

Fortune Magazine Fights Subpoena of

By PETER KIHSS

Another Justice Department subpoena for confidential journalistic files became known yesterday. In this, the Antitrust Division has sought materials dealing with a Fortune magazine interview with James J. Ling, head of a conglomerate whose sales exceed \$3-billion a year.

In Washington, the department said that a letter by Attorney General John N. Mitchell had been mailed yesterday to James Shepley, president of Time, Inc., Fortune's parent concern, expressing regret that the subpoena "may have been the subject of any misunderstanding or implied any lack of concern of the Department of Justice with the freedom and independence of the press." Mr. Mitchell reaffirmed an intent to negotiate such issues.

The subpoena had been protested by Mr. Shepley and Daniel Seligman, senior staff editor of Time Inc., as a threat to freedom to search out news, undermining off-the-record relationships between newsmen and their sources.

But it also became known here that Mr. Ling, to whom Fortune had given the tapes of two day-long interviews with him, had turned over the tapes to the Justice Department.

Through his lawyers, Mr. Ling had indicated willingness to have the department get the other material.

The subpoena, dated last Oct. 2, was served in connection with a civil suit filed by the Antitrust Division in Federal Court in Pittsburgh last April. In this, the Federal agency is seeking to force Ling-Temco-Vought, Inc., the conglomerate, to divest itself of control of the Jones & Laughlin Steel Corporation, which it had ac-

quired by investing more than \$425-million in 1968.

Attorney General Mitchell's letter said the subpoena was "an effort to resolve apparent inconsistencies" between Mr. Ling's testimony in a deposition in the antitrust suit and statements attributed to him in interviews published in Fortune's issues last August and September.

The subpoena demanded all the interview notes of John McDonald, a member of Fortune's board of editors; his tape recordings; any documents furnished by Mr. Ling, and "the successive drafts" of the articles before they were published.

The Justice Department had also called for a deposition by Mr. McDonald. While Time Inc. was formally seeking reconsideration of the subpoena, a Justice Department official was understood to have visited its headquarters and to have obtained the written material through a misunderstanding.

Mitchell Seeks Solution

Mr. Mitchell's letter said "the proposed deposition of Mr. McDonald has been postponed indefinitely" and added that he had instructed the Antitrust Division to seek "an amicable solution" with Time Inc. lawyers before using any of the subpoenaed material.

In a letter on Dec. 23 to Richard W. McLaren, Assistant Attorney General in charge of the Antitrust Division, Mr. Seligman said that there had been an understanding with Mr. Ling that the interviews would be "off the record" except for wording he would later clear.

The editor added that "there is scarcely a businessman Fortune might interview these days who does not have some kind of immediate or potential

'antitrust problem.'"

In a letter Jan. 14, Mr. Seligman said that Fortune had written and talked to businessmen about antitrust cases for 40 years but he had never known of an instance in Time Inc. history in which interview material or drafts in a noncriminal case had been subpoenaed by a Government agency.

Data for an Antitrust Suit

Mr. Shepley, in a letter to Mr. Mitchell, protested "the threat to free and responsible journalism posed by the Government's demanding access to an interview that was conducted in complete confidence."

Earlier controversy over Justice Department subpoenas to news organizations had involved grand jury investiga-

tions into the Weatherman faction of Students for a Democratic Society and the Black Panther party. These led Mr. Mitchell to announce last Thursday that the department would refrain from subpoenas to the press until it first attempted to reach acceptable agreements with the news media.