Michael Toner - 5/21/12

	Page 1		Pag	e 3
	BEFORE THE CAMPAIGN FINANCE	1	INDEX	
	AND PUBLIC DISCLOSURE BOARD	2	WITNESS PAGE	
	OF THE STATE OF MINNESOTA	3	MICHAEL E. TONER	
		4	Examination by Mr. Sigurdson 4, 31	L
		5	Examination by Mr. Goldsmith 28	8
	In the Matter of the Republican	6		
	Party of Minnesota	7		
		8		
	Telephonic sworn statement of MICHAEL E.	9 10		
	TONER, taken in the above-entitled matter, pursuant to	11		
	Notice, before Julie A. Rixe, court reporter and notary	12		
	public, at Suite 190, 658 Cedar Street, in the City of	13		
	St. Paul, County of Ramsey, State of Minnesota, on the	14		
	21st day of May, 2012, commencing at approximately 9:30 a.m.	15		
	7.50 a.m.	16		
		17		
		18		
		19 20		
	* * *	20 21		
		22		
		23		
		24		
		25		
	Page 2		Pag	e 4
1	APPEARANCES:	1	MICHAEL E. TONER,	
2	GARY GOLDSMITH, Executive Director, and	2	after having been first duly sworn, was	
3	JEFFREY SIGURDSON, Assistant Executive Director,	3	examined and testified on his oath as follows:	
4	and JODY POPE, Management Analyst, Minnesota	4	EXAMINATION DV MD. SICURDSON	
5 6	Campaign Finance and Public Disclosure Board, Centennial Office Building, Suite 190, 658 Cedar	5	BY MR. SIGURDSON: Q And, sir, would you provide your name and addres	0
7	Street, St. Paul, Minnesota 55155-1603, appeared		for the record?	3
8	for and on behalf of the Minnesota Campaign	8	A Michael Eugene Toner. And my residential addres	s
9	Finance and Public Disclosure Board.	9	4227 Fordum Road Northwest, Washington, DC 200	
10		10	Q And then just to identify everyone here, my name	
11		11	is Jeff Sigurdson, S-I-G-U-R-D-S-O-N. I'm the	
12		12	assistant director with the Campaign Finance and	
13 14		13 14	Public Disclosure Board? MR. GOLDSMITH: Gary Goldsmith,	
14 15		15	executive director, Campaign Finance Board.	
16		16	MS. POPE: Jody Pope, management	
17		17	analyst, Campaign Finance Board.	
18		18	THE WITNESS: And I apologize. I'm	
19		19	having a little trouble hearing everybody. I'm	
20		20	sorry.	
		21	BY MR. SIGURDSON:	
21				
21 22	WHEREUPON, the following proceedings	22	Q Yes, sir. And we apologize for that too. The	
21 22 23	WHEREUPON, the following proceedings were duly had and entered of record, to wit:	23	problem with speaker phones is that we have so	
21 22				

1 (Pages 1 to 4)

