

# Opinion + Comment

## Stop the stalling on Penney site cleanup

The fact that the unsightly mess that marks the location of the old J.C. Penney building has been left untouched for nearly 16 months now indicates that the owners of the property are not taking their civic responsibilities seriously.

And the fact that City Hall has let them get away with it for so long indicates that Butte's governing officials are not taking their responsibilities seriously enough, either.

Butte has never been a town to get exercised over a blot on the scenery, at least when it appears unavoidable if the city is to progress. But there is an increasing amount of grumbling about the seemingly abandoned Penney site, and for good reason. The feeling is that 16 months is long enough for this

debris-strewn area to detract from appearance, and safety, too, of the downtown business district.

We agree.

There has been talk for months now of some sort of deal between the city and the property's owner, Jeffrey Granger, to clean up the area and put it to constructive use as a parking lot.

So far it's been just talk, and the months roll on with no improvement.

The city recently added a "public nuisance" measure to its city ordinances which permits the city to compel residents and property owners to clean up the junk on their land.

The site of the old J. C. Penney store shows why we need such an ordinance. Now let's use it.

## Partisan crusaders

A few days ago, we poked at the American Civil Liberties Union (ACLU) a little bit for the one-sidedness of some of its crusades.

Our editorial drew a letter from a reader who contended that the ACLU is a Communist organization.

We don't buy that.

We do, however, believe the ACLU is a distinctly partisan group with distinctly liberal leanings.

A recent news story at the national level reinforced that belief. The ACLU (which usually acts on behalf of the accused) has now become a prosecutor.

It wants the convictions of the Watergate burglars set aside and the indictment redrawn "to try all responsible" for the incident.

Obviously, the national ACLU wants to see some higher ups drawn into this, too, probably including President Nixon himself.

There's no law against liberal-oriented legal action groups, of course. And we'll concede that in some cases the ACLU has probably been instrumental in securing justice.

But a few years ago a couple of gentlemen named Billie Sol Estes and Bobby Baker were convicted after their misdeeds were revealed by the press and investigatory agencies.

If the ACLU ever demanded that their convictions be set aside in favor of prosecuting "all responsible" we missed it.

## Is an 'admission' a 'confession'?

By RICK FOOTER  
Standard Staff Writer

The Butte police department and the Silver Bow County sheriff's office have a wealth of electronic equipment ready to assist officers in obtaining evidence in criminal cases.

But some serious questions have been raised recently in district court about the admissibility of evidence obtained through the use of electronic equipment.

Two cases are before Dist. Judge James Freebourn. In one, Donald Holmes is accused of manslaughter in connection with the Dec. 3, 1972 shooting death of his longtime mining and hunting partner Harold Smith.

In the second case Thomas Smith is accused of the Mother's Day, 1972, strangulation death of his wife Vicki.

Hearings were conducted about both cases and the question arose about the validity of information obtained from both men about the respective crimes.

Holmes is represented by attorney Leonard Haxby. Haxby contended that statements made by Holmes into a tape recorder and a video tape recorder did not amount to a confession of the crime.

Deputy County Atty. Brian Tierney, who is prosecuting both men at the hearing. According to Judge Freebourn, the central question was whether Holmes' statements amounted to a confession or merely admission of facts surrounding the crime. The judge ruled the statements, as reflected in a transcription of a tape recording, amounted to an admission, not a confession.

Sullivan and Russell testified they believe Smith was, at all times, able to understand the proceedings. Mulcahy says he believes that at times during the questioning Smith was not conscious of his surroundings.

One of the guiding principles in Montana law concerning the use of electronic equipment in questioning was handed down by the Montana Supreme Court's decision in the Archie Warwick case. Warwick was convicted of the murder of a Kallispell school teacher, Roberta Clark. He was sent to prison. The high court granted him a new trial.

In its decision the court firmly set down seven requirements for the admissibility of taped evidence.

1. Showing that the recording device was capable of taking testimony.
2. Showing that the operator of the device was competent.
3. Establishment of authenticity and correctness of the recording.
4. Showing that changes, additions or deletions have not been made.
5. Showing the manner of the preservation of the recording.
6. Identification of the speakers.
7. Showing that the testimony elicited was voluntary without any kind of inducement.

