment. Units in Northern Luzon fought an organized series of retreats until, on 7 January 1942, all had reached the main line of resistance for the U.S. and Filipino forces, and been positioned on or behind it. The line ran from Mabatang and Abucay on the east coast of the Bataan Peninsula to Mauban on the west, with a break in the center in the form of Mount Natib (see figure 2).⁵ The 57th Infantry Regiment, Philippine Scouts served in the II Corps under Major General George F. Parker on the easternmost portion of the line. Unlike many of the other units on the main line, the 57th Infantry Regiment had not yet been in battle with the Japanese.⁶

The regimental commander assigned the 1st Battalion, 57th Infantry Regiment to the defense of the barrio of Mabatang, while the 3rd Battalion defended the area immediately west of the 1st

¹ World War II Honor Roll listing for Alexander R. Nininger, Jr., 1st Lt, O-23761, American Battle Monuments Commission (ABMC), <http://www.abmc.gov.php>.

² Individual Deceased Personnel File (IDPF) for Alexander R. Nininger, Jr., 1st Lt, O-23761, Record Group 92: Records of the Office of the Quartermaster General, Washington National Records Center, Suitland, MD.

³ See Louis Morton, *Fall of the Philippines* (Washington, DC: U.S. Army Center of Military History, 1993 (First printed 1953)).

⁴ Donald J. Young, *The Battle of Bataan* (College Station, TX: Texas A & M Press, 2009), 5.

⁵ Morton, *Fall of the Philippines*, 166-247.

⁶ Young, *The Battle of Bataan*, 26.



Battalion.⁷ A large sugar cane field occupied the area to the front of the 3rd Battalion, but rather than cutting it, the Battalion commander opted to train artillery fire in that direction to deter Japanese attack. The Japanese commander of the 141st Infantry to the north of the positions of the 57th had already determined that the cane field would be the best route. The results of the attacks left the 57th Infantry Regiment wishing they had cleared the cane field.⁸

Battle along the main line of resistance commenced on the night of 11 January 1942, with the 3rd Battalion, 57th Infantry Regiment experiencing a heavy Banzai charge from the cane field. The 3rd Battalion fought through the night and managed to hold their position and inflict a large number of casualties on the Japanese troops. With daylight on 12 January, they discovered, however, that many Japanese snipers had infiltrated their lines to take up camouflaged positions from which they harassed and killed members of the 3rd Battalion throughout the day. To cope with the problem, the 57th Infantry Regiment organized several sniper hunting parties which flushed out and killed the Japanese infiltrators. First Lieutenant Nininger, whose 1st Battalion had not been involved in the fighting during the night, volunteered to lead one of these parties, and though they successfully silenced several snipers, 1st Lt Nininger died in the process.⁹ Officers of the 57th Infantry Regiment reported that he had been killed in action and buried in the vicinity of the Abucay church.¹⁰

SEARCH AND RECOVERY: The parents of 1st Lt Nininger learned of his death via telegram on the same day that the War Department released the news of his award. From that point until the end of the war they would learn very little else, for the men of 1st Lt Nininger's unit who did not die in the ensuing battles became prisoners of the Japanese in April 1942 when the last American forces in the Philippines surrendered. These captured men endured the Bataan Death march and ensuing imprisonment under the harshest of conditions in the Philippines. Once Allied forces moved to retake the islands, their jailors marched them to the shore where they boarded unmarked merchant ships bound for Japan. Many of the prisoners died en route to Japan as U.S. Navy planes and submarines, unaware of the presence of POWs, strafed, bombed, torpedoed and sank several of the ships. Those who survived the voyage would not be released until September 1945. Many of the men who might have provided crucial information about the death of 1st Lt Nininger and the other missing men of the 57th, did not survive captivity.

Colonel George S. Clarke, commander of the 57th Infantry Regiment at the time of 1st Lt Nininger's death, did not share this fate. He left Bataan January 14, 1942.¹¹ In a letter dated February 20, 1944 he wrote to Mr. Nininger at the behest of the Adjutant General's Office and in response to Mr. Nininger's queries to that office requesting detailed information about his son's death and burial. The information provided by Col Clarke drove all subsequent investigations

⁷ Young, *The Battle of Bataan*, 30.

⁸ Young, *The Battle of Bataan*, 30.

⁹ Accounts of 1st Lt Nininger's death can be found in both *The Fall of the Philippines* and *The Battle of Bataan*. Both accounts rely heavily upon the information provided in 1st Lt Nininger's citation accompanying the awarding of the Congressional Medal of Honor. Donald Young in *The Battle of Bataan* mistakenly reports 1st Lt Nininger's first name as Arthur rather than Alexander.

¹⁰ "Case History for Remains Considered Non-Recoverable," 12 September 1950, IDPF for 1st Lt Nininger.

¹¹ "Notebook #19: The Story of the 57th Infantry Dec 8, 1941-," Colonel Edmund J. Lilly Jr. P.O.W. Papers, Combined Arms Research Library, Command and General Staff College, Fort Leavenworth, KS.

concerning 1st Lt Nininger's burial. In colorful language, Col Clarke vividly described 1st Lt Nininger's actions in the moments leading up to his death. Much of his description can be found in the Medal of Honor citation, the recommendation for which, according to his letter, had been submitted by him. Col Clarke elaborated that Sandy was so excited that he "yelled like a school boy," that he "went berserk" "throwing grenade after grenade," and that though he died, he was "recklessly brave," his behavior acted "like a tonic on the men around him," adding greatly to their successful counter attack. He continued on, providing a detailed description of 1st Lt Nininger's burial:

Sandy's remains were carefully brought to the church in the town of Abucay, Province of Bataan, The Philippines. Captain Cecina [sic], Chaplain 57th Inf. held a reverent and beautiful service for him. He is buried in grave No. 9 behind the South wall of the Abucay Church beside many of my fine brave young officers who also died in that same action. Men of his Company carefully placed the exotic flowers of the Philippines upon the wooden cross that marks his last resting place. I was present personally for your son's funeral services. It was beautiful and reverent, honoring a man that I loved, one of my fine young Officers and a brave man. I may say that his men loved him too, and his memory will live with them as long as they live.¹²

Col Clarke followed up his letter to the family with a visit in 1945 in which he reiterated the information quoted above and further embellished his account by reporting that the Governor of Bataan had promised that "his people would always keep flowers on Sandy's grave."¹³ Mr. Nininger also reported being visited in 1945 by two officers from 1st Lt Nininger's regiment: Major Imerman and Captain Cain, who, according to Mr. Nininger, "verified" the account of the burial provided to him by Col Clarke.¹⁴