	Page 5		Page 7
1	with my questions, if Mr. Goldsmith or Jody Pope,	1	with that 2010 gubernatorial recount.
2	who is also here from our office, if either one of	2	Q And so there was no other written authorization
3	them have questions, we'll probably change seats	3	that was either required or received regarding the
4	so you can hear us a little clearer.	4	recount?
5	A Okay. And please let me know if you have any	5	A That's correct.
6	trouble hearing me on my end.	6	Q Okay. Sir, if you could turn to page 48 of your
7	Q Okay. Thank you. Just a couple of background	7	submission, it's a listing of the hours and the
8	questions. You're currently a member of the Wiley	8	services that you were providing relative to the
9	Rein Law Firm; is that correct?	9	recount. And I note that the very first item
10	A Yes.	10	listed is dated November the 3rd of 2010, which
11	Q But in 2010 you were a member of the Bryan Cave	11	would be the day after the general election, which
12	Law Firm?	12	was November 2, 2010.
13	A That's correct.	13	Can you recall who contacted you to
14	Q And just for the purposes of establishing a time	14	start work on the recount basically immediately
15	line, sir, do you recall the date that you left	15	after the election was over?
16	Bryan Cave?	16	A Well, I do recall that some days before the
17	A I left Bryan Cave in March of 2011 and joined	17	November election, approximately a week before, a
18	Wiley Rein at that time.	18	week to ten days before, I received a call from
19	Q Okay. In 2010 did Bryan Cave and you specifically	19	Tony Sutton, who was then chairman of the
20	provide legal services to the Republican Party of	20	Republican Party of Minnesota. And Tony indicated
21	Minnesota in relation to the recount of votes of	21	that it looked like the gubernatorial race was
22	the 2010 gubernatorial election?	22	very close in Minnesota and that a recount was
23	A Yes.	23	quite possible.
24	Q Okay. With your response to the Board that's	24	And Tony wanted to retain me and my law
25	dated May 11, 2012, you included a letter of	25	firm if a recount took place, and so we talked.
	Page 6		Page 8
1	engagement dated July 25, 2007 between Bryan Cave	1	And I indicated, well, you know, I represented the
2	and the Republican Party. Was this the document	2	Republican Party of Minnesota for a number of
3	under which the work related to the recount was	3	years and they've been a good client of mine, so,
4	performed?	4	you know, I'd be available to work on the recount
5	A Yes. And as you point out, there was an	5	if that came to pass. So we had that discussion
6	engagement letter I executed on behalf of Bryan	6	before the election.
7	Cave to represent the Republican Party of	7	And then I remember election night I was
8	Minnesota that was dated back in July 2007, I	8	here in Washington. I represent clients in other
9	think it's pages 1 through 5 of my document	9	parts of the country. So I was hoping there
10	production, and have represented the Republican	10	weren't going to be recounts in the various states
11	Party of Minnesota on a wide variety of federal	11	and the clients for whom I'd been doing the legal
12	and state campaign finance, election law	12	work. I went to bed late on election night
13	compliance matters over the years. And this was	13	thinking I was in the clear and there was going to
14	the engagement letter under which we performed	14	be no recount work for me.
15	or I performed and my colleagues performed work in	15	And then I got up the next morning, the
16	connection with the 2010 gubernatorial recount out	16	Wednesday after the election, and I had gotten a
17	in Minnesota.	17	voicemail message from Tony Sutton, you know,
18	On page 2 of the Bryan Cave engagement	18	sometime before dawn, saying that, actually, the
19	letter, at the end there it indicates that that	19	race was very close in Minnesota and a recount was
20	engagement letter will cover any additional	20	imminent, and could I come out to the Twin Cities
21	matters that are undertaken on behalf of the	21	that day and begin work on behalf of the recount.
22	client's request, so it's standard language that	22	And I did that.
		00	
23	was included in the Bryan Cave letter. So this is	23	So I flew out to the Twin Cities the
		23 24 25	So I flew out to the Twin Cities the Wednesday after the election and began work, as the time records indicate, starting on

2 (Pages 5 to 8)

