

United States Marshals Service



POLICY NOTICE

NUMBER: 94-006B
File number 3220

DATE: September 20, 1997

SUBJECT: MEDIA POLICY


This Policy Notice updates the policy of the United States Marshals Service concerning the release of USMS information to the media by employees of the Service, and provides guidelines for media seating at court proceedings. Also provided are guidelines concerning the release of booking photographs (mugshots) based on a decision by the United States Court of Appeals in Detroit Free Press, Inc. v. Department of Justice, 73 F.3d 93 (6th Cir. 1996).

EFFECTIVE DATE: Immediately.

PROPONENT: Executive Services Division, Public Affairs Team
Point of Contact: (202) 307-9065
Office of General Counsel concerns pertaining to Section XII, release of photographs of Federal Prisoners (mugshots).

DISTRIBUTION: Districts and Headquarters Offices and Divisions

POSTING INSTRUCTION: This Policy Notice supersedes and replaces Policy Notice 94-006A, "Media Policy" (3/6/96).¹



Director

Date

10/3/97

¹ This policy has been negotiated and approved by the International Council of U.S. Marshals Service Locals American Federation of Government Employees.

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I. BACKGROUND: The Executive Services Division, Public Affairs Team serves as the focal point for media queries about the U.S. Marshals Service (USMS) and its operations. This centralization ensures a timely and consistent response, facilitates the appropriate coordination with the Department of Justice (DOJ), and ensures conformity with USMS, DOJ, and Administration policies. The Public Affairs Team is responsible for review and approval of all USMS publications and articles written by USMS employees about the Service and intended for release to external publications, and for liaison with writers, and all print and electronic media. In addition, the Executive Services Division provides media-liaison support for district offices for high profile trials or other events which involve significant media coverage.

II. DEFINITION: "Media" refers to both **print media** (newspapers, wire services, magazines, books) and **electronic media** (radio and television news and entertainment programs, motion pictures, video productions, and on-line computer services).

POLICY: The policies of the USMS concerning media issues are:

III. MEDIA CONTACTS WITH HEADQUARTERS PERSONNEL. All contacts (to include telephonic and personal) made by the media with Headquarters employees shall immediately be referred to the Executive Services Division, Public Affairs Team. This should be done by directing the media representative to call 202-307-9065 and asking to speak to a public affairs specialist. Employees should not respond to any media questions prior to such referral. This procedure helps avoid misstatements to the press. Executive Services Division will work with all concerned USMS employees to ensure a coordinated and timely response to media inquiries.

IV. MEDIA CONTACTS WITH DISTRICT PERSONNEL.

A. U.S. Marshals and their Chief Deputies are authorized to respond to media and public inquiries relating to their district within the guidelines set forth herein. They are encouraged to release to the media, information about significant local accomplishments and activities. If there are questions related to a particular media issue or with their media affairs program in general, they should contact a public affairs specialist in Executive Services Division.

B. U.S. Marshals should ensure that their staffs are aware that **ONLY** the U.S. Marshal, the Chief Deputy, or an individual specifically designated by the Marshal, are the authorized spokespersons for the district, and that other staff members are required to direct any news media inquiries to them. The U.S. Marshal or Chief Deputy may designate one of their employees to act as the public affairs officer for the district with the authority to provide information to the news media, prepare news releases, arrange for district press conferences, and so forth. If such a person is designated in the district, he or she must be fully familiar with this media policy and should also provide his or her name and phone number/e-mail address to Public Affairs team. Specific advice on interacting with media representatives and *FACT Sheets* on USMS programs are available from the Executive Services Division.

V. **REPORTING OF MEDIA EVENTS.** All incidents occurring in a district or in a division which have generated, or can reasonably be expected to generate, regional or national interest in the media are to be reported to the Chief, Public Affairs Team as soon as possible. This notification is in addition to the reporting of significant operational incidents to the Assistant Director, Investigative Services Division. Whenever possible, contact should be made in advance of such matters, so that we may inform, and coordinate with, the Department of Justice or United States Attorneys offices, if necessary.

