

United States Senate

May 12, 2020

The Honorable Chris Wray, Director
Federal Bureau of Investigation
935 Pennsylvania Ave, NW
Washington, D.C. 20535

Dear Director Wray,

The vast majority of our FBI agents and those who work in our criminal justice system, including our federal prosecutors, are patriots who every day abide by their constitutional obligations. However, the recent troubling revelations regarding the Michael Flynn investigation and prosecution have reopened old wounds for Alaskans.

As the U.S. Senator who has the honor of occupying the seat of the late Senator Ted Stevens, I am all too familiar with the lasting effects of due process violations and corrupt activities by the FBI. Senator Stevens was the target of an egregious injustice by FBI agents and federal prosecutors—including the withholding of exculpatory *Brady* evidence. Those responsible were not held accountable, and, to my knowledge, the culture within the FBI that allowed such abuses appears to still exist at least in some quarters even after Senator Stevens' verdict was thrown out by the federal district court and the Department of Justice given the constitutional violations perpetrated by federal agencies during that unjust prosecution of this exceptional public servant.

Like so many across our country—and many in our law enforcement agencies—I was shocked to learn about the recent disclosures of abuse on the part of FBI agents who interviewed former national security advisor Michael Flynn, as well as the Justice Department prosecutors who withheld potentially exculpatory *Brady* evidence from the defense during the criminal proceedings.

Further, it appears, based on *Brady* evidence that had been withheld, that the FD-302, which is the interview report form intended to memorialize information that might become testimony, was altered, if not heavily edited. As you know, FD-302s are intended to provide an objective assessment of what was observed during an interview of a suspect. What is immediately observed and heard during such an interview is supposed to be sacrosanct, and it is rare that they are so heavily edited, much less altered.

Last year, I introduced bipartisan legislation to help prevent this kind of misconduct. The *Due Process Protection Act* would require judges in all criminal trials to issue an “order to prosecution and defense counsel that confirms the disclosure obligation of the prosecutor under *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny.” Having this standing order in place will explicitly remind the prosecution of their constitutional disclosure obligations, and provide for quicker recourse upon discovering any violations.

In the case of Mr. Flynn, the FBI's tactics and the prosecution's withholding of evidence once again call into question conduct by your agency. I applaud the DOJ's recent decision to drop the criminal charges against Mr. Flynn, but I strongly encourage you to investigate the underlying investigatory and prosecutorial violations and to punish those responsible. Otherwise, the world's most respected law enforcement agency will, unfortunately, continue to lose credibility and the trust of the American people.

Sincerely,

A handwritten signature in blue ink that reads "Dan Sullivan". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Dan Sullivan
United States Senator

cc: Attorney General William Barr