

Calendar No. 618

110TH CONGRESS
2D SESSION**S. 352**

To provide for media coverage of Federal court proceedings.

IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2007

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

MARCH 13, 2008

Reported by Mr. LEAHY, with amendments

[Omit the part struck through and insert the part printed in *italic*]**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 ~~2007~~ 2008”

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

7 (a) DEFINITIONS.—In this section:

1 (1) PRESIDING JUDGE.—The term “presiding
2 judge” means the judge presiding over the court
3 proceeding concerned. In proceedings in which more
4 than 1 judge participates, the presiding judge shall
5 be the senior active judge so participating or, in the
6 case of a circuit court of appeals, the senior active
7 circuit judge so participating, except that—

8 (A) in en banc sittings of any United
9 States circuit court of appeals, the presiding
10 judge shall be the chief judge of the circuit
11 whenever the chief judge participates; and

12 (B) in en banc sittings of the Supreme
13 Court of the United States, the presiding judge
14 shall be the Chief Justice whenever the Chief
15 Justice participates.

16 (2) APPELLATE COURT OF THE UNITED
17 STATES.—The term “appellate court of the United
18 States” means any United States circuit court of ap-
19 peals and the Supreme Court of the United States.

20 (b) AUTHORITY OF PRESIDING JUDGE TO ALLOW
21 MEDIA COVERAGE OF COURT PROCEEDINGS.—

22 (1) AUTHORITY OF APPELLATE COURTS.—

23 (A) IN GENERAL.—Except as provided
24 under subparagraph (B), the presiding judge of
25 an appellate court of the United States may, at

the discretion of that judge, permit the photographing, electronic recording, broadcasting, or televising to the public of any court proceeding over which that judge presides.

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

(i) in the case of a proceeding involving only the presiding judge, that judge determines the action would constitute a violation of the due process rights of any party; or

(ii) in the case of a proceeding involving the participation of more than 1 judge, a majority of the judges participating determine that the action would constitute a violation of the due process rights of any party.

(2) AUTHORITY OF DISTRICT COURTS.—

(A) IN GENERAL.—

(i) AUTHORITY.—Notwithstanding any other provision of law, except as provided under clause (iii), the presiding judge of a district court of the United States may, at the discretion of that judge, per-

mit the photographing, electronic recording, broadcasting, or televising to the public of any court proceeding over which that judge presides.

(ii) OBSCURING OF WITNESSES.—Except as provided under clause (iii)—

(I) upon the request of any witness (other than a party) in a trial proceeding, the court shall order the face and voice of the witness to be disguised or otherwise obscured in such manner as to render the witness unrecognizable to the broadcast audience of the trial proceeding; and

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

(iii) EXCEPTION.—The presiding judge shall not permit any action under this subparagraph, if that judge determines the action would constitute a violation of the due process rights of any party.

1 (iii) *EXCEPTION.—The presiding judge*
 2 *shall not permit any action under this sub-*
 3 *paragraph—*

4 (I) *if that judge determines the*
 5 *action would constitute a violation of*
 6 *the due process rights of any party;*
 7 *and*

8 (II) *until the Judicial Conference*
 9 *of the United States promulgates man-*
 10 *datory guidelines under paragraph (5).*

11 ~~(B) NO TELEVISIONING OF JURORS.—The~~
 12 *presiding judge shall not permit the televising*
 13 *of any juror in a trial proceeding.*

14 (B) *NO MEDIA COVERAGE OF JURORS.—The*
 15 *presiding judge shall not permit the*
 16 *photographing, electronic recording, broad-*
 17 *casting, or televising of any juror in a trial pro-*
 18 *ceeding, or of the jury selection process.*

19 (C) *DISCRETION OF THE JUDGE.—The pre-*
 20 *siding judge shall have the discretion to obscure*
 21 *the face and voice of an individual, if good cause*
 22 *is shown that the photographing, electronic re-*
 23 *cording, broadcasting, or televising of the indi-*
 24 *vidual would threaten—*

25 (i) *the safety of the individual;*

(ii) *the security of the court;*

(iii) *the integrity of future or ongoing*

law enforcement operations; or

(iv) *the interest of justice.*

(D) *SUNSET OF DISTRICT COURT AUTHOR-*

ITY.—The authority under this paragraph shall

terminate 3 years after the date of the enactment

of this Act.

(3) *INTERLOCUTORY APPEALS BARRED.—The de-*

cision of the presiding judge under this subsection of

whether or not to permit, deny, or terminate the

photographing, electronic recording, broadcasting, or

televising of a court proceeding may not be challenged

through an interlocutory appeal.

~~(3)~~(4) *ADVISORY GUIDELINES.—The Judicial*

Conference of the United States may promulgate ad-

visory guidelines to which a presiding judge, at the

discretion of that judge, may refer in making deci-

sions with respect to the management and adminis-

tration of photographing, recording, broadcasting, or

televising described under paragraphs (1) and (2).

~~(4)~~ *SUNSET OF DISTRICT COURT AUTHORITY.—*

The authority under paragraph (2) shall terminate

3 years after the date of the enactment of this Act.

1 (5) *MANDATORY GUIDELINES.*—Not later than 6
2 months after the date of enactment of this Act, the Ju-
3 dicial Conference of the United States shall promul-
4 gate mandatory guidelines which a presiding judge is
5 required to follow for obscuring of certain vulnerable
6 witnesses, including crime victims, minor victims,
7 families of victims, cooperating witnesses, undercover
8 law enforcement officers or agents, witnesses subject to
9 section 3521 of title 18, United States Code, relating
10 to witness relocation and protection, or minors under
11 the age of 18 years. The guidelines shall include pro-
12 cedures for determining, at the earliest practicable
13 time in any investigation or case, which witnesses
14 should be considered vulnerable under this section.

15 (6) *PROCEDURES.*—In the interests of justice
16 and fairness, the presiding judge of the court in which
17 media use is desired has discretion to promulgate
18 rules and disciplinary measures for the courtroom use
19 of any form of media or media equipment and the ac-
20 quisition or distribution of any of the images or
21 sounds obtained in the courtroom. The presiding
22 judge shall also have discretion to require written ac-
23 knowledgment of the rules by anyone individually or
24 on behalf of any entity before being allowed to acquire
25 any images or sounds from the courtroom.

1 (7) *NO BROADCAST OF CONFERENCES BETWEEN*
2 *ATTORNEYS AND CLIENTS.*—*There shall be no audio*
3 *pickup or broadcast of conferences which occur in a*
4 *court proceeding between attorneys and their clients,*
5 *between co-counsel of a client, between adverse coun-*
6 *sel, or between counsel and the presiding judge, if the*
7 *conferences are not part of the official record of the*
8 *proceedings.*

9 (8) *EXPENSES.*—*A court may require that any*
10 *accommodations to effectuate this Act be made with-*
11 *out public expense.*

12 (9) *INHERENT AUTHORITY.*—*Nothing in this Act*
13 *shall limit the inherent authority of a court to protect*
14 *witnesses or clear the courtroom to preserve the deco-*
15 *rum and integrity of the legal process or protect the*
16 *safety of an individual.*

Calendar No. 618

110TH CONGRESS
2^D Session

S. 352

A BILL

To provide for media coverage of Federal court
proceedings.

MARCH 13, 2008

Reported with amendments