

THE PRESS

choices to succeed the Vice President—is timely but frivolous. Eugene McCarthy nominates Pat Nixon, Cartoonist Jules Feiffer likes Bebe Rebozo, Senator William Saxbe votes for himself.

Colorful Crew. A number of other features are far more satisfying. The front of the magazine is dominated by staccato reportage under the heading "The Insider." The terse items on politics, journalism, show business and consumer affairs are uniformly lively and informative. A full-length piece by Joan Barthel attacking the stratospheric costs of medical care is solidly done. Ruth Gruber contributes an absorbing profile of Valery Panov, the Russian dancer whom Soviet authorities are persecuting because he wants to emigrate to Israel.

Publisher Hirsch and Editor Steve Gelman, both 39, are bright comers in the magazine field. Hirsch, after working as assistant publisher for Time-Life International, was publisher of *New York* for four years. Gelman was LIFE's articles editor for 3½ years. The print order for the first issue was 300,000, but Hirsch is basing his ad rates on an initial paid circulation of 100,000. With 38 ad pages in the first issue, *New Times* has already won some support from advertisers. Its name talent is sure to attract reader interest. With a little experience in working together, *New Times's* colorful crew should throw some brighter parties in the future.

Before the first issue went to press, two writers whose names had figured prominently in Hirsch's promotional efforts defected noisily. Jack Newfield, an investigative reporter and assistant editor of the *Village Voice*, and Pete Hamill, a *New York Post* columnist, demanded that their names be removed from the masthead. Along with Studs Terkel, who remains as a contributor, they sent a letter to *New Times's* other contributing editors complaining about compensation and financing arrangements.

Crusader Newfield is particularly irked by the way Hirsch raised money. The Chase Manhattan Bank was one of the large investors. Newfield is "troubled by the presence of Rockefeller money in a magazine that pretends to be liberal or radical." (A principal owner of Newfield's paper is Millionaire S. Carter Burden.) Newfield also accuses Hirsch of failing to give the contributing editors—who are to receive shares of stock in addition to fees—a full explanation of the company's financial scaffolding and of special arrangements made with Breslin and a literary agent representing some of the writers.

Hirsch points out that the major backers have been known publicly since last March (though the "privacy" of some shareholders has been protected so far). Says he: "It's a lot of red-herring stuff." Though the incident marred *New Times's* opening, negotiations between Hirsch and the dissidents were continuing—through a lawyer.

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Pair of Dockets

The nine Supreme Court Justices were back on the job last week "in a good mental set and ready to go," as one of them put it after looking over his colleagues. They had to be, for the unusually heavy pressures and duties facing the court this term were felt almost immediately. In their first important determination of the year, the Justices declined for the moment to consider the President's right to impound congressionally authorized funds.

At least 37 suits are currently attacking impoundment in courts around the country. Both Georgia and the Justice Department had urged that their dispute should be heard directly by the Supreme Court so that the whole issue could be settled quickly. The court did not explain last week why it chose not to exercise its constitutional power of original jurisdiction, and the case will now apparently go to a federal district court for trial.

But even without impoundment, there is looming over the court a phantom docket of cases that have not yet been formally presented to the Justices but almost certainly will be. And all involve challenges to presidential powers. Unlike the neutral result of the action on the Georgia impoundment suit, these other cases will come up with lower-court rulings that will stand if the Supreme Court declines to review.

The most critical test is the confrontation between President Nixon and Special Watergate Prosecutor Archibald Cox over nine White House tape recordings, which now goes to the high court (see THE NATION). The Senate Watergate committee's fight for some of the same tapes is still before the trial judge, but it may also have to be dealt with by the court this term. Meanwhile, a Ralph Nader group is seeking access to presidential papers that, it believes, will show an improper connection between an increase in federal milk-price supports and Nixon campaign contributions from milk producers. The Supreme Court will thus have an opportunity to consider Executive privilege against the competing interests of, respectively, a criminal prosecutor, the Congress and private citizens.

Congressional v. presidential authority is also involved in a suit over a Nixon pocket veto of a medical education bill during a five-day recess in 1970. Senator Edward Kennedy, a co-sponsor of the bill, went to court contending that the pocket veto power was meant for use only when Congress was in adjournment. He recently won in the trial court, and the appeals are now under way. Further in the future, the court may also have to consider whether the President's national security power legally justified the office burglary of Daniel Ellsberg's

psychiatrist, as former Presidential Adviser John Ehrlichman is now arguing.

