

**REBUTTAL TO JEFFREY BOONE'S 08/14/08 RESPONSE
FLORIDA BAR COMPLAINT, CASE # 2009-00,25 (4,A)
this rebuttal written by John Patten, complainant
August 26, 2008**

Summary of prior filed complaint: that Jeffrey Boone, attorney, falsely and knowingly (or should have known) that he was making a false allegation of criminal activity in a civil action in order to attempt to gain other strategic advantage in defense of his client, Venice City Councilman John Simmonds; that Boone did not undertake due diligence before making an accusation of criminality. For more specific detail, see the affidavit filed by John Patten in open court on June 24, 2008, previously submitted to the Bar Association as the foundation of the underlying complaint.

EXHIBITS:

C-1: Full unexpurgated article from Venice Florida! Dot com, previously submitted in an expurgated version by Boone as Exhibit B; Patten to Simmonds: "You are a coward," 06/26/08

C-2: Article from Sarasota Herald-Tribune, "Councilman wants to see his computer," 06/26/08

C-3: Video clip, "Patten vs Boone," from city council meeting of 06/24/08, available for viewing at www.youtube.com/watch?v=_2FxBh54WZc or by entering the search phrase "patten vs boone" at YouTube.com

C-4: Excerpts from Florida Bar Association Rule 4.3.4, Fairness to opposing party and counsel

C-5 Text of the original emails in contention, as originally published to the web

I. The Main Rebuttal to Boone's Key Arguments

In twelve pages of narrative and additional exhibits, Jeffrey Boone gives a convoluted, complicated set of explanations and defenses. Ignoring for a moment some obvious red herrings tossed in for sensationalist eyebrow raising, Mr. Boone's defenses can be summed up as such:

- 1.) That Jeff Boone didn't make any accusations at all -- his client (and two other affiants) did;
- 2.) That it wasn't the fault of attorney Boone if the allegations did turn out to be false as all Boone did was submit the affidavits of his client, John Simmonds, and the affidavits of the two other affiants, fellow attorney, law partner, and father E.G. 'Dan' Boone, and Boone law firm client Arthur Nadel;
- 3.) That his client made no accusations of an actual criminal nature aimed at me;
- 4.) That I was or am under some kind of mandatory obligation to divulge the source of how I received these emails to Boone's ad-hoc self-appointed criminal investigation, this despite the fact that Boone has yet to notify local law enforcement of his (erroneous) suspicions.

The rest of his response is a narrative of explanations, many, many of which are provably false (and I will show how they are false later), and serve as sensationalist distractions to the above listed assertions.

I'm going to start out with the third part of Boone's response: that the accusations made were not of a criminal nature at least as they pertain to me.

In Boone's original subpoena and motion, he makes no bones about the fact that something criminal took place, to wit: that the emails that had been published by me in an online article were "private and personal email entries" (Item 9), and that I had obtained and was in possession of "stolen" emails (Item 14), and that these are part of "other illegally obtained emails" that I might have in my possession (Item 14).

So, Boone notes that I acquired "stolen" "illegally obtained" "private and personal emails," was in possession of those "stolen" and "illegally obtained" emails, and, that I electronically transmitted those "stolen" and "illegally obtained" emails when I published them in an online article.

That's three crimes in one:
receiving and acquiring stolen electronic data; and
possessing stolen electronic data; and
transmitting or re-transmitting stolen electronic data.

If the emails were private and personal, if they had been obtained in an illegal manner, and if I had published the illegal emails as Boone indicates, that would be three separate crimes under TITLE 18, PART 1, CHAPTER 119 of the U.S. Code, more familiarly known as the Electronic Communications and Privacy Act. Section 2511 of that act specifically deals with disclosure of intercepted communications (the publishing of allegedly stolen emails, in my case), while the rest of the Act deals with illegal interception, acquisition, and possession of stolen electronic data. See <http://www.law.cornell.edu/uscode/18/> for the full text.

All of which might be applicable except for two things. One: that the nature of these emails to and from a public official acting in the capacity of a public official makes them public records; and Two: that these emails were not stolen at all – Boone now admits that Simmonds himself leaked them in subsequent forwardings to other parties and that, by implication, there is now no telling how many people these emails were forwarded to prior to my receiving a copy.

