BULLETIN OF THE SOCIETY FOR AMERICAN ARCHAEOLOGY

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NO. 1

WASHINGTON REPORT: CULTURAL RESOURCES THREATENED AGAIN

Philip Speser SAA Washington Representative

The National Stolen Properties Act makes it a crime to transport in interstate or foreign commerce goods worth \$5000 or more when an individual is aware that the goods were stolen or taken by fraud. It also makes it a crime to receive, conceal, store, sell, or dispose of such goods where the individual has knowledge that they were stolen. The Act is important to archaeologists because many countries have declared that archaeological resources belong to the State. Where such goods are looted, brought into the U.S., and then traded with knowledge that they were looted, the National Stolen Properties Act declares that a crime has been committed. After years of trying, the American Association of Dealers in Ancient, Oriental, and Primitive Art are trying once again to exempt people dealing in stolen antiquities from prosecution under the Act.

Background

A number of years ago, several people were caught knowingly dealing in illegally exported Mexican artifacts. At trial, the U.S. Government successfully argued that the defendants were dealing in stolen goods. The basis for the Government argument was the fact that in 1897 the Mexican Government had declared by statute that it owned all pre-Columbian antiquities in the country, even though private persons still were allowed to hold them.

The U.S. constitutes about one-half of the world's market for stolen antiquities, so perhaps we should not be surprised--even if we are saddened--to hear that the American Association of Dealers in Ancient, Oriental, and Primitive Art disagreed with the guilty verdict, and in the two U.S. vs. McClain cases (545 F2d 988 and 593 F2d 658, cert. denied 444 US 918) argued that blanket legislation purporting to vest ownership of antiquities in the state should not make such goods liable to being viewed as stolen under the National Stolen Properties Act unless there were additional steps to positively assert ownership. Such steps might be reducing the items to possession, specific designation, and so forth.

In 1977, the Federal Appeals Court for the 5th District disagreed. On behalf of the Court, Judge Wisdom held that the National Stolen Properties Act does cover items owned via broad declarations of ownership because "...when it [the State] declares itself the owner, the declaration is an attribute of sovereignty." Judge Wisdom went on to say that once such a declaration of ownership exists, "exportation constitutes a sufficient act of conversation to be deemed a theft."

Ironically, the Court reversed the convictions, finding that under Mexican law, a broad declaration of ownership of antiquities had not taken place until 1972. The defendants were retried, reconvicted, and appealed again. The Court upheld the previous Federal Appeals Court holdings, however, and once more reversed the convictions on the grounds that it was not clear whether the goods were, in fact, exported prior to 1972. The defendants did not get off scott free, however, as there was ample evidence to show that they were, in fact, still engaged in the business of dealing in artifacts illegally exported after 1972 and that they knew Mexico considered these artifacts to be stolen. Convictions on conspiracy were upheld in the 1979 Appeals Court decision.

The Art Dealers, needless to say, were upset. The U.S. Courts, they argued, were destroying the legal distinction between stolen and illegally exported goods. Not so, responded Judge Wisdom in his earlier opinion. Illegal export, without a clear declaration of ownership, does not make anything stolen.

Unsuccessful in Court, the Art Dealers followed the tried and true course. They lobbied Congress. But Congress had other things on its agenda, and there the matter sat until the SAA once more sought to pass legislation implementing the UNESCO Convention on Culture Property.

Many SAA members will remember the long struggle to enact implementing legislation for the UNESCO Convention. A major problem we faced was the opposition of Senator Daniel Patrick Moynihan (D-NY). A sociologist who should have known better (but then there are a lot of well heeled art dealers in New York City), the Senator made use of a Senatorial courtesy, "the hold", to prevent the implementing

- (continued on page 2)

IN BRIEF

- -- Washington Report: Cultural Resources Threatened Again. Page 1.
- -- Built Form and Culture Research Conference. Page 3.
- -- Errata. Page 3.
- -- Coop Column. Page 3.
- -- Letters to the Editor. Page 4.
- -- Placement Center. Page 4.
- -- Bulletin Board. Page 4.
- -- People on the Move. Page 6.
- -- Index, Volume 2, 1984. Page 7.