APPARENTLY IT IS up to the state to demonstrate compliance with the court's ruling. As in any legal question, there will be conflicting arguments as to what constitutes competency. For instance is knowledge of how to run a tape recorder sufficient knowledge or should an operator have been instructed in a school?

If it must be established that the recording is authentic and correct, more than one witness who was present during the making of the recording and a complete and edited transcription of the tape probably would be necessary.

The state must be able to show no changes, additions or deletions have been made in the tape. For instance in the Smith case, Mulcahy testified that Smith was read his rights while the tape recorder was playing but that portion of the tape was erased. Sullivan testified Tierney inadvertently erased the tape.

The judge will have to decide if that amounts to a change in or deletion from the tape.

The state must further show the speakers on the tape are identified. But the question is whether the fact that persons who know the speakers and can recognize their voices on the tapes are sufficient to establish recognition, or whether the names must be stated and recorded on the tape.

The state must also demonstrate that the testimony was voluntarily made. Again the question which defense attorneys will raise is whether a statement made with questioners hovering can be voluntary.

When Judge Freebourn and the supreme court finish with their expected rulings about taped evidence in Butte, the police department and sheriff's office should have a better idea of what they must do to be able to get such evidence into court in their respective quests for convictions.

Meanwhile the Smith case is not expected to come to trial until fall and the Holmes case may go the same way if the judge rules against the state and Tierney appeals.

# Montana air—Clean, for now

By ERNEST B. FURGERSON

WOLF POINT, Mont. — They call it that because in the old days, trappers brought stacks of frozen wolf carcasses here each winter, to ship them down the Missouri to St. Louis in the spring.

They do not have enough wolves to do that kind of business any more. Nor do they have plains full of bison, like those the wolves and the Indians lived on before the railroad came. But all the way across the Northwest, there is still a platitude of land and sky, clean and rich with life — at least for the time being.

In both government and industry, however, there is mounting pressure to blight this land and air the way less fortunate parts of America already have been blighted. Because Eastern coal is running out or dwindling in quality, because the air back there already is polluted beyond toleration — or at least for those cited excuses — the coal and power industries are eager to strip-mine and build polluting plants in the mountains and high plains.

Excited by the smell of money to be coined amid the forthcoming "energy crisis," they are turning west, where the land has only begun to be torn apart and the air pollution levels are so far under control. It is an example of what Oregon's Gov. Tom McCall calls the "buffalo hunter mentality," which smells waste with no thought of tomorrow.

The courts already have stepped in at several points and are being beseeched for further protection, but pessimists, and I am one, fear that constitutes only a delaying action. Thus it may not be long that an American can start in Seattle and see what I have seen this past two days traveling east.

Rainier still dominates the North Pacific skyline. It remains possible to make a side trip to Paradise, Wash., on its southern slopes, and



Ernest B. Furgeson

covered in a 10-inch snowstorm three days before the official start of summer, but from road and railroad, the views are scarred in the near distance by the timber companies' "clear-cutting" of mountaintops, on national forest lands. It is like an excema, though less permanent than the strip-mining that has disfigured Appalachia to the east, and up into the Cascades, relieved on the eastern slopes by the unsung beauty of the Yakima valley, but reappears on the climb into the Rockies.

IN THE EARLY morning the train crosses the Continental Divide, and then Glacier Park — which almost incredibly appears on the Environmental Protection Agency's list of places where air pollution has increased in the past three years. That thought too is assuaged for a while by the scale of the land and sky.

All day across Northern Montana, uncountable ducks, herons, swallows, hawks, loons and gulls speckle the range land the ignorant transient expected to be semidesolate. Where man is up here, he is barely tiling the earth's surface with his tractors and tillers. Where he has been and his, the signs are trivial — derelict cabins, skeletons of windmills.

But the engines of thorough destruction are coming, dispatched by men whose concern is not for the land but for the quick payoff beneath its surface. The draglines that strip coal dwarf the combines that harvest wheat, and they are fed by acreage, square mileage of earth ravaged — unlike the copper mining equipment that has eaten deep into the hills around Butte for more than a century.

