Case 7: Professor Blackface

In October 2016, University of Oregon law professor Nancy Shurtz decided to throw a Halloween costume party at her house, inviting friends, colleagues, and students. Upon arriving, the guests immediately noticed their host’s costume: Shurtz, a white woman, was wearing a white lab coat, a stethoscope, an afro wig, and black make-up on her face and hands. In short, Shurtz had donned blackface, a style of make-up associated with minstrelsy. (Minstrel shows were an early 19th-century form of entertainment that featured mostly white actors wearing black face paint for the purpose of portraying African Americans in a derisive fashion.)

According to one of the students who attended the party, “the costume was so ludicrous and offensive that it was apparent that many of the guests were avoiding interaction with Shurtz.” Notwithstanding their discomfort, guests did not confront Shurtz about her costume. Students explained that, despite wanting to leave the party, they felt obligated to stay, “because Shurtz had papers of theirs still waiting to be graded.”

As the news of the party spread through the campus like wildfire, students of color found themselves “put in the awkward position of having to explain why blackface is inappropriate.” After complaints from faculty and students reached the university authorities, the law school suspended Shurtz, launched an investigation, and subsequently published a report. According to the investigation, Shurtz was deemed to have committed “discriminatory harassment,” citing the negative impact of her costume on her students and the university at large. The investigators concluded that “[t]he lack of understanding by some students, coupled with an existing lack of

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68 Theen.

69 Ibid.
diversity in the law school student body, has led to minority students feeling further disenfranchised from their classmates and the school.”

In response to the fallout from her Halloween party, Shurtz issued a written apology in which she explained that her costume was inspired by Dr. Damon Tweedy’s memoir *Black Man in a White Coat*, which focuses on Tweedy’s experience of racism in medical school. She added that her intention was “to provoke a thoughtful discussion on racism in our society, in our educational institutions and in our professions.”

Despite Shurtz’s public apology, several faculty members have called on Shurtz to resign. Others, while not necessarily calling for her dismissal, have expressed confusion and dismay over the incident, noting the irony that a professor who has served in the law school’s diversity committee could be ignorant of the association between blackface and the “really tragic history of lynching…slavery…[and] Jim Crow.”

In contrast, Shurtz’s supporters have characterized the backlash against the professor as extreme, noting that suspending a tenured faculty member over the offensive nature of a Halloween costume undermines the university’s fundamental commitment to freedom of speech. “Universities are supposed to be a place for debate and controversy,” explained Eugene Volokh, a UCLA law professor. According to the Foundation for Individual Rights in Education,

students and professors are in trouble if they are at risk for punishment any time their expression motivates rigorous debate on campus…The outcome in Shurtz’s case means that if someone expresses their opinion on any race- or sex-related controversy in a way that others deem offensive, that person will be held responsible for all subsequent

70 Ibid.


72 Ibid.

discomfort and disruption—even if that discomfort is a natural consequence of constitutionally protected speech, and even if the disruption is plainly someone else’s responsibility.74