

# **CORRUPTION ON STEROIDS<sup>1</sup>**

## **The Bell Scandal From The Legal Perspective**

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### **I. INTRODUCTION: THE SCANDAL AND RECALL**

Starting with the publication of an article in the Los Angeles Times on July 14, 2010<sup>3</sup> concerning the excessive salary of Bell Chief Administrative Officer (“CAO”) Robert Rizzo, the City of Bell became the national poster child for municipal corruption and self-dealing public officials. The media focus brought to light a series of shocking stories: A city administrator making \$787,637, four managers among the 25 highest paid in the state, City Council salaries of \$100,000 when state law only permitted \$400/month for a City of Bell’s size (California Government Code Section 36516), a City program providing loans to almost 50 employees and a charter adopted with only 500 votes. All of this excess was occurring in a 37,000-population city near downtown Los Angeles, a city which is over 90% Hispanic, with median household income of approximately \$37,000, only 40% of the statewide average; and unemployment 60% greater than the statewide average. The property tax burden was reported by the Los Angeles Times to be the second highest in Los Angeles County. The sad plight of the community with such self-serving leadership was exemplified by the Mayor when to press inquiries voicing community rage, he gave the justification “In a troubled city, the city council should get paid a little more” (*LA Times*, June 24, 2010).

The City’s situation quickly spun out of control. The California State Controller began four in depth audits of the City, and the District Attorney indicted 8 Bell officials including four of the five sitting Councilmembers. The Attorney General commenced an action to recover excessive and illegal salaries, block excessive pensions based on the illegal salaries, and to actually put the City into a form of receivership for the reason that the direction of the City could not be left with the then serving Councilmembers. In fact, for almost six months the former City Council did not even meet and bills could only be paid through irregular procedures.

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<sup>1</sup> “Corruption on Steroids” is a phrase originally used by former Los Angeles District Attorney Steve Cooley to describe the Bell corruption scandal in 2010. That phrase has since become a common description used by many to describe the Bell scandal and it provides an appropriate title to this whitepaper.

<sup>2</sup> The bios for the authors are included at the end of this whitepaper.

<sup>3</sup> *L.A. Times* reporters Jeff Gottlieb and Ruben Vives were awarded the Pulitzer Prize for Public Service in 2011 for their efforts to expose the corruption scandal in Bell.

The firm of Aleshire & Wynder, LLP (“A&W”) was formed in February 2003 by a group of public law lawyers some of whom had represented cities for over three decades. David Aleshire was a founding name partner and the son of City Manager Frank Aleshire who started in the profession in 1950<sup>4</sup>. David Aleshire felt that some public service-oriented entity needed to assist the residents in the recall effort then being discussed to show that public servants would stand forth against the dispute brought down on all public officials in Bell. A&W volunteered over \$70,000 worth of services to assist the grassroots community organization of BASTA which gathered 4,000 signatures in 30 days and qualified the Recall Measure for the March 2011 ballot. In the combined regular municipal election and recall election, all five of the Councilmembers were replaced.

After a competitive selection process, on July 28, 2011, David Aleshire and A&W began serving Bell as its first permanent city attorney since the corruption scandal. The attorneys of A&W have represented the City in virtually all of its various legal matters since that time: from its regular matters including contracts, planning, labor and employment, and risk management; to its highly unusual matters such as malpractice actions against former professional advisors, to bond workouts (including the workout of the \$35 Million Dexia Bond matter), SEC and IRS investigations, to pension matters dealing with CalPERS actions against former officials, to the Supplemental Retirement Plan, and indemnification claims by former officials who became known as the “Bell 8”.

Besides defending itself against over \$70 Million in liability claims, the City also needed to spearhead an unprecedented effort to recover from the financial losses the City incurred during the corruption scandal. Those financial losses are difficult to quantify because of the lack of recordkeeping at the City during the corruption scandal. Over \$12 Million is estimated to have been expended during the corruption scandal for the illegal compensation and benefits paid to former officials.

The recovery matters included, for example, litigation against former city officials and recovery of retirement monies paid for with City funds to former officials and professional negligence claims against lawyers and auditors. After over three years of hard fought legal battles,

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<sup>4</sup> Frank D. Aleshire (1925-2000) a WWII pilot, was member of ICMA for 35 years and served as Assistant City Manager in Ontario 1950-55, first City Manager La Puente 1955-57, first City Manager Pico Rivera 1957-64, City Manager Palm Springs 1964-73, Chief Administrative Officer San Diego County 1973-75; City Manager Scottsdale 1976-80; City Manager Carlsbad 1980-88; the first city manager in Temecula in 1990. This paper is dedicated to Frank and the dedicated public servants with whom he served for 35 years.

the City recovered over \$10 Million within a few years after the new City Council took office and the City is now on stable financial ground. While Bell has turned the corner away from insolvency, the City's recovery efforts continue to this day. This paper will outline how a legal strategic plan was developed and what some of the major successes have been.

## **II. DEVELOPING A LEGAL STRATEGIC PLAN<sup>5</sup>**

When commencing legal services for the City in July 2011, a year after the *LA Times* began exposing the scandal, it was soon revealed that even with the media exposure and the numerous complex investigations and reports which had been issued, the problems were far more pervasive and difficult than anyone could have supposed. In fact, in trying to develop a remedial action plan, we were dealing with the classic case, in the words of Donald Rumsfeld<sup>6</sup>, of the "unknown unknowns." There was no list of claims, no evaluation of threat, and not even any understanding of the City's financial capability as no audits had been performed in two years. Accordingly no realistic budget was even possible.