Following the close of hostilities, the American Graves Registration Service (AGRS), U.S. Army Quartermaster Corps, searched for and disinterred the remains of U.S. servicemen in the Pacific Theater as part of the global effort to identify and return fallen servicemen for honored burial in U.S. cemeteries. Through the assistance of a family friend who was still stationed in the Philippines, 1st Lt Nininger's father learned that AGRS teams had transferred all the servicemen who had been buried at Abucay to U.S. Manila Cemetery #2. First Lieutenant Nininger, however, did not have a named burial in that latter cemetery and Major Caulkin, the family friend, suggested that it was possible that he was among the many "unknowns" that AGRS teams had collected. He further suggested that one of the unknowns buried at Manila #2 was "probably Lt Nininger" and that the skull and teeth of that unknown had "been sent to Washington, as that is the only positive identification they will accept."¹⁵ Alarmed by the information he received, Mr. Nininger wrote to the Adjutant General's Office, noting that he had received

¹² Col George S. Clarke to Alexander R. Nininger, Sr., letter dated February 20, 1944, Individual Deceased Personnel File (IDPF) for Alexander Nininger, O-23761, Record Group 92: Records of the Office of the Quartermaster General, Washington National Records Center, Suitland, MD.

¹³ Alexander R. Nininger, Sr. to Mrs. C.W. Cole, letter dated February 5, 1946, IDPF for Nininger.

¹⁴ Alexander R. Nininger, Sr. to Mrs. C.W. Cole, letter dated February 5, 1946, IDPF for Nininger.

¹⁵ Alexander R. Nininger, Sr. to the Office of the Quartermaster General, letter dated August 21, 1951, IDPF for Nininger; Alexander R. Nininger, Sr. to the Adjutant General, letter dated September 3, 1946, IDPF for 1st Lt Nininger.

communications of a “disturbing nature.” He provided a lengthy quote of Col Clarke’s account of his son’s burial ceremony and emphasized that he had been buried in Grave 9 behind the south wall of Abucay church, and noted the information obtained from Major Caulkin. He asked that the circumstances surrounding the disposition of Sandy’s remains be quickly and thoroughly investigated.

The Adjutant General’s Office referred Mr. Nininger’s letter to the Memorial Division. In reply, the Memorial Division confirmed his fear that something had gone awry in the recovery of his son’s remains:

Although no conclusive information is available as to the recovery and the identification of the remains of your son, remains have been recovered and interred in the United States Armed Forces Cemetery #2, Manila, Philippine Islands, which may be those of your loved one. An investigation is now being conducted in order to determine beyond a shadow of a doubt, the identity of those remains. Upon the conclusion of this investigation, you will be informed of the results.¹⁶

This letter also noted that it would not be necessary for Mr. Nininger to inquire with them further about his son’s remains, as they would notify him when an identification had been approved and would, at that point, ask him to make a decision about disposition.¹⁷

On 8 January 1946, an AGRS team conducted an excavation of the Abucay village cemetery, Soldiers’ Row, Grave 9 (a separate cemetery from the Abucay church yard). The team had taken a statement from Gregorio Cunanan, a local resident, who said that he helped to bury five American soldiers at that location in January 1942. The team indicated in its reporting that the remains from Grave 9 were likely Nininger. One assumes that Col Clarke’s mention of Grave 9 was the reason, despite the fact that they were at the village cemetery and not the church.¹⁸ Because they were not officially identified, the remains recovered from Grave 9 of the church yard became Manila #2 X-1130 (subsequently Manila Mausoleum X-4685).

On 8 December 1948, AGRS officials proposed that X-1130 be recommended for identification as the recovered remains of 1st Lt Nininger.¹⁹ This recommendation was made based on favorable comparisons of the place of burial, the time and place of death, branch of service, grade and organization, and pattern of dental work. Lieutenant Colonel Metz of the Quartermaster Corps Memorial Division, however, was not convinced of the correlation and he requested further information about the recommendation. He noted several potential

¹⁶ Office of the Quartermaster General to Alexander R. Nininger, Sr., letter dated 4 October 1946, IDPF for Nininger.

¹⁷ Office of the Quartermaster General to Alexander R. Nininger, Sr., letter dated 4 October 1946, IDPF for Nininger.

¹⁸ Memorandum, SUBJ: Interrogation, 11 December 1945, Manila #2 X-1130 File; Report of Disinterment, Manila #2 X-1130 File.

¹⁹ These remains had been given the designation X-4685 by Manila Mausoleum staff. Prior to receipt of the remains at the mausoleum, they had been buried in Manila Cemetery #2 where the remains had been designated X-1130. Though the designation X-4685 post dates that of X-1130, today, information about the remains is filed under X-1130 Manila Cemetery #2.

discrepancies between X-1130 and 1st Lt Nininger, including height, dental information, and grave location.²⁰ Until these issues were clarified, Lt Col Metz suspended board proceedings for the case.²¹

Over the next several years, the Memorial Division and Graves Registration personnel exhaustively tried to trace the disposition of 1st Lt Nininger's remains; pursuing the burial account provided by the family from regimental officers, collecting additional details, tracing previous exhumations from all locations on Bataan, and dispatching a team to the field to excavate potential burial areas within the walls of Abucay churchyard (see Figure 3). All of these avenues produced only more gaps in the collected statements and narratives of the burial with no clear connection emerging between any recovered remains and the body of 1st Lt Nininger. Survivors contacted by the Memorial Division reported that they had not been present at the funeral and could not attest to a specific burial location. The lead provided by Col Clarke, the only witness who continued to insist he had been present, turned out to be problematic at best. Col Clarke had already left Bataan by the time burials took place behind the Abucay churchyard wall.²² Moreover, Graves Registration personnel identified the remains from grave number 9 at the south wall of the church cemetery as those of an enlisted Philippine Scout, Pvt Tranquilino Beles, and they did not report recovering any of the other officers purportedly buried with 1st Lt Nininger from this location (see Figure 4).²³ In fact, all eighteen sets of remains found in the thorough exhumation of the churchyard were examined by an anthropologist, determined to be of mongoloid ancestry, and reburied at the church.

On 13 August 1951, Col Clearwater, Chief of the Memorial Division, notified 1st Lt Nininger's parents that a final determination had been made in their son's case:

All unknowns recovered from the general area of Mabatang and Abucay have been processed by accredited technicians utilizing advanced scientific and technical procedures to obtain the most accurate information possible concerning these unknowns. The information obtained as a result of this processing was compared with the information on file with the Department of the Army for your son. However, no association was possible between any of these unknowns and your son because of the difference in dental and physical information. Having considered all the factors in this case: the contradiction with regard to the actual place of interment, the shelling of the

²⁰ According to 1st Lt Nininger's file, he stood 5'11" tall, but measurements taken of the long bones of the remains of X-4685 indicated that this individual had a living height of 5'1" – 5'3". While the dental records of 1st Lt Nininger compared favorably to the dental information of X-4685, they also compared favorably to several other unknowns recovered from the vicinity of Abucay. Finally, Lt Col Metz was unsure that the location of X-4685 (recovered from grave 9, Soldier's Row, Abucay Cemetery) was the same as that listed as 1st Lt Nininger's burial spot - grave 9, behind the South wall of Abucay Church. T.H. Metz to Commanding General, Philippine Command, memorandum dated 17 February 1949, *Subject: Identification of Unknown Deceased*, IDPF for 1st Lt Nininger.