By contrast, the issues on the court's actual docket are not, concedes one Justice, "particularly exciting." Nonetheless, important cases are pending in which the Justices are asked to:

► Sharply undercut the exclusionary rule barring the use of illegally seized evidence by permitting it to be introduced in court if the improper police conduct was not "outrageous."

► Decide whether a judge can order busing across district lines to desegregate public schools.

► Declare sex discrimination as constitutionally suspect as race discrimination, thereby rendering the equal

LOU GRANT—LOS ANGELES TIMES



Above it all?

rights amendment largely superfluous.

► Limit class actions by tightening the standards under which such suits may be maintained.

► Uphold a taxpayer's right to discover the heretofore secret CIA budgets.

The court has not scheduled any case that could markedly clarify last June's pornography ruling; however, a decision by the Georgia Supreme Court—upholding a local finding that the film *Carnal Knowledge* was obscene—may yet reach the high bench.

A Second Sirhan?

Eight eyewitnesses say that they saw Sirhan Bishara Sirhan assassinate Robert F. Kennedy in the jammed serving pantry of the Ambassador Hotel in Los Angeles on June 5, 1968. Unlike Lee Harvey Oswald, who was killed before he could be tried, or James Earl Ray, who pleaded guilty before being brought

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before a jury of his peers, Sirhan was given a lengthy public trial and was convicted of murder in the first degree. Despite the seemingly overwhelming evidence that Sirhan acted alone, a 110-minute accusatorial documentary film that opened in New York last week suggests that there was a second gunman in the hotel pantry, who actually fired the fatal shot.

The film, *The Second Gun*, is the brainchild of Theodore Charach, a Los Angeles-based freelance broadcaster. Charach was at the scene of the shooting, and has been opportunistically working on his thesis ever since, despite rebuffs from state and local officials, other journalists and Kennedy friends. After finding a few backers, he and French Film Maker Gerard Alcan patched together the film, which relies essentially on these points:

▶ A maître d'hôtel at the Ambassador, Karl Uecker, told Charach that he was ushering Kennedy by the hand toward the exit when Sirhan stepped up in front of him and began firing; the maître d' says that Sirhan was never behind Kennedy and that the assassin's revolver was never closer to Kennedy than 1½ ft.—a fact that Charach says has not been contradicted by any other witness.

▶ Los Angeles Coroner Thomas Noguchi, after an autopsy, testified that three bullets entered the Senator's body from the rear and that the fatal shot was fired into his brain from only inches behind his right ear.

▶ A hotel security guard, Thane Eugene Cesar, was behind Kennedy, drew his gun, and at the time owned a .22-cal. revolver similar to Sirhan's.

▶ A messenger for a local TV station claimed that he had seen a security guard fire back at the assassin—or perhaps at Kennedy.

▶ William Harper, a criminalist who regularly serves as an expert ballistics witness, and who went over some of the evidence after the trial, is quoted in the film as saying that two of the bul-

lets recovered at the scene were fired by different weapons. *Ipsa facto*, the second gun.

Or is it *ipso twisto*? The film appears to be at least as much doctored as documentary. For instance, the narration clearly implies that Coroner Noguchi's autopsy findings got him in trouble and prompted his removal from office. In fact, the removal related to a wide range of matters, and Noguchi was reinstated. Criminalist Harper says that his studies are inaccurately represented in the film, and are not complete. Various other witnesses contend that the TV messenger was not even in the room at the time of the shooting, that Guard Cesar did not draw his gun until after Sirhan had fired his last shots, that Sirhan's gun was initially only inches from Kennedy's turned head.

Conspiratorial theories surround all the tragic assassinations of modern U.S. history. What makes *The Second Gun* superficially plausible is that Sirhan's trial scarcely touched on the factual conflicts raised by the film. Sirhan's defense admitted his guilt but maintained that because of his mental state he had only a "diminished responsibility" for the act. Defense Attorney Grant Cooper concedes that his cross-examination of some prosecution witnesses was therefore less than tough. "What was the sense of wasting time on these things?" he asks. There may have been no sense tactically, since there was never any doubt that Sirhan had at least tried to assassinate Kennedy. But in mounting a mental-illness defense, Sirhan's lawyers did not subject the police and district attorney's version of what happened to the kind of challenge normally carried out in adversary proceedings. Thus the questioning of discrepancies has been left to the fertile imagination of conspiracy buffs.

In his polemical zeal to point out discrepancies left unresolved in the courtroom, Charach raises another serious question: the validity of his own cut-and-splice technique of trial by celluloid.

ROBERT KENNEDY AFTER BEING SHOT



CHARACH HOLDING BALLISTICS PHOTOS



PALL

The longer