This world of unknowns lacked any structure whatsoever, something of an anathema to an attorney and something we have never experienced in over 30 years serving as City Attorney or Assistant in 12 cities. Consider the following pieces of normal municipal structure lacking in Bell:

(1) **No Management Team.** Many top managers had left the City and were under indictment. Some of those that remained were under suspicion. There was no management and not even good sources of oral history.

(2) **Unknown Finances.** No audits had been done in two years and the prior auditor was under scrutiny by the State Controller and Attorney General. Without legitimate audits, there could be no real budget. Ultimately when the unaudited back years of 2010-2013 were audited, it was

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<sup>5</sup> Nothing in this whitepaper discusses anything that is confidential or attorney-client privileged in any manner. Rather, this whitepaper is written concerning matters that were handled in public proceedings and discussed previously in public documents. This whitepaper is written from an academic perspective only. Nothing herein should be relied on as legal advice for any specific legal matter. No compensation was paid to the authors for this whitepaper.

<sup>6</sup> Secretary of Defense Rumsfeld speculated in February 2002 that there are the known knows, the known unknowns, but the most dangerous problems are the unknown unknowns, perfectly illustrated, as it turns out, by Bell.

revealed that the City's reserves had disappeared and that on June 30, 2013, the City's fund balances had been a negative \$1.458M.

(3) **No Written Rules Procedures.** Compared with normal cities, there were almost no written rules and procedures. The Rizzo regime evidently found written procedures constraining, and limiting “*ad hoc*” “problem-solving”. Businesses paid ad hoc fees for permits and approvals (based on capacity to pay some said). As an example, the City's three bargaining units had no active MOUs at the time when the scandal broke; and two of the three bargaining groups never had an MOU.

(4) **Legal Claims.** Initially it was unclear what were all the legal claims and challenges facing the City and, in fact, more were developing from the various investigations being performed, and would be generated by our offensive efforts to recover monies for the City. Given these unknown unknowns, there was obviously no strategic plan to deal with these matters.

(5) **Lack of Technology.** There had been no effort to invest in technology or modernize the City's current operating systems. A&W's efforts to discover records and information to defend the City ultimately led to our having to install document management personnel in City Hall to start organizing the City's document systems.<sup>7</sup>

(6) **Lack of Transparency.** As the prior administration had operated on the basis of secrecy, the City was not transparent, had no adequate web site, did not operate in accordance with the Public Records Act, and simply lied to the public when confronted. Accordingly, there was deep public suspicion and anger besetting everything the City did. The public was impatient and expected problems to be immediately corrected. Early Council meetings were very unruly even though the Councilmembers were new.<sup>8</sup>

(7) **Council Experience.** None of the five council members had ever been on a City Council. It was similar in this respect to a new council for a newly formed city, except that this

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<sup>7</sup> Michael Kratzer was hired by Aleshire & Wynder, LLP in April of 2012 to specifically assist city staff with collecting and managing the documentation in Bell after the disruption in document management occurred in Bell because of the corruption scandal. He was instrumental in his efforts in assisting city staff and we thank him for it.

<sup>8</sup> We applaud the efforts by the new Council in these early times after the corruption scandal became public.

Council assumed office with a suspicious populace and devastated organizational culture. The Council's attitudes and aspirations for their community, and determination to achieve justice were, of course, vital to our efforts, but there were no experienced senior council members for the new ones to learn from; certainly a new experience for us.

So our world of unknown unknowns, left virtually no island of solid ground from which we could start our voyage. We were in a place we had never been in our career, and probably few have. As the unknowns above began to reveal themselves, it was probably a blessing that we could not see the full picture in the beginning.

### **III. DEVELOPING THE STRATEGIC PLAN.**

Dave Aleshire had been a Scoutmaster of Boy Scout Troops for over 20 years. When telling his high school age boys how to build their Eagle Scout project, Dave would tell them not to be overwhelmed with the complexity of the thing or the fears, but to just pick a place to start and do something, and develop momentum as you move forward from piece to piece. This is the same way we created a strategic plan in Bell.

(1) **Legal Fees.** We did not know initially how extensive all the legal claims were, and we did not know that the City was falling day by day into a deficit in terms of cash reserves, but it was clear that the legal claims could overwhelm the City. Moreover, we were going to be confronting an array of legal experts from small firms working on contingency to giant international law firms. We had initially bid relatively low rates to the City, \$155 per hour for general services and \$195 for litigation. We also knew that the prior interim City Attorney firm had charged about \$2 Million for a year of services. So within a month we decided to hold our bills to \$100,000 per month and also drop our rates by about \$10 per hour. In our first year the limitation of \$100,000 per month led to writing off \$256,000 in legal fees and our effective rate including all the complex litigation averaged \$149 per hour. Additionally, the \$10 per hour discount, and other write offs, meant that over the first two years of services, we charged the City over \$1 Million less in fees than our contract would have permitted (ultimately about a 20% discount).

After the first year, with the litigation load becoming heavier, it was clear we could not keep writing off all fees over \$100,000 per month. At that point however we were already seeing the light at the end of the tunnel, and it seemed we had good chances of beginning to recover funds. The City Manager suggested deferring fees in excess of the \$100,000 per month, and getting paid out of

recoveries. We agreed to do this, and each month's statement showed the accounts and amount were we were deferring. We did not get any extra contingent fees or even interest on the deferrals. By the end of the year the deferred fees amounted to over \$1 Million – in essence an interest free loan by our firm to the City. So in the second year our fees were \$2.3 Million, but \$1 Million of this was deferred and by the end of the year we had brought in over \$10 Million, and so, happily, we did recover our \$1 Million of fee deferral.