WASHINGTON REPORT: CULTURAL RESOURCES THREATENED AGAIN (continued from page 1)

legislation from reaching the floor of the Senate for a vote. A "hold" is placed on a bill whenever a Senator declares that they will filibuster a bill if it is brought up for a vote. By simply keeping it off the floor, a good deal of Senate time is saved and frustration avoided. During our ultimately successful efforts to get the hold removed, the American Association of Dealers in Ancient, Oriental and Primative Art came to the SAA and suggested a compromise. They would ask Senator Moynihan to remove his hold if the SAA would support legislation to repeal the McClain decision. As Moynihan's activity on the Convention was a result of carrying the Dealers' water in the first place, it was reasonable to assume they could deliver on this deal.

Needless to say, the SAA rejected the deal--and passed the Convention anyway. Despite an intensive lobbying campaign, the Senate Finance Committee (the only Committee which held hearings on the bill) stated in Report 97-565 that the implementing legislation:

"...affects neither existing remedies available in State or Federal Courts nor laws prohibiting the theft and the knowing receipt and transportation of stolen property in interstate and foreign commerce (e.g., National Stolen Properties Act, Title 18, U.S.C. Sections 2314-14), including the possible recovery of stolen property for the rightful owner in the courts without the payment of compensation."

SAA rejected consenting to the legislative repeal of McClain for three good reasons:

First, it is immoral and plain stupid to encourage people to knowingly traffic in looted artifacts.

Second, broad legislation declaring ownership over artifacts is frequently one of the few options available for poor, third world countries seeking to stop looting and the illegal export of items into the U.S. and other countries. After all, when people are starving, when basic economic infrastructure needs to be built, when the U.S. is pressuring you to spend money to stop drug production, etc., it is difficult to justify spending money to place guards over every archaeological site. At least if the looted items are legally recognized as stolen, it may be possible to recover them. This fact may discourage people from knowingly purchasing such items. A nice spin-off benefit is that the thought of losing ill-gotten, yet still costly, antiquities reduces demand for the services of looters.

Third, even if the Convention on Cultural Property Implementation Act passed, it would not address all looting problems. The Act gives the President stand-by authority to stop illegally exported artifacts at the border. In deciding whether to use this authority, the President is told to consider: 1) whether the cultural patrimony of a foreign country party to the Convention is in danger; 2) whether that country has taken steps to protect its patrimony; 3) whether the U.S. is acting in isolation or whether actions by other countries party to the Convention will ensure that U.S. actions will be of "substantial benefit in detering a serious situation of pillage"; and 4) whether the application of import restrictions "is consistent with the general interest of the international community in the interchange of cultural property among the nations for scientific, cultural, and education purposes." Although the Act does have a provision enabling the President to implement emergency import restrictions, there is still a 90-day waiting period during which the President must solicit the views of an Advisory Panel containing art dealers as well as archaeologists before he can close the border to specified categories of artifacts. In short, the implementing legislation established a political process that is likely to work well on world-wide recognized major crises and poorly on anything else.

The New Effort

Last year Mr. Moynihan once again introduced legislation to repeal McClain. The bill, S. 1559, should be laughed out of Congress. But Congress is a political place, and stranger laws have passed. What Moynihan's and the Art Dealer's bill would do is amend the National Stolen Properties Act to read (and here I have to quote, although I have added the emphases):

"No archaeological or ethnological material taken from a foreign government of country claiming ownership shall be considered as stolen, converted, or taken by fraud within the meaning of this section [the key one in the law for our purposes] where the claim of ownership is based only upon--

(1) a declaration by the foreign government of national ownership of the material; or

(2) other acts by the foreign government intending to establish ownership of the material and functionally equivalent to a declaration national ownership, and the alleged act of stealing, converting, or taking is only based upon--

 (A) <u>illegal</u> export of the material from the foreign country;

(B) the defendant's knowledge of the illegal export; and,

(C) the defendent's knowledge of the claim of ownership described in clauses (1) and (2)."

