

to the United States in April for evaluation by the same physicians who examined U.S. personnel stationed in Cuba. An embassy spokeswoman told reporters that preliminary “clinical findings” on the patient “matched mild traumatic brain injury.” In the weeks following, the *New York Times* reported that two more U.S. diplomats had fallen ill in Guangzhou with similar symptoms after hearing unexplained auditory stimuli.

The “medical indications” of the first reported victim in China were “very similar and entirely consistent with the medical indications that have taken place to Americans working in Cuba,” Secretary of State Mike Pompeo told the House Foreign Affairs Committee on May 23. “We are working to figure out what took place both in Havana and now in China as well... We’ve asked the Chinese for their assistance in doing that, and they have committed to honoring their commitments under the Vienna convention to keep American foreign service officers safe.” The State Department established a task force earlier this summer to investigate the health attacks.

It’s no secret that, like Cuba, China is a surveillance state, one with far more advanced technological surveillance capabilities than Cuba. China already tracks its citizens using sophisticated facial recognition technology and Internet monitoring, for example. If the U.S. government is so certain Cuba knows who perpetrated these alleged attacks, why wouldn’t the government also be certain that China knows as well?

Some of the diplomats sickened in the attacks clearly aren’t confident the federal government will solve this mystery. As the *Miami Herald* reported in June, 8 of the 24 U.S. personnel affected by the incidents in Havana have hired a lawyer to help them pursue their health claims given the confusing signals they’ve received thus far regarding their treatment. “Are they being treated or are they being studied? It’s not entirely clear what is happening,” the group’s lawyer told the *Herald*.

Writing in *Commentary* in 1961,

Philip Roth observed, “The American writer in the middle of the 20th century has his hands full in trying to understand, and then describe, and then make credible much of the American reality. It stupefies, it sickens, it infuriates, and finally it is even a kind of embarrassment to one’s own meager imagination.” Roth was describing—and lamenting—the difficulty of matching the absurdity of the early ’60s in fiction, but with these recent health attacks, our current reality seems to be taking cues from a Cold War novel.

Given the public’s interest in “fake news” and Internet conspiracy theories (and how avidly it consumes true-crime podcasts and television shows), it’s odd that Americans are so sanguine about this real-life mystery. Each new reported case, each new statement from the government, raises far more questions than answers. Meanwhile, experts continue to posit competing theories with what little information is available, leaving the public—and the diplomats sickened by these attacks—with partial truths and no clear path forward. ♦

The Mulvaney Maneuver

Beating Elizabeth Warren at her own game.

BY RONALD L. RUBIN

On June 18, President Trump nominated Kathy Kraninger to replace Mick Mulvaney, the acting director of the Consumer Financial Protection Bureau. Few had heard of Kraninger, Mulvaney’s deputy at the other agency he leads, the Office of Management and Budget. Critics quickly declared that Kraninger’s lack of consumer finance experience made her unfit to lead the CFPB.

Kraninger is certainly not the most qualified Republican the president might have chosen, since many of the presumed candidates for the director’s job were extraordinarily accomplished. Among the names floated over the last year were those of the chairman of the National Credit Union Administration’s board, the general counsel of Fannie Mae, the chairman of the House Financial Services Committee, and a professor

recognized for expertise in consumer financial law. Nevertheless, the Senate must decide only whether Kraninger is *sufficiently* qualified to lead the bureau.

Senator Elizabeth Warren opposes Kraninger, of course, just as she would have opposed any other Republican candidate. Warren, the former law professor who first proposed a Financial Products Safety Commission in a 2007 article and later led the CFPB’s start-up process, believes that only Democrats can protect consumers from financial industry fraud. More important, she has never forgiven Republicans for blocking her own attempt to become the bureau’s first director.

