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A Historical Overview of Informants

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Chapter 1

A Historical Overview of Informants

From the dawn of our history, internal law and order has had to depend in greater or less measure on the informer. [Police Manual]¹

Informers date as far back as the first records of governing institutions. As long as the states and their officials have existed, they have needed information about challengers to their authority. In fact, the words “informer” and “informant” derive from the informer’s role as supplier of information. This information is usually given to the state in its prosecution of crime.²

There are two basic types of informers: the “incidental informer” and the “recruited” or “confidential informer.” The incidental informer supplies information to the authorities about one particular incident. These informers might receive a specific reward, but they are not “on the payroll.” Some incidental informers act out of a sense of civic duty. They do not have repeated contact with the authorities, but rather supply information at one meeting. In contrast, the confidential informant provides information for on-going investigations and is typically paid by the police whom they have repeated contact with.³

Confidential informers began to play a larger role as our governing institutions developed more complex policing systems and institutionalized investigative techniques.

¹ Gary T. Marx, *Thoughts on a Neglected Category of Social Movement Participant: The Agent Provocateur and the Informant*, 80-2 AMERICAN JOURNAL OF SOCIOLOGY 402, 402 (Sept. 1974).

² BLACK’S LAW DICTIONARY (6th ed. 1990) defines “informer” or “informant” as “an undisclosed person who confidentially discloses material information of a law violation, thereby supplying a lead to officers for their investigation of a crime. This does not include persons who supply information only after being interviewed by police officers, or who give information as witnesses during the course of investigation. Rewards for information obtained from informers is provided by 18 USCA Sec. 3059.”

³ RUSSELL L. BINTLIFF, *POLICE PROCEDURAL: A WRITER’S GUIDE TO POLICE AND HOW THEY WORK* 80 (1993).

From ancient Greece through the early 19th century, there was little widespread or systematic use of confidential informers. Most informers played a minimal role in the criminal justice system. Then, beginning with the professionalization of police forces in Western Europe, the use of informers by police became much more prevalent. This reflects the general pattern of informer history, but there are examples of extensive use of confidential informants in ancient Rome and during the Middle Ages. However, this use of confidential informers represents exceptions to the general operation of criminal investigations in these times.⁴

Informers in Ancient Civilizations

The laws of antiquity did not draw a distinction between criminal acts and private wrongs, as most legal systems do today. Rather, all violations against private individuals were categorized as *delicts* (a broader term than our “tort,” but by and large *delicts* is what we would today call torts). Victims could bring private actions against their perpetrators, but the state played no role in gathering evidence or prosecution. For example, in a homicide case, the victim’s estate would have the burden of initiating, funding and prosecuting the murderer. Consequently, informers as we understand them today, as people who give information about a crime to the government or police, were not widely known or used in these types of cases.⁵

Informers were, however, vigorously employed for cases of treason. The birthplace of democracy, classical Athens (425 to 322 B.C.), had a rich tradition of

⁴ See MICHAEL GAGARIN, EARLY GREEK LAW 63-4 (1986); ANDOCIDES, ON THE MYSTERIES 36.43 ff.20; JACOB BURCKHARDT, THE GREEKS AND GREEK CIVILIZATION 281 (1998); JOHN E. STAMBAUGH, THE ANCIENT ROMAN CITY 126-27 (1988); Clifford S. Zimmerman, *Toward a New Vision of Informants: A History of Abuses and Suggestions for Reform*, 22 HASTINGS CONST. L. Q. 81, 165 (Fall 1994).

⁵ GAGARIN, *supra* note 4, at 63-4.

encouraging the reports of planned and already committed treasonous acts.⁶ Termed *menutai* in Greek, any person could come forward, whether it be man or woman, slave or free person, citizen or foreigner.⁷ The informer would report to the *Boule* or *Ekklesia*, courts of capital crimes in Athenian society. As for the system of rewards and punishment, a 415 B.C. law provided that an informer be given impunity if his information was true, but he would be put to death if it was not. Oftentimes an informer would be a member of the conspiracy to commit treason and would come forward on condition of impunity.⁸

The most renowned Greek informer was Andocides. In 415 B.C. he conspired in the desecration of sacred Athenian statues called the Hermae, which were “sacred pillars topped by busts of the gods.”⁹ Andocides was acquitted in exchange for informing on his fellow conspirators, which included his own father, Legoras. All the named culprits were executed, except for Legoras, who like his son, informed on other criminals to gain his freedom.¹⁰

Similarly, in ancient Roman society, informers were chiefly used to combat subversion of the ruling authority. They functioned more like current-day spies. Private

⁶ DOUGLAS M. MACDOWELL, *THE LAW IN CLASSICAL ATHENS* 181 (1978).