(continued on page 3)

WASHINGTON REPORT: CULTURAL RESOURCES THREATENED AGAIN (continued from page 2)

There you have it. If this bill passes--If you know that a foreign country has declared that they own the artifact, and if you know that the artifact is illegally exported, and you buy, sell, transport, etc., the artifact, the U.S. Congress, the President and the Courts will protect you from prosecution and prohibit the foreign country from recovering the artifact.

Is this the kind of America we want? Unfortunately, Senator Paul Laxalt has agreed to hold hearings in March on Mr. Moynihan's bill. He has not yet made up his mind whether or not to support it. He needs to hear from each and every one of us. Write him today and tell him:

Kill any effort to repeal the McClain decision! I do not want to live in an America where the Federal Government protects people who knowingly traffic in stolen and illegally exported antiquities.

Mr. Laxalt's address is: The Honorable Paul Laxalt, Chairman, Senate Judiciary Subcommittee on Criminal Law, SD-148, Washington, D.C. 20510.

Do it today! We cannot let this bill be taken seriously.

* * *

BUILT FORM AND CULTURE RESEARCH CONFERENCE

On October 18-20, 1984, researchers from close to thirty countries attended the first interdisciplinary conference on Built Form and Culture Research at the University of Kansas-Lawrence. The conference was sponsored by the School of Architecture and Urban Design and the Center for Humanistic Studies at the University of Kansas as well as by the Exxon Education Foundation. Participants, in addition to hearing several keynote addresses, presented the results of their own research in sessions on the following topics: architecture in cultural change and continuity, vernacular environments and processes, cosmological and religious aspects of architecture, research approaches, design roles in multi-cultural contexts, built environments in "Third World" cultures, and political ideologies and processes in built environments. Those archaeologists in attendance were treated to new scholarly contacts with one another and with architects, geographers, linguists, psychologists, and others. A directory of individuals interested in the study of sociocultural aspects of built environments is being composed, and it is hoped a second conference will be held in Kansas in 1986. For further information contact Dr. Gary D. Shaffer, 420 West Third Street, Elmira, New York 14901.

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ERRATA

The December 1984 Bulletin incorrectly located the Jefferson Patterson Park and Museum on the Potomac, when it is actually located on the shores of the Patuxent River. ed. Contributors sought for symposium:

- <u>Title</u>: Circumscription and the Evolution of Society: Theoretical and Empirical Contributions.
- Organizers: Paul B. Roscoe, Department of Anthropology, University of Main-Orono, Orono, ME 04469, 207/581-1895; Robert B. Graber, Division of Social Science, Northeast Missouri State University, Kirksville, MO 63501, 816/785-4638.
- Discussant: Robert L. Carneiro, American Museum of Natural History.
- <u>Subject</u>: The organizers envisage a set of papers applying, clarifying, elaborating, or criticizing aspects of circumscription theory. Potential contributors should contact Roscoe or Graber by March 1.

Dr. Cheryl Claassen is seeking references to studies of shellfish seasonality from prehistoric and historic sites of the Pacific coast of North America and either coast of Mexico. Please send author, date, title and source of both published and unpublished research to Dr. Claassen, Department of Anthropology, Appalachian State University, Boone, North Carolina 28608.

I am writing to solicit expressions of interest from academic institutions and research organizations in long-term, cooperative archeological research in the island groups of Micronesia and American Samoa. Here, in brief, is the situation.