In the emails in question, Councilman Simmonds is clearly writing and taking actions in his capacity as a public servant and elected official. As both a member of City Council and the city's Airport Advisory Board, he is clearly discussing city business and airport development planning. There is precious little, if anything, in those emails that could even be remotely construed as private and personal.

As such, these emails are (or should have been) public records. **So no to the idea that these are private and personal emails.** Add to the fact that Simmonds and E.G. 'Dan' Boone both claim that they destroyed these emails, so Simmonds was particularly distressed to find them on the web... well, given the nature of their content (the fact that Simmonds appears to be participating in a vast deception aimed at fueling a future lawsuit against other elected officials and the city itself), I think the real nature of Simmonds' distress should be obvious.

That Boone had no proof whatsoever that the emails were stolen, indeed that he should have possessed evidence that they were not, is distressing to me. His explanation, that his father/law partner destroyed correspondence with a client that would and should have proved otherwise – I find that equally distressing. I also find it somewhat unbelievable that attorneys of such self-professed professional stature would destroy correspondence with a client.. Unless they were trying to hide their possible involvement in the scheme – if that were true, then it would make sense.

So the allegation of criminality was made. There is no dancing around that. That Boone was describing my behavior as having violated three parts of Federal criminal law – there is no dancing around that, either, despite the fact that he did not specifically mention the U.S. Code. There are similar prohibitions in Florida's statutes about possession of stolen property, and that's exactly what Boone was writing.

As to Boone's statement that it wasn't his fault, it was all his client – that falls apart on multiple levels: Firstly, it's a prohibited defense in this kind of case. Just because his client told him things that he knew or could have or should have been able to prove were wrong; AND, just because his client has a vivid imagination and is able to make factual and specific accusatory statements of criminal behavior without any shred of proof to back it up doesn't mean that his attorney has to go along with it.

In fact, if Boone's account is the true story, Boone's obligation at that point in time should have been to pick up the phone and call the cops. According to Captain Tom McNulty of the Venice Police Department, as of this writing, Boone has yet to do that. Instead, Boone became a law unto himself. According to Boone's account, he had several conversations with me where he approached me and allegedly lawfully demanded in his non-existent capacity as a criminal investigator that I tell him what I know. Except that didn't happen, either, at least not the way Boone tells it. I'll return to this later for a fuller explanation.

All three affidavits are identical or nearly so. All follow the same format. It is ludicrous to believe

that the three affiants all wrote their accounts spontaneously using identical wording, structure, writing style, and sequence. Jeff Boone wrote those affidavits, not the three affiants. That those three affiants agreed with the content is beside the point – this was not the work of Boone's client, these were not the words of Boone's client. **They were Boone's words, signed by his client(s) and law partner.**

As further proof, I had a conversation with Simmonds in court on the day of the hearing, June 30, 2008. Simmonds smiled at me and said “Hi, John. -- why are you wearing a suit today?”

I glared at Simmonds and told him this wasn't a 'Hi, John' moment, that I was furious with him for making the bogus accusation.

Simmonds asked what accusation?

I reminded him that he had accused me of hacking into his computer and stealing data from him.

Simmonds stated he didn't know anything about it. He then walked over to City Attorney Bob Anderson and told Anderson what I had said (Anderson was in the audience just a few feet from me). Simmonds told Anderson that he hadn't accused me of anything, let alone any crimes.

Anderson told him that yes, he [Simmonds] had done exactly that. Anderson specifically told Simmonds that the councilman had accused me of committing a crime, that Simmonds' attorney had subpoenaed me because of those accusations. “That's what is going on here,” Anderson concluded.

Simmonds shook his head as if to disagree and said that he didn't understand this whole mess.

I walked up to confirm, but before I could say anything substantive, Simmonds got testy with me and angrily stated, “I have an attorney, if you have a problem, you talk to him.”

I started to respond when Anderson interjected: “Gentlemen, this isn't the time or the place for this.”

I paused, and then said, “You're right, Bob.” I immediately turned and walked away.