Thus, one element of our strategic plan was to reduce fees and defer collection so that the City did not have to devote 25% of its budget to paying for litigation. Other parts of the strategic plan included the following.<sup>9</sup>

(2) **Long Term.** Any strategy had to be one that would work long term based on the City's resources. We could not start on a path and then have to abandon it as not sustainable and waste our limited resources. We needed a broad strategic view of the legal conflicts.

(3) **Prioritize Legal Actions – Litigate, Settle, Defer.** Besides controlling our costs and having a long term view, the next important strategy was to evaluate every case in our developing caseload, which, including administrative actions, was over 60 cases. The cases were evaluated based on: (i) reward based on the potential amount to be recovered or lost, (ii) the likelihood of success based on the law, (iii) the cost of litigation, (iv) the length of litigation, and (v) the strength and strategy of the opposition. Based on these factors the cases were categorized: Litigate; Settle; Defer. For example, we placed an emphasis on litigating some of the malpractice matters against the former audit firm and city attorney because of the chances of recovery. On the other hand, an international bank, Dexia, had a claim against the City for \$38M in a failed bond transaction and obviously had deep pockets to litigate. Here our emphasis was to find an acceptable settlement concept as we could easily burn up all our litigation budget fighting with this entity. In one of our few disappointments, we had to abandon claims against the City's bond counsel on the issuance of \$100M in debt over a number of years as their legal counsel, one of the biggest firms in the US, buried us in a high cost competition which in short order became our most expensive case. In the deferral area, we had numerous claims against the Bell 8 former public officials and used tolling

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<sup>9</sup> Total legal fees were \$1.163M FY 2011-12; \$2.323M FY 2012-13; \$1.476 FY 2013-14 and at mid-year FY 2014-15 only \$508,368 and may finally fall under \$1M. The category we classify as "corruption matters" was \$1.8M of the FY 212-13 budget (almost 80%) and at the current mid-year (Jan 1, 2015) is down to \$162,996, almost a third of the legal budget.

agreements to put most of the civil matters on hold as we felt we could let the District Attorney and the County taxpayers carry the laboring oar in the criminal prosecutions and reach civil settlements thereafter. The tolling agreement was a very effective mechanism for us in staging our legal fights. There was simply not enough money to litigate all matters without sending the City down the path of Stockton to bankruptcy.

(4) **Administrative Agencies.** We needed to take account that the natures of our adversaries were different – from down beaten former officials with limited resources to banks and law firms. But perhaps some of the most important entities were administrative agencies funded by taxpayers other than those in Bell. To the federal agencies like the SEC and IRS, and state agencies like the State Controller, Attorney General, Department of Corporations, we kept beating the same drum: *“Bell is not the criminal, it was the management team and councilmembers in power. Now there is new management, and any penalties or damages assessed now will be paid by the taxpayers and residents of Bell, an impoverished community which has been betrayed once by its leaders, and could now be penalized again by an unthinking rule-obsessed bureaucracy”*<sup>10</sup>. One part of this was that we had to show ourselves to be different leaders to the bureaucracy than the former leaders. So instead of typical lawyers stonewalling over producing documents, or being too busy, we attempted to establish good relations with all governmental agencies. Our reasoning was that unlike most of our private adversaries, there was no reason we had to be adverse to the government. Although, there was some frustration in all of this, as a bureaucracy can’t wholly change its stripes, on the whole, this was a successful strategy. One illustration was that the IRS told us we could be penalized \$6M due to not spending the proceeds of a tax exempt bond issue appropriately (where delays were due to in part to the disruption of management cause by the scandal), but we ultimately settled paying only \$257,000. Another example was in our changing the City’s position from opposing the Attorney General’s efforts to put the City into receivership to supporting their efforts to get restitution from the Bell 8. This ultimately led to two Court of Appeal decisions which will forever help public agencies fight officials who are seeking indemnification for their illegal acts.

(5) **Transparency.** While fighting these legal battles, Bell embraced a new era of transparency in the City starting in 2011 and continuing through the present time. Under

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<sup>10</sup> Interestingly, this was also our theme in court and the judicial establishment almost universally showed great heart and sympathy for this theme.

California's open meeting law for public agencies, the Ralph M. Brown Act, litigation matters can be discussed behind closed doors (which are referred to as closed sessions).<sup>11</sup> Most cities in California conduct discussions concerning litigation matters entirely in closed session and could even approve a settlement agreement in closed session (reporting out the vote).

After the corruption scandal became public in 2010, the community in Bell demanded transparency in all city affairs. By 2011, those matters included litigation matters and recovery efforts by the City from the scandal. Besides the dealing with a suspicious public, we realized that our bills would be skyrocketing, and unless the public had a general understanding of all the matters we were involved with, and the challenges there would be a public revolt.

Accordingly to increase the level in transparency in Bell during these recovery efforts, status reports for all litigation matters were presented through written reports and detailed PowerPoint presentations to the City Council and to the public at Council meetings. Additional legal documents were placed on the City's web site. At least annually we prepare extensive budget reports on the status of all accounts. Finally, public reports were made when significant events occurred and all settlement agreements were approved at public meetings. The public has been kept fully informed, or at least as much as possible without undermining our legal strategies.

The reward for this effort was that despite spending some \$5.47 Million over almost four years in these legal battles, our legal effort was generally publicly supported in the community.