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The Mariana, Caroline, and Marshall Islands, except for Guam in the Marianas, which is a U.S. territory, have been administered since World War II by the U.S. as the Trust Territory of the Pacific Islands. As such, they have received funding from the U.S. for historic preservation activities, and since 1977, these funds have supported a substantial archeological survey, testing, and salvage program. At the present time, the Marshalls and Carolines are moving into quasi-independent status, with the Marshalls becoming the Republic of the Marshall Islands, the Carolines becoming the Federated States of Micronesia (comprising the states of Yap, Truk, Ponape, and Kosrae) and the Republic of Palau (consisting of the Palau archipelago). Guam remains a U.S. territory, and the rest of the Marianas have become the Commonwealth of the Northern Mariana Islands, in a commonwealth relationship to the U.S. Far to the south in Polynesia, the islands of American Samoa remain a U.S. territory. At present, each island group has an historic preservation program, and each receives modest grant funds from the U.S. for its support. Once the Marshalls, Federated States, and Palau achieve their new status, in the next year or so, U.S. historic preservation funds are scheduled to dry up, though a move is afoot to provide for their continuance. Guam, the Northern Marianas, and American Samoa will continue to receive funds.

Among the more successful historic preservation/ archeology programs in the area is Palau's, which involves a symbiotic cooperative relationship with Southern Illinois University at Carbondale. In

(continued on page 4

COOP COLUMN (continued from page 3)

essence, Palau relies on SIU to carry out the surveys and excavations it needs, at lower cost than would be the case if Palau had to contract for each needed project, and to provide ongoing professional advice and training. SIU in turn receives the benefit of a stable research environment, such funding as Palau can provide to support projects of interest to both parties, and ready access to a very attractive place for students to undertake thesis and dissertation research when winter settles in over Carbondale.

The potential exists for the development of similar relationships in other areas. To some extent, the University of Oregon has developed such a relationship with the State of Ponape in the Federated States. Other institutions interested in cooperative ventures would be welcome in most of the island groups. The level of financial support available varies from group to group, as does the level of organization of the local historic preservation/archeology program.

As an informal advisor to the various island historic preservation programs, I am seeking to "test the water" to see what institutions might be interested in establishing cooperative working relationships with such programs, generally along the lines of the SIU/Palau model. Interested institutions are invited to write me at the address below, outlining research and areal interests and providing some idea of what the institution might bring to a cooperative relationship in terms of facilities, personnel, training opportunities for island residents, and research funding. I will then see what can be done in terms of "matchmaking". Anyone interested in learning more about the Palau/SIU arrangement can contact Dr. George Gumerman, Center for Archeological Investigations, Southern Illinois University, Carbondale.

> Thomas F. King 7407 Buffalo Avenue Takoma Park, MD 20912

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LETTERS TO THE EDITOR

I applaud the inclusion of letters to the editor in the <u>SAA</u> <u>Bulletin</u>; the Society has long lacked any sort of forum of this nature where members can voice their feelings about significant issues. Nonetheless, I was baffled by several aspects of the long letter by Vaughn M. Bryant that appeared in the December <u>Bulletin</u> (Volume 2, No. 6). While purporting to be a comment on Dincauze's earlier comments, it appears to me that Dr. Bryant's letter is really more of an advertisement for Texas A&M's anthropology program. They are certainly to be congratulated for having an interdisciplinary orientation, but I am sure there are many other institutions in the country that should also be noted for this.

I was also interested in knowing more about to whom (or what) Dr. Bryant is referring as "pseudoscientists," a word used (in quotation marks) three times in that letter. It is odd that these "pseudoscientists" seem to get all of the employment in interdisciplinary archaeology when his well-trained professional ex-students go unemployed. Maybe there is something wrong with the American free enterprise system as well as with the profession, as he suggests. Who is hiring the "pseudoscientists," and what can we as a professional society do about it? I'd like to see such issues addressed further in the <u>Bulletin</u>'s letters section.

Sincerely,

James I Ebert Albuquerque, New Mexico

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PLACEMENT CENTER

ARKANSAS ARCHEOLOGICAL SURVEY has a full-time 12-month position for Ph.D. archeologist with specialization in southeastern U.S. Position is as Station Archeologist at the University of Arkansas at Monticello, and includes teaching two courses on that campus, as well as research in the area. Must have Ph.D. in hand. Salary is competitive. Position will start 1 July 1985. Send detailed resume and list of references by 1 March to Hester Davis, Arkansas Archeological Survey, P.O. Box 1249, Fayetteville, AR 72702-1249. Phone: 501/575-3556.