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		Page 9			Page 11
1		November 3rd.	1		have that in front of me. On page 57 of my
2	Q		2		production I did two hours of work on
3	· ·	description here of the services provided.	3		December 7th. Do we know which day Mr. Emmer
4		There's often references to Chairman Sutton and	4		conceded? Was it December 7th?
5		RPM staff. During any of these meetings, was	5	0	
6		there any question in your mind that the services	б	~	Okay. And was that a Saturday? I recall it was
7		that you were going to be providing relative to	7		maybe a Saturday morning. Was it a Saturday?
8		the recount were for any entity other than the	8	0	
9		RPM?	9		head.
10	А	There was no question in my mind, no.	10	А	Okay. That sounds right. Because obviously once
11	Q		11		Mr. Emmer made that decision, that brought work to
12	-	trips to Minnesota related to the recount; is that	12		an end on the recount matter. So that sounds
13		correct?	13		right, yes.
14	Α	I'd have to recall the exact number. I got used	14	Q	Do you recall who informed you on the 7th, I
15		to the Delta shuttle between Washington and the	15	-	assume, that the recount effort was ending?
16		Twin Cities and the nonstop flights that exist	16	А	I recall sometime in the latter part of that week
17		there. I remember I was out there in the November	17		being told that Mr. Emmer was considering ceding
18		2010 time period a number of weeks. And I think I	18		the race. I can't remember how far in advance I
19		was out there after Thanksgiving into early	19		learned that, but I recall that.
20		December of 2010. I guess I'd have to go back and	20		And then I recall seeing Mr. Emmer's
21		look at my travel records to recall the exact	21		press conference. As I recall, I think it was at
22		number of weeks I was out there. It seemed like a	22		his house, front of his house, you know, saw
23		long time at the time, but working during the	23		that. I can't remember if I saw it live or if I
24		November, December period.	24		saw it in video, through the media, but I do
25	Q	Okay. And for reference, sir, if you want, on	25		remember shortly before that announcement
		Page 10			Page 12
1		page 59 I'm sorry, I should have mentioned that	1		discussion that it looked like that's what he was
2		to you before I asked the question there is a	2		going to do.
3		listing of the travel expenses that Bryan Cave	3	Q	Okay. So just to clarify, you weren't informed
4		related to the recount, and that's where I was	4		prior, really, to the media account that the
5		getting the three trips. But basically you were	5		recount effort was going to be ending?
6		out in Minnesota on numerous occasions related to	б	А	No, I think I was informed.
7		the recount. During those times you were always	7	Q	Okay.
8		working with RPM staff and Chairman Sutton?	8	A	I just can't recall how far in advance I was
9	Α	I was working for RPM staff, Chairman Sutton as	9		informed. Because, you know, there were various
10		well, of course our co-counsel in the matter, Tony	10		efforts in terms of how to approach the
11		Trimble from the Tony Trimble & Associates Law	11		announcement, what the Republican Party of
12		Firm there in Minnesota, along with Eric Magnuson	12		Minnesota ought to say and, you know, when and
13		and his law firm in the Twin Cities.	13		that kind of thing. So I do recall being informed
14	Q	Okay. And in your submissions, sir, you provided	14		that this was going to happen before it took
15		a number of invoices, both initially submitted by	15		place. I just can't remember, was it a day
16		Bryan Cave to the Republican Party and then, as	16		before, was it two days before. I can't remember
17		we'll get to later, sometimes resubmitted to Count	17		how far in advance.
18		Them All Properly. But they were all consistent	18	Q	5
19		on one point, and that is that December 7, 2010 is	19		you that, that you were having these discussions
20		the last date in which recount services are	20		with?
21		listed. Is that consistent with your memory of	21	А	,
22		it?	22		want to speculate here, but I think it was
23	А	Let me look at the invoices. I'm trying to recall	23		discussions with the Republican Party of Minnesota
24		the day in which Mr. Emmer ceded the race, and it	24		and our legal team, in other words, you know,
25		might very well have been that day. I just don't	25		Mr. Trimble and his firm and perhaps Mr. Magnuson

3 (Pages 9 to 12)