²¹ T.H. Metz to Commanding General, Philippine Command, memorandum dated 17 February 1949, *Subject: Identification of Unknown Deceased*, IDPF for 1st Lt Nininger.

²² Memorial Division personnel inferred that this inconsistency in Col Clarke's story was the result of the Colonel trying to ease the grieving process of the family, and not an oversight or error on his part.

²³ X-1130, though recovered from a grave number 9, had been exhumed from Abucay *village cemetery*, not Abucay churchyard.

church and surrounding areas, the desecration and opening of graves by Japanese Forces, the intensive investigations conducted in the area, and inability of Graves Registration Service of the Army to locate the remains of your son, it has been determined that his remains are nonrecoverable.²⁴

Mr. Nininger responded with a final plea to keep his son's case open. Unable to reconcile himself to the possibility that his son's remains would not be returned, he restated the information provided to him by Col Clarke, Maj Imerman, and Capt Cain. He noted that Maj Imerman and Capt Cain had been good friends of his son, that they had both spent three and a half years in Japanese prisons: "Surely none of these would give me any incorrect information."²⁵ Mr. Nininger once again summarized all of the compelling evidence which pointed to Sandy having been buried in Grave #9 behind the South wall of Abucay church he concluded:

My son won the first Congressional Medal of Honor of World War II. Several memorials have been dedicated to his memory. Many stories have been published about his heroic action. And we receive numerous inquiries as to the resting place of his remains.²⁶

Unwilling to state in writing that none of the officers named by Mr. Nininger had been present at the burial of his son, Col Clearwater sent an officer to Mr. and Mrs. Nininger's home in Florida to explain to them in person the difficulties and contradictions of the case. He showed them the letters that officers of Lt Nininger's regiment had written in response to Memorial Division inquiries and pointed out the inconsistencies between those letters and the ones held by Mr. Nininger from those same officers. He explained that Sandy's friends would not have wanted to tell his family anything which would increase their grief at his death.²⁷

MORE RECENT INVESTIGATIONS: In the 1980s, the U.S. Army Central Identification Laboratory (CILHI) reviewed and evaluated the case of 1st Lt Nininger, in response to an inquiry from Mr. John A Patterson, the nephew of 1st Lt Nininger.²⁸ Coming to a similar conclusion as the Memorial Division decades earlier, internal memoranda from CILHI report that the "biggest stumbling block" in the case "is the fact that every investigative narrative in the files gives a different scenario of what happened to [1st] Lt Nininger's remains." With this conclusion, CILHI recommended that no further action be taken on the case.²⁹

Mr. Patterson also related a conversation with Col John E. Olson, former S-1 of the 57th Regiment and author of *Camp O'Donnell: Andersonville of the Pacific*. Colonel Olson reportedly stated that, in late January 1942, graves such as 1st Lt Nininger's may have been withdrawn to a new cemetery "at the north end of a new ... airfield off the West Road north of

²⁴ James B. Clearwater to Alexander R. Nininger, Sr., letter dated 13 August 1951, IDPF for 1st Lt Nininger.

²⁵ Alexander R. Nininger, Sr. to the Office of the Quartermaster General, letter dated August 21, 1951.

²⁶ Alexander R. Nininger, Sr. to the Office of the Quartermaster General, letter dated August 21, 1951.

²⁷ E.M. Brown, memorandum dated 21 September 1951, *Subject: Report of Official Travel*, IDPF for Nininger.

²⁸ In 2003, CILHI became the Joint POW/MIA Accounting Command (JPAC).

²⁹ Johnie E. Webb, Investigation of World War II Nonrecoverable Remains, 17 December 1986, Philippines JPAC Incident 151, WWII Active Case Files, JPAC, Hickam AFB, HI.

Mariveles.” Mr. Patterson speculated that this might be a description of Mariveles #3.³⁰ Notably, this contradicted Col Olson’s 1950 statement that he heard 1st Lt Nininger was “in or near” the churchyard.³¹

On 27 September 1985, Col Garnet Francis, formerly of Headquarters and Headquarters Company, 57th Infantry, wrote to Mr. Patterson regarding the burials. Colonel Francis believed that the burials of 1st Lt Nininger, and likely the other officers, occurred 150 feet west of the highway, and approximately 50 feet south of the stream that runs along the southern edge of the Abucay church (Figure 5).³² While this contradicts a 1950 statement by Col Anders that Nininger and Maynard were buried in the church yard, Col Anders had earlier verified that both he and Col Francis were present at the burial.³³

On 20 May 1986, Mr. Patterson related conversations he had at a 57th Regiment reunion with Col Franklin Anders, former intelligence officer in the 57th Regiment. Col Anders believed that Nininger, Maynard, Wilson, Compton, and Green were indeed buried within the church yard. He provided a map indicating where, he believed, the 57th Infantry officers were buried (Figure 6).³⁴ Colonel Anders had stated in 1950 that only 1st Lt Nininger and 1st Lt Maynard were for certain buried together.

In 1991, Mr. Patterson began an investigation in the Abucay cemetery in which he attempted to ascertain the location of his uncle’s burial and secure permission for an excavation. In September 1992, Mr. Patterson, an archaeologist colleague, and archaeologists from the National Museum of the Philippines took core samples in the Abucay churchyard. At that time, the former caretaker of the churchyard stated that, around 1988, “while enlarging a subsurface canal in the immediate vicinity, a number of remains were found” which were placed in the wall of the church. Mr. Patterson reported this finding to the U.S. Army Central Identification Laboratory-Hawaii (CILHI) in October 1992.³⁵ Having attempted to locate a prospective site in the cemetery, by June 1993 he concluded that this effort had “proved fruitless.”³⁶

From his private investigations, Mr. Patterson now concluded that X-1130 must be the remains of his uncle, 1st Lt Nininger. Hoping to prove this through forensic evidence, in June 1993, Mr. Patterson requested that X-4685 Manila Mausoleum be disinterred and thoroughly examined. Responding in October 1993, CILHI declined to conduct a disinterment because dental, race, and height information for the unknown remains was either non-conclusive or at variance with information for 1st Lt Nininger.³⁷

³⁰ John Patterson to Col William Ryan, 7 January 1985, IDPF for Nininger.

³¹ Summary of conversation with Major Olson, Intraoffice Reference Sheet, 24 October 1950, Declassified IDPF for Cheaney.

