

111TH CONGRESS  
1ST SESSION

# S. 657

To provide for media coverage of Federal court proceedings.

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## IN THE SENATE OF THE UNITED STATES

MARCH 19, 2009

Mr. GRASSLEY (for himself, Mr. SCHUMER, Mr. LEAHY, Mr. SPECTER, Mr. GRAHAM, Mr. FEINGOLD, Mr. CORNYN, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide for media coverage of Federal court proceedings.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Sunshine in the Court-  
5       room Act of 2009”.

6       **SEC. 2. FEDERAL APPELLATE AND DISTRICT COURTS.**

7       (a) DEFINITIONS.—In this section:

8               (1) PRESIDING JUDGE.—The term “presiding  
9       judge” means the judge presiding over the court  
10       proceeding concerned. In proceedings in which more  
11       than 1 judge participates, the presiding judge shall

1 be the senior active judge so participating or, in the  
 2 case of a circuit court of appeals, the senior active  
 3 circuit judge so participating, except that—

4 (A) in en banc sittings of any United  
 5 States circuit court of appeals, the presiding  
 6 judge shall be the chief judge of the circuit  
 7 whenever the chief judge participates; and

8 (B) in en banc sittings of the Supreme  
 9 Court of the United States, the presiding judge  
 10 shall be the Chief Justice whenever the Chief  
 11 Justice participates.

12 (2) APPELLATE COURT OF THE UNITED  
 13 STATES.—The term “appellate court of the United  
 14 States” means any United States circuit court of ap-  
 15 peals and the Supreme Court of the United States.

16 (b) AUTHORITY OF PRESIDING JUDGE TO ALLOW  
 17 MEDIA COVERAGE OF COURT PROCEEDINGS.—

18 (1) AUTHORITY OF APPELLATE COURTS.—

19 (A) IN GENERAL.—Except as provided  
 20 under subparagraph (B), the presiding judge of  
 21 an appellate court of the United States may, at  
 22 the discretion of that judge, permit the  
 23 photographing, electronic recording, broad-  
 24 casting, or televising to the public of any court  
 25 proceeding over which that judge presides.

1 (B) EXCEPTION.—The presiding judge  
2 shall not permit any action under subparagraph  
3 (A), if—

4 (i) in the case of a proceeding involv-  
5 ing only the presiding judge, that judge de-  
6 termines the action would constitute a vio-  
7 lation of the due process rights of any  
8 party; or

9 (ii) in the case of a proceeding involv-  
10 ing the participation of more than 1 judge,  
11 a majority of the judges participating de-  
12 termine that the action would constitute a  
13 violation of the due process rights of any  
14 party.

15 (2) AUTHORITY OF DISTRICT COURTS.—

16 (A) IN GENERAL.—

17 (i) AUTHORITY.—Notwithstanding  
18 any other provision of law, except as pro-  
19 vided under clause (iii), the presiding judge  
20 of a district court of the United States  
21 may, at the discretion of that judge, per-  
22 mit the photographing, electronic record-  
23 ing, broadcasting, or televising to the pub-  
24 lic of any court proceeding over which that  
25 judge presides.

1 (ii) OBSCURING OF WITNESSES.—Ex-  
2 cept as provided under clause (iii)—

3 (I) upon the request of any wit-  
4 ness (other than a party) in a trial  
5 proceeding, the court shall order the  
6 face and voice of the witness to be  
7 disguised or otherwise obscured in  
8 such manner as to render the witness  
9 unrecognizable to the broadcast audi-  
10 ence of the trial proceeding; and

11 (II) the presiding judge in a trial  
12 proceeding shall inform each witness  
13 who is not a party that the witness  
14 has the right to request the image and  
15 voice of that witness to be obscured  
16 during the witness' testimony.

17 (iii) EXCEPTION.—The presiding  
18 judge shall not permit any action under  
19 this subparagraph—

20 (I) if that judge determines the  
21 action would constitute a violation of  
22 the due process rights of any party;  
23 and

24 (II) until the Judicial Conference  
25 of the United States promulgates

1                    mandatory guidelines under para-  
2                    graph (5).