		Page 13			Page 15
1		and his firm. Discussions with the Republican	1		e-mail, on why a separate fund for paying the
2		Party of Minnesota team.	2		recount bills would be advisable or why he was
3	Q	Okay. Thank you. If you could, could you turn to	3		why that was being established?
4		page 22 of the material?	4	А	Again, I might have had those kinds of
5	А	Page 22?	5		discussions. I don't specifically recall them.
6	Q	Yes, sir.	6		In terms of why a separate fund might be
7	А	Yes. Yes, I've got it.	7		advantageous, obviously from a fiscal perspective
8	Q	Okay. There's a couple of e-mails here between	8		it could be advantageous, but I don't recall.
9		you and Mr. Sutton. It appears from the e-mails	9		And, again, it doesn't mean that there weren't
10		that you had submitted an invoice for the legal	10		some discussions of that nature, but I don't
11		services provided to the RPM on December the 10th,	11		recall, for example, providing legal advice on the
12		2010. And then in response later that same day,	12		ability to set up a separate organization under
13		Mr. Sutton responds. I'm going to quote the	13		Minnesota law. For example, I understand there
14		e-mail. It says, technically these services were	14		was a ruling of the Campaign Finance Board that
15		for the Emmer recount fund and not the RPM;	15		related to this area. I just don't recall being
16		payment will be coming from that fund, and then it	16	~	in the middle of all that during that time period.
17		says the state party will also transfer funds in	17	Q	Okay. Thank you. Now if I could have you turn to
18		as we receive them.	18		page 34 of the material.
19 20		Was this the first time that you became	19 20	A	8
20	٨	aware of some sort of recount fund? I don't know if it was the first time. I do	20 21	Q A	Yes, sir. Yeah.
22	A	recall discussions at some juncture about possibly	22		And there's a series of e-mails here. They start
23		a new entity being created or a separate entity	22	Q	on January 19th, and I believe the last one is
24		covering paying for the recount costs. I can't	24		through February 17th. And I guess to paraphrase
25		recall if that was before December 10th or after	25		the e-mails, they basically have the same subject,
		Page 14	23		Page 16
1		December 10th.	1		which is that you've asked for a status of payment
2		To be honest with you, I was really	2		from the RPM on the invoices that have been issued
3		focused on the merits of the recount and the	3		by Byron Cave for the recount. At this point were
4		various legal proceedings that were going on	4		you under the impression that the RPM was not
5		during November and December. So I don't know if	5		going to be obligated or not viewing itself as
6		this was the first time that I had heard about	6		obligated for these bills?
7		this, but I do recall this being a discussion.	7	А	It was definitely my impression that the
8	Q	Okay. Sir, in your opinion, did you ever have any	8		Republican Party of Minnesota was my point in
9		discussions with Tony Sutton that could be	9		contact in terms of getting these bills paid. You
10		regarded as legal advice on whether or not it	10		know, I was in Washington DC and not in Minnesota,
11		would be appropriate to establish a separate fund	11		so I wasn't familiar with this other entity
12		to pay for the recount?	12		What is it called again?
13	А	I mean, I don't recall specifically. Does it mean	13	Q	Count Them All Properly.
14		that there weren't some? It just wasn't my	14	А	Count Them All Properly, right. And as my written
15		focus. My focus was working with Tony Trimble and	15		submission my letter to the Board indicates, I
16		his firm, working with Eric Magnuson and his firm	16		don't recall ever having any discussions with
17		on the recount proceedings. So I might have had	17		anyone associated with that entity or discussions
18		some discussions about this, but I don't, for	18		about whether they were going to pay any of the
19		example, recall, you know, doing any memos or any	19		Bryan Cave bills or what was going on with them.
20	_	written legal analysis on these options.	20		All of my discussions in terms of the billing was
21	Q	Okay. Let me word my questions It's Probably	21		with Chairman Sutton and the Republican Party of
22		the same question, but I'm rewording it slightly.	22		Minnesota staff, who, after all, were the clients
	Α	Okay.	23		for whom we did this work and the clients for whom
23			<u> </u>		
23 24 25	Q	Did you ever have any discussions with Mr. Sutton on why, especially after this December 10th	24 25		we sent our invoices and were the clients with whom we followed up on the invoices.

4 (Pages 13 to 16)