VI. ASSISTING THE NEWS MEDIA.

A. In order to promote the aims of law enforcement, including the deterrence of criminal conduct and the enhancement of public confidence, USMS personnel, with the prior approval of the United States Attorney, **and except as indicated in paragraph C below**, may assist the news media in

photographing, taping, recording, or televising a law enforcement activity. The United States Attorney will consider whether such assistance would unreasonably endanger any individual, would prejudice the rights of any party or other person, or is otherwise proscribed by law.

B. Other than by reason of a Court order, USMS personnel shall not prevent the lawful efforts of the news media to photograph, tape, record, or televise a crime scene from outside the sealed perimeter.

C. It is the policy of the Department of Justice that media "ride-alongs" not be conducted. Therefore, in cases in which a search warrant or arrest warrant is to be executed, no advance information will be provided to the news media about actions to be taken by law enforcement personnel, nor shall media representatives be solicited or invited to be present. This prohibition also applies to operations in preparation for the execution of warrants and to any multi-agency action in which USMS personnel participate. In this context, "ride-alongs" do not encompass the air or bus movement of prisoners. Exceptions to this policy may be granted in extraordinary circumstances by the Attorney General or Deputy Attorney General. Requests for such an exception shall be sent to the Chief, Public Affairs Team.

D. If news media representatives are present during an arrest or search warrant situation, USMS personnel may request them to withdraw voluntarily if their presence puts the operation or the safety of individuals in jeopardy. If the news media representative declines to withdraw, USMS personnel should consider canceling the action, or their participation in it, if that is a practical alternative.

E. When news media representatives are photographing or videotaping a law enforcement activity, caution should be used to not reveal the faces of any individuals whose effectiveness or safety may be compromised. USMS employees should advise the news media of their concerns in this regard and request that they avoid such filming. Additionally, USMS personnel who do not wish to appear in photographs or on video tape which will be shown publicly are not required to do so. In any filming conducted by, or sponsored by, the USMS, faces of subjects and third parties (e.g., family members) must be blurred to prevent recognition before the tape is released to the media or shown publicly. See also Paragraph XII, A & B, "Photography of Federal Prisoners."

VII. RELEASE OF INFORMATION AND RESTRICTIONS. The Department of Justice has established specific guidelines, consistent with the provisions of 28 CFR 50.2, governing the release of information relating to criminal and civil cases. This policy is based on the need to balance interests involving the right to a fair trial, the right of the public to know, and the Government's ability to administer justice.

A. GENERAL. No USMS employee shall furnish any statement or information that he or she knows, or reasonably should know, will have a likelihood of prejudicing a legal proceeding.

B. CONFIDENTIALITY. Careful weight must be given in each case for protecting the rights of victims and litigants, as well as the protection of the life and safety of other parties and witnesses. To this end, the Courts and Congress have recognized the need for limited confidentiality in:

1. On-going operations and investigations;
2. Grand jury and tax matters;
3. Certain investigative techniques; and,
4. Other matters protected by the law.

If a USMS employee has any doubt about whether or not a situation is covered by the need for limited confidentiality, the individual should call Public Affairs Team and request guidance on the appropriate action.

C. DISCLOSABLE INFORMATION. USMS personnel, subject to specific limitations imposed by law, or by court rule or order, and consistent with the provisions of this section, may make public the following information in any criminal case in which charges have been brought:

1. The defendant's name, age, hometown, occupation or name of employer, marital status, and similar background information;
2. The substance of the charge, limited to that contained in the complaint, indictment, information, or other public documents;
3. The identity of the investigating and/or arresting agency and the length and scope of an investigation; and

4. The circumstances immediately surrounding an arrest, including the time and place of arrest, whether resistance and pursuit occurred, possession of or use of weapons, and a description of physical items seized at the time of arrest. Any such disclosures shall not include subjective observations.

In the interest of furthering law enforcement goals, the public policy significance of a case may be discussed by the appropriate representative of the United States Attorney.

VIII. JUVENILE RECORDS. Generally speaking, access to juvenile records is severely restricted. Juvenile records or information contained therein (to include the name of the juvenile and details related to the arrest) are **not** releasable to the media. However, under certain circumstances as described below, information relevant to the juvenile and his arrest **may** be releasable to requesting media (individuals or organizations).

A. Whenever a juvenile is **charged** and tried as a **juvenile**, there shall be no disclosure of records or information to the media or unauthorized persons. For those who may be considered "authorized" please refer to Chapter 18, *U.S. Marshals Law Handbook*, Section 5038 ("Use of juvenile records"), subsection (a).

