

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

WESLEY C. SMITH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:07-CV-1002
	)	
GAYLORD L. FINCH, JR., et. al.,	)	
	)	
Defendants.	)	

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS OF  
DEFENDANTS, JUDGE GAYLORD L. FINCH, JR., OFFICE OF PUBLIC  
DEFENDER and DAWN BUTORAC**

Defendants, Gaylord L. Finch, Jr. ("Judge Finch"), Office of Public Defender ("OPD") and Dawn Butorac ("Butorac"), submit this Memorandum in Support of their Motion to Dismiss.

The nature of his action is difficult to discern. Construing the complaint liberally, see, e.g., *Ransom v. Danzig*, 69 F. Supp. 2d 779, 787 (E.D. Va. 1999), plaintiff is attempting to state a claim for violation of protected rights. Assuming this to be the case, defendants move to dismiss the complaint under Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

Defendants point this Court to the fairly recent case of *Bell Atlantic Corp. v. Twombly* 127 S.Ct. 1955, 1964-1965 (2007), wherein the United States Supreme Court made 12(b)(6) motions more "user friendly" for defendants. Specifically, the Court rejected the old standard (that essentially allowed a Motion to Dismiss to be granted only when it appeared certain that the plaintiff could not prove any set of facts in support of