	Page 17		Page 19
1	So my understanding during this January	1	invoices should now be re-invoiced, even though
2	period and really throughout 2011 was that my	2	they've already been paid. So is it your
3	collection efforts were appropriately focused with	3	understanding, then, that the Republican Party
4	Chairman Sutton and the Republican Party of	4	actually made two payments against the recount
5	Minnesota.	5	costs prior to well, prior to this moment, I
6	Q Okay. Thank you. If I could have you now switch	6	guess?
7	to page 42.	7	A I'm not aware of that. Because I think that it's
8	A Page 42? Okay.	8	possible that We did some work for the
9	Q Yes, sir.	9	Republican Party of Minnesota concerning a Federal
10	A Yes, sir.	10	Election Commission enforcement matter that
11	Q This is an e-mail from Lori Schwartz, who is with	11	involved the 2008 senate recount, not the 2010
12	Bryan Cave. And I realize you had now left the	12	gubernatorial recount. And so I think that the
13	firm, and she's apparently asking you about the	13	payments that are being referred to there might
14	RPM matter and the billing there. She has two	14	very well have been referring to that, that
15	points in her e-mail that I'd like to ask you	15	recount work. And, in fact, it wasn't really
16	about. If you want to take a minute to look at	16	recount work. It was doing work for the Federal
17	the e-mail, then I'll ask my questions.	17	Election Commission concerning the 2008 recount.
18	A Okay, sure. I'll go ahead and do that.	18	So I think that might be what's being referenced
19	Okay. Please go ahead.	19	there.
20	Q The first is her statement that, she states that,	20	I had not been aware of any payments
21	we've received a request from the client regarding	21	against the balance that was pending for the 2010
22	reissuing of the invoices.	22	gubernatorial recount, apart from this, what,
23	Is this the first time that you had	23	\$9,000 payment that is referenced in some of the
24	actually heard that the invoices were supposed to	24	materials later in my production.
25	be re-invoiced to Count Them All Properly or to at	25	For example, on page 84 of my production
	.		Page 20
1	Page 18	1	
1	least some entity?	1 2	there's a reference to a payment dated April 21,
2	A It's possible. I mean, obviously as of March 18th		2011 of \$9,000, which looks to me that it's likely
3	Bryan Cave had gotten that request, to have those	3	a payment concerning the 2010 gubernatorial
4	invoices rerun. I don't recall Bryan Cave being	4	recount. That's the only payment that I'm aware
5	notified about that previously or my being	5	of.
6	notified of that request previously.	6	Q On that same page, sir, up above that there's a $\int \frac{d^2}{dt^2} \frac{dt}{dt} = \int \frac{dt}{dt} \frac{dt}$
7	You know, when you leave law firms, as a	7 8	payment of \$6,743.39. Do you believe that's the
8	partner you have an obligation to continue your		one that Ms. Schwartz is referencing in terms of a
9	collection efforts, so that's really what I have	9	payment received prior to that?
10	been doing since I left Bryan Cave in March of	10	A I guess it could be, yeah. I'm somewhat at a
11	2011. I continue my collection efforts, and this	11	disadvantage here because I'm not at Bryan Cave,
12	is just one client file where I was continuing	12	so it's just harder for me to have a feel for all
13 14	those efforts.	13 14	this, but that could very well be.
14 15	So this is my best sense of when that	14 15	Q This is jumping ahead a little bit, but because
15 16	request was received by Bryan Cave. You know,	15 16	we're on this, I don't want to lose our train of
16 17	Lori Schwartz is the billing accounting manager	16 17	thought. I may loop back, frankly, to an earlier
17 10	for the Washington DC Bryan Cave office. So this	17	e-mail here.
18 10	March 2011 time period is my best sense of when	18 19	But relating to the FEC issue, on the
19 20	that request was received.	19 20	compliance issue, my understanding here is that
20 21	Q Okay. And, sir, then on that same e-mail she also	20 21	not only was the 2010 gubernatorial election costs
21 22	says, there were two invoices issued to this the	21 22	re-invoiced to Count Them All Properly, but
22	matter but were already paid by the Republican	22 23	apparently the costs related to this FEC matter
23 24	Party of Minnesota. And then she goes on to say or ask	23 24	was also re-invoiced to Count Them All Properly?A Not the latter. Only the 2010 gubernatorial
24 25	you a question as to whether or not those two	24 25	charges were invoiced to the separate entity Count
	you a question as to whether of not mose two	J	enarges were involced to the separate entity Count

^{5 (}Pages 17 to 20)