3                    (B) NO MEDIA COVERAGE OF JURORS.—

4                    The presiding judge shall not permit the  
5                    photographing, electronic recording, broad-  
6                    casting, or televising of any juror in a trial pro-  
7                    ceeding, or of the jury selection process.

8                    (C) DISCRETION OF THE JUDGE.—The  
9                    presiding judge shall have the discretion to ob-  
10                    scure the face and voice of an individual, if  
11                    good cause is shown that the photographing,  
12                    electronic recording, broadcasting, or televising  
13                    of the individual would threaten—

- 14                    (i) the safety of the individual;  
15                    (ii) the security of the court;  
16                    (iii) the integrity of future or ongoing  
17                    law enforcement operations; or  
18                    (iv) the interest of justice.

19                    (D) SUNSET OF DISTRICT COURT AUTHOR-  
20                    ITY.—The authority under this paragraph shall  
21                    terminate 3 years after the date of the enact-  
22                    ment of this Act.

23                    (3) INTERLOCUTORY APPEALS BARRED.—The  
24                    decision of the presiding judge under this subsection  
25                    of whether or not to permit, deny, or terminate the

1       photographing, electronic recording, broadcasting, or  
2       televising of a court proceeding may not be chal-  
3       lenged through an interlocutory appeal.

4               (4) ADVISORY GUIDELINES.—The Judicial Con-  
5       ference of the United States may promulgate advi-  
6       sory guidelines to which a presiding judge, at the  
7       discretion of that judge, may refer in making deci-  
8       sions with respect to the management and adminis-  
9       tration of photographing, recording, broadcasting, or  
10      televising described under paragraphs (1) and (2).

11              (5) MANDATORY GUIDELINES.—Not later than  
12      6 months after the date of enactment of this Act,  
13      the Judicial Conference of the United States shall  
14      promulgate mandatory guidelines which a presiding  
15      judge is required to follow for obscuring of certain  
16      vulnerable witnesses, including crime victims, minor  
17      victims, families of victims, cooperating witnesses,  
18      undercover law enforcement officers or agents, wit-  
19      nesses subject to section 3521 of title 18, United  
20      States Code, relating to witness relocation and pro-  
21      tection, or minors under the age of 18 years. The  
22      guidelines shall include procedures for determining,  
23      at the earliest practicable time in any investigation  
24      or case, which witnesses should be considered vulner-  
25      able under this section.

1           (6) PROCEDURES.—In the interests of justice  
2           and fairness, the presiding judge of the court in  
3           which media use is desired has discretion to promul-  
4           gate rules and disciplinary measures for the court-  
5           room use of any form of media or media equipment  
6           and the acquisition or distribution of any of the im-  
7           ages or sounds obtained in the courtroom. The pre-  
8           siding judge shall also have discretion to require  
9           written acknowledgment of the rules by anyone indi-  
10          vidually or on behalf of any entity before being al-  
11          lowed to acquire any images or sounds from the  
12          courtroom.

13           (7) NO BROADCAST OF CONFERENCES BE-  
14          TWEEN ATTORNEYS AND CLIENTS.—There shall be  
15          no audio pickup or broadcast of conferences which  
16          occur in a court proceeding between attorneys and  
17          their clients, between co-counsel of a client, between  
18          adverse counsel, or between counsel and the pre-  
19          siding judge, if the conferences are not part of the  
20          official record of the proceedings.

21           (8) EXPENSES.—A court may require that any  
22          accommodations to effectuate this Act be made with-  
23          out public expense.

24           (9) INHERENT AUTHORITY.—Nothing in this  
25          Act shall limit the inherent authority of a court to

- 1 protect witnesses or clear the courtroom to preserve
- 2 the decorum and integrity of the legal process or
- 3 protect the safety of an individual.

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