

TRIALS

Rights of the Material Witness

Only a few months ago, hardly anyone much cared how Charles Quitman Stephens, 57, chose to lead his life. An unemployed bulldozer operator, Stephens drew a veteran's modest pension from the Government, lived alone in a room rented for \$10 a week in downtown Memphis, and had a reputation for drinking. Stephens would have continued to attract small notice had he not been present in his rooming house on the afternoon that Martin Luther King Jr. was shot to death while standing on a motel balcony a few hundred feet away.

According to police, the sniper fired from a window perch in the rooming house. Stephens told authorities that seconds after the shots rang out he had seen a stranger hurrying down the stairs from the second floor, carrying a package that presumably concealed the murder weapon. Days later, he identified the man from photos as James Earl Ray, who was eventually seized in England and charged with King's murder.

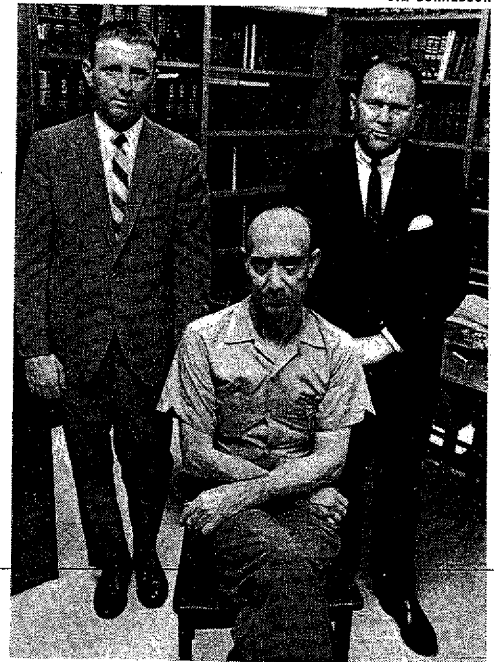
Thus, from an inconsequential human cipher, Stephens leaped to importance as a central witness in one of the century's most shocking assassinations. He was so important that the state sought to do everything—even keep him a prisoner—to protect him against harm from possible accomplices in the killing. At first, Stephens willingly moved into Shelby County jail, where he was free to come and go but was accompanied by a bodyguard. He was away too often to suit police. Claiming that his activities outside the jail jeopardized his own safety, the state invoked a Tennessee law that provides for confinement of material witnesses, and imprisoned Stephens in July. In setting bail of \$10,000, the Memphis Criminal Court virtually assured that he would be safely tucked away until Ray's scheduled trial in November (see PRESS.)

Stephens was understandably irritated over this treatment, especially when police refused his own brother permission to see him. His irritation raised a little-understood legal issue: What are the rights of a material witness? He got in touch with a pair of Memphis at-

torneys, Harvey Gipson, 37, and Jay Fred Friedman, 33, who pored over the laws of not only Tennessee but other states for precedents. While most states permit the jailing of witnesses, the attorneys found, the laws have been applied only in extreme circumstances—when there is clearly no other way to guarantee a witness's appearance in court. New York courts, for example, have upheld the imprisonment before trial of rackets witnesses who might flee the country or be bribed or intimidated into changing their testimony.

No Actual Threats. Tennessee's law had been tested in the courts only once, but in that case the jailing of a witness had been upheld because he had balked at testifying and had been declared in contempt of court. By contrast, Ste-

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STEPHENS WITH LAWYERS

How much protection is too much?

phens had been a cooperative witness. His lawyers argued that there was no reason to believe that he would not testify; there had been no actual threats on his life. Taking the case to a Memphis Circuit Court, Gipson and Friedman won a plea for a writ of habeas corpus on the grounds that Stephens had been denied due process and that his bail was excessive.

Last week Stephens was free and living in a small, police-protected apartment somewhere in Memphis. Pleased by their success, Gipson and Friedman maintained that their exhaustive research showed that laws regulating witnesses' rights could stand improvement in many states. The more enlightened laws, they pointed out, allow written depositions from witnesses as evidence, provided that the right of cross-examination and other trial guarantees are preserved. At least in many cases, the state thus avoids having to confine the bodies of witnesses to assure the presence of their words in court.