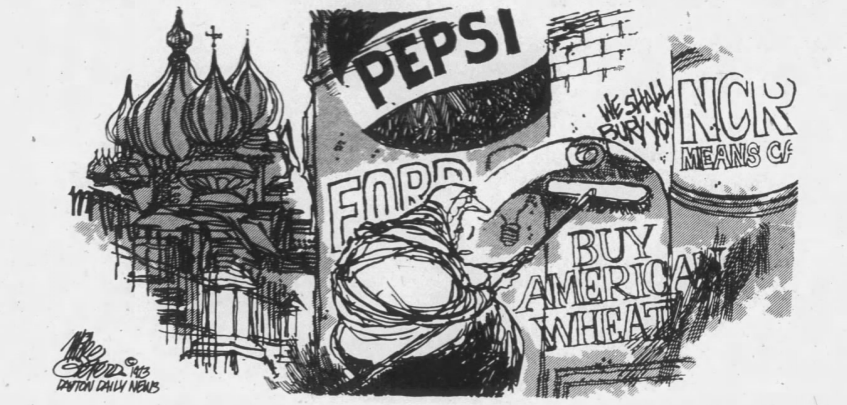
At the appropriately named Colstrip, far out of sight south of here, two huge coal-fired steam power plants are being built, and two doubly huge are planned. What they will do to the clear Montana air already has been demonstrated at the notorious Four Corners installation, at the Colorado—whose smoke was the only sign of man visible to U.S. astronauts orbiting above.

Some Montanans, including Indian tribes, are fighting legally to halt the advance of strip mining on their lands. Gov. Thomas L. Judge vowed last week that Montana was not going to become "a West Virginia or Pennsylvania."

More concretely, state help and environmental officials were heartened by the Supreme Court's recent decision effectively outlawing the "export" of air pollution. The court upheld a ruling which federal standards are meant to be a maximum pollution level not to be exceeded in already industrialized areas, rather than a line that must be crossed before relatively virgin states can enforce their own stringent controls. The result could be to block the Colstrip plants, or at least the larger two of them.

Rejoicing was restrained, however, for the establishment fuel economy on a 44-wp. In the nation that produced the buffalo hunter, his spiritual heirs cannot let such a tenuous obstacle stand without seeking a way around it. So, sadly, I advise that the best time to part with the air and other delights out this way is right now.

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## Buyers want smaller cars

By WILLIAM D. SMITH  
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NEW YORK — Detroit has begun to receive vibrations from the only source it really listens to — new-car buyers.

The message: Build smaller cars.

The latest report on new-car sales and inventory.

The impetus behind the message is the "energy crisis." Whether real or contrived, it is beginning to discourage sales of larger cars, according to dealers across the country. Fuel consumption is closely tied to the weight of a vehicle, and Americans for the first time in many years are beginning to worry about fuel consumption.

The question auto makers must answer is whether the market message is a passing fancy, brought on by headlines about future gasoline shortages and price increases, or a long-term trend that companies must learn to live with.

Detroit's response could vitally affect the health of the American economy. (One job out of every six in this nation is related to the manufacturing, distribution and use of automobiles.)

There is also a real question of whether the auto industry is willing or able to alter its product mix before the end of this decade.

Willing? Smaller cars produce considerably lower profit margins.

Able? Any massive chngover to smaller cars would mean a multibillion-dollar retooling taking upward of four years.

Then there is the sobering opinion expressed by John McLean, head of the Continental Oil Company and Chairman of the National Petroleum Council. He says that if every other car were taken off the road right now it would represent only a 6 per cent reduction in the nation's energy use.

Yet, if there is an energy crunch, every little bit will help. And every barrel less of oil the United States has to import will ease foreign-exchange pressure on the dollar.

So far, most auto executives appear to be treating the energy situation with equanimity compared with leaders of some industries such as chemicals, metals and utilities.

