Wresting Pedagogical Victory from the Jaws of Student Defeat: *Walker v. Harvard College* as an Object Lesson

By Almas Khan

*Almas Khan is an ESL Fellow at the Georgetown University Law Center in Washington, D.C.*

I. Introduction

A new academic year often brings with it the search for an exemplary case through which to introduce incoming law students to strategies for legal analysis, effective lawyering, and academic success. *Stambovsky v. Ackley* (1991), the “Ghostbusters” case, is a popular choice among professors and academic support specialists, but a recent decision from the First Circuit has a much higher likelihood of haunting students and merits serious consideration as well. *Walker v. Harvard College* (2016) involved breach of contract and defamation claims arising from a plagiarism incident at a Harvard Law journal. The First Circuit affirmed the district court’s summary judgment grant for Harvard, holding that Harvard Law’s expansive plagiarism policy referring to “[a]ll work submitted” “on its face applies to any student work for any academic or nonacademic exercise, whether in draft or final form, turned in to an instructor or student editor of an extracurricular law journal.” Most law schools have comparable rules proscribing plagiarism, and while the First Circuit’s decision may reassure many of these institutions, it may equally terrify their students. Assuming the court’s dicta reference to coursework attains precedential value, judges may deem even early drafts submitted to instructors as coming within a plagiarism code’s purview. But while *Walker* may have frightening consequences for students, it may also result in salubrious outcomes for them. The case can be a fascinating pedagogical tool for professors to teach pragmatic and ethical considerations in law school and legal practice, case briefing techniques, legal argument paradigms, procedural issues, and persuasive strategies.

II. A Distillation of *Walker v. Harvard College*

Plaintiff Megon Walker attended Harvard Law School from 2006 to 2009, during which time she was a member of the *Journal of Law and Technology* (JOLT). She worked as a “subciter” during her 1L year, confirming the veracity of quotations and citations in draft articles, and as a 3L, she successfully applied to compose a comment on a cutting-edge patent case. JOLT apprised her of intermediary and final draft due dates, and from her cite-checking experiences, she was aware that authors were only allowed to make relatively minor edits after their so-called final drafts had undergone editing and cite-checking. Walker’s laptop, on which she was writing the comment, became infected with a virus six days before the final draft was due. Walker and Harvard disputed about whether she informed JOLT editors that

2. 840 F.3d 57 (1st Cir. 2016).
7. *Id.*
9. *Id.* at 59–60.
the virus had corrupted her article and resulted in her sending a “fragmented” or “incomplete” final draft to JOLT; Walker alleged that she notified JOLT editors orally while Harvard pointed to the paucity of written evidence confirming the editors were aware of her computer issues as well as proof that her earlier drafts contained similar attribution problems.16 Harvard also cited an email Walker sent JOLT preceding her late final draft, which read, in part: “All the sources are included, but I’m still moving words around.”17 After emailing JOLT the technically final draft, Walker delivered a flash drive containing sources she had downloaded from Westlaw to JOLT and emailed JOLT about her intent to continue working on the comment.18 As JOLT staff reviewed the comment, though, they found at least twenty-three instances in which Walker had failed to properly cite sources, at which juncture they contacted the Dean of Students, who referred the matter to Harvard Law’s Administrative Board (“Board”).19 The Board voted to schedule a hearing on the plagiarism charge, refusing Walker’s request for a more informal resolution, and formally reprimanded her.20 This caused a plagiarism designation to appear on her transcript and she lost a lucrative full-time employment offer from a prestigious law firm.21

Walker accordingly sued Harvard in the United States District Court for the District of Massachusetts, alleging claims including breach of contract and defamation, and she sought both monetary damages and removal of the plagiarism designation from her transcript.22 As noted above, the district court granted Harvard summary judgment,23 a decision affirmed by the First Circuit for essentially the same reasons provided by the trial court, and I will here thus focus on the appellate opinion. Walker’s case in both courts turned on the interpretation of Harvard Law’s rigorous plagiarism policy, which at the time read in part:

All work submitted by a student for any academic or non-academic exercise is expected to be the student’s own work. In the preparation of their work, students should always take great care to distinguish their own ideas and knowledge from information derived from sources. ... Students who submit work that is not their own without clear attribution of all sources, even if inadvertently, will be subject to disciplinary action.24

