

January 4, 1991

Mr. Justice:

Re: NO. 89-7376; Wilson v. Seiter:

To Be Argued Monday, January 7, 1991

We have received a reply brief in this case. This brief responds in detail to resps' arguments, but adds nothing new to the consideration of the question presented.

Lynn

May 24, 1991

Mr. Justice:

Re: No. 89-7376; Wilson v. Seiter:

Justice Scalia has circulated a draft opinion in this case. AS concludes that a pltf challenging conditions of confinement must allege a culpable state of mind on the part of prison officials, and determines that the requisite mental state is deliberate indifference.

You voted at Conference, along with BRW, TM, and JPS, for a result that would not require an allegation of deliberate indifference. This is the position advanced by the SG as well. Although you indicated at Conference that you might go along with a deliberate indifference requirement, I am not entirely pleased with AS' opinion (particularly Part IV where he discusses the application of the deliberate indifference std and the threshold for alleging that cumulative conditions constitute an 8th Amend violation). Accordingly, I recommend that you wait to see if BRW assigns the dissent, and then await the dissent, before voting in this case.

Lynn



June 9, 1991

Mr. Justice:

Re: No. 89-7376; Wilson v. Seiter:

Justice White has circulated a concurrence in this case, in which BRW contends that reason and the Ct's precedent require that a prisoner be permitted to plead an 8th Amend conditions of confinement claim w/o alleging that any particular prison official acted with "deliberate indifference." This is the position advocated by the SG, and adhered to at conference by you, BRW, TM, and JPS. TM and JPS have joined BRW's concurrence; Justice Scalia's proposed majority has garnered joiners from the Chief and SO'C; and AMK and DHS are still out. BRW's clerk informed me that BRW thinks he may have a chance at getting DHS' or AMLK's vote.

BRW's opinion is soundly written and, in my view, persuasive. I have agreed with this position since I wrote the bench memo in this case, and I am now further convinced that it is correct. You also seemed to hold the view that allegations of deliberate indifference should not be required, although you did indicate at conference that you might go along with a deliberate indifference std. I see no reason to go along, since BRW, JPS, and TM are with your original position, and it is possible that the Court will swing. Accordingly, I recommend that you join BRW's concurrence.

Lynn