

1 laboratory space for the study of the remains; 3) appropriate security in the collections storage
2 area; and 4) a loading dock and service elevator for moving the cabinet into the facility. *Id.*
3 Furthermore, the fact that the Director of the Burke, Dr. Karl Hutterer, agreed to personally serve
4 as responsible for this collection provided additional assurance that the remains will be properly
5 housed, curated, and protected. Declaration of Dr. Hutterer.

6 On the dates of June 24th and 29th, 1998 Dr. Trimble's spoke with Ms. Leckie about the
7 results of his inspection of the Burke and relayed the fact that, for reasons set forth his
8 assessment, it had only reinforced his impression that it was an appropriate place to house the
9 remains. At the conclusion of these discussions, Ms. Leckie indicated that she felt that the Burke
10 was a technically competent repository, and that given Dr. Trimble's report, she was leaning
11 toward an endorsement of the Burke. Declaration of Dr. Trimble at III. B. 4.

12 **b. Inspection and Evaluation of the Burke Museum's Examination**
13 **Facilities By Dr. Frank McManamon**

14 On June 19, 1998, Frank McManamon conducted an inspection of the examination
15 facilities at the Burke Museum. Declaration of Dr. McManamon at ¶4. As a result of this
16 inspection he concluded that the Burke Museum is a suitable site for relocation and housing of
17 the remains as it will ensure their physical security and scientific integrity, while also providing
18 appropriate on-site examination facilities. Specifically, Dr. McManamon was impressed by the
19 Burke Museum's ability to provide the following resources necessary for examination: 1) an
20 exclusive, secure, examination room was located only a few yards from the room where the
21 remains would be housed; 2) the examination room is large enough to accommodate a 3-5
22 member team of experts, as well as several observers; 3) the Burke made a commitment to
23 brightening the lighting in the room to ensure adequate light for examination; and 4) in the event
24 that examination and testing requires more technical equipment, such as x-rays or CAT scans,
25 such equipment could possibly be borrowed from the medical facility on campus. *Id.* ¶ 4.b-c. As
26 with Dr. Trimble, Dr. McManamon found that Dr. Hutterer's personal involvement in housing
27 the remains was an important and positive factor in endorsing the Burke Museum as a location
28 which can provide the necessary care and security for proper examination of the remains.

1 Declaration of Dr. McManamon, ¶ 4 a.

2 **2. Federal Defendants' Inspection of the San Diego Museum of Man**

3 In response to the plaintiffs-scientist objection to the Burke and proposal to house the
4 remains at the Museum of Man, federal defendants inspected the facility. On June 18 and 19th
5 members of Dr. Trimble's staff inspected the Museum of Man to determine whether it met the
6 necessary and agreed upon criteria for proper curation of the remains. When Dr. Trimble's team
7 arrived at the Museum of Man they found that the plaintiffs-scientists had not notified the
8 Museum of Man that they had proposed that the remains be curated there and that, in any event,
9 the Museum of Man did not have appropriate space for the remains. Following this visit Dr.
10 Trimble and his staff prepared an assessment of their inspection which would, as with his
11 assessment of the Burke, include an evaluation of the museum based upon criteria agreed upon
12 by Ms. Leckie. Declaration of Dr. Trimble at ¶ III.1. Dr. Trimble determined that the Museum
13 of Man was not an appropriate housing facility for the remains. Specifically, Dr. Trimble noted
14 that the Museum did not have adequate space for the remains and did not have a fire suppression
15 system. Declaration of Dr. Trimble *citing* June 29 Memorandum of Record.

16 On June 24, 1998, Dr. Trimble informed Ms. Leckie about his assessments of the Burke
17 and the Museum of Man and on June 26, he sent her a copy his written evaluations. Based upon
18 review of this information, both Dr. Trimble and Ms. Leckie agreed that the Museum of Man
19 was not an appropriate facility for housing the remains. Declaration of Dr. Trimble at III. B.
20 *citing* June 29, 1998 Memorandum of Record. Counsel for plaintiffs-scientists confirmed that
21 they no longer recommended the Museum of Man in a letter faxed to counsel for the federal
22 defendants' office on July 1, 1998.

23 **c. Consideration of The Getty Conservation Institute In Los Angeles, California**

24 On June 24, 1998, prior to receipt of Dr. Trimble's written assessment of the Burke
25 Museum and the Museum of Man, Ms. Leckie requested that Dr. Trimble look into the
26 possibility of housing the remains at the Getty Institute in Los Angeles, California. Declaration
27 of Dr. Trimble at III. B. 4. Pursuant to Ms. Leckie's request, Dr. Trimble wrote the Getty and
28

1 asked whether they would permit the collection to be housed at their facility. By letter dated
2 June 25, 1998, the Getty stated that they would not accept the collection explaining that their
3 "first concern would be the safety of the skeletal material- some 9,000 years old- during packing
4 and 3-mode transport from Oregon [to Los Angeles]. Damage to the remains would surely upset
5 a delicate political balance." Letter of 25 June, 1998 letter from Dr. Margaret G.H. Mac Lean,
6 Group Director The Getty, Declaration of Dr. Trimble at B.4. On June 29th Dr. Trimble relayed
7 the Getty's response to Ms. Leckie and they both agreed that although long distant transport was
8 possible, it was not optimal for these remains if it could be avoided. Declaration of Dr. Trimble,
9 June 29, 1998 Memorandum For Record.

10 IV. INVESTIGATION OF ADDITIONAL MUSEUMS IS NOT NECESSARY

11 Although Dr. Trimble and his staff had spent most of the month of June inspecting the
12 Burke Museum as well as all other facilities identified by plaintiffs' expert, on June 26, 1998,
13 plaintiffs's counsel requested that Dr. Trimble produce a list of 10 to 15 museums which could
14 provide suitable for housing the remains. In addition, plaintiffs' counsel requested that Dr.
15 Trimble include the Smithsonian Museum in Washington, D.C. on that list. Federal defendants
16 responded by requesting that plaintiffs first submit to Dr. Trimble a list of those facilities that
17 they would not oppose and for which they had obtained a commitment to house the remains. In
18 addition, federal defendants asked if the plaintiffs would agree to housing the remains at the
19 Burke and that if they were apprehensive about doing so they were encouraged to call the
20 Director of the Burke, Dr. Hutterer, in order to find out more about the facility. Plaintiffs still
21 have visited the Burke regarding this matter and contacted Dr. Hutterer by telephone for the first
22 time on June 30, 1998. See Declaration of Dr. Hutterer at ¶ 4.

23 Dr. Trimble estimates that it would take approximately 5 to 6 weeks just to generate an
24 accurate list of potentially adequate facilities that he would feel comfortable presenting to the
25 Court. Declaration of Dr. Trimble at ¶ III. D.1. Dr. Trimble further projects that, to visit each
26 facility and create an assessment of the type produced in relation to the Burke and the Museum
27 of Man, probably could not be achieved until January, 1999. *Id.* As plaintiffs are aware, Dr.
28 Trimble is currently scheduled to be out of the country for the entire month of July.