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BULLETIN BOARD

FELLOWSHIPS

POSTDOCTORAL FELLOWSHIP: ANNOUNCEMENT

The Center for Archaeological Investigations, Southern Illinois University at Carbondale, instituted in 1983 a research program for postdoctoral archaeologists. The Visiting Scholar Program provides eleven months of support for a resident scholar interested in pursuing problemoriented research in some aspect of North American prehistory. Preference has been given previously to scholars working on eastern U.S. prehistory, but persons with other geographic interests are also encouraged to apply. In addition to pursuing his/her own research, the visiting scholar is asked to organize and conduct a conference on or relating to his/her research domain, and prepare the conference topics for publication through the center. Preference will be given to scholars whose conference topics are likely to draw both participants and audience from a wide circle of professionals and students.

The Center for Archaeological Investigations was established in 1978 with the goal of simultaneously accomplishing the related missions of archaeological research and service. The Visiting Scholar Program is designed to amplify the center's research potential and to create a means of organizing investigative efforts and communicating their results.

(continued on page 5)

BULLETIN BOARD FELLOWSHIPS (continued from page 4)

Applications for the visiting scholar position should include a specific proposal for the conference, which will be used to evaluate the merits of the scholar's application. The conference will comprise two days of public paper presentations by approximately 20 contributors selected by the scholar early in the term. The remainder of the conference will be devoted to group discussion and evaluation. Conference proceedings will be edited by the visiting scholar and published by the Center for Archaeological Investigations. Previous conference topics include Lithic Resource Exploitation (1983-4; Susan Vehik, organizer) and Eastern Archaic Subsistence Systems (1984-5; Sarah Neusius, organizer).

The visiting scholar position is designed for a relatively junior-level postdoctoral archaeologist or a senior colleague capable of supplementing the stipend. The eleven-month appointment will ordinarily extend from September 1 through July 31. Benefits under the Visiting Scholor Program include: \$1,800 per month stipend; University fringe benefits (medical and life insurance); office and laboratory space in the Center for Archaeological Investigations; and use of the center's research facilities, clerical staff, and the university library. If the scholar desires, the center will assist in making housing arrangements.

Individuals interested in applying for 1985-1986 should submit a vitae, including the names of three references, and a description of no more than five pages covering the proposed research and conference, to:

> Visiting Scholar Program Center for Archaeological Investigations Southern Illinois University at Carbondale Carbondale, IL 62901

All applications must be received by April 1, 1985. A decision will be made shortly after the expiration of the deadline. Inquiries about the program may also be directed to the above address or (618) 536-5529 (telephone number).

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MEETINGS

CHARLES FLETCHER LUMMIS SYMPOSIUM

A one-day symposium on Charles Fletcher Lummis will be held on February 2, 1985, at the Southwest Museum in Los Angeles.

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SUN BELT SOCIAL NETWORK CONFERENCE

The Fifth Annual Sun Belt Social Network Conference will be held on February 14-17, 1985, at the Palm Beach Hilton, Palm Beach Florida.

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MIDDLE ATLANTIC ARCHEOLOGICAL CONFERENCE

The Annual Meeting of the Middle Atlantic Archeological Conference will be held April 12-14, 1985, at the Henlopen Hotel in Rehoboth Beach, Delaware.

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ARCHAIC PERIOD SUBSISTENCE CONFERENCE

The Center for Archaeological Investigations, Southern Illinois University-Carbondale, will sponsor a conference entitled "Foraging, Collecting, and Harvesting: Archaic Period Subsistence Strategies in the Eastern Woodlands" to be held April 12-13, 1985, at Carbondale, Illinois.

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MIDWEST MESOAMERICAN CONFERENCE

The 8th Annual Midwest Mesoamerican Conference will be held March 23-24, 1985, at the University of Wisconsin, Madison, J. F. Friedrick Center. For more information please contact Gary M. Feinman, Department of Anthropology, University of Wisconsin-Madison, Madison, WI 53706.