1 Them All Properly entity. All the other work was invoiced to the Republican Party of Minnesotu. in reference to a request for Mr. Sutton. Well, I'm not sure. Scratch that last. I'm not sure 2 Q. Actually, sir, if you stay on the same page that you reference, page 84 is kind of the issue that I'm having. The current charges for matter, it does say federal recount legal compliance advice. I'm not sure. Scratch that last. I'm not sure who the "asked me to" is referring to. But at any rate, it's breaking out the billing for the FEC motific you believe there had been any that had been shifted prior or try the adverse that starts on page 84, hat's all work related to the gubernatorial recount in November of 2010, just thumbing through the invoice here, pages 84. 13 A Not to my knowledge. So looking at this invoice that starts on page 84, hat's all work related to the gubernatorial recount. A 14 A ubten foroign no the December invoice to the Count Them All Properly again, just for work in connection with the gubernatorial recount. Not the the other element all along there is that in November and December for work in connection with the gubernatorial recount. Yem 22 1 Yem 24 Yem 24 Yem 24 2 Not the the other element all along there is that in November and December for work in connection with the gubernatorial recount. Yem 24 Yem 24 3 And then the other element all along there is that in November and December for work in connection with the gubernatorial recount you see being separating on the See work in wait		Page 21		Page 23
2 invoiced to the Republican Party of Minnesota. 2 Tm not sure. Scratch that last. Tm not sure work work ware. 3 So, for example - Tm just going through here. 3 4 Q Actually, sir, if you stay on the same page that you reference, page 84 is kind of the issue that for here invoice asys, split between the family on matter. It is breaking out the billing for the FEC work. 7 does say federal recount legal compliance advice. 7 8 is an invoice to Courn Them All Properly. 7 9 That was my issue of confusion, is whether or not in fact you believe there had been any that had been accepted by Count Them All Properly. 7 10 been accepted by Count Them All Properly. 10 11 been accepted by Count Them All Properly. 11 12 services prior to be 2010 recount; 14 13 had been accepted by Count Them All Properly again, just 14 14 A oft then going on to the December 10 15 there is that in November of 2010, just the gubernatorial recount only, and then we had the invoices that had been medo wut to the gubernatorial recount legal compliance work. 14 A oft then going on to the December 10 15 non-gubernatorial recount them All Properly again, just gon yor duction, for example, s	1	Them All Properly entity. All the other work was	1	in reference to a request for Mr. Sutton. Well,
 So, for example – Tm just going through here. Actually, sir, if you stay on the same page that you reference, page 84 is kind of the issue that Im having. The current charges for mater, it does say federal recount legal compliance advice. That was my issue of confusion, is whether or not in fact you believe there had been any that had been shifted prior – or try the adverse – services prior to the 2010 recount, if that also had been accepted by Count Them All Properly. A Not to my knowledge. So looking at this invoice that starts on page 84, that's all work related to the gubernatorial recount in November of 2010, just thumbing through the invoice here, pages 84. to v8. And then the other element all along here is that in November and December non-gubernatorial recount and the Republican party of Minnesota at the same time, so that work, you see being separated out earlier in my production, for example, starting on page 68. We were separating out the mole there have. Q Okay. Yang O Hados, I am going to ak you, then, to look at you see being separated out earlier in my production, for example, starting on page 68, were were separating out that work. Q Okay. Yang O Hados, I am going to ak you, then, to look at Yang O Hindes, I am going to ak you, then, to look at You was to turn to page 98, sir. Q I thoss, I am going to ak you, then, to look at You was to turn to page 98, sir. A Okay, Q This is an e-mail from you to Tony Sutton dated A Okay, Q This is an e-mail from you to Tony Sutton dated A Okay, Q Yas. Q Nay. A Okay, Q This is an e-mail from you to Tony Sutton dated A Okay, Q This is an e-mail from you to Tony Sutton date				
4 Q Actually, sir, if you sixy on the same page that you reference, page 84 is kind of the issue that for having. The current charges for matter, it is the adding the term of the invoice says, split between the term of the sender advice. This is an invoice to Count Them All Properly. 7 does say federal recount legal compliance advice. This is an invoice to Count Them All Properly. 9 That was my issue of confusion, is whether or not in fart you believe there had been any that had been accepted by Count Them All Properly. The issue that there's still confusion here on the invoice start had been accepted by Count Them All Properly. 12 services prior to the 2010 recount, if that also that starts on page 84, that sal work related to its 88. This is an encircing with the gubernatorial recount in November of 2010, just thumbing through the invoice here, pages 84 14 to 88. The one compliance work were to recount. The invoices that had been made out to the Count Them All Properly again, just the same inpage 90 of my production are just the gubernatorial recount were, that work you see being separated out earlier in my production. Gre example, starting on page 68, there's an entry that ways, circled items are not fitter in two is separating out that work. The invoices had been reissued to Count Them All Properly, but, instate, and so for a scample, the try of page 68, there's an entry that says, circled items are not fitter in my production. Gre example, the try of page 68, there's and the set envice that were beyond what the Bear endivice. 10 Party of Minnesota Cons that maks esense? And you'II see in		1 2	3	who the "asked me to" is referring to. But at any
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6 (Pages 21 to 24)