B. When a juvenile is **charged as an adult**, and such charge has been approved by the proper judicial official (judge, magistrate) for the case, information about the juvenile may be released to the media as it would be for any adult defendant, namely, in accordance with the previous section (Section VII, C, "Disclosable Information").

C. Questions directed to USMS District offices from family, friends, or relatives of a juvenile about whether that individual is held in USMS custody should be directed to the pre-trial services officer (Administrative Office of the U.S. Courts) assigned to the case, **unless** the juvenile has been charged as an adult in accordance with the preceding paragraph.

D. Any release of information about juvenile defendants should be carefully coordinated with the United States Attorney or appropriate representative, to ensure that the guidelines for release of information about a juvenile have been met. Consult Chapter 18, *U.S. Marshals Law Handbook*, Section 5038 for complete guidelines on the use of juvenile records.

IX. CIVIL CASES. In civil cases, similar identification material regarding defendants, the concerned government agency or program, a short statement of the claim, and the government's interest, may be released.

X. DISCLOSURE OF INFORMATION CONCERNING ONGOING INVESTIGATIONS. Except as provided below, USMS personnel shall not respond to questions about the existence of an ongoing investigation or comment on its nature or progress, including such matters as the issuance or serving of a subpoena, prior to the public filing of the document.

EXCEPTION: In matters that have already received substantial publicity, or about which the community needs to be reassured that the appropriate law enforcement agency is investigating the incident, or where release of information is necessary to protect the public interest, safety, or welfare, comments about, or confirmation of, an ongoing investigation may need to be made. In these unusual circumstances, the United States Attorney handling the matter must be consulted and must approve dissemination of any information to the media.

A. DISCLOSURE OF INFORMATION CONCERNING A PERSON'S PRIOR CRIMINAL RECORD. USMS personnel shall not disseminate to the media any information concerning a defendant's or subject's prior criminal record either during an investigation or pending litigation. **However**, this policy is not intended to restrict the release of information concerning a defendant who is a fugitive from justice. Therefore, in certain situations, such as with fugitives or extradition cases, USMS personnel may confirm the identity of defendants or subjects, the offense(s) for which they are wanted, and the nature of past convictions.

1. Where a prior conviction is an element of the current charge, such as in the case of a felon in possession of a firearm, USMS personnel may confirm the identity of the defendant and the general nature of the prior conviction where such information is part of the public record in the case at issue. There are other circumstances where it may be permissible to release information about prior convictions, such as when discussing career criminals. The United States Attorney or representative should be consulted in such cases.

2. The release of information concerning an investigation, arrest, release, prosecution, adjudication of charges, or correctional status is **not** appropriate if it is not reasonably contemporaneous with the event to which the information relates. For example, if a convicted felon has served his sentence and resumed his place in society, it would not be appropriate to release information about his prior record or incarceration without a law enforcement purpose.

B. CONCERNS OF PREJUDICE. Because the release of certain types of information could tend to prejudice an adjudicative proceeding, USMS personnel shall refrain from providing the following information related to a defendant:

1. Observations about a defendant's character;
2. Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement;
3. Reference to investigative procedures, such as fingerprints, polygraph examinations, ballistic tests, forensic or laboratory services, or the refusal by the defendant to submit to such tests or examinations;
4. Statements concerning the identity, testimony, or credibility of prospective witnesses;
5. Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial;
6. Any opinion as to the defendant's guilt, or the possibility of a plea of guilty to the offense charged, or the possibility of a plea to a lesser offense.

**XI. PUBLICATIONS, NEWS RELEASES, NEWS CONFERENCES,
AND INTERVIEWS.**

A. Dissemination or publication of information concerning USMS activities which may receive regional or national attention requires the approval of the Executive Services Division, Public Affairs.

B. USMS personnel will not disclose information about:

1. Any operation, investigation, or security activity which would jeopardize its success or affect the safety of those involved;

2. Sensitive sources of information leading to arrest - e.g., confidential informants, undercover officers, intelligence sources, electronic surveillance, etc.;
3. Third parties - any individual who is not the subject of the activity;
4. Prisoners (see below).