³² Garnet Francis to John Patterson, 27 September 1985, Ground Incident 151 Case File.

³³ Summary of conversation with Col Anders, 25 October 1950, Declassified IDPF for Cheaney.

³⁴ John Patterson to John Manning, 20 May 1986, Ground Incident 151 Case File.

³⁵ John Patterson, Notes on Visits to Bataan Concerning Alexander Ramsey Nininger, Jr., Ground Incident 151 Case File; John Patterson to Commanding Officer, CILHI, 6 October 1992, Ground Incident 151 Case File.

³⁶ John Patterson to Colonel William E. Ryan, 10 June 1993, Ground Incident 151 Case File.

³⁷ Johnnie E. Webb to John A. Patterson, letter dated 7 October 1993, Philippines JPAC Incident 151, WWII Active Case Files, JPAC, Hickam AFB, HI.

In February 2013, a Joint POW/MIA Accounting Command team conducting investigations in the Philippines visited Abucay, focusing on areas which the historical record suggest as most likely burial locations for 1st Lt Nininger. The team found all areas to be paved or densely populated with residential housing and did not recommend additional field activity.

In February 2016, Mr. Patterson made another formal request to disinter X-1130 for comparison to 1st Lt Nininger. This request was denied due to discrepancies in height and burial location.

In September 2016, the DPAA 16-2RP Investigation Team conducted interviews with the caretaker of Abucay Church Cemetery. He stated that, in 1992, he was instructed to destroy an apartment-style crypt in the churchyard. Finding a stone slab underneath the crypt, he lifted it and found a skeleton without a skull, along with other comingled remains. He believed the bones to be American because they were buried at a lower depth, in the “old style” under the slab, and they were white and longer than other remains he has encountered. The caretaker placed the remains in a sack and removed them to an apartment-style crypt, where “relatives of Lt. Nininger and a group associated with the United States Military Academy” placed a plaque at some point after 2006.³⁸ In October 2017, a DPAA team opened the crypt but did not observe any remains believed to be American. The team also learned that the original discovery location of the remains is now covered by a new mausoleum belonging to a prominent politician.³⁹

NEXT STEPS: The details of 1st Lt Nininger’s loss continue to be tracked by the Defense POW/MIA Accounting Agency. Researchers at DPAA are undertaking a large-scale project to reconstruct burial plot and recovery data for all major collection points on the Bataan peninsula. The goal is to conduct comparisons of all unknowns from the Abucay area to all potentially-associated individuals, to include 1st Lt Nininger. Researchers will also assess whether any mis-identifications took place, and if so, whether mis-identified remains compare favorably to missing servicemembers, including 1st Lt Nininger.

December 2017
GJK

³⁸ Additional Information Report for Ground Incident 1800, 16-2RP IT.

³⁹ Detailed Report of Investigation and Excavation Summary Report pending.

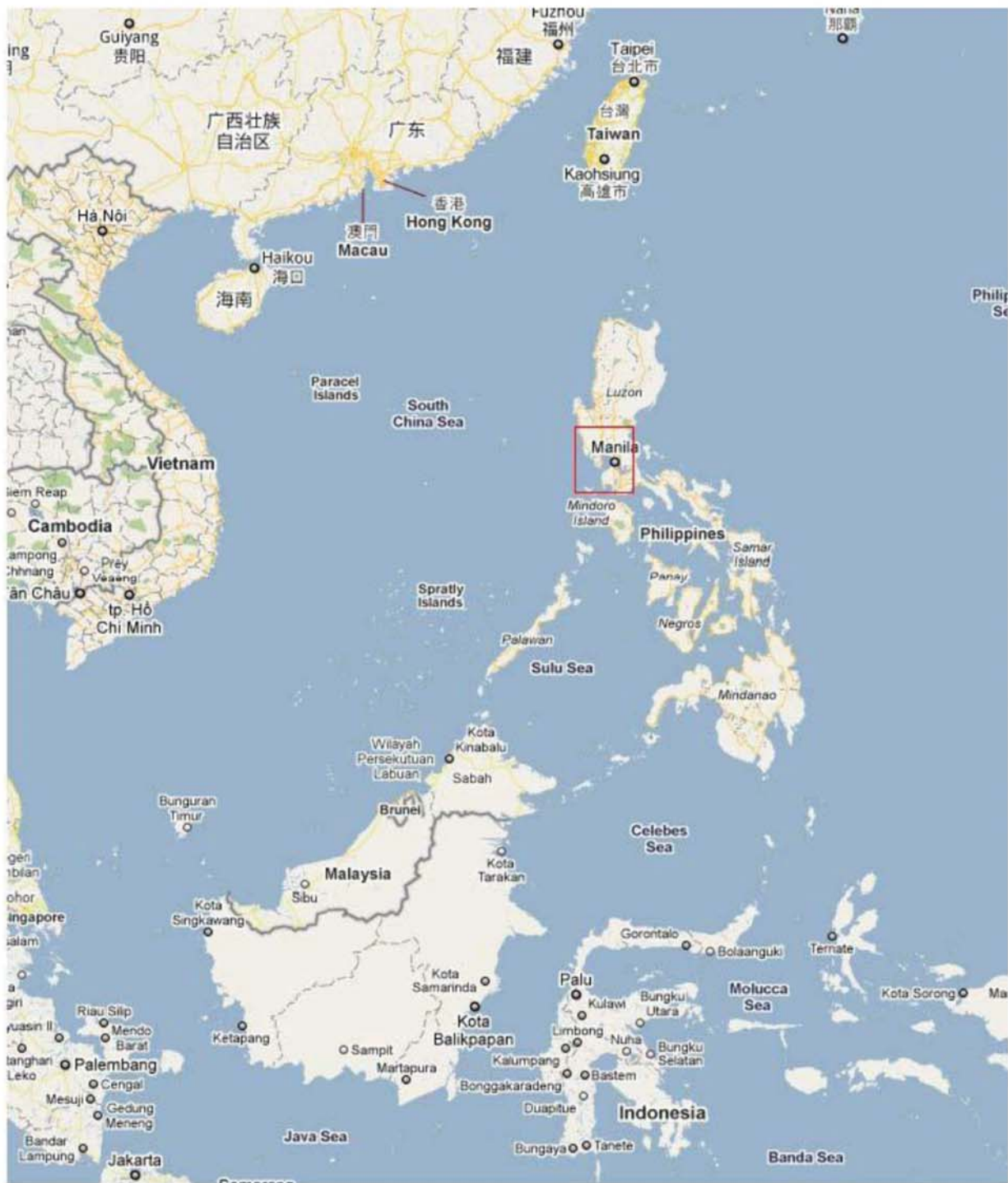


Figure 1. Broad view of Philippines region. Red box delineates scope of map in Figure 2.