1QThen while we're in the invoices, if you could flip to page 109.1other entities. So I know the name.3A109, okay.2QOkay. But you didn't have any work with 44QAnd I believe the dates here are a little confusing because the invoice is dated335confusing because the invoice is dated44I don't recall any at all, no.6April 11th. And as you noted on the invoice that showed the \$9,000 payment, that's dated April 21st 8 on an April 5th invoice. So I'm not quite sure, 95AI don't recall any at all, no.9frankly, if that check was actually received in 109Can you turn to page 98? I think we looked at this one briefly, but I have another question.11But my point on page 109 is the 1211A98, okay.12statement total is \$154,101.32. To the best of 1312A98, okay.13your knowledge, then, that's the amount that was 1413QI'm sorry. Actually, I'm going to change th 98 we did talk about. This is the one from y 98 we did talk about. This is the one from y 98 we did talk about. This is response. If you16AThat's right. That's my best sense of that total,16On page 110 is his response. If you	ve , nith ns. 1t.
2flip to page 109.2QOkay. But you didn't have any work with a terms of related to the recount, you didn't have terms of related to the recount, you didn't have any contact with him?3A109, okay.34QAnd I believe the dates here are a little confusing because the invoice is dated36April 11th. And as you noted on the invoice that showed the \$9,000 payment, that's dated April 21st 85A7showed the \$9,000 payment, that's dated April 21st 96QOkay. One last set of e-mails to look at, si and then I'll be handing it over to Mr. Golds and Ms. Pope to see if they have any question 910March and that's a misdate.1011But my point on page 109 is the 121112statement total is \$154,101.32. To the best of 13 	ve , nith ns. 1t.
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15 2010 gubernatorial recount? 15 Mr. Sutton.	
17 and that we incurred approximately \$154,000 on 17 could turn to page 110.	
18 2010 gubernatorial recount legal work. 18 A Page 110? Okay.	
19 Q Okay. If you could loop back to page 44, sir. 19 Q And the top of the page is the e-mail in res	onse
20 A Page 44? 20 to your e-mail, again, dated the same date,	
21 Q Yeah. 21 July 27, 2011. And he states, the good news	for
22AOkay.22real is that we intend to start making substar	
23 Q And I realize this e-mail is not to you. It's 23 payments to Bryan Cave for the FEC matter	
from Ron Huettl, who is the finance director at 24 August; the recount is a little trickier issue to	
the RPM, to Bryan Cave, I believe. Again, if you 25 raise money for due to the fact that we lost;	
Page 26 Pag	28
1 could just review that quickly. 1 however, my intention is to pay the FEC matte	
2 A Sure, sure. Yes. 2 first and then the recount.	
3 Q And this is dated March 16, 2011. And this was, 3 From that e-mail, sir, do you have any	
4 apparently, forwarded to you, I'm sorry, by 4 doubt that he's referring to the Republican Part	
5 Ms. Schwartz. Is this the first time you had 5 still being responsibility for cost of the	
6 heard the term or saw the term Count Them All 6 recount?	
7 Properly? 7 A No, I don't have any doubt.	
8 A Well, like we were talking about earlier, it's 8 MR. SIGURDSON: Okay. I believe that	's
9 possible that I heard of this entity before 9 all the questions I had before I give it to	
10 March 16th. 10 Mr. Goldsmith. He does have a couple question	ıs.
11 Q Okay. 11 We're going to switch chairs here for just a	
12 A You know, as I indicated in my written submission, 12 second. Hold on.	
13I didn't have any interaction I don't recall13EXAMINATION	
14 any interaction with Count Them All Properly, or 14 BY MR. GOLDSMITH:	
15 whoever was running this entity. But certainly as 15 Q Hi, Mr. Toner, Gary Goldsmith.	
16 of March 16th, you know, this request was made, 16 A Mr. Goldsmith, good morning.	
17 according to the e-mail traffic, by Ron and the 17 Q I just have two questions. You mentioned you	
18 Republican Party of Minnesota for these invoices 18 understood that there was a Campaign Finance	Board
19to be reissued.19ruling relating to other associations paying for	
20 Q The e-mail references a Dan Puhl. Are you 20 recount activities. Did you review that ruling i	L I
21familiar with that individual?21the course of your services for the Republican	
22 A I mean, I know the name and I may have met him. I 22 Party?	
23think Mr. Puhl has done some work, for example,23AIt's possible I did. I became refamiliar (sic)	
24for the Republican National Committee, and so I24with it in reviewing some of the materials	
25 may have met him in connection with his work for 25 produced by the other law firms in this matter,	0