⁷ MATTHEW R. CHRIST, *THE LITIGIOUS ATHENIAN* 143 (198). The act of informing is referred to as *menysis*. DOUGLAS M. MACDOWELL *supra* note 6, at 181.

⁸ MACDOWELL, *supra* note 6, at 181.

⁹ *See* THE COLUMBIA ENCYCLOPEDIA (5th Ed 1993); BURCKHARDT, *supra* note 4, at 281.

¹⁰ BURCKHARDT, *supra* note 4, at 281.

entrepreneurs, known as *delatores*, would bring information to the urban magistrate and the emperor. These *delatores* are the closest to being what is now a “confidential informer” in ancient times. In fact, in the 2nd century A.D., the emperors gave the task of supplying information about subversive activity to a group called the *frumentarii*. These officials were uniquely suited to observe activity across the empire, because they would supply grain to the legions, giving them contacts across the Mediterranean on a regular basis.¹¹

Judas Iscariot: The Most Famous Informer

Judas Iscariot, one of Jesus’ twelve apostles, was the “one who betrayed him.”¹² His name has become “synonymous with betrayal,”¹³ and likened to Benedict Arnold. *United States v. Frost*, 914 F.2d 756, 770 (6th Cir. 1990). We therefore regard Judas as one of the early informants.

According to biblical accounts, Judas was an informer for the Romans, the ruling government at the time, against Jesus Christ. In 33 A.D., the Jewish authorities wished to arrest Jesus and hand him over to the Romans for execution for sedition. However, Jesus’ popularity was strong and they were concerned that a public arrest might result in a riot. During the Passover feast, Judas guided the Roman soldiers to Gethsemane, a remote grove outside Jerusalem. Judas and the Romans arrived, and under the torch light Judas signaled to the Romans which man was Jesus by giving him a kiss. Judas supplied the information needed to avoid an uprising. In exchange for his role as an informant, he

¹¹ STAMBAUGH, *supra* note 4, at 125-27.

¹² See 10 *Matthew* 4.

¹³ Martyn Percy, *Arguments for Easter: The Day When Even God Needs a Scapegoat; Poor Judas. The Tendency to Lay the Blame for the Sin of the World at the Feet of One Man Is Not Restricted to Gospel Writers. Look Around*, THE INDEPENDENT (LONDON), Apr. 2, 1999, at 7.

received thirty pieces of silver. Without Judas' information, the arrest might have sparked an insurrection, bringing the might of the Roman army down on all Jerusalem.¹⁴

From the New Testament we learn little of Judas' history prior to his betrayal of Jesus.¹⁵ Folklore holds that Judas was born to Reuben and Cyborea, a Jewish couple.¹⁶ When Cyborea was pregnant, she had a dream that Judas would grow up to destroy the entire Jewish people, and out of fear of this dream she put the baby Judas into a chest and sent him out to sea. Judas was found by the Queen of the island Skariot, who having no children of her own, kept him and raised him as her own. She later gave birth to a son, who Judas eventually killed upon learning of his own origins. Judas then left Skariot and landed in his birthplace, where he entered into a fight with Reuben, not knowing him to be his father, and killed him as well. Judas, now a member of Pilate's entourage, married Reuben's wife, his own mother, unaware of their relationship.¹⁷ When he and Cyborea uncovered the truth about their familial relations, Judas went to Jesus looking for forgiveness, became one of his favorite disciples, and was chosen to be the holder of the purse.¹⁸ Judas was one of the twelve men chosen by Jesus to act as his inner circle. They were known as the twelve apostles. Judas was the treasurer and carrier of the common purse. Possibly in search of the motivation for Judas' act, the book of John attributes this

¹⁴ RAYMOND E. BROWN, *THE DEATH OF THE MESSIAH: FROM GETHSEMANE TO THE GRAVE 1399-1404* (1994).

¹⁵ See W.H. Kent, *Judas Iscariot*, *THE CATHOLIC ENCYCLOPEDIA*, VOLUME VIII, (visited July 17, 2000) <<http://www.newadvent.org/cathen/08539a.htm>>

¹⁶ See HYAM MACCOBY, *THE MYTH OF JEWISH EVIL*, 79 (1992).

¹⁷ Larry B. Stammer, *New Look at Ancient Betrayer; For Centuries, Judas Iscariot Has Been the Archetype of the Traitor. But Some Scholars Are Beginning to Wonder If He Was a Villain At All*, *L.A. TIMES*, Apr. 21, 2000, at A1.