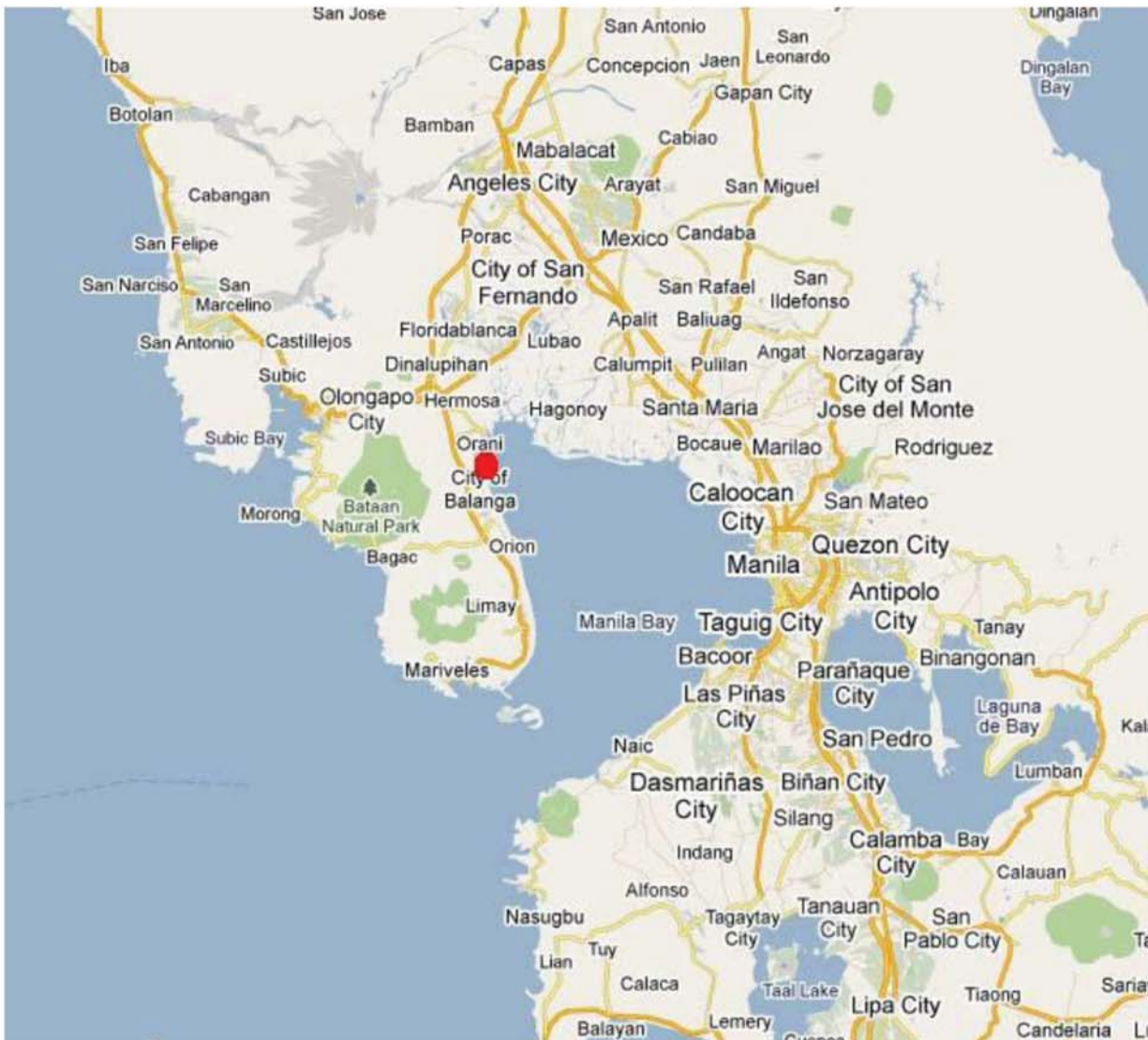


Figure 2. Red dot indicates location of Abucay, Bataan Province, Philippines.