7 (Pages 25 to 28)

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		Page 29		Page 31
1		I read it a few weeks ago. And I might very well	1	production, I mean, Chairman Sutton indicated,
2		have read it back at that time. I can't recall.	2	which I appreciated, fairly regularly that he was
3		Do we know what date that ruling was issued? I	3	going to pay these balances, and so it was natural
4		can't remember.	4	for me to continue following up with him on it.
5	Q		5	Q All right. Thank you. I don't have anything
6	×	think, right after the election.	6	further.
7	А		7	FURTHER EXAMINATION
8	Q		8	BY MR. SIGURDSON:
9	À		9	Q Did you have anything that you wanted to add to
10		time. As I testified earlier, my real focus	10	the record?
11		during this November, December period was on the	11	A No.
12		merits of the recount and, you know, the mechanics	12	Q That completes the deposition, then. Thank you.
13		of these proceedings that, as you know, were going	13	A Thank you.
14		fast and furious in the state of Minnesota. That	14	(Deposition concluded at 10:06 a.m.)
15		really was my focus in the November, December	15	
16		period.	16	
17	Q	Okay. And the reason I ask is because we believe	17	
18		that Mr. Sutton is representing that he consulted	18	
19		with attorneys about the feasibility of setting up	19	
20		a third organization or another organization for	20	
21		the payment of the recount costs, and we're trying	21	
22		to determine which attorneys he would have	22	
23		consulted on that matter.	23	
24	Α	Okay.	24	
25	Q	And you're saying you don't know for sure if he	25	
		Page 30		Page 32
1		consulted you or not?	1	STATE OF MINNESOTA)
2	А	Well, I don't recall providing any written advice	2) ss. COUNTY OF DAKOTA)
3		in this area. I may very well have discussed it	3	,
4		orally, but I really don't recall providing legal	4	Be it known that I took the statement of MICHAEL E. TONER on the 21st day of May, 2012, at Suite 190,
5		guidance in this matter.	5 6	658 Cedar Street, St. Paul, Minnesota;
6	Q		б	That I was then and there a notary public in and for the County of Dakota, State of Minnesota, and that
7	-	that you did or the Republican Party did, either	7 8	I was duly authorized to administer an oath;
8		during or after the services you provided for the	0	That the witness before testifying was first duly sworn to testify the truth and nothing but the truth;
9		recount, that made you conclude that the	9	That the testimony was recorded by myself and
10		Republican Party was relieved of its legal	10	transcribed into a computer-aided transcript and that
11		obligation to pay Bryan Cave's attorney's fees?	11	the deposition is a true record of the testimony given by the witness to the best of my ability;
12	Α		12	That I am not related to any of the parties hereto
13		the Party was my contact for the work that was	13	nor interested in the outcome of the action;
14		done in connection with the gubernatorial		That the cost of the original transcript has been
15		recount. As my document production indicates, I	14	charged to the party noticing the deposition, unless otherwise agreed by Counsel, and that copies have been
16		did follow up on a regular basis via e-mail with	15	made available to all parties at the same cost, unless
17		Chairman Sutton on Bryan Cave's pending invoices	16	otherwise agreed upon by Counsel;
18		and, also, the invoices related to non-recount		That the reading and signing of the statement by
19		work, because there were two categories of	17 18	the witness was waived. WITNESS MY HAND AND SEAL this 30th day of May,
20		invoices we were talking about. That's the		2012.
21		approach I took in terms of trying to collect	19 20	
22		these funds.	21	JULIE A. RIXE Court Reporter
23		I have not had any discussions with	22	Court Reporter
24			23	
25		representatives of other entities concerning our pending invoices. And, as you see from my	23	

8 (Pages 29 to 32)