#### **IV. ACCOMPLISHMENTS**

The implementation of this strategic plan has brought us a level of success we truly could not have anticipated in July 2011. Attached as Exhibit A are summaries showing some \$75M in liability avoided between 2011 to 2014. In Fiscal Year 2013-14, the City collected some \$25M in revenue, which besides the settlements and recoveries, included a \$15M sale of property for a major facility bringing hundreds of new jobs to the City. Major accomplishments include the following:

(1) **Rizzo/Spaccia/Adams Indemnity and Pension Claims.** These former employees claimed some \$6M in future unfunded pension benefits based on their final salaries. The City defended on the basis that the final contracts were not properly authorized and the salaries were excessive, and that the pensions should be based on the last properly authorized contracts in 2003. Rizzo claimed a salary of \$58,000 per month (\$700,000 annually) while Spaccia claimed \$38,000

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<sup>11</sup> California Government Code Section 54956.9(d).



per month (\$456,000 annually). The City prevailed reducing the pension liability to a salary level of approximately 25% (Rizzo) and 18% (Spaccia) of what was being claimed. Former Chief Administrative Officer, Robert Rizzo settled actually paying the City approximately \$250,000 from his ICMA retirement accounts. Rizzo and his former assistant, Angela Spaccia, also sued for unpaid wages and benefits and defense costs (\$3.5M Rizzo; \$1.5M Spaccia). In former Chief of Police Randy Adams' case, the determination was that none of his salary for pension purposes should be based on his time with Bell meaning the City had no unfunded liability. Additionally, as a part of the settlement, Adams actually repaid the City \$215,000 in excessive salary and abandoned his claim for reimbursement of \$500,000 in legal fees, and for another \$800,000 in unpaid wages, benefits and lifetime medical (total \$1.3M).

(2) **Dexia Litigation** The City issued \$35M in bonds in 2007 supported by a lease of 3 parcels (23 acres) to BNSF. The lease was voided in 2008 when following a lawsuit challenging the transaction, the court ruled that the City had failed to comply with CEQA. Accordingly, Dexia who had bought the bonds, sued the City in October 2011 for \$38M in damages, and sought to foreclose on the property and obtain recovery against the City for the deficiency between the value of the property and Dexia's losses and the former City Attorney who had given no pending litigation opinion. After lengthy litigation, the parties reached a settlement based on accomplishing the development of the property to obtain a maximum property value, within a six month period. In April 2013 City received an offer from developer P1 Bell to buy the property. During the six months, with staff, we negotiated a purchase agreement, development agreement and environmental approvals, and overcame two lawsuits against the Project. The City's liability was completely eliminated and the City received an additional \$15.5M for sale of an additional parcel to the Developer.

(3) **Malpractice**. The City sued various entities for malpractice, including the former City Attorney. The City claimed that the former City Attorney failed to advise as to the existence of litigation in the Dexia bond issue, failed to prevent the excessive compensation schemes or the improper employee loan program, and had conflict issues in the dual representation of Bell and Maywood. After engaging in extensive mediation, a settlement of \$2.5M was reached. Additionally the City had hired a contingent fee lawyer who would have obtained 25% of the settlement. We negotiated a \$300,000 buyout of that contract preserving for the City the bulk of the settlement. Our

legal fees ended up being about \$250,000 at our discounted rates, so not only less than the 25% contingent fee, but less than the buyout. In fact, our arrangement saved the City an estimated \$1M in what the fees would have been.

(4) **Malpractice Claim: Former City Auditor.** The City used an audit firm to perform its audits since 1994, including the years preceding the corruption scandal. The State Controller investigated the audit practices and issued a review report in December 2010 (Quality Control Review for Audit of City of Bell and Agency for FY June 30, 2009) finding 97 audit violations, and that the City's internal controls did not comply with audit standards resulting in excessive compensation, illegal taxes, mismanaged bond funds and questionable contracts and land practices. Thereafter the Attorney General conducted a disciplinary action before the State Board of Accountancy resulting in a two year probationary supervision of the auditor's license and an assessment of fines and fees amounting to \$300,000. The City made a claim against the audit firm for malpractice related to the foregoing. After mediation, a settlement agreement was reached and the audit firm agreed to pay the City \$3M.

(5) **Supplemental Retirement Plan ("SRP").** This Plan was created in 2003 to provide management employees and councilmembers enhanced pension and life-time medical benefits and was terminated by the new Council in April 2011. Liabilities under the Plan were almost \$6M but the City's contributions were insufficient and there was over \$3M in unfunded liability. Five employees receiving benefits sued the City in September 2012 for the termination of benefits in the *Ramirez v. City Of Bell*, Case No. BC474118 ("*Ramirez*") case. The City won a summary judgment motion on January 2013 ruling that the Plan was not legally established. Wells Fargo administrated the Plan and claimed \$750,000 in legal fees due to all the Bell 8 litigation and records requests by investigating agencies. The City brought 41 plan participants into the matter through a second lawsuit filed, *City Of Bell v. Avila*, Case No. BC491531 ("*Avila*"). Although an appeal was filed of our victory in *Ramirez*, we negotiated settlements with the parties in both actions. This resulted in \$4.8M being paid by Wells Fargo to the City. Settlement payouts of over \$1M have been made with virtually all claimants. Surplus funds will be used to pay the obligations of the members of the Bell 8 who are participants in the Plan. The Wells Fargo claim was negotiated down to about half of the claim.

(6) **Werrlein.** In or around September 2010 the City stopped payment on a note in connection with the 2009 \$4.6M purchase of the Western Auto property, a property on the City's key downtown intersection and owned by the Pete Werrlein Children's Private Annuity Trust ("Trust"). The City could not afford the payments and the purchase price was excessive (in total the City would have paid \$7M). This transaction was highlighted in the State Controller's report. The Trust sued the City to foreclose, but the City obtained a stay, and thereafter negotiated a settlement approved by the court on September 19, 2013 which will allow the City to buy the property and find a developer for the property. The City will pay \$2.5M over 10 years at 5% interest (reducing the aggregate price paid to \$4M, a \$3M reduction). This transaction was a part of a judicially approved settlement agreement allowing the City to still utilize redeveloped funds despite the dissolution or redevelopment by ABx126 in June 2011. Accordingly, the General Fund cost is zero.

