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If he thought Black women were ‘lesser’ in general, would he really have tweeted that?

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The author and former Cato Institute vice president Ilya Shapiro just took a position as a senior lecturer at Georgetown University’s law school and as executive director of the Georgetown Center for the Constitution. But he’s been placed on leave because of tweets he aired taking issue with President Biden’s stated intention to appoint a Black woman to the Supreme Court — a campaign promise that’s no longer hypothetical, now that Justice Stephen Breyer is stepping down.

Shapiro tweeted: “Because Biden said he’s only consider black women for SCOTUS, his nominee will always have an asterisk attached. Fitting that the Court takes up affirmative action next term.” More controversially, he also tweeted: “Objectively best pick for Biden is Sri Srinivasan, who is solid prog & v smart. Even has identity politics benefit of being first Asian (Indian) American. But alas doesn’t fit into the latest intersectionality hierarchy so we’ll get lesser black woman. Thank heaven for small favors?”

The tweets created a predictable uproar on Twitter and elsewhere, and a few days later, William Treanor, dean of the Georgetown University Law Center, released a statement that read, in part, “Ilya Shapiro’s tweets are antithetical to the work that we do here every day to build inclusion, belonging, and respect for diversity,” and that he has been placed “on administrative leave, pending an investigation into whether he violated our policies and expectations on professional conduct, non-discrimination, and anti-harassment, the results of which will inform our next steps.”

Shapiro tweeted out a statement that read, “I’m optimistic that Georgetown’s investigation will be fair, impartial, and professional, though there’s really not much to investigate. And I’m confident that it will reach the only reasonable conclusion: my Tweet didn’t violate any university rule or policy, and indeed is protected by Georgetown policies on free expression. Accordingly, I expect to be vindicated and look forward to joining my new colleagues in short order.”

His suspension is unnecessary and unjust.

To be sure, there is so much wrong with Shapiro’s position on Biden’s pending nomination that it’s almost hard to know where to begin. For one, just which metric makes Srinivasan, chief judge of the United States Court of Appeals for the D.C. circuit, the “objectively best” Supreme Court candidate right now is unclear. There are many valid and proven pathways to becoming a Supreme Court justice, and all the Black women that Biden is said to be considering have

sterling dossiers, quite comparable to the current members of the high court. Also, Shapiro's apparent numbness to the significance of there being a Black female justice suggests an almost willful disinterest in America's social history.

We can't ignore that Shapiro also dismissed then-judge, now Justice Sonia Sotomayor as an affirmative action hire, writing in a 2009 [CNN commentary](#) that "she would not have even been on" President Barack Obama's "short list if she were not Hispanic" — despite her having spent more time on the federal bench in her career before her Supreme Court service than any of its other current justices.

There's plenty take issue with here. But does it justify Georgetown placing Shapiro on leave, investigating him and potentially firing him?

Here's the first reason I think not. For many, the most offensive part of Shapiro's tweets is the phrase "lesser black woman," which is at least unfeeling and arguably hostile. Many are reading this as Shapiro saying that Black women are, in general, less qualified for a Supreme Court position in some inherent sense. That interpretation is understandable, given that when concepts are paired like this, there is often an implication of a general characterization.

As it happens, Sotomayor was the source of a comparable famous example, in a [statement](#) of hers that got around during her Supreme Court confirmation process, supporting the idea that the jurisprudence of a "wise Latina" could be especially valuable. The expression could be taken to refer coolly to the subset of Latinas who happen to be wise — not likely in this case; or that the added perspective of being woman of color enhanced her judicial skill set — probably how she meant it. But in living language it can also carry a further implication: that there is something about being a Latina that inherently involves a certain wisdom.

In the same way, "lesser black woman" easily can be read as meaning that there is something about being a Black woman that is automatically lesser. We read such expressions in this way especially when there is a prompt, rooted in negative stereotypes, to link the two things. Note, by contrast, that if someone had tweeted that a man divorced and then married a "richer Black woman," we wouldn't read the adjective "richer" as an insult and would simply think of a woman who is both rich and Black.

I think Shapiro meant that, one, Biden would choose a Black woman and two, that because Srinivasan is — in his view — the "best" of the judges that a Democratic president would consider nominating, any other potential nominee, including any of the Black women on the president's short list, would be less qualified than Srinivasan. I don't think Shapiro meant to say that a Black woman would be less qualified *because* she is a Black woman.

I may seem to be bending over backward here, but I sincerely am not. The question is: If Shapiro had wanted to say that Black women are inherently lesser, would he actually have written it for all the world to see? This, after all, would paint him as not just obnoxious, but as someone severely socially impaired. Given how carefully policed so much of our language is these days, why would he deliberately type out a line saying, in essence, that Black women are inferior, somehow missing that this would likely put his new job in jeopardy and draw a wave of social opprobrium?

To assume Shapiro would baldly, publicly assert this manifests the tendency to assume malevolence in those we disagree with, a means of dehumanizing people perceived as being on other side of an unbridgeable divide. I find the idea of him writing “lesser black woman” in the meaning of “Black women are lesser” psychologically implausible. Shapiro is by all indications intelligent; writing “lesser” and intending it as a blanket judgment would be stupid.

Rather, Shapiro screwed up. He phrased something unartfully. He has apologized for it (even if another tweet he sent Wednesday seemed somewhat less contrite), and yet is still being re-evaluated by his new employer.

Which brings us to the second reason he shouldn't be suspended. A few years ago, Georgetown professor C. Christine Fair tweeted that some of those who defended then-judge, now Justice Brett Kavanaugh against accusations of past sexual misconduct were a “chorus of entitled white men justifying a serial rapist’s arrogated entitlement,” and that “All of them deserve miserable deaths while feminists laugh as they take their last gasps. Bonus: we castrate their corpses and feed them to swine? Yes.”

Georgetown responded with a statement that read, in part: “The views faculty members expressed in their private capacities are their own and not the views of the university. Our policy does not prohibit speech based on the person presenting ideas or the content of those ideas even when those ideas may be difficult, controversial or objectionable.” Fair remained in her job.

Where is the bright line, then, between the decision in Fair’s case — which was the correct one — and the circumstances of Shapiro’s case? It is impossible not to see it as a color line. Apparently, all bets are off on free speech when the issue is race.

Consider that last year, Georgetown Law fired adjunct professor Sandra Sellers after she was caught, at the end of a video meeting, noting to another instructor that Black students tended to cluster at the bottom of her classes, performance-wise. She wasn’t deriding the students — she said that every semester it gave her “angst” — but was instead posing the issue as a problem for which she sought a solution. Nevertheless, her calling attention to the problem at all, in that way, was judged grounds for dismissal.

I get the idea that some people agree with this bright line, such that anyone who says or writes something deemed as offensive by a critical mass of Black people, or another racial minority group, or our presumably progressive white allies, must face potential excommunication. Because of racism being America’s original sin, perhaps.

However, I differ. I cannot know whether Shapiro has a low opinion of the intellectual capabilities of Black people in general. Yet I cannot see even that as disqualifying him from a teaching position, especially given that in this case, we are dealing with more the perception of his having aired such an opinion than his having unequivocally done so. Racism is, to parrot Georgetown’s judgment on Fair, difficult, controversial and objectionable. That isn’t grounds for treating it the way medievals treated heresy.

And to insist that it is carries a grievous implication: that we Black people are ever so delicate. Last time I checked, we were strong. Strong people, frankly, don't give a damn what a law school lecturer says about them on Twitter.