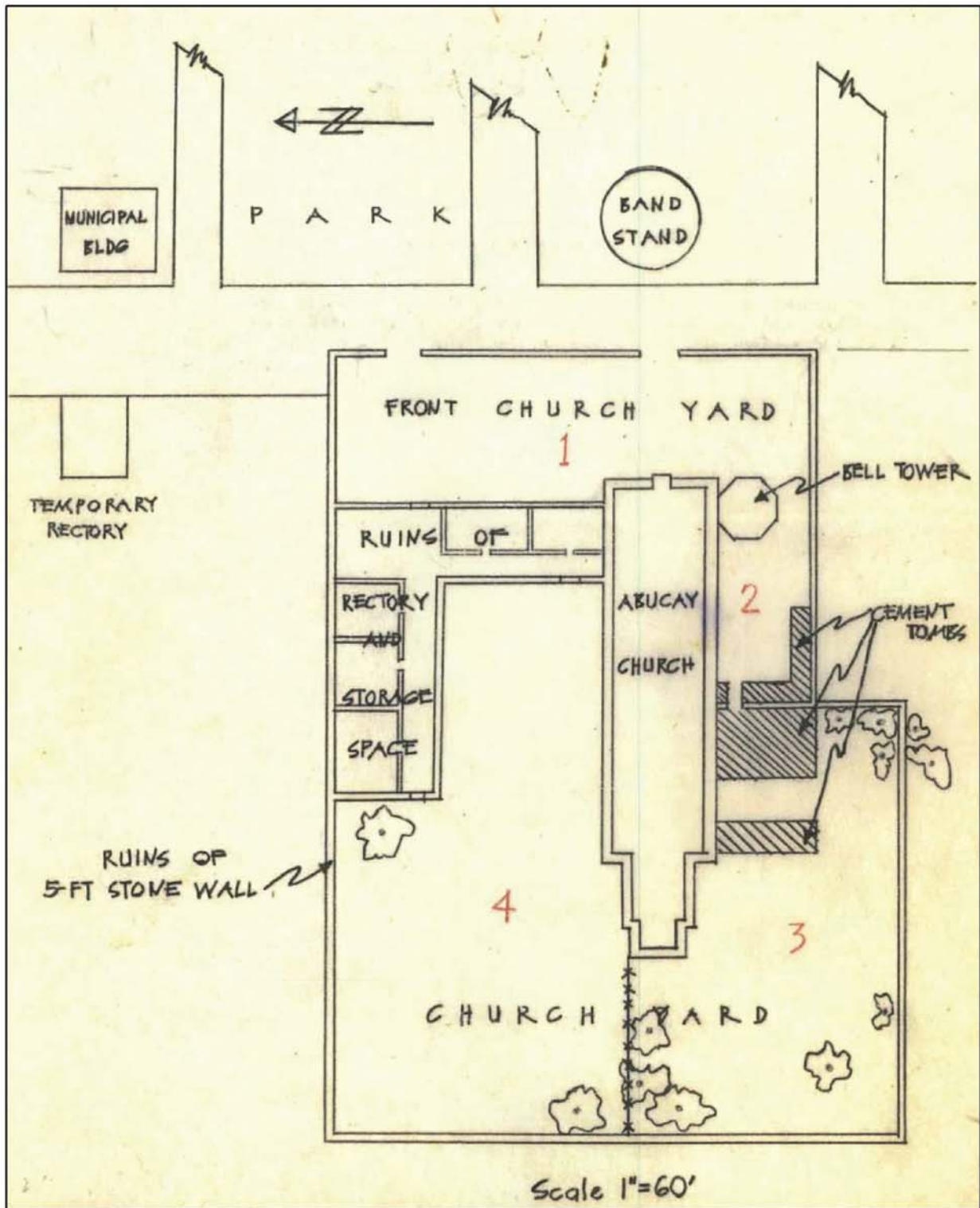


Figure 3. Sketch map showing the locations where AGRS conducted extensive excavations of the areas numbered above as 2 and 3 within the walls of the Abucay churchyard in 1950. Source: IDPF for 1st Lt Nininger.

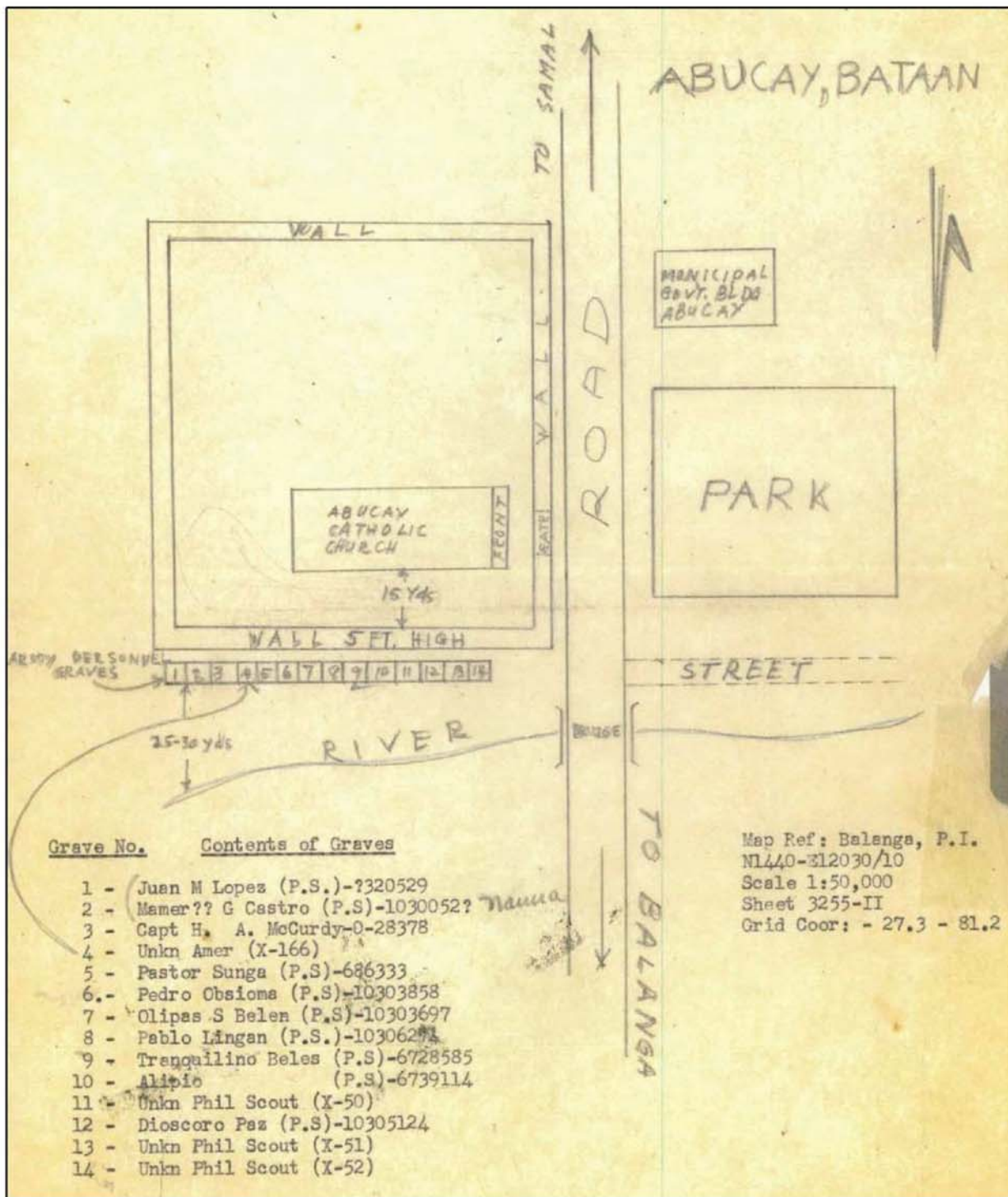


Figure 4. Sketch map of Abucay churchyard and vicinity showing the list of graves recovered from outside the churchwall and the names of the individuals identified from remains found in those graves. Source: IDPF for 1st Lt Nininger.

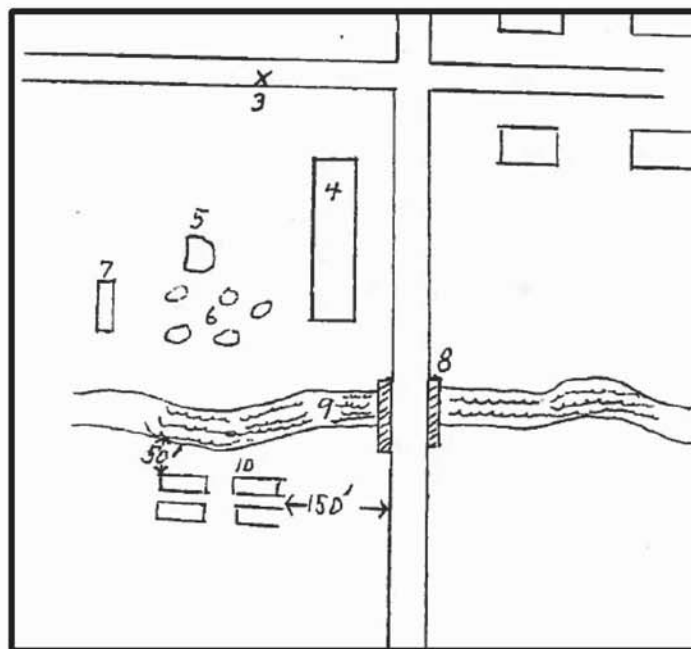


Figure 5. Map drawn by Col Garnet Francis indicating the location of graves to the south of the church (#4) and the stream (#9). Source: Ground Incident 151 File.

