'Little Pentagon Papers' Case May

By FRED P. GRAHAM Special to The New York Times

LOS ANGELES, Aug. 10-Until last week, it would have seemed impossible that Daniel Ellsberg and Anthony J. Russo Jr. could be upstaged as legal figures by Arthur Kunkin and Gerald R. Applebaum.

Dr. Ellsberg and Mr. Russo. the defendants in the celebrated Pentagon papers case, were on the threshold of a trial that! was to be a major test of the Government's authority to punish those who disclose its secrets.

Mr. Kunkin and Mr. Applebaum, underground journalists with The Los Angeles Free Press, were defendants in a remarkably similar "little Pentagon papers" case that raised an identical legal issue-whether those who arrange for the publication of "leaked" Government documents may be punished as criminals.

But an appeal to the Supreme Court has now put off

Mr. Applebaum for publishing capacity to keep secrets. a stolen list of undercover narcotics agents, which is pending before the California Supreme Some constitutional lawyers and were given what is becourt, may well reach the believe that if the Supreme lieved to be the first criminal court does not rule out the use penalties against the press in the first constitutional test of leaks, widespread censorship of the new strains that are being Government information could be strained and superstants and superstants develop. before the California Supreme

case are the first known in-machine-copying top secret pa-stances in which persons who pers that were leaked to newsarranged for the publication of papers, has many parallels in "leaked" Government docu-"leaked" Government docu-the Free Press case. Peter Young, says that, in ret-ments have been charged with Jerry M. Reznick, a self-de-rospect, one of the worst dealing in stolen property. scribed artist who worked as a breaks of the case was when Many journalists and constitu-mail clerk in the California the defendants won a hung



The New York Times Arthur Kunkin

delay could last well into 1973, by the copying machines that stealing public documents and
May Reach Court First sit in virtually every Govern the others for receiving stolen That could mean that the conviction of Mr. Kunkin and with this new threat to its later testified against the jour-

Censorship Feared

The Ellsberg-Russo prosecu-conspiracy against Dr. Ellsberg was given a suspended \$500 and the Kunkin-Applebaum and Mr. Russo, for allegedly fine.

tional experts feel that the attorney general's office, be-jury on the charges of publish-similarity between the two epicame disturbed in 1969 about ing the U.C.L.A. police report. sodes is not a coincidence, but some aspects of law enforce-

ment reflected in some of the confidential papers that passed through his hands.

He machine-copied a report that said that brutality by the campus police at the University of California in Los Angeles was going unpunished, and he took a list of the names, home addresses and telephone numbers of the state's 80 undercover narcotics agents.

Names of All 80

These he delivered to Mr. Applebaum, a reporter for The Free Press, who promised to pay the usual \$20 fee the paper gave for information. The Free Press ran front-page articles lambasting the U.C.L.A. police, and denouncing the use of "secret police" to infiltrate society. It printed the names, addresses and telephone numbers of all 80, and some received threatening telephone

Mr. Reznick, Mr. Applebaum and Mr. Kunkin, the publisher and editor of The Free Press, the Ellsberg-Russo trial at rather a product of the rise in plus The Free Press itself, were least until October, and the investigative journalism—aided all indicted—Mr. Reznick for inalists.

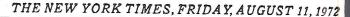
They were convicted of re-Some constitutional lawyers and were given what is beplaced upon the First Amend-eventually develop.
The Federal Government's tion for three years and fined copying machine upon Govern-charges of theft of Government secrecy.

The Federal Government's \$1,000; Mr. Applebaum was given a suspended sentence and ment secrecy.

The Federal Government's \$1,000; Mr. Applebaum was given a suspended sentence and fined \$500, and The Free Press.

Won Hung Jury

One of their lawyers, H.



Reach Court Before Ellsberg's

publishing a story about con-threat to governmental secrecy. doned police brutality would The state judges based much have been such an obvious vio- of their arguments upon statelation of the First Amendment of their arguments upon state-that no court could have failed ments made in the opinions of to see it," Mr. Young said.

an expert on copyright law Supreme Court refused to block and the First Amendment at U.C.L.A., this illustrates why it would be a blow to press freedom if theft convictions in either the Ellsberg-Puses of Chief I the ground that the documents secrets. bearing the information were Government property. "Clearly," the California court said, "a majority of the

reasoned that the threat to law ceive stolen documents. stake.

government officials can with-est court.

hold. To machine-copy an internal government document is First Amendment issues will reto steal the information on main to be settled in the Penlish such a leaked document berg and Mr. Russo, assuming amounts to receiving stolen there is ultimately a trial and goods.

Based on Justices' Views

body could have been convicted tially historic study to the if Mr. Reznick had dictated the public. The other is whether list on a telephone without ever individuals who leak classified taking the paper out of the documents can be prosecuted office or copying it. However, under the general anticonspirit ruled that it was logical to acy law on the theory that treat documents differently because they constituted a greater secrecy system.

Justices Byron R. White and Pot-To Prof. Melville B. Nimmer, ter Stewart last July when the

either the Ellsberg-Russo or general agreement of Chief Jus-Kunkin-Applebaum cases should be upheld. He said it would permit the Government to prevent the publication of emthough it did not involve national or personal eafety constitutional under some circumstances to punish journaltional or personal safety, on ists who published government

Court of Appeals did uphold, is willing to apply laws against 2 to 1, the conviction for pubthe receipts of stolen property lishing the narcotics list. It to newsmen who knowingly re-

enforcement and to the safety

The United States Supreme Court will apparently have an Free Press consideration at opportunity to say if this is so after the California Supreme In that decision, an American Court hears arguments next fall court held for the first time and rules on the case. Both that government information sides have expressed determityped on paper is property that nation to appeal it to the high-

it, the court held, and to pub-tagon papers trial of Dr. Ellsconviction.

One is whether the espionage laws can be used to punish The court admitted that no-those who disclose an essen-