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CANADIAN ARCHAEOLOGICAL ASSOCIATION

The 18th Annual Conference of the Canadian Archaeological Association will be held in Winnipeg, April 24-27, 1985, at the Hotel Garry.

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SOCIETY FOR AMERICAN ARCHAEOLOGY

The 50th Annual Meeting of the SAA will be held from May 1-5, 1985, at the Denver Hilton, Denver, Colorado.

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ANTHROPOLOGISTS AS EXPERT WITNESS

For information concerning a workshop at the SfAA meetings to train anthropologists in the intricacies of legal procedure and courtroom protocol contact:

> Florence Shipek Department of Anthropology University of Wisconsin - Parkside Kenosha, WI 53141 (414) 553-2625 or 553-3658

The workshop should be of interest to anthropologists who expect to be called as an expert witness in court cases involving Indian claims cases, environmental issues, physical or medical

(continued on page 6)

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(continued on page 6)

INDEX VOLUME 2, 1984

AUTHOR INDEX

Anon 1984 Archaeological Colloquia Series Debutes. 2(6):2. Anon 1984 ARPA Regulation Published. 2(1):4. Babson 1984 Letter to the Editor. 2(4):4,5. Bryant, Vaugh M. 1984 Letter to the Editor. 2(6):2,3. Doctoral Dissertation Prize Committee 1984 The SAA Doctoral Dissertation Prize: Announcement and Call for Nominations. 2(1):1. Dekin, Albert A. Jr. 1984 The COPA Phoenix. 2(6):4. Dekin, Albert A. Jr. 1984 Letter to the Editor. 2(5):3. Dekin, Albert A. Jr. 1984 SAA Members Urged to Support Candidates and Incumbents. 2(4):7. Dekin, Albert A. Jr. 1984 Support of Federal Publications. 2(6):5. Downer, Alan S. 1984 Scholars vs 'Shovel-Bums': If we're all in the same boat rowing, WHY AREN'T WE CLOSER TO SHORE? 2(3):2,3. Editor 1984 Archaeologist Garners 1983 Margaret Mead Award. 2(1):1. Editor 1984 Archaeologists Garner MacArthur's. 2(3):2. Editor 1984 Committee on Public Archaeology Reactivated. 2(1):3. Editor 1984 Emil W. Haury Award Created. 2(2):1. Editor Georgia Title to Shipwrecks Upheld. 1984 2(6):1,2. Editor 1984 Governing Structure of the SAA Under Review. 2(1):3. Editor 1984 Pot Hunters Buster. 2(3):1,2. Editor 1984 Ronald F. Lee Graduate Fellowships Established. 2(2):2. Editor 1984 Special Events for the 50th Annual Meeting Scheduled. 2(4):2. Frison, George 1984 Griffin Garners Distinguished Service Award: 50 Years of Achievement Honored. 2(4):1. Fryell Award Committee 1984 Fryell Award Committee Concerned About the Status of Interdisciplinary Studies.

2(5):1,2.