So no, Boone can't hide behind Simmonds for a couple of reasons. He is trying to negate his responsibility as a barrister to make factual statements that can be backed up with actual proof, not suspicion and whimsy; and the fact that his client, some 83 years old and (not meaning to be ageist here) not always seeming to be dealing with the real world anymore.

To support my version of events, take a look again at Boone's Exhibit A-2. That's a copy of an email that I sent to Simmonds and city council the very day after the above mentioned encounter in court, only Boone's copy is a blind copy that was sent to some folks that I had inadvertently left off my mailing list.

Look at my wording in the fourth paragraph, recounting Simmonds' confusion:

“I could, at this time, file an ethics complaint against you for the very same reason. However, based on the conversation we had yesterday, it is readily apparent that you are not totally aware that Boone has done this for you on your behalf. Either he had you sign some things and didn't

explain them or this whole legal battle is somehow incomprehensible to you.”

-- Patten, July 1, 2008 email to John Simmonds

So, again, no. No, this was not Boone's client's doing. These were not Boone's client's words. These were not Boone's client's allegations. Boone's client, John Simmonds, was, on the day of the hearing, totally unaware that the allegations had been made, let alone by Simmonds.

Maybe Simmonds didn't make the allegations, maybe he did and he is just getting a touch of senility. Either way, Boone is wrong, legally and ethically.

So, again, no. The responsibility for making sure that an allegation of factual criminality is actually factual before filing it with the court as factual – that responsibility ultimately lies with the attorney, not the client, notwithstanding Boone trying to pass off the blame onto his client.

Additionally, all of this puts his client at greater legal risk. I may very well file an ethics complaint against John Simmonds with the Florida Commission on Ethics. Boone's defense of his own actions will surely be included as proof of his client's wrongdoing. What Boone should have done was say, “I'm sorry, my bad, I take it all back. I goofed.” I would have dropped the issue right then and I told Boone so about three weeks ago. Boone's response was “Sue me for defamation.” So now you, the Florida Bar, gets to play referee solely because Boone won't fess up to his own incompetence.

Now, if that weren't bad enough, take a look at the allegations in the other two affidavits filed by Arthur Nadel and by E.G. 'Dan' Boone. Then read my affidavit from the original filing. None of these guys could get their stories right.

Each one of them told fabrications in their allegedly factual notarized statements. E.G. 'Dan' Boone never bothered to check his copies of the emails as he ostensibly destroyed these communications with his client, Arthur Nadel (!!!). Nadel likewise failed to go back and look at the original emails, this despite the fact that by his own words to me at a recent press conference held by a local organization on which he is a board member, his corporate computer network is state of the art and run by tech pros. Nadel also denied ever receiving any prior communications from me in his affidavit. That is not true, either (see my original complaint and exhibits)..

You are asked to believe that Jeff Boone caught none of this, that he really thought that Simmonds' computer was hacked. This is what Boone thinks and states is due diligence?

I think not. Based upon some of the other misleading statements that Boone gave in his response to the Bar Association, it can be readily seen why I believe that.

Now please – read and re-read the above section – it is the main thrust, the real argument. The rest, below, is white noise, chaff that Boone threw out as deflection, but needs to be addressed anyway to show and contrast the credibility of our two arguments.

II. APOCRYPHA – Some other factual problems with Boone's response

Boone states that he offered to withdraw the motion in question on June 30, 2008 but that he was cut off by the court and that left the motion hanging, still active. That's not exactly what happened. While Boone discussed the option of withdrawing the motion in court on June 30, Boone specifically stated that he was intentionally leaving the motion open, pending resolution of some negotiations with opposing counsel Andrea Mogensen. While those negotiations have concluded, Boone has yet to file a withdrawal with the court. That's why I filed the bar complaint, precisely because he refused to withdraw the motion and to clarify the facts and to retract the allegations made against me. I specifically demanded a retraction, but he hasn't even withdrawn the motion.

Boone muddies this up by fictionalizing the court events of June 30 with technical mumbo-jumbo that he either doesn't understand or that he hopes you won't. On page 6 of his response, Boone writes:

“Once all the parties arrived in Court, all of the above was resolved by a different forensic examination process being agreed to at the beginning of the hearing by the Plaintiff and the several Defendants. In a nutshell, the newly agreed upon forensic procedure was more akin to an electronic picture-taking of the computers' hard drives, as opposed to the "scraping" of the hard drives that had been the process required in the Court's original order. Defendant Moore's attorneys had proposed the different process to Plaintiff's attorney before the beginning of the hearing, and after an explanation of the process and the logistics associated therewith, Simmonds and the other Defendants agreed as well.”