¹⁸ See *id.* at 104.

position to Judas' being a thief.¹⁹ This connection with money is seen as having corrupted him, and it becomes more credible that Judas then turns to evil and betrayal. However, this money theory could be interpreted in another way. Since Judas was keeper of the purse and had ready access to money, then it is unlikely that money would be a motivation for betrayal. Further given that Jesus gave him this important and responsible position, Judas was probably regarded at least by Jesus as honest and not a thief.

Another suggested motivation focuses on altruistic motives. Judas had great faith that Jesus was indeed God. He hoped that when Jesus was seized by the authorities he would manifest his power for all the world to see. Of course, one could argue that this was impatience on the part of Judas who was more concerned with an earthly manifestation of a kingdom than a heavenly one.²⁰

Still another motivation might be personal animus toward Jesus. Judas was the only apostle from Judean in the South; the rest were from Galilee in the North. Although he had a trusted position, he was not part of Jesus' inner circle. He expected Jesus to be a ruler of an earthly kingdom and Judas would, of course, be an important part of the regime. Feeling disappointed in his own personal advancement, he began to resent Jesus.²¹ Thus the informer, Judas Iscariot, could have been motivated by greed, hate or possibly altruism. Much of which motivates the informants we see today.

¹⁹ See 12 John 6.

²⁰ W. W. STORY, A ROMAN LAWYER IN JERUSALEM IN THE FIRST CENTURY (1908).

²¹ WARREN W. WIERSBE, CLASSIC SERMONS ON JUDAS ISCARIOT (1995)

After his infamous act of betrayal, we learn in the book of Matthew, Judas repents after seeing Jesus condemned, and gives back the thirty pieces of silver.²² He then hangs himself. The chief priests use the money, which at this point is blood money and cannot be put back into the treasury, to buy a field in which to bury foreigners. The field is called the Field of Blood.

Members of the early Christian Church used the Judas story to discourage informing among its persecuted members. The literature shows that vilification of Judas fluctuated with the level of Roman persecution of the church members.²³ In contemporary times, Judas has been associated with such infamous informants such as Linda Tripp,²⁴ and others who are considered to have betrayed or informed on someone. The debates continue as to the exact motives of Judas, and as to the proper translation of the words describing his acts in informing on Jesus. However, the story of Judas betraying Jesus by informing on him to the Romans is well-known, and Judas is considered by many to be the epitome of betrayal and informing.²⁵

Classical history, therefore, exhibits how the use of informers mirrored the reach of state-sponsored law enforcement. Greek and Roman governments were primarily concerned with crimes against the state's power and stability, not with crimes against individuals. Consequently, informers in ancient times were key players only in cases of treason and subversion.

²² See 27 Matthew 3-5.

²³ See *id.*

²⁴ See Gregg Zoroya, *Monica Does D.C. Touring The Favourite Haunts Of The World's Most Famous Intern*, THE TORONTO SUN, Mar. 28, 1999, at T6.

²⁵ See Stammer, *supra* note 17.

Informers from the Middle Ages through the Enlightenment

By 1275, the use of informers in England had broadened to include felony prosecutions.²⁶ The approver system, as it was termed, set up procedural incentives for informers to come forward. Any person accused of treason or a felony could confess and inform on the remaining accused. A successful approver would be fully pardoned and exiled, but if the approver's testimony was proved wrong, the approver risked execution.

The system was rife with flaws.²⁷ There was nothing to lose by the appeal to approve. The accused murderer could stand trial, lose and face execution, or he could appeal to "approve" against his fellow conspirators, lose and face execution.²⁸ Either way the accused risked execution. Furthermore, the system provided an incentive to blackmail innocent parties. A person could threaten to appeal for approval against an innocent person unless the innocent person handed over money. Also, law enforcement officials would sometimes compel prisoners to inform on innocent parties in order to extort ransom. Ultimately, the system succumbed to its long history of abuse and was gradually replaced by the common informer system.

A common informer was "a person who brought certain transgressions to the notice of the authorities and instituted proceedings, not because he, personally, had been aggrieved or wished to see justice done, but because under the law he was entitled to a part of any fine which might be imposed."²⁹ This system, too, was subject to widespread

²⁶ Zimmerman, *supra* note 4, AT 152-56.

²⁷ *Id.* at 155-56

²⁸ LEON RADZINOWICZ, A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750, Vol. 2 138 (1981).