Gelburd, Diane E. 1984 Soil Conservation Service Helps Save Archaeological Sites from Erosion. 2(6):1. Hoffman, Michael Allen 1984 Letter to the Editor. 2(5):3. Irwin-Williams, Cynthia and Don D. Fowler 1984 Open Letter (SAA Regional Conferences) 2(4):2-4.Knudson, Ruthann 1984 Committee on Public Archaeology Reactivating. 2(4):6. Meltzer, David J. and Jeremy A. Sabloff 1984 SAA to Celebrate 50th Anniversary. 2(3):1. Littmann, Edwin R. 1984 Letter to the Editor. 2(6):3. Miller, Jerome A. 1984 Bulletin to Accept Advertising. 2(6):4. Miller, Jerome A. 1984 Dues Billing Cycle to Be Adjusted. 2(6):5. Miller, Jerome A. 1984 Extra Day Added to SAA Annual Meeting. 2(6):3. Miller, Jerome A. 1984 Life Member Fee to Be Increased July 1, 1985. 2(6):4. Miller, Jerome A. 1984 Non-Member Subscriptions Available. 2(1):4. Niquette, Charles M. and Hester A. Davis 1984 Letter to the Editor. 2(3):6. Program Chair 1984 Society for American Archaeology 49th Annual Meeting: Preliminary Program. 2(2):2-6.SAA Membership 1984 Resolution. 2(4):4. Scott, Stuart D. 1984 Letter to the Editor. 2(4):5. Speth, John 1984 Distinguished Service Award Nominations Solicited by SAA. 2(4):2. Speser, Philip 1984 Washington Report. 2(1):1-3. Speser, Philip 1984 Washington Report. 2(3):3-5. Speser, Philip 1984 Washington Report. 2(4):5,6. Stark, Barbara 1984 Archeology Unit Formed in the AAA. 2(2):1. Williams, J. Raymond 1984 News from the Society of Professional Archaeologists. 2(2):6. TITLE INDEX Archaeological Colloquia Series Debutes by Anon. 2(6):2, 1984. Archaeologist Garners 1983 Margaret Mead Award. Editor. 2(1):1, 1983. Archaeologists Garner MacArthur's by the Editor. 2(3):2, 1984. Archeology Unit Formed in the AAA by Barbara Stark.

2(2):1, 1984.

ARPA Regulations Published by Anon. 2(1):4, 1984.

Bulletin to Accept Advertising. 2(6):4, 1984.

Committee on Public Archaeology Reactivated by the Editor. 2(1):3, 1984.

Committee on Public Archaeology Reactivating by Ruthann Knudson. 2(4):6, 1984.

The COPA Phoenix by Albert A. Dekin, Jr. 2(6):4, 1984.

Distinguished Service Award Nominations Solicited by SAA by John Speth. 2(5);2, 1984.

Dues Billing Cycle to be Adjusted by Jerome A. Miller. 2(6):5, 1984.

Emil W. Haury Award Created by the Editor. 2(2):1, 1984.

Extra Day added to SAA Annual Meeting by Jerome A. Miller. 2(6):3, 1984.

Fryell Award Committee Concerned About the Status of Interdisciplinary Studies by the Fryell Award Committee. 2(5):1, 2, 1984.

Georgia Title to Shipwrecks Upheld by the Editor. 2(6):1, 2, 1984.

Governing Structure of the SAA Under Review by the Editor. 2(1):3, 1984.

Griffin Garners Distinguished Service Award: 50 Years of Achievement Honored by George Frison. 2(4):1, 1984

Letter to the Editor by David W. Babson. 2(4):4, 5, 1984.

Letter to the Editor by Vaugh M. Bryant. 2(6):2, 3, 1984.

Letter to the Editor by Albert A. Dekin, Jr. 2(5):3, 1984.

Letter to the Editor by Michael Allen Hoffman. 2(5):3, 1984.

Letter to the Editor by Edwin R. Littmann. 2(6):3, 1984.

Letter to the Editor by Charles M. Niquette and Hester A. Davis, 2(3):6, 1984.

Letter to the Editor by Stuart D. Scott. 2(4):5, 1984.

Life Member Fee to be Increased July 1, 1985 by Jerome A. Miller. 2(6):4, 1984.

News from the Society of Professional Archaeologists by J. Raymond Williams. 2(2):6, 1984.

Non-Member Subscriptions Available by Jerome Miller. 2(1):4, 1984.

Open Letter (SAA Regional Conferences) by Cynthia Irwin-Williams and Don D. Fowler. 2(4):2-4, 1984.

Pot Hunters Busted by the Editor. 2(3):2, 1984.

Resolution (in support of the Advisory Council on Historic Preservation) by the SAA Membership. 2(4):4, 1984.

Ronald F. Lee Graduate Fellowships Established by the Editor. 2(2):2, 1984.

SAA to Celebrate 50th Anniversary by David J. Meltzer and Jeremy A. Sabloff. 2(3):1, 1984.

The SAA Doctoral Dissertation Prize: Announcement and Call for Nominations by the Doctoral Dissertation Prize Committee. 2(1):1, 1984.

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