(7) **General Obligation Bond Workout (2007).** Some \$50M in bonds were issued for the Sports Complex and community facilities to be repaid with property taxes. Property taxes would have been the second highest in LA County and would have increased 70% to repay the bonds. A workout was accomplished through a tender offer which acquired 50% of the bonds, and \$20M in unspent proceeds were used to defease the bonds, so that property tax increases were avoided.

(8) **SEC/IRS Matters.** We have spent a great deal of time coordinating with these agencies on their administrative investigations as to (i) possible misrepresentations or omissions in its disclosure to securities market, and (ii) failure to spend money timely on tax exempt projects. The IRS initially suggested that the City's liability exceed \$6M. Moreover, if the IRS determined the bonds to be taxable we would have been exposed to litigation by all bondholders for damages. In 2014 a settlement was reached where the City paid \$257,000 and thus eliminated the exposure of \$6M and claims by bondholders.

(9) **Other Matters.** Two vendors, DJ Engineering and Fisher Associates sought to recover some \$300,000 for contractual services they had provided, but the cases were either dismissed or abandoned when the judge ruled that the City could not be forced to pay where no properly authorized written contract was in place. A Sergeant in the Police Department resigned and sued the City claiming constructive termination due to his whistleblowing activities. He claimed \$3M in damages, and at mediation, the mediator recommended settlement at \$1.6M. Ultimately, we

negotiated a settlement and reinstatement agreement dated August 1, 2012 and paid approximately \$500,000 in lost wages and attorney fees, probably avoiding \$1M in liability. Additionally, we have extensively investigated the City's insurance coverage to determine whether there is coverage for some of the improper acts of the former public officials. In December 2012, we obtained from Alliant a payment of \$1M, the full amount of the policy limits.

**V. THE BELL CORRUPTION SCANDAL BROUGHT ABOUT CHANGES IN CALIFORNIA LAW WHICH WILL BENEFIT PUBLIC AGENCIES IN THE FUTURE**

Bell has changed the legal landscape in California concurring public corruption. Although Bell's legal battles over the corruption scandal resulted in victories, ultimately all public agencies in California have benefited. A primary reason is due to two cases decided at the Court of Appeal. These very significant cases in 2013 resulted in two published opinions in the wake of the Bell corruption scandal. These decisions are "published" meaning that they can be cited as binding legal precedent within the State of California and the United States. These published Court of Appeal decisions will impact how future corruption scandals throughout the country are resolved by the courts in the future.

The first published decision is *People ex rel. Harris v. Rizzo* (2013) 214 Cal.App.4th 921. This decision allowed the California Attorney General to pursue claims against the corrupt former officials in Bell. Before that decision was issued, the trial court had taken the view that the Attorney General could not pursue litigation against the corrupt former officials in Bell.

The background for this case is that on September 15, 2010 the California Attorney General filed this civil action ("AG Lawsuit") against Robert Rizzo, Angela Spaccia, Randy Adams and the former Bell City Council, alleging violations of various state laws pertaining to the waste of public funds, conflict of interest, and breach of fiduciary duty and violation of public trust. Approximately one month after the AG Lawsuit was filed, on October 15, 2010 Robert Rizzo countered this lawsuit by suing the City of Bell and seeking indemnity from the City under the terms of his employment contract with the City and under sections of the Government Code and Labor Code, and payment of his legal fees and costs in defending the lawsuits filed against him by the Attorney General and the District Attorney. Shortly thereafter, on November 24, 2010 the City countered with its own lawsuit against Robert Rizzo.

The AG's complaint was subsequently dismissed by the trial judge. One of the main reasons why the trial court indicated it was dismissing the lawsuit was because the AG lacked standing to argue the case for the City and that the AG was barred from doing so under separation of powers. The AG appealed the trial court's dismissal of its complaint to the Court of Appeal.

Under the City's new leadership, post the 2011 election, the City worked directly with the AG's Office to urge the Court of Appeal to reverse the trial court's decision. The City made detailed arguments in its briefing before the Court of Appeal focusing on the statutory construction of the City's governing documents, its City Charter, and other legal arguments to urge the Court of Appeal to allow the AG's lawsuit to proceed forward. On March 20, 2013, the Court of Appeal issued its 43-page published ruling reversing the trial court's judgment and remanding the matter to trial court with instruction to reinstate the AG's lawsuit. This was a tremendous victory for the AG's Office and for the City of Bell.

The legal significance of this opinion is that Attorney General's Offices can now assist cities in recovering from corruption scandals. In many cases, a small public agency that has been victimized by a corruption scandal and had its public funds looted by corrupt officials might not have the necessary financial resources to fight its legal battles alone. City officials and State officials can now work together through the court system to obtain justice for victim public agencies and cities in the aftermath of a corruption scandal. An efficient use of public funds is accomplished in this manner. Additionally, this approach harmonizes public administration between State and local government in crisis situations stemming from a corruption scandal.

The second published decision is *City of Bell v. Superior Court* (2013) 220 Cal.App.4th 236. As discussed above, on October 15, 2010, Robert Rizzo sued the City of Bell seeking indemnity from the City under the terms of his employment contract with the City and under sections of the Government Code and Labor Code, and payment of his legal fees and costs in defending the lawsuits filed against him by the Attorney General and the District Attorney. The trial court made rulings adverse to Bell. Bell sought relief from the Court of Appeal. The Court of Appeal subsequently issued a 37 page published opinion on October 4, 2013 holding that Robert Rizzo was not entitled to payment of his legal fees for his defense of criminal and civil litigation against him under his contract with the City.