XII. PHOTOGRAPHS OF FEDERAL PRISONERS.

A. Procedures related to the publicity and photography of federal prisoners are outlined in the Volume V, United States Marshals Service Manual. As a general rule, USMS personnel should take no action to assist the media in photographing or televising a defendant or accused person being held or transported in federal custody. Post-arrest photographs of prisoners are not made available to the news media unless a law enforcement function is served thereby.

B. As with other criminal history information, there is a time element to be considered in the release of such information (Paragraph X (all) above). Booking photographs may be released if the subject is a fugitive and the release of the photograph is for the purpose of locating that individual; otherwise, "mugshots" shall not be released. Prisoner booking proceedings shall be considered to be confidential in nature and media representatives should not be advised in advance of their specific details or allowed to be present during the proceedings.

**SEE THE ATTACHED SUPPLEMENT
"SPECIAL GUIDELINES"
(6th Circuit United States Court of Appeals)"**

XIII. INTERVIEWS OF USMS DETAINEES. The USMS takes a neutral posture on the issue of media interviews of prisoners in USMS custody.

A. If the United States Attorney, the judge in the case, the prisoner, the defense attorney, and the management of the facility where the prisoner is located approve the request for an interview, USMS personnel should assist in facilitating the interview if security is not compromised and it is not unduly burdensome and costly to the USMS to do so.

B. However, it is the reporter's responsibility to obtain the approval of the parties mentioned and to ensure that the parties indicate their approval to the U.S. Marshal. Approvals may be in writing if so requested by the U.S. Marshal.

XIV. PRISONER MOVEMENT. Information about extraditions or the movement of prisoners in USMS custody will not be given to the media in advance. It is permissible to confirm that someone is a prisoner in the custody of the USMS, and also where they are confined if that information does not jeopardize security.

XV. MEDIA SEATING GUIDELINES FOR COURT PROCEEDINGS.

A. GENERAL. The increasing number of federal court proceedings that attract significant media attention present a number of concerns for the USMS. Frequently, the courtroom will not accommodate all the news media representatives seeking access. Consistency and fairness in handling the media representatives in these situations is critical. The following guidelines should be adhered to.

B. EARLY CONSULTATION. As soon as it is apparent that a proceeding will attract significant news media coverage, the Clerk of the Court should be informed. Further, the United States Attorney should be alerted to the fact that seating will be limited and ascertain the number of government officials who will need to attend. The Executive Services Division, Public Affairs Team should be notified as soon as possible regarding details concerning the handling of the press.

C. DISTRIBUTION OF AVAILABLE SEATING. The USMS may assist the Court by participating in planning sessions to allocate seats, when asked to do so. (USMS Manual, Volume X, Judicial and Court Security, Section 10.1-7b). Frequently, the Clerk of the Court is responsible for recommending a seating plan. The USMS should provide guidance regarding any security issues raised by the Court's seating plan and assist in its administration.

D. COURT SEATING POLICY. It is the policy of the USMS that no seats be reserved or otherwise set aside without prior approval of the trial judge. Multiple news media organizations requiring seating should be handled on a "**First Come, First Served**" basis, to the extent they can be reasonably accommodated. This "**First Come, First Served**" policy must be **STRICTLY** enforced. Press pools should be considered if the amount of available seating is significantly less than the number of media representatives seeking to attend. In such cases, the establishment of a press room with an audio feed from the courtroom may be considered if the trial judge approves. Any costs involved in setting up such a room will be borne by the media organizations covering the trial.

E. ASSISTANCE FROM THE EXECUTIVE SERVICES DIVISION. District offices are encouraged to contact the Executive Services Division when preparing for a major trial that will generate substantial media coverage at the regional, national, or international level. If an unusual situation threatens to overwhelm a district's ability to handle media requests, the Executive Services Division can provide guidance and in some instances temporarily detail a public affairs officer to the district.

XVI. NEWSPAPER CLIPPINGS AND TV REPORTS. District offices should send the Executive Services Division, Public Affairs Team, clippings of newspaper coverage of any significant activities within their districts (and which specifically mention the U.S. Marshal's office, Deputy Marshals, or operations). The clippings should initially be faxed to Public Affairs Team (Fax: 202-307-8729) on the day they appear in the newspaper, with the originals or copies of same sent by mail to Public Affairs Team. If there is significant local television coverage of a district office, its employees, or its activities, an effort should be made to videotape the television program and forward a copy of it to Public Affairs Team as soon as practical.