-- Jeff Boone, response to complaint, August 14, 2008, page 6

No, not quite. The forensic examination / reproduction process of Simmonds' hard drive never changed at all. The “scraping” and the “electronic picture taking” are two different ways to describe the exact same necessary process, the ONLY process available that would do the job. Nobody agreed to any different process as to the examination and reproduction of the contents of Simmonds' hard drive.

Boone is using two different phrasings to describe the EXACT same dual-step process. In actuality, the hard drive is laboriously read (without changing any data) bit by bit, a process that can take days on large hard drives. That's the “scraping.” As it is being read, an exact mirror copy of ALL OF the 0's and 1's of binary data on the hard drive (including so-called deleted data) are meticulously reproduced on a second hard drive, thus creating the “electronic picture.” That's the ONLY way to do that. Boone was merely describing the two different parts of the singular process as though they were two mutually exclusive processes.

What was changed was how many duplicate copies would be made, who would get them, and that Simmonds himself would get an exact duplicate along with his original laptop, thus Simmonds would be able to take off running as though he still had his original hard drive as he would have had the exact same, complete with hidden so-called deleted data.

I don't know if Boone wrote the above account untruthfully or because he is technically illiterate, but the end result falsely covers the real reason that he didn't act on his motion to haul me onto the stand.

Boone didn't haul me onto the stand because he realized he had goofed big time in his false accusations

and it was about to explode in his face in front of a judge; and as the events in court on June 30 unfolded, it became painfully obvious to Boone that there was no way he was going to be able to avoid or delay the forensic examination of his client's computer

As to why I brought an attorney and why I was claiming Fifth Amendment protections, Boone leans towards inferring guilt. He can believe what he wants, but by that point, Boone had already falsely accused me of three Federal offenses. He wanted to get me on the witness stand to ask me about those accusations to help build whatever case he was trying to build. After observing that kind of unethical behavior, I sure as heck wasn't about to give him the opportunity to twist any response I might give him to support his self-created fiction. Curiously, it is this exact type of scenario that caused the Fifth Amendment to be added to our constitution – those kinds of legal tactics had been employed in the Kings' courts in England by King's barristers on uneducated farmers. Such tactics were viewed as an egregious abuse of power by our founding fathers.

As to Boone's account of his intense criminal investigation, that doesn't exactly jibe with my quite excellent memory of those events.

Shortly before the subpoena was issued, I ran into Boone at the courthouse. I had heard from Mayor Ed Martin that there was a rumor going around that Boone was about to formally accuse me of hacking, that Boone had been telling people that I was in deep trouble. I asked Boone if the rumors were true. He initially denied them, but then asked me how I got the emails. I told him I didn't have to tell him who gave them to me or how I got them, but that if he persisted in making accusations about me, he was going to be the source of some big laughs when it all blew out. Boone got away from me as quickly as possible, and shouting at me from the end of the hall, he asked how the person who gave them to me got them. I shrugged.

That was the ONLY conversation about the matter that happened prior to my receiving a subpoena at and during the June 24, 2008, city council meeting. Of the other conversations that Boone recounts as being part of his pre-subpoena investigation – they DID NOT happen. Some are pure fictions and never happened at all, the rest took place in the days and weeks AFTER I received the subpoena.

Then there is that sensationalist sex-bomb that Boone drops into the middle and keeps referring to as though it is the major indicator of my total lack of character: Boone's claim that I offered to receive oral sex from him in exchange for the info that he sought. If this were political commentary, that right there is what I would refer to as comedy gold. But this isn't political commentary, this is serious stuff, real legal filings.

The political activist “character” and “personna” that I have to put on sometimes is a bit larger than life. I've been fighting corruption and abuse of power in Venice for over eight years. A prior mayor, one heavily supported by Boone's pro-land development PAC (Citizens for Quality Government) once referred to me on camera as “the worst thing that ever happened to the City of Venice.” Bearing in mind that Mohamed Atta trained to fly here in Venice, I must be some incredibly evil person.

That incident went national as web sites and news outlets picked up the story of a web writer who was worse than Mohamed Atta.. The Mayor resigned eight days later. Then he moved out of state.

So when Boone interrupted a polite conversation that I was having with a city councilman (after the

closing gavel of the June 24 city council meeting) by crossing the entire length of council chamber to interject that all I had to do was cough up my source of the emails, I responded in character by telling Boone that all he had to do was blow me. There was no reciprocal offer, no quid pro quo. I offered nothing in exchange. Nor did I sense for a second that Boone might be actually naive enough to think that such locker room chest puffing was an actual offer. Nobody can really be that stupidly homophobic as to see an offer of sex where there is none, nor can such pretense to dumbness be believed for a second; and yet, incredibly, Boone would have you believe that he is that dumb and homophobic.

Moreover, prior to filing the Motion, I asked Patten on two separate occasions where he obtained the emails in question, and he refused both times to answer. After filing the Motion, I asked him a third time, he refused again, but did state he would tell me if I would perform an oral sex act on him. This statement was made out loud, in public (at Venice City Hall) and in front of several people. In fact, Patten created a blog post on his web site confirming this. [See Ex. B. For space considerations, I have included the relevant portions of the blog post - a complete copy is available upon request]. [NOTE: I regret having to include such vulgar and disgusting language in this response, but it is factually accurate, it was posted by Patten himself on his blog, and it provides a direct indication as to the type of person who has filed the complaint].

-- *ibid.*, page 2

Boone decries that my comment to him was a low “vulgar” moment and uses it to attack my character. Yet for all my baseness and blue-collar crass in making the statement to Boone, his fictional account of the incident and the hallucinogenic interpretation that he would have you believe – all that manages to show that Boone is capable of going even lower into the same gutter that he would have you believe that I am in.

As proof of Boone's allegation of solicitation of prostitution for information, he included an article about the incident that I wrote, although heavily expurgated to delete huge portions of text that Boone would not want you to read. I include that full article as Exhibit C-1. I still stand fully behind the factual statements in the article and in the editorial stance taken.

Boone did this all not just to gain advantage in court and try to prevent his client's hard drive from being examined for incriminating evidence. In that respect, he was using everything he could grab at to try to protect his client. While his intent was laudable, his methods were anything but. Boone also did this to knowingly create bad press for me, which he did. See Exhibit C-2, an article on this that appeared in the Sarasota Herald-Tribune. A similarly toned article appeared in another newspaper, The Venice Gondolier Sun, but I can't seem to find a copy of that at the moment.

Then there is Boone's allegation on page 1 that I made no attempt to contact him prior to filing the complaint with the bar association. There's no nice way to say it: that's an outright fabrication that Boone's own account disproves:

-- There's the email that I sent to Simmonds right after being subpoenaed that Boone included as Exhibit A-1. I instructed Simmonds to share it with his attorney, which Simmonds did.

-- Then there's my confrontation with Boone that was on the record and video-taped at the end of the June 24 council meeting, only hours after being served. You can view that online at <http://www.youtube.com/watch?v=2FxBh54WZc> or by simply using “patten vs boone” without the

quotes in YouTube's site search function. Consider that as my Exhibit C-3.

-- Then there's the affidavit itself, filed by me in court on June 24 and handed to Boone by me as we rode the elevator together in the courthouse. During the elevator ride, I let him know that I would fight him tooth and nail if he did not retract his statement.

-- There is the fact that in that affidavit, I claimed First and Fifth Amendment protections against Boone's proposed action of forcing me to give up my source for the emails.

-- There is the fact that I did show up with an attorney to support those arguments.

-- And finally, there is the "blow me" insult, which Boone becomes repeatedly fixated upon and writes extensively about in his response..

Short of hitting Jeff Boone over the head with a frying pan, I have no idea how many other ways I could have communicated my displeasure of and protestation against his unethical and ill-thought out actions.

But even that's not the worst of it.

The absolute worst of Boone's allegations shows his entire contempt for the democratic process and for the concept of The Fifth Estate, corporate and independent, as a necessary watchdog of government. It shows the incredible hubris that has come to dominate the Boone Law Firm.