Edward N. Cole, president of the General Motors Corporation, commented this week in an interview: "I do not like to think of the situation in terms of crisis. The amount of fuel we are short is not of crisis proportions. I think the situation is better described as one of energy concern."

during most of the 20th century, has become a major target of criticism — first for safety reasons, then for pollution and now for being a contributor to the nation's energy difficulties.

Many influential segments of American public opinion, ranging from oil men to ecologists (and seldom do these twains meet), call the automobile a major offender in the present "energy crisis."

They note that there has been a 21 per cent decrease in gasoline mileage for U.S.-made cars since 1965 and that some of the "Detroit gas guzzlers," as the big cars have been dubbed, get less than 8 miles to the gallon while small imported cars get 20 to 30 miles to the gallon.

Cole's riposte is that fuel efficiency is a matter of major concern at G.M. and other auto makers but that meeting safety and emission standards leads the industry's list of priorities.

"We realize better than anyone else that high prices for gasoline and cars that get low mileage are not good for the automobile business," he said. "However, everything we have done to

advance automobile safety and emission controls has reduced fuel efficiency."

Despite such disclaimers, the automobile industry is under attack from the halls of Congress to the floor of the New York Stock Exchange and from boardrooms to the bar rooms across the country for its role in the energy situation.

—Rep. Charles A. Vanik, D-Ohio, introduced a bill last month calling for a graduated tax, starting in 1976, on every new automobile. It would heavily penalize cars that are large gas guzzlers.

Sen. Ernest F. Hollings, D-S.C., introduced a bill directing the secretary of transportation to establish fuel economy standards. The 1978 cars would be required to have at least 25 per cent greater fuel efficiency than the 1972 models.

—The Environmental Protection Agency proposed controls on June 15. If imposed, they could drastically reduce motor vehicle traffic in major cities by 1977.

They may have failed in their objective of keeping the Presidency close to the people and the President himself of the people.

Sen. Barry Goldwater of Arizona, the Republican presidential candidate in 1964, had a lot to say about all this when he ran for the high office. The accumulation and abuse of executive power was a major theme of his campaign, but nobody much was listening. Today, because of Watergate and the arrogance of power it has come to represent, Goldwater's speech, "My case for the Republican Party, 1964," takes on a haunting significance.

In it, he said: "We hear praise of a power-wielding, arm-twisting President who gets his program through Congress by knowing the use of power. Throughout the course of history, there have been many other such wielders of power. There have even been dictators who regularly held plebiscites, in which their dictatorships were approved by an Ivory-soap-like percentage of the population."

"But their countries were not free, nor can any country remain free under such despotic power. Some of the current worship of powerful executives may come from those who admire strength and accomplishment of any sort. To be a constitutionalist, it is at least as important that the use of power be legitimate as that it be beneficial."

## The CAR, A SYMBOL of success in America

By DON BACON  
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WASHINGTON — The White House police straddled around the South Lawn last week in their formal white uniforms — the ones with gold epaulets and braided patent-leather belts. The gaudily-costumed "Herald Trumpets" with their long, straight horns, stood on the White House steps and blew what sounded like a Sigmund Romberg version of "Hail to the Chief."

If the visiting Russians were amused at this display of pseudo-royalty, it is understandable. The formal ceremony that is laid on by the President for a visiting dignitary, particularly one of Leonid I. Brezhnev's potency, plays like a scene from an old opera.

The humor emerges because it is all so grotesquely out of place in a democratic society. But it is disturbing also.

This is not the principality of Liechtenstein. Putting ice cream suits on tough White House guards is a bit like, as Earl Long used to say, putting socks on a rooster.

President Nixon has added several monarchical touches to the White House since he came to office. Those fancy police uniforms, for example, were his idea — a brainstrom after his 1969 trip to Europe where he was received in splendor by the palace guard in several countries.

Perhaps more than any of his recent predecessors, Nixon has wrapped himself in the trappings of his office. He cannot enter a room but that the drum roll and the band gushes forth with "Ruffles and Flourishes," followed by the inevitable "Hail to the Chief." Before Nixon can appear, an off-stage voice must bellow into a microphone: "Ladies and gentlemen... The President."

## The royal presidency

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