The significance of this Court of Appeal decision is that previously public agencies that were victimized by corrupt officials were prevented from a practical standpoint from suing those corrupt

officials to recover the losses sustained by the public agency due to that official's corruption. Under prior law, a corrupt official could turn around and claim that the public agency owed them a duty to pay their legal fees and to indemnify them. This is exactly what Rizzo tried to do to Bell.

If a victimized public agency had to pay for a corrupt former official's indemnity and defense claims, then from a practical standpoint no victimized public agency could recover from a corrupt former official after a corruption scandal. This Court of Appeal decision allows public agencies to pursue claims against corrupt officials without the official turning around and claiming that the victimized public agency pay for its own recovery efforts.

Additionally, the California State Legislature enacted many changes in the law after the Bell Scandal in an effort to prevent future corruption scandals. For example, Assembly Bill 1344, approved by the Governor of California on October 9, 2011, enacted several reforms, including among other reforms, requiring that cities provide notice of each council meeting and post agenda packages on the city's Internet Web site, which was not previously required.

Also under AB 1344, cities can no longer hold a special meeting with only 24 hours' notice to the public regarding the salary, salary schedule, or other form of compensation for any local agency executive and those matters must instead be disclosed publicly with 72 hours' notice and conducted at a regular city council meeting.

Effective January 1, 2012, Government Code Section 3511.2 provides that any contract executed or renewed between a city and its executive manager cannot include an automatic renewal of a contract that provides for an automatic increase in the level of compensation that exceeds a cost-of-living adjustment and that contract or contract extension cannot provide a cash settlement that exceeds 18 months of the salary and benefits to that executive employee.

Under recent pension reform in California since the Bell scandal, pension forfeiture statutes<sup>12</sup> apply to all public employees including those hired before January 1, 2013. Any current or future public official or public employee convicted while carrying out their official duties, in seeking an elected office or appointment or in connection with obtaining salary or pension benefits, will be required to forfeit any pension or related benefits earned from earliest date of the commission of the felony to the forfeiture date (meaning the date of the conviction). The felony must arise out of conduct or in the performance of their official duties, but does not require it occur during normal work hours.

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<sup>12</sup> California Government Code sections 7522.72 and 7522.74

In terms of other deferred compensation benefits, typically pension plans (such as 401(k)'s) are judgment proof. Once a judgment is obtained, pension funds cannot be collected to pay the amount owed to satisfy that judgment. However, Bell was able to recover in excess of \$500,000 from deferred compensation plans held by former officials through various restitution awards and a federal court action involving Rizzo's pension plans. Bell was able to do so by seeking recovery of these monies prior to the entry of judgment in these actions as a claim to the recovery of public funds and by obtaining a court ordered award of these funds that was agreed to by the subject officials through those court actions.

## **VI. ADVOCACY FOR VICTIM PUBLIC AGENCIES IN CRIMINAL COURT**

We applaud the efforts by Steve Cooley and the Los Angeles District Attorneys' Office in the Bell Corruption Scandal. A critical part of our representation of Bell after the corruption scandal was working closely with the District Attorney to obtain justice for the City. Justice includes convictions that result in both jail sentences and a restitution order to pay back funds that were misappropriated from a victimized city. We focused on taking a leading role concerning the restitution component after the District Attorney obtained convictions. We helped ensure that the current city officials and the community had a voice at the criminal sentencing and restitution hearings.

At the sentencing and restitution hearings for the convicted former city officials, the current city officials and residents had the opportunity to make public statements in court to the judge. We worked closely with the current city officials and the residents to ensure their voices were heard in court and to organize their presentations in court. We introduced each speaker at the sentencing hearings to the judge and also argued ourselves for the maximum restitution recoveries allowed by law at each of the seven restitution hearings. This was an incredibly rewarding experience to see the voices of city officials and community members heard in court at each of the sentencing hearings.

Between April 2014 and July 2014, the City of Bell obtained criminal restitution awards for millions of dollars against the convicted former officials. Specifically, the Court awarded Bell approximately \$8.8 Million in restitution against Robert Rizzo, \$8.2 Million in restitution against Angela Spaccia and approximately \$1 Million combined against all of the convicted former Bell City Council members, all payable to the City of Bell. We argued at all seven criminal restitution hearings for the City of Bell to obtain these restitution orders.

Robert Rizzo's sentencing hearing was the most contentious of these restitution hearings. Rizzo's attorney argued that Rizzo should receive credit for all of the recoveries Bell had as of that time, April 2014, including credits of \$5.5 Million for recoveries for professional negligence claims against Bell's former city attorney firm and former city auditor, \$1 Million received from an insurance claim filed by Bell for employee theft during the corruption scandal and for other recoveries. We countered these arguments in court and a heated court battle ensued between us and Rizzo's attorney (see L.A. Times April 16, 2014 article). The trial court ruled against Rizzo and granted Bell a full recovery for the restitution sought against Rizzo of over \$8 Million.<sup>13</sup>

The restitution awards against Robert Rizzo and Angela Spaccia also included the release of their claims to the Supplemental Retirement Fund based on their criminal convictions. The Supplemental Retirement Plan ("SRP") was created in 2003 to provide management employees and former councilmembers enhanced pension and life-time medical benefits and was terminated by the new City Council in April 2011. The criminal restitution order against Rizzo and Spaccia resulted in the release of over \$2 Million from the Supplemental Retirement Fund back to the City. Convicted former city council members also agreed to relinquish a combined total of over \$200,000 to Bell from their retirement accounts under their criminal restitution orders.

