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Why are feds involved in 'hate crime' case?



By Andy Metzger
State House News Service

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BOSTON - Tim Flaherty, a Cambridge attorney and the son of the former speaker of the House, offered advice to a Malden limousine driver three months ago that he might as well have given to himself.

"I wouldn't even want the U.S. Attorney's Office knowing my name, or my number. Stay as far away from them as you can. You don't want

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Former state Senate candidate Tim Flaherty is seen campaigning for office in 2010 in this photo on one of his social network websites. Facebook photo

those (expletive) people in your business," Flaherty said on a recorded phone call in May. "Between you and me, the federal government, they try and justify their existence but I would totally stay away from them."

Flaherty was on the phone with the 27-year-old who had allegedly been on the receiving end of a racist attack by Flaherty's client during a road rage incident in Cambridge's Central Square.

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In this early stage of the case, Flaherty's lawyers - Martin Weinberg, Thomas Butters and Matthew Thompson - are trying to gather information to show that federal prosecutors wouldn't have normally gotten involved in the road rage case, thereby calling into question whether Flaherty interfered with a genuine federal investigation.

"The sad and grim reality is that widespread police killings and other official and non-official violence perpetrated on religious or racial minorities on a repeated and documented basis in many of our nation's cities go without federal criminal investigation or prosecution," the attorneys wrote in a discovery motion seeking data on state and federal hate crime prosecutions along with other information. "This non-federally prosecuted criminal conduct is far more egregious than the purported underlying hate crime in this case."

Attorneys in the case met before Magistrate Judge Donald Cabell on Wednesday and no ruling was made on the defense discovery motion.

When Flaherty was arrested and indicted in May there were scant details of the underlying criminal case that led Flaherty to pay the alleged victim turned government witness. Details of the incident have emerged in court filings.

It all started the night of Monday, Dec. 15, when Reda Birchi was turning around his Chrysler limo on a Cambridge side street next to a McDonald's in Central Square to respond to a potential

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customer in another part of the city, according to court documents. Ralph Feinberg, driving a Lexus with Florida plates, encountered Birchi as he was backing out of the street, and Feinberg honked and signaled for him to stop, according to court documents and surveillance video.

At that point the accounts diverge. Cambridge Police showed up just as Feinberg was leaving, and Birchi told them that the 61-year-old had pretended to be a police officer, and said when Birchi approached the Lexus and asked to see his badge, Feinberg swore at him, called him a "little Muslim" and a "terrorist" and grabbed him by the arm and started to pull away.

In his own application for a criminal complaint, which was subsequently withdrawn, Feinberg claimed that Birchi told him to move, threatened to slap him and then reached inside his car before Feinberg drove away. Feinberg has a history of threats and racist language.

When police went to catch up with Feinberg, he allegedly drove the wrong way down a city street, reaching speeds of about 50 miles per hour and turned off his lights before stopping nearby. Feinberg claimed he thought the police vehicle in pursuit was "the other guy," according to the report. Police documented "numerous" open Coors Light bottles in the Newton man's car.

"This is a Mickey Mouse case. This would rarely get into federal court, because no one's injured," Robert Sheketoff, Feinberg's new attorney, told the News Service. He said federal court is usually reserved for "egregious" cases.

While Flaherty is facing a federal charge of tampering with a witness to a possible federal civil rights offense, Feinberg's case is proceeding in Cambridge District Court. Assistant District Attorney Matt Bailey is prosecuting him on charges of assault and battery, assault with a dangerous weapon, civil rights assault, impersonating a police officer, reckless operation of a motor vehicle, possession of alcohol in a motor vehicle, speeding and failure to stop for police, according to a spokeswoman for the Middlesex District Attorney's Office.

Sheketoff noted the grainy surveillance video appears to show Feinberg's car was stationary throughout the encounter until the police show up - when Birchi was approaching and waving down responding officers, according to the police report.

Attempts to reach Birchi were unsuccessful.

While Birchi has a relatively short record of driving infractions, according to the Massachusetts Department of Transportation, Feinberg previously had his license suspended for defaulting on citations for speeding and other violations in Newton, Boston and Brookline. His license has been revoked since this most recent incident.

Birchi is a naturalized citizen of Middle Eastern descent, according to court documents, while Feinberg is a businessman with a history of outbursts, threats and racist language.

According to a Jan. 21 F.B.I. memo, Feinberg in October 1999 yelled the n-word at a parking garage cashier and threatened to kill the person. Sometime earlier Feinberg had allegedly threatened a developer in Brookline over the purchase of property next to a lot that Feinberg was developing, according to the FBI memo. In February 2008, while on a Southwest flight from Providence, R.I. to Phoenix, Ariz. and after more than a couple martinis combined with prescription medication, Feinberg insulted a fellow passenger and threatened her son.

Feinberg's federal probation ended in 2013, according to federal prosecutors Robert Fisher and S. Theodore Merritt in their own legal filing.

State Police contacted the U.S. Attorney's Office about the Cambridge case on Dec. 23, after Flaherty had offered Birchi money to not cooperate in the investigation, and the day before Flaherty paid Birchi.

Cash offered in exchange for the dropping of assault and battery charges is a practice allowable under Massachusetts statute dating back to at least the 1830s when it was included in the "revised statutes" of state law, according to law books.

In the 1830s and today so-called "accord and satisfaction" has also carried the requirement that the injured party put the agreement on record before the court.

When Flaherty met Birchi at a Dunkin' Donuts the morning of Christmas Eve, Birchi accepted \$2,500 but refused to sign the accord and satisfaction document that Flaherty offered, according to a defense filing. Birchi was outfitted by State Police with audio and visual recording equipment for the meeting, and Flaherty's attorneys contend no warrant was issued for the secret recording in

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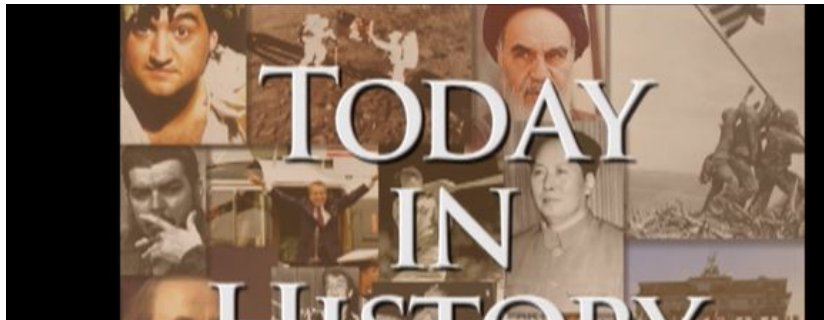
Flaherty's attorney, Weinberg, said he has a copy of that recording, though it has not yet been entered into the public record.

The F.B.I. interviewed a McDonald's security guard who witnessed the altercation in Central Square and said he saw one man - likely Birchi - attempt to stop a man in a car - likely Feinberg - from leaving the scene. The man in the car attempted to back over the other man, according to the guard's statement to the F.B.I., which differs from Birchi's statement to police.

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