

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

W. EARL BRITT  
JUDGE

MEMORANDUM

DATE: October 25, 1994

TO: U.S. ATTORNEY  
CLERK'S OFFICE  
U.S. MARSHAL  
FEDERAL PUBLIC DEFENDER

RE: Rule 35 Motions for Downward Departure Based  
On Substantial Assistance

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This memorandum is intended to clarify my practice regarding the presence of the defendant at Rule 35 hearings for Downward Departure based on Substantial Assistance. Unless otherwise directed by me, the defendant SHALL BE PRESENT at all such hearings. If the United States Attorney feels that the motion can be effectively handled without the presence of the defendant, the MOTION itself shall set forth:

1. Whether a hearing is necessary or desired for disposition of the motion, and the reasons therefor.
2. The reason why defendant's presence is not necessary.
3. The facts on which the motion is based.
4. The recommendation, if any, of the United States Attorney with regard to the extent of departure.
5. Whether a discussion has been held with counsel for defendant regarding the necessity of defendant being present at any hearing and, if so, the position of counsel for defendant.

/s/  
W. EARL BRITT  
SENIOR UNITED STATES DISTRICT JUDGE