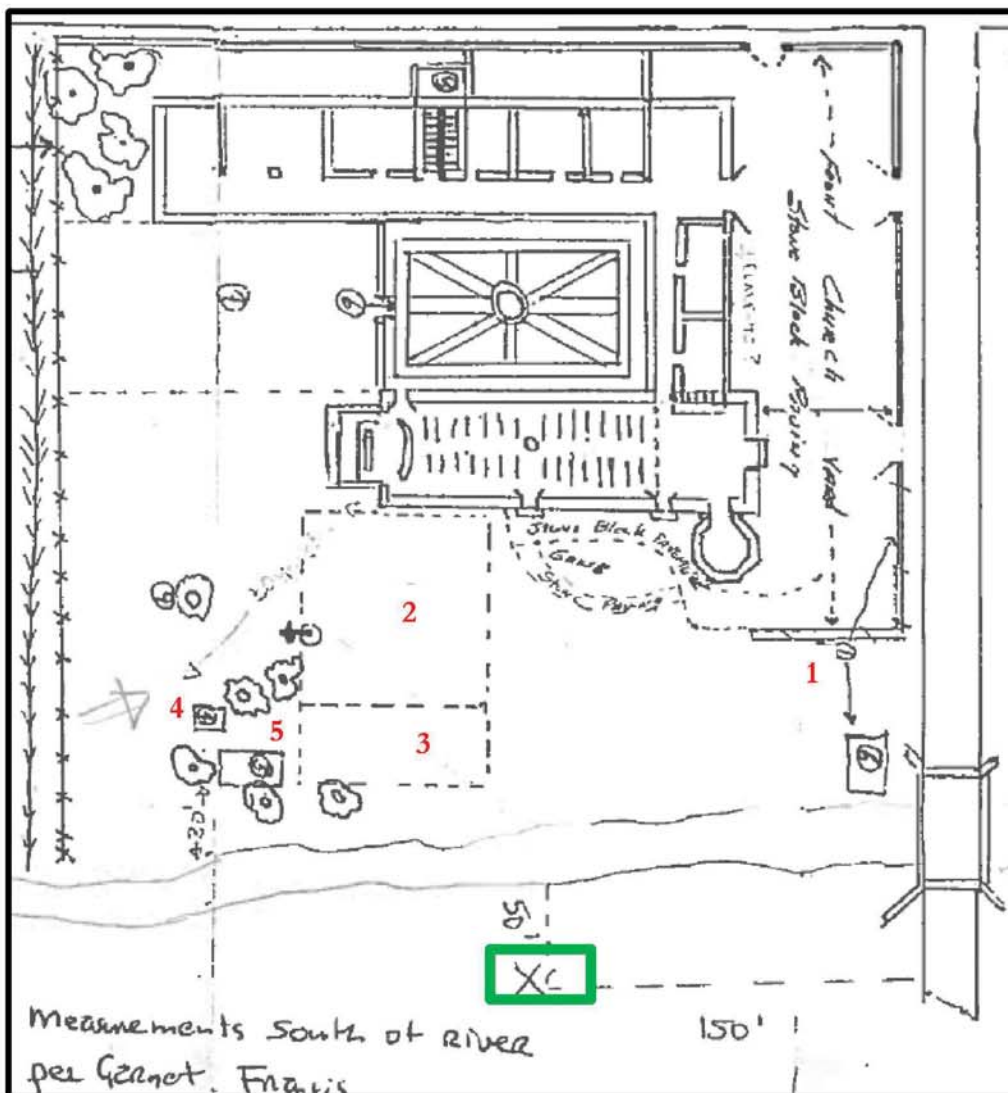


Figure 6. Map indicating key landmarks in the Abucay cemetery according to Col Anders.

His descriptions are:

1. 5-foot stone wall along southeast corner, removed between 1945-1950
2. Church Cemetery;
3. Church Cemetery (Potters Field);
4. Graves of 57th Infantry, 11-13 Jan 1942;
5. Grave of Capt McCurdy, one unknown American and 12 enlisted Philippine Scouts.

NOTE: The green square marks Col Francis's location of the graves south of the river.

DEFENSE POW/MIA ACCOUNTING AGENCY(DPAA)

First Lieutenant Alexander Niningger, U.S. Army



Speaker Notes for Slide 1

For briefing with Sen Bill Nelson (FL), 20 December 2017.

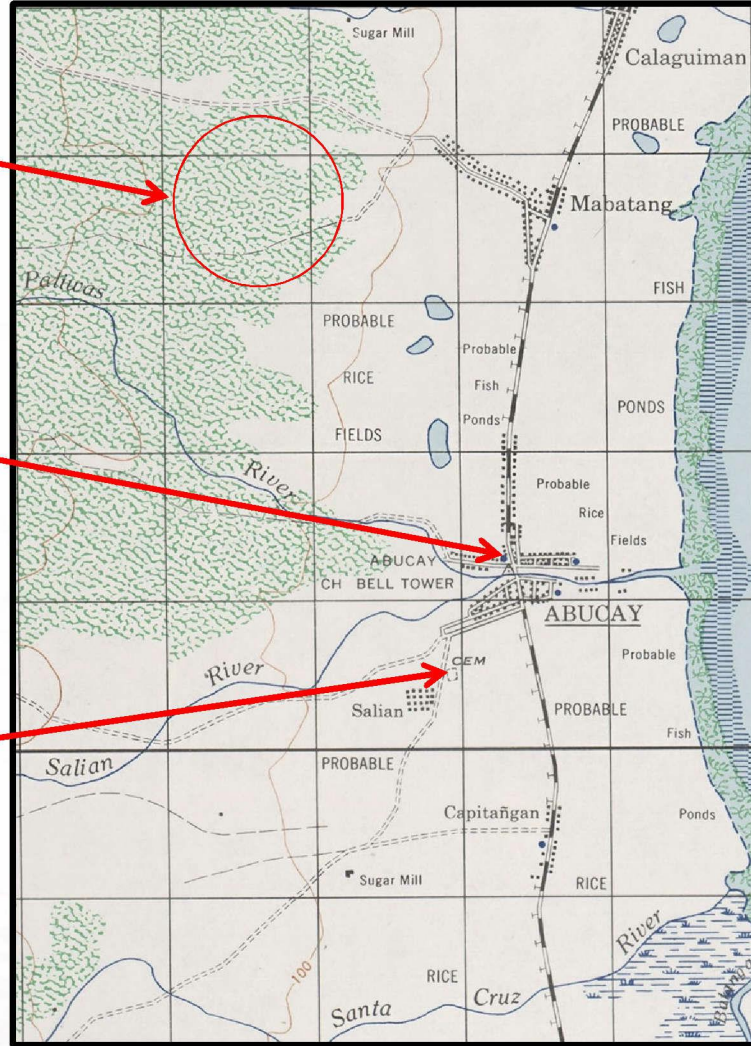
RELEVANT LOCATIONS



Area of Loss

Reported burial
(Abucay Church)