XVII. TV AND MOTION PICTURE PRODUCTION COMPANIES. The Chief, Public Affairs Team coordinates all USMS communications with television and motion picture companies, and commercial publishers and authors. All requests from producers and authors, including television network daily news and magazine shows (e.g. "60 Minutes"), for story ideas or other kinds of assistance shall be referred to Executive Services Division, Public Affairs Team.

XVIII. PUBLICATIONS AND SPEECHES. Articles or papers written by USMS employees that pertain directly to the primary mission or activities of the Marshals Service, and are written for publications circulated outside the Department of Justice, must be cleared in advance by Executive Services Division, Public Affairs Team.

XIX. STANDARDS OF CONDUCT FOR EXECUTIVE BRANCH EMPLOYEES. The Standards of Conduct for Executive Branch Employees prohibit an employee from being compensated for speaking or writing on subjects that relate to the employee's official duties (5 C.F.R. § 2635.807(a)). Accordingly, Marshals Service personnel cannot be compensated for writing an article or making a speech when the topic of that article or speech is a Marshals Service policy, the mission of the Service, or otherwise related to the employee's duties.

XVIII. OFFICIALS OF THE UNION. This policy does not infringe on the rights of Union officials to contact the media regarding labor relations disputes or issues with the USMS as provided by Article 9 of the 1996 Master Agreement.

Supplement

**SPECIAL GUIDELINES
(6th Circuit United States Court of Appeals)**

The United States Court of Appeals for the 6th Circuit ² held that disclosure of booking photographs (mugshots) of federal defendants in certain limited instances was not an invasion of the defendant's privacy rights.

This decision does not affect the policy of withholding mugshots for U.S. Marshals' Offices located outside of the 6th Circuit, except as stated in paragraph D below. The policy set forth in paragraphs A and B, Section XII above, apply to those offices.

- A. This decision applies only to the **6th Circuit** and requires disclosure of mugshots in response to Freedom of Information Act requests when the photographs are maintained by a U.S. Marshal's Office within the **6th Circuit (Kentucky, Michigan, Ohio and Tennessee)** (regardless of whether the requester resides or has a principal place of business within the **6th Circuit**) Accordingly, appropriate USMS personnel within the **6th Circuit** may disclose mugshots maintained by their offices to any requester regardless of residence, but only when all of the following conditions have been met:
- (i) The defendant has been publicly named;
 - (ii) There is an indictment of the defendant;
 - (iii) The defendant has made a court appearance in connection with the indictment; and
 - (iv) There is an on-going trial or appeal related to the indictment.
- B. Before any disclosure of a defendant's booking photograph, the U.S. Marshal's Office must have a written request **in hand** which contains sufficient information to properly identify the defendant.

² *Detroit Free Press, Inc. v. Department of Justice*, 73 F.3d 93 (6th Cir. 1996)

**SPECIAL GUIDELINES (6th Circuit United States
Court of Appeals) (Continued)**

The U.S. Marshal's Office may make these disclosures without review by the Office of General Counsel. However, the U.S. Marshal should alert the U.S. Attorney upon receipt of the request and upon disclosure. A copy of the request and disclosure correspondence is to be forwarded to the Office of General Counsel for record keeping and reporting purposes. **Release only the official mugshot related to the current case.** Mugshots taken in connection with previous cases or other photographs which may be in the defendant's USMS file shall **not** be released. The U.S. Marshal's Office which receives the request shall verify case status/completion of all appeal proceedings and other actions mentioned above by contacting the Clerk of the Court.

- C. Mugshots shall **not** be released:
- (i) Prior to an indictment being filed;
 - (ii) When a case is closed, upon completion of all proceedings (including appeals);
 - (iii) Upon acquittal of defendant; or
 - (iv) Upon dismissal of charges.

A request for a mugshot which falls within any of these categories shall be forwarded to the Office of General Counsel for response, with case status information.

- D. A written request received by a U.S. Marshal's Office from a resident or corporate resident of the 6th Circuit for a mugshot **not actually maintained by a U.S. Marshal's Office in the 6th Circuit** is to be forwarded to the Office of General Counsel immediately for action and response to the requester. Such requests will be honored under the 6th Circuit decision by the Office of General Counsel but only upon verification of residency.
- E. The U.S. Marshal's Office shall release to the requester the best copy of the mugshot available. The copy may be in any format satisfactory to the requestor.