The Constitution sets no guidelines for Senate confirmation of presidential nominees. Some jobs merit more scrutiny than others, but to be evenhanded, each senator should apply consistent standards for any particular vacancy. For Warren, Ohio senator Sherrod Brown, and New York’s Charles Schumer, the

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Leandra English, left, with patrons Chuck Schumer and Elizabeth Warren, November 27, 2017; inset, Kathy Kraninger



benchmark for evaluating the qualifications of potential CFPB directors is Leandra English.

English held mostly political positions during the Obama administration before serving as former CFPB director Richard Cordray's chief of staff for less than a year. On November 24, 2017, Cordray promoted English to deputy director and announced that under the Dodd-Frank Act, she would become acting director when he resigned later that day to run for governor of Ohio. President Trump, relying on the Federal Vacancies Act, immediately appointed Mulvaney acting director.

During the ensuing legal battle, Warren, Schumer, Brown, and other Democrats touted English's qualifications to lead the bureau. Republicans argued, and a judge agreed, that the president, not Cordray, had the right to appoint the acting director. English is still deputy director, although she rarely visits her office and does little to earn her salary. Kraninger's and English's education and work experience are comparable, so it is difficult to argue that Kraninger is less qualified.

Of course, Warren has done just that, with a bit of gratuitous character assassination. Citing little more than Kraninger's budget office title, the senator published a letter demanding extensive documentation of the nominee's role in the administration's zero-tolerance immigration policy and tweeted, "Kathy Kraninger helps oversee the agencies that are ripping

kids from their parents."

One critic of Kraninger's credentials likened her to Harriet Miers, President George W. Bush's White House counsel and 2005 Supreme Court nominee, who withdrew after Republicans questioned her qualifications. A more appropriate analogy than the Miers episode is Cordray's attempt to retain control of the CFPB by making English acting director.

The Kraninger nomination will extend Mulvaney's influence there for at least another year, since he will remain acting director while the nomination is pending, and Kraninger likely shares his plans. If the process does not go smoothly, the Vacancies Act allows Mulvaney to continue as acting director for 210 days after the nomination is withdrawn or rejected, and after that while a second nomination is pending. If the Senate confirms Kraninger to a five-year term, she cannot be removed by the president—any president—except for cause.

Mulvaney need not apologize for taking full advantage of the law. Warren's attempt to link Kraninger to an unpopular immigration policy is typical of the gamesmanship that has been standard practice at the CFPB since 2010, when Democrats controlled Congress and the White House and, with Warren's input, enacted the Dodd-Frank Act that created the bureau and immunized it from congressional oversight.

Claiming that only a government agency independent from politics could stand up to the financial industry, Democrats guaranteed the director's five-year term and the CFPB's funding, which comes from Federal Reserve Bank profits rather than congressionally appropriated tax dollars. Warren then staffed the agency with liberals, and President Obama nominated Cordray to be its director.

Republicans objected to being completely shut out of the bureau for at least five years and filibustered Cordray's nomination. On January 4, 2012, Obama dismissed their protests and executed a recess appointment while Congress was technically in session, a maneuver the Supreme Court would find unconstitutional two years later.

Cordray served as acting director for 18 months before Democrats forced Republicans to abandon their filibuster and allow his confirmation to a new five-year term. Mulvaney may be playing partisan hardball, but at least he's doing so legally.

Eight years after its conception, the CFPB is irreparably politicized. Even Democrats who once believed its structure served some purpose beyond excluding Republicans now recognize this simple truth: An agency with a single leader chosen by one party cannot be independent from politics; it can only be independent from the other party.

Many House Democrats support the Financial Product Safety Commission Act of 2018, a bipartisan reform bill that would replace the CFPB's director with a five-member, bipartisan panel similar to the Securities and Exchange Commission. Mulvaney, and presumably the president, will back the bill. Ironically, Warren's threat to filibuster it in the Senate is now the main obstacle to a commission like the one she envisioned in 2007. If she persists, she will have only herself to blame when Mulvaney shepherds his vision for the CFPB to fruition. ♦

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