Recovery of
X-1130

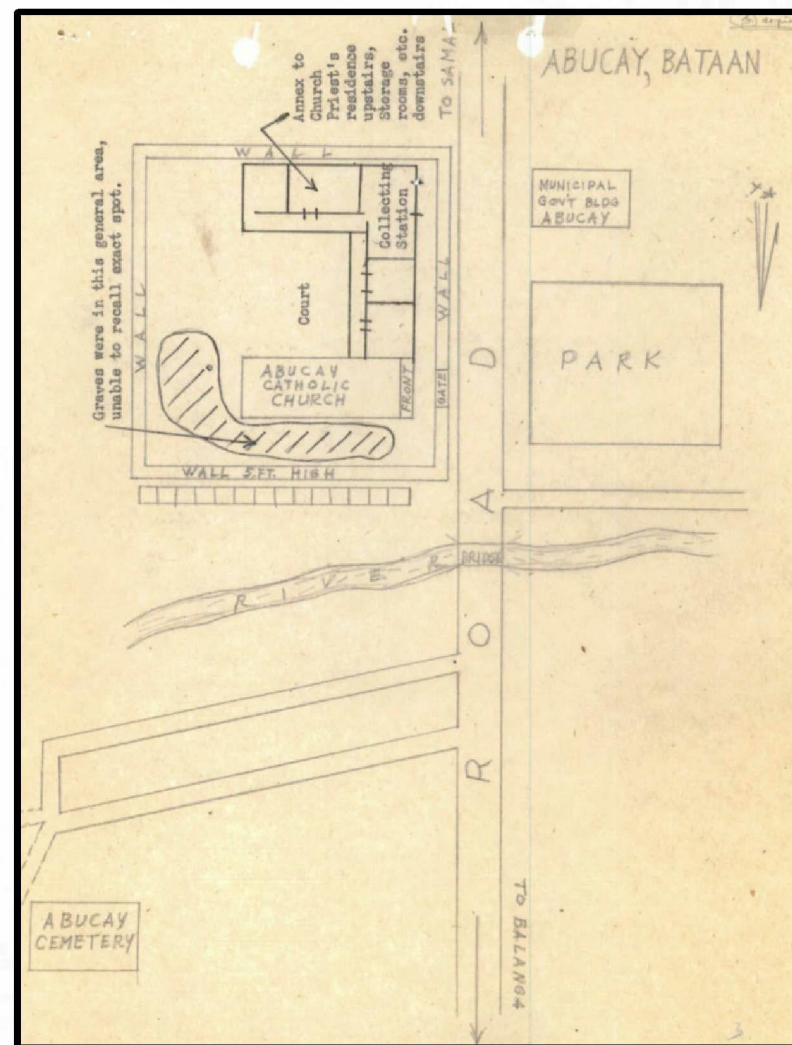




CIRCUMSTANCES OF LOSS



- On 12 January 1942, Japanese snipers infiltrated the U.S. defensive line near Abucay.
- 1st Lt Nininger volunteered for a sniper hunting party and cleared several positions before being killed, earning the first Medal of Honor conferred on a Soldier during World War II.
- Multiple accounts place 1st Lt Nininger's burial in Abucay church yard. Excavations in 1946, 1948, and 1950 failed to locate his remains.
- Unknown X-1130 was disinterred from the Abucay village cemetery. Graves Registration recommended a comparison to 1st Lt Nininger, but this was rejected based on height, ethnicity, and burial location discrepancies.
- Since 1985, Mr. John Patterson has suggested potential burial locations. He also reported that remains found in the church cemetery in the 1980s may be American.



Speaker Notes for Slide 3

While medals of honor were conferred related to Pearl Harbor, 1st Lt Nininger's was the first conferred.

Reports on the exact location in the church yard vary. Colonel Clarke, his commander, claimed to have witnessed a burial at Grave #9, but he was no longer on Bataan at the time of the reported burial. Because X-1130 came from Grave #9 in another cemetery, it was considered as 1st Lt Nininger.

DPAA ACTIVITY



STEPS TAKEN:

- DPAA has reviewed over 2,000 personnel files to reconstruct burial and recovery data for the Bataan peninsula.
- In October 2017, DPAA visited the Abucay village cemetery to seek local information on wartime burials. Results were negative.
- In October 2017, DPAA opened the crypt in the Abucay church yard but did not find any remains believed to be American.

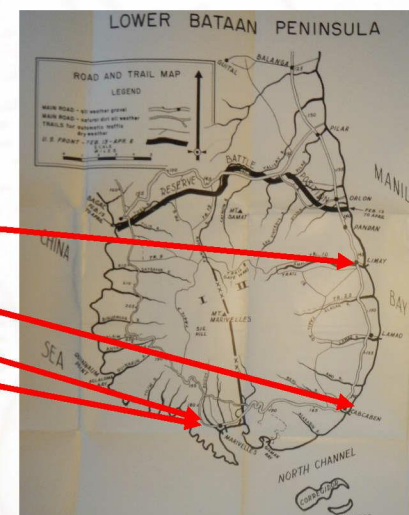
THE WAY FORWARD:

- DPAA will continue research in personnel files to build burial and recovery data, and to reconstruct plot maps for major collection points.
- DPAA will use burial and recovery data to inform comparisons of unknowns to missing individuals from Bataan.
- DPAA will locate and assess potential mis-identifications from the 1940s for comparison to missing individuals from Bataan.



Present-day Abucay cemetery, with crypt and plaque on remains found in 1980s.

Major collection points on Bataan, 1942



Speaker Notes for Slide 4

Research in IDPFS has shown that individuals recovered in Abucay turned up at collection points in Limay, Cabcaben, Mariveles #1, and Mariveles #3 cemeteries. As a result, unknowns from all three locations need to be considered against the Abucay missing.



CONTACT WITH THE FAMILY



- DPAA, its predecessors, and other agencies have been in contact with Mr. John Patterson, nephew of 1st Lt Nininger, since 1985:
 - 1985-1993: correspondence and multiple requests for information
 - June 1993: formal request for disinterment of X-1130
 - 1994: additional requests for information
 - 2011: Princeton Family Update (Info Only; no meeting)
 - 2012: Providence Family Update
 - February 2015: formal request for disinterment of X-1130. Request is denied.
 - 2016: Boston Family Update (Info Only; no meeting)