**SPECIAL GUIDELINES (6th Circuit United States
Court of Appeals) (Continued)**

F. FEES. Fees to be assessed for disclosing mugshots are:

(i) For costs of duplicating, other than by photocopying, the actual costs incurred if they exceed \$8.00 (the full amount, not just the excess over \$8.00 should be charged). This includes constructive costs for computer scanning and imaging.

(ii) For photocopying, we may charge only for photocopying more than 180 pages. In that case, we may charge at a rate of 10 cents per page for all pages, not just for the excess over 180 pages.

(iii) Search fees may generally be charged for search time in excess of 2 hours. However, no search fees may be charged to educational institutions, noncommercial scientific institutions, or the news media. Review fees may also be charged but only to commercial users, not including the news media. If search or review fees may be applicable, please contact the Freedom of Information/Public Affairs Officer, Office of General Counsel for details on the charges.

(iv) For purposes of F(i) - F(iii) above, the U.S. Marshal should aggregate all requests received from the same requester for mugshots during any 90-day period.

UNITED STATES MARSHALS SERVICE POLICY NOTICE

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95-008	06-30-95	Applicant Medical Examinations	HQ. Districts
95-009A (Supersedes 95-009)	11-21-95	External Training	HQ. Districts
95-010	07-21-95	Undercover Operations Guidelines	HQ. Districts
95-011	07-21-95	Criminal Investigator (GS-12) Certification Program	HQ. Districts
95-012	07-21-95	Three-Year Deputy Development Program	HQ. Districts
95-013	07-21-95	Strip Searching of Prisoners	HQ. Districts
95-014	07-21-95	United States Marshals Service - Duty Uniform	HQ. Districts
95-015	08-15-95	Hearing Standards and Testing Protocol	HQ. Districts
95-016	10-25-95	Ratification of Unauthorized Commitments	HQ. Districts
95-017	10-26-95	Uniform Deadly Force Policy for the Department of Justice	HQ. Districts
95-018	11-30-95	Code of Professional Responsibility	HQ. Districts
95-019	12-06-95	Updated Merit Promotion Program for 1811 Employees	HQ. Districts
96-001B (Supersedes 96-001A)	08-31-96	Weapons Policy	HQ. Districts
96-001B Addendum filing instructions	12-05-96	Ammunition Supply Letter	HQ. Districts
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96-004	09-15-96	Fee Structure for Service of Process	HQ. Districts
96-005	09-16-96	Drug Testing Applicants	HQ. Districts
96-006	09-16-96	Revised Medical Examination Forms	HQ. Districts
96-007	11-01-96	Special Assignment Process	HQ. Districts
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97-003	03/10/97	Standard Filing System	HQ. Districts
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97-005	04/11/97	Sexual Harassment Policy	HQ. Districts
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97-007	06/30/97	Disclosure to Prosecutors of Potential Impeachment Information Concerning Operational Personnel	HQ. Districts
97-008	08/13/97	Security Alert Plan "LIMITED OFFICIAL USE"	HQ. Districts
97-009	09/05/97	USMS Training Academy Assignments	HQ. Districts

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94-003	02-03-94	Expandable Batons	HQ, Districts
94-004	02-24-94	Medical Examinations and Hepatitis Immunizations	HQ, Districts
94-006B (Supersedes 94-006A)	09-20-97	Media Policy	HQ, Districts
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94-011	05-10-94	Transfer of Office to Incoming U.S. Marshal	HQ, Districts
94-012 (Superseded by 94-006A)	05-17-94	Media Seating Guidelines for Court Proceedings	HQ, Districts
94-013	05-20-94	Write-Off of Uncollected Charges for Processing	HQ, Districts
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94-023	10-07-94	Official Government Vehicle Policy	HQ, Districts
94-024	10-07-94	Leaves of Absence for Presidential Appointees Subject to Senate Confirmation	HQ, Districts
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95-003	04-20-95	Fingerprinting Juveniles	HQ, Districts
95-004	04-20-95	Reimbursement of Health Club Fees for Employees on Official Travel	HQ, Districts
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