²⁹ Zimmerman, *supra* note 4, at 157-66

abuse.³⁰ For instance, in the 18th century, poachers learned to have a friend come forward as the informer because they would have rights to the fine. “Five pounds sterling went from the poacher to the JP [Justice of the Peace], then to the friend (as informer) and back again to the poacher over a pint in the alehouse.”³¹ Thus, the common informer system proved too costly and vulnerable to corruption for the small benefits of justice it produced.³²

The Rise of Professional Police and Informers in the Nineteenth Century

Western European states began to develop more sophisticated police forces in the early nineteenth century.³³ In France, Francois Vidocq, imprisoned for a minor crime, agreed to provide information to the police about other prisoners.³⁴ He was later released in exchange for having given this information, and went on to found the Paris Surete, a criminal investigation division for the Paris police. From 1810 to 1827, Vidocq set up a network of informers, hired former criminals as detectives, and pioneered systematic use of police surveillance and investigation.

In 1877 an English barrister, Howard Vincent, emulated Vidocq’s work and established the Criminal Investigation Division (CID). Much like the approver and common informer systems, CID informers provided new opportunities for police

³⁰ DOUGLAS HAY ET AL., *ALBION’S FATAL TREE: CRIME AND SOCIETY IN EIGHTEENTH-CENTURY ENGLAND* 198 (1975).

³¹ *See id.*; Zimmerman, *supra* note 4, at 157-66.

³² GARY T. MARX, *UNDERCOVER: POLICE SURVEILLANCE IN AMERICA 18-19* (1988); JOHN BRIGGS ET AL., *CRIME AND PUNISHMENT IN ENGLAND: AN INTRODUCTORY HISTORY* 216-17 (1996).

³³ Marx, *supra* note 32, at 18-19.

³⁴ Briggs, *supra* note 32, at 216.

corruption, and by the 1920's the metropolitan CID "had become a thoroughly venal private army."³⁵

Despite the failures and abuses of these abandoned methods of criminal investigation and prosecution, England developed a deep tradition of using informants effectively. These systems, while imperfect, laid the institutional foundations for establishing improved systems of information gathering, particularly in the policing of colonies such as Ireland and America. English imperial history is full of examples of the Crown forces skillfully using an informer to sabotage the machinations of its enemies.³⁶

For instance, in America, the British used informers to enforce the unpopular Navigation Acts and other similar legislation.³⁷ Distrusting informers was a large part of American colonials' distrust of British rule, and after the Revolution the new governments refrained from employing these same policing techniques. In fact, it was not until American cities developed professional police forces in the mid-19th century that informers came back into use. By this time, even private enterprises like Allan Pinkerton's private detective agency used a network of informers to carry out the assignments of its corporate clients.

Informers in the Twentieth Century

Prohibition and communism increased the demand for informer activity. With the threat of Bolshevism in Russia at the end of World War I, more American citizens and

³⁵ See ANDREW BOYD, *THE INFORMERS: A Chilling Account of the Supergrasses in Northern Ireland* 7-24 (1984)

³⁶ CHARLES A. WRIGHT & KENNETH W. GRAHAM, JR., *FEDERAL PRACTICE & PROCEDURE* § 5702 (1992).

³⁷ *THE HANDBOOK OF CRIME AND PUNISHMENT* 444-45 (MICHAEL TONRY, ed. 1998).

law enforcement officials supported the use of informers to combat crime.³⁸ The Federal Bureau of Investigation, set up by Theodore Roosevelt in 1908, developed and cultivated informers, who were essentially domestic spies, across the country. From the 1920's to the 1970's, the FBI infiltrated and investigated what they considered to be radical groups, such as the Black Panthers, the Student Democratic Society, the Progressive Labor Party, and Vietnam Veterans against the War.³⁹ Their work was meant not only to investigate crimes, but also to sabotage the work of these groups. For the most part, these were political operations, and they hearken back to ancient times when informers were primarily used to undermine subversive activity.

Informers were also used by the FBI in criminal investigations. The FBI distinguishes between people with legitimate occupations whom they call confidential sources and those with close contact with criminal elements who are classified as informant. In fact, the FBI is infamous for its use of informers in investigating organized crime. Recently, the FBI Law Enforcement Bulletin (November 1998) addressed the informer issue directly in *Avoiding the Informant Trap: A Blueprint for Control*. This article dealt with the failures and abuses which have plagued informer systems since ancient times. It also discussed 1) how to recruit reliable informants; 2) how to document and assess the value of informant information; 3) how to identify false or misleading information; and 4) how “to handle” informants.⁴⁰

³⁸ Marx, *supra* note 1, at 405-09.

³⁹ *Avoiding the Informant Trap: A Blueprint for Control*, FBI LAW ENFORCEMENT BULLETIN (Nov. 1998).

As much of the crime in America involves willing participants, the need for informants has increased substantially. In order for law enforcement authorities to solve crimes such as drug dealing, gambling, loan sharking, money laundering and political corruption, they need information from individuals who are either closely aligned with the participants or are participants themselves.