## **VII. CONCLUSION**

The world of unknown unknowns in Bell has receded and we are back to a world of largely known knowns and known unknowns. Financially the City has timely completed its audits and has gone from the then unknown deficit of \$1.5M to over \$22M in reserves. The unwritten and unknown policies and practices are gone, filled in with new purchasing ordinances and standards, negotiated and approved MOUs with the employee bargaining units, there is a risk management function, and a council procedures manual. Some \$75M of threatened liabilities is gone and the outstanding case load has shrunk to a handful of cases. And not only has Bell's world become cleaner and better, markers have been put down which will benefit all communities: judicial decisions stand as precedents to keep wrongdoers from raiding the city treasury, and the law requires more disclosure and give citizens a greater opportunity to uncover abusive practices.

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<sup>13</sup> Robert Rizzo received credit for approximately \$250,000 he paid back to Bell in 2012 from his retirement accounts under a court approved settlement of a federal lawsuit.



What have been the most important factors in these accomplishments? Certainly we would like to feel that good lawyering and being able to deal with a variety of legal issues is an ingredient. Being a partner and willing to make some economic sacrifice helps as well. Of greater importance is really a mindset, the quality of being able to see things whole<sup>14</sup>. In a complex setting of unknown unknowns, starting on the problem at a logical place, keeping an open mind and reacting to new data and events as they develop, and always keeping the long view in mind, is the needed mindset.

Probably one of our most difficult decisions was whether to become involved in the malpractice action against the former city attorney, one of the best known and a highly respected firms in our field. Initially we declined to take the case for the reasons that the City already had retained a contingent fee lawyer, we had never handled such a case, and we didn't want to create a negative relationship with colleagues. However, we did litigate the related Dexia case and over the course of a year became very knowledgeable, about both matters, and ultimately critical of how the malpractice matter was being handled. We negotiated a buyout of the contingent fee contract and at our lesser rates, the City received \$1M more from the final settlement that they would have from the contingent fee arrangement. The prior attorney actually received more in fees than we did from the case. The City would have had to get a settlement of twice that which was offered to end up with the same return if the contingent fee had been in place. So our willingness to adapt to the situation benefited the client, although it was an extremely difficult internal decision.

So adaptability and "seeing things whole" are important qualities in the unknown unknown world. But exceeding even good lawyering, good organization and "seeing things whole" is the concept of team, or the even broader concept of community. Though this paper has been focused on the lawyer role, the turnaround of the organization was a joint effort. It started with some agitators and was picked up by journalists and became a community organization, of which BASTA, led by Cristina Garcia, who is now a member of the California State Assembly, was the most prominent. However, others leaders and organizations played their part, and the current council members came from these community organizing efforts. Then the new Council selected a manager, Doug Willmore, and he created an outstanding management team which has spent three years in the trenches fighting for each improvement under enormous scrutiny. Doug is now moving on to fresh

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<sup>14</sup> "Seeing things whole" was seen as the initial goal quality of John Weeky Powell, the first man to descent through the Grand Canyon in 1869, Seeing Things Whole, edited by William deBuys. "He saw things whole. He drew his conclusions from the entirety of the puzzle, not piece by piece." (p. 24).

challenges with a new city, but he is an outstanding city manager and has left a mark in Bell which will be felt for years to come. But, indeed, every City employee has felt the impact of the Bell scandal, the community questioning and suspicious, and everyone who has kept coming back to work doing their job has played their part in the restoration of Bell.

And while we have been part of a management, and even organizational team, in the end the broader concept is one of community. In making all the decisions along the way, of maneuvering through the unknown unknown, there are decisions made. The decisions are weighted by risk factors; chances of success, costs, life experience of the judge, strength of the opposition. But overarching is the commitment of the advocate. In the public arena, and particularly this case, we had a whole community which felt abused. The sense of abuse was not created by the L.A. Times. It existed for decades as the long-time community residents who had come to a small well-kept community saw it decline from its height in the 1950s and 1960s to something lesser, not worthy to raise and keep their children. The L.A. Times found this anger and formed it into a flood which washed away the years of powerlessness and cynical self-dealing officials, so that Bell could take its chance at a rebirth.

So in the end, all of this has been about rebirth and renewal, and justice and for the lawyers, the new management team, and the organization, in the end, in each of the decisions we have participated in, it has been about understanding this truth. And it comes from the community, the demand for fairness and justice. Our new inexperienced council members, then, were not a liability but the essential ingredient. They were our instant sounding board on what justice means in each situation we presented to them. Of course, there were times where we settled and took less than we felt we deserved. But overall, bit by bit justice has become real, defined by the decisions directed by the Council for their community.

We the lawyers had to understand what justice was to the client, to the Council and community – and we then had to explain it to judges, auditors, administrators, adversaries, and reporters, and fight for it. And we also have been changed by this advocacy.

Public service is not the performance of a function, the shuffling of papers and receipt of a check. It is certainly not the manipulation of a system to one's personal benefit. It is the serving of a community, the creation of new resources, and capacity by the establishment of fair process, the lifting of spirit, the teaching of a people of their power. Bell is not about the harm those who have

lost the sense of public service can do, it is about the will to serve in each of us and how it can be energized and directed to accomplish things the cynical heart cannot imaging.

People who understand this story can be changed. *The whole system has cooperated to make the hopes and dreams of Bell achievable.* But the journey is never over. It is for us to continue on absorbing this lesson. And for being allowed to participate in this journey, for our part, we are grateful beyond expression, and expect to apply the lessons bestowed on us by the suffering experienced by the citizens of Bell.

[END OF WHITEPAPER]

**EXHIBIT A**  
**SUMMARY OF RECOVERIES (2011 – 2014)**

- (1) City Avoids Almost \$70M in Liability and Recovers Over \$10M in Revenue with \$18M in restitution awarded.

Focusing just on the 15 major matters, we can state that under the guidance of the City Council and City Manager, through our litigation and settlements, we believe the City has avoided \$70M in liability as follows:

Matter	Potential City Liability
1. Rizzo/Spaccia Pension Claims	\$ 6.000M
2. Adams Pension/Indemnity Claims	\$ 1.300M
3. Bell 8 Pension/Indemnity Claims	\$ 6.000M
4. Eric Eggena Claim	\$.800M
5. Dexia claim against General Fund	\$38.000M
6. Werrlein claim for payment	\$ 7.000M
7. Vendor claims for payment	\$ .300M
8. Supplemental Retirement Obligations	\$ 7.350M
9. IRS Claim	\$ 6.000M
10. Cochran Claim	\$ 3.000M
	<b>\$74.950M</b>

Additionally, in terms of actual monies recovered, we believe we have brought in over \$10M in revenue, with an additional \$15.5M resulting from a sale of property as a part of the Dexia transaction for a total monies to the City of \$25.5M. On a non-monetary basis, through the 2007 GO Bond workout, we avoided a 70% increase in property taxes to property owners, and we've recovered the Werrlein property for the City's use in economic development. These benefits are real but not translated into dollars. The breakdown in monies recovered is as follows

Matter	Funds to City
1. Professional Negligence Settlements	\$ 5.500M
2. Supplemental Retirement	\$ 4.800M
3. Rizzo/former Council ICMA Funds	\$ .500M
4. Adams	\$ .215
5. Alliant	<u>\$ 1.000M</u>
	<b>\$14.209M</b>

**RESTITUTION**

Matter/Criminal Trial	Restitution
1. Robert Rizzo	\$ 8,845,229.80
2. Angela Spaccia	\$ 8,254,776.60
3. Victor Bello	\$ 177,634.03
4. Oscar Hernandez	\$ 241,331.83
5. Teresa Jacobo	\$ 242,229.37
6. George Cole	\$ 77,643.66
7. George Mirabal	\$ 242,293.48
	<b>\$18,081,138.77</b>

## ABOUT THE AUTHORS

The authors of this whitepaper are David J. Aleshire and Anthony R. Taylor.

David J. Aleshire was appointed as City Attorney of Bell in July 2011 as part of the reform efforts by the new City Council after the corruption scandal. Aleshire & Wynder, LLP volunteered its services to the citizen recall effort led by BASTA which gathered 4,000 signatures in a month and carried out the recall. Mr. Aleshire has served the City of Bell as its City Attorney since that time through the law firm he is the founding partner of, Aleshire & Wynder, LLP, a municipal law firm based in Irvine, California.

The restoration of Bell is one of Mr. Aleshire's most important achievements in his nearly 40 years of practice in municipal law. In September 2014, the City of Bell adopted a proclamation recognizing City Attorney David Aleshire for his service to the City of Bell.

Besides Bell, Mr. Aleshire serves as City Attorney in Signal Hill (since 1978) and Rancho Palos Verdes (since 2014). He has long tenures as City Attorney of Palm Springs (15 years), Lawndale (17 years) and Irwindale (10) and has served as City Attorney of seven other cities (San Jacinto, Banning, City of Suisun City, Cerritos, Norwalk, San Dimas and Irvine).

Mr. Aleshire graduated from UCLA with a J.D. in 1975 and M.A. in Urban Planning in 1976. Prior to that, Mr. Aleshire graduated with a B.A., Phi Beta Kappa, from Stanford University in 1972.

Anthony R. Taylor is a partner of Aleshire & Wynder, LLP. As part of the recovery efforts for the City of Bell after the corruption scandal, Anthony R. Taylor was lead litigation counsel and argued appeals for the City of Bell in *People ex rel. Harris v. Rizzo* (2013) 214 Cal.App.4th 921 (allowing recovery against former city officials after Attorney General's lawsuit was dismissed by the trial court) and *City of Bell v. Superior Court* (2013) 220 Cal.App.4th 236 (holding that Robert Rizzo was not entitled to payment of his legal fees for his defense of criminal and civil litigation against him under his contract with the City).

Mr. Taylor also handled professional negligence claims for the City of Bell against its former city attorney firm and former city auditor and recovered a combined total of \$5.5 Million for the City of Bell in those professional negligence matters.

Mr. Taylor argued at all seven criminal restitution hearings for the City of Bell to obtain restitution awards against the convicted former officials. The Court awarded Bell approximately \$8.8 Million in restitution against Robert Rizzo, \$8.2 Million in restitution against Angela Spaccia

and approximately \$1 Million combined against all of the convicted former Bell City Council members, all payable to the City of Bell.

Mr. Taylor graduated with a B.S. from the University of Southern California, *summa cum laude* and class valedictorian of the School of Public Administration in 1997. Continuing at USC, he received his J.D. from USC Law School in 2000.

Mr. Taylor found his inspiration to serve cities from his parents and his upbringing in public service. Mr. Taylor's father, Robert B. Taylor, was a distinguished LAPD officer and a retired commander from the LAPD before becoming the Chief Probation Officer of Los Angeles County, where he retired in 2010. Two members of Mr. Taylor's family were police officers that were tragically killed in the line of duty. This whitepaper is dedicated to all public safety employees who have made the ultimate sacrifice for our communities and to all of those who serve our communities with honor.

Both David J. Aleshire and Anthony R. Taylor were named 2015 *California Lawyer Magazine* Attorney of the Year in the category of municipal law for their work in the City of Bell.