Over the years, the firm has become the powerhouse firm in dealing with land development in South Sarasota County, enough so that several years back, the Sarasota Herald-Tribune listed Jeff Boone as one of the ten most powerful men in the county. The Boones' participation in the Citizens For Quality Government and the massive amounts of money that the PAC has raised over the years has ensured that Venice City Council was stacked with seven pro-development, pro-Boone council members. E.G. 'Dan' Boone is the undisputed self-crowned King of Venice and Jeff is the undisputed crown prince. Both are founding members, fund raisers, and fund givers to the PAC and to the candidates that the PAC supports.

There's nothing illegal or unethical about that – that's American small town politics. But it does explain a lot of the background of this case and explains well why Jeff Boone and I don't play nicely in the sandbox when we're together.

Boone's coalition started to fall apart this past election with three slow-growth candidates that I had no small part in helping to get elected. With just one more slow-growth candidate needed to topple the Boone regime and council strangle hold, and that could happen in this November's election, the fact that Jeff Boone has lost his magic touch at bringing in powerhouse land developers like WCI, which is declaring bankruptcy – all of that decries the crumbling and desperate times that the Boone Law Firm now finds itself in.

Discrediting me, the three newly elected council members, and the political affiliations that we all share has become mission critical to the CQG. This is the big battle in a small town, and a brutal civil war atmosphere exists.

In Jeff (and Dan) Boone's mind, the Boone Law Firm owns this town. One need only look at the plantation-style gated mansion that houses their law firm, so architecturally out of place in an otherwise typical Florida coastal town as to be totally unique. The only things missing are the little statues of jockeys that typically adorn such a spread of land – those jockeys were really there up until a few years

ago. Now a giant porcelain pig painted in Venice's colors sits on the front lawn. I kid you not.

Thus it comes as no surprise that on page 2 of Boone's response, he claims total ownership of me in laying the ultimate entire blame for Simmonds' emails and Boone's legal buffoonery at my doorstep for the act of making public those public records that Simmonds and attorney E.G. 'Dan' Boone thought they had successfully destroyed:

“Moreover, prior to filing the Motion, I asked Patten on two separate occasions where he obtained the emails in question, and he refused both times to answer...”

[actually, Boone asked only once and that was due to my confrontation with him over the matter – Boone hastily ran from that confrontation as quickly as possible; if I hadn't confronted him, he likely never would have asked at all – see above narrative]

“...Finally, John Patten's problems with this entire matter were caused by himself, in the actions he took at the outset by placing certain emails in his blog post. As noted above, my several attempts to have him explain and clarify this matter prior to the Motion hearing (which could have obviated the Motion being filed, or even after filing not being called up for hearing) were rebuffed.”

-- *ibid.*, page 2

In Boone's mind, he so owns this town that nobody has the right to defy or oppose him. He really and truly believes that, it is at the core of the Boone legal philosophy, and the above narrative by him is a clear statement of that ownership and sense of entitlement. When Jeff Boone commands, the peasants must obey. So, Boone thinks he has some ownership rights over my very thought processes and that I have absolutely no God given or legal right to defy him by refusing to tell him what I know. That is absolutely core to his thinking processes. The fact that I did the unthinkable, of standing up to him, this fully justifies in his mind that the entire blame for the subsequent chain of events rightfully lands on my lap for my sheer uppityness in daring to refuse to be bullied by him.

I haven't even discussed the obvious prohibited conflict that Boone placed himself and Simmonds in by taking on Simmonds as a client. Since Simmonds became a Boone client, Simmonds has twice participated in council discussions and votes on projects that Boone presented to council and that Boone was the attorney of record for. That's probably a separate potential bar complaint all on its own. It is certainly a state ethics violation.

I can't file a bar complaint for Boone's thinking processes, which is a shame as that type of thinking embodies in the public mind everything that is stereotypically bad and abusive about stereotypical attorneys. I can, however, file a complaint for the legal abuse that springs forth from such a mind when such actual abuse happens.



John Patten, respectfully submitted August 26, 2008

c.c.: Jeff Boone, attorney; John Simmonds, city councilman (both electronically)