A plain reading of the policy suggests its capacious reach, extending to “[a]ll work” a student submits for “any” academic exercise or “any” nonacademic exercise; moreover, the policy articulates a strict liability rule, as inadvertency is not a defense. In addition, the policy establishes that students “will,” in the definitive, “be subject to disciplinary action” for not clearly attributing “all sources” in their submitted work. Under Massachusetts law, the First Circuit determined that Harvard’s policy would be construed in light of an objective “reasonable expectation” standard, based on “what meaning the party making the manifestation, the university, should reasonably expect the other party [, the student,] to give it.”25 The key term for both parties and the appellate court was “submitted”; Walker claimed that she reasonably expected the word to refer to her giving JOLT a “completed” product,26 but Harvard successfully rebutted this assertion. Harvard argued, and the First Circuit agreed, that the word “submitted” in this context contained no denotation or connotation of completion or finality.

---


11 Memorandum in Support of Defendants’ Motion for Summary Judgment, supra note 11, at 3. Her subsequent cover email to this draft stated in part: "Here’s the latest draft … . Let me know if you have difficulty finding any sources." Id.

12 Walker, 840 F.3d at 60.

13 Id.

14 Id. at 60–61.

15 Id. at 61.


17 Id. at 533.

18 Quoted in Walker, 840 F.3d at 60–61.


20 Id. at 62.
but instead referred to a student like Walker turning in an article “for the exercise of student publication” regardless of form; Walker’s subjective intent to insert additional citations was found to be irrelevant for the reasonable expectation analysis based on the ordinary meaning of “submitted.”

III. Walker as a First-Year Primer on Ethics, Legal Analysis, and Procedure

Regardless of one’s view on the rectitude of the First Circuit’s construction of the word “submitted” or its eventual decision, the case underscores several important points for students. First, by saving her work consistently, Walker could have potentially avoided disciplinary proceedings and a court case that together spanned seven years; nor are courts likely inclined to consider a computer virus as a legitimate excuse for flouting deadlines in practice. A lack of clear communication between Walker and JOLT staff also exacerbated her situation. Faculty and journal editors should openly convey their expectations about attribution.

Students, in turn, would be well-advised to inform professors and editors of uncertainty about citation practices and of mishaps like a computer virus immediately and in unambiguous writing, in addition to meeting in-person for clarification. Serious long-term consequences may otherwise ensue; as Walker’s counsel contended in colorful language, the plagiarism designation on her Harvard Law transcript adhered “to her like the professional equivalent to Hawthorne’s Scarlet Letter.” Conversely, knowledge of this ethical stigma may deter potential plagiarizing students who have committed at least a year or more time and likely tens or hundreds of thousands of dollars to advance their professional ambitions.

Aside from spotlighting these practical concerns for students, the case can be instructive for an introductory discussion of the American Bar Association’s Model Rules of Professional Conduct, particularly Rule 8.4 on “Maintaining the Integrity of the Profession: Misconduct.”

24 As Harvard Law’s current Student Handbook provides: “Students who are in any doubt about the preparation of their work should consult the appropriate instructor, supervisor, or administrator before it is prepared or submitted.”

25 See id. at 62–63.


attorneys from "engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentation."\textsuperscript{28} Scholars have recently questioned whether plagiarism should be flagged as a per se ethics offense under the rule,\textsuperscript{29} as some courts have found in sanctioning attorneys adjudged liable for plagiarism,\textsuperscript{30} and students are likely to express a range of provocative views on the subject. This colloquy could feed into one about whether Walker’s case should or could have been resolved informally without litigation, an option pressured students may find appealing because of the dubious nature of her submission,\textsuperscript{31} and whether the First Circuit’s decision was correct from legal and equitable perspectives.\textsuperscript{32} The case’s subject will immediately pique students’ interest, and the appellate opinion will also be valuable in teaching students what can sometimes be perceived as desiccated albeit essential lessons: case-briefing and legal argument paradigms (e.g., IRAC).\textsuperscript{33} The opinion is short, spanning about six pages in the Federal Reporter, and it is clearly written and on a non-abstruse topic. It is moreover organized traditionally, with an introduction, background section setting forth the facts, standard of review section, discussion section, and conclusion. Identifying the case’s procedure posture, facts, issues, holding, and rationale—the typical sections of a case brief—should not be an overly onerous exercise for new students given the opinion’s length, subject, and organization. Within the discussion section, the court’s analysis is structured in IRAC form, describing the issue of the standard of reasonable expectations before citing precedents articulating the standard and applying rules in those cases to the instant case.\textsuperscript{34} The court evaluates both arguments and counterarguments in reaching its conclusion ruling against Walker.\textsuperscript{35} Considering the case’s progression from institutional disciplinary proceedings up to the First Circuit, \textit{Walker} also provides a prime opportunity to unpack procedural issues. Many case documents are accessible via Westlaw, and tracing the case’s development from the complaint through the appellate opinion illuminates the complicated fact-finding and legal processes culminating in a relatively terse and seemingly straightforward appellate decision on only two of the original six counts.\textsuperscript{36} As cases are increasingly resolved

\textsuperscript{28} Id. at R. 8.4(c).

\textsuperscript{29} Peter A. Joy & Kevin C. McMunigal, \textit{The Problems of Plagiarism as an Ethics Offense}, 26 CRIM. JUSTICE 56, 56 (2011).

\textsuperscript{30} E.g., Iowa Sup. Ct. Atty Discip. Bd. v. Cannon, 789 N.W.2d 756 (Iowa 2010); Columbus Bar Assoc. v. Farmer, 855 N.E.2d 462 (Ohio 2006).

\textsuperscript{31} However, in a case comparable to Walker’s, one law school found a student liable for plagiarism even when turning in a first draft of a paper and despite his citing computer problems as part of the reason why he failed to properly attribute sources. \textit{In re Zbiegien}, 433 N.W.2d 871, 872–73 (Minn. 1988). This, though, did not preclude him from bar admission upon fulfilling other bar requirements. \textit{Id.} at 877.

\textsuperscript{32} On the distinction between these, see \textit{Napolitano v. Trustees of Princeton University}, 453 A.2d 279, 282 (N.J. Super. Ct. 1982) (“Princeton might have viewed the matter of the penalty with a greater measure of humanity and magnanimity, with a greater recognition of the human frailties of students under stress, as the university apparently has done in many cases in the past. This court cannot mandate compassion, however, and will not, nor should not, engrave its own views on Princeton’s disciplinary processes, so long as the standard of good faith and fair dealing has been met and the contract between the student and the university has not otherwise been breached.”), aff’d, 453 A.2d 263 (N.J. Super. Ct. App. Div. 1982).

\textsuperscript{33} Standing for Issue, Rule, Application, and Conclusion, though a panoply of other paradigms have been catalogued in scholarly literature. Gerald Lebovits, \textit{Cracking the Code to Writing Legal Arguments: From IRAC to CRARC to Combinations in Between}, 28 N.Y. BAR ASSOC. J. 64 (2010).


\textsuperscript{35} Walker v. Harvard Coll., 840 F.3d 57, 61–63 (1st Cir. 2016).

\textsuperscript{36} Id.

\textsuperscript{37} Id. at 59. Over 60 years ago, Jerome Frank critiqued law schools’ inordinate focus on appellate court opinions, a legacy of Christopher Columbus Langdell’s 19th-century innovations in legal education: “[S]tudents are supposed to study cases. They do not. They study, almost entirely, upper court opinions. Any such opinion, however, is not a case, but a small fraction of a case, its tail end . . . [T]he study of cases which will lead to some small measure of real understanding of how suits are won, lost and decided should be based on a very marked extent on reading analysis of complete records of cases—beginning with the filing of the first papers, through the trial in the trial court and to and through the upper courts. A few months properly spent on one or two elaborate court records...will teach a student more than two years spent going through twenty of the casebooks now in use.” Jerome Frank, \textit{Courts on Trial: Myth & Reality in American Justice} 225, 227, 233 (Princeton 1949); see also Thomas C. Grey, \textit{Langdell’s Orthodoxy}, 45 U. PITT. L. REV. 1, 1–2 (1983).
As an Exemplary Case to Teach

Walker's resolution on a summary judgment motion can invite a dialogue about summary judgment rules as well as standards of review on appeal. Finally, subject matter jurisdiction via diversity of citizenship can be explained through the concrete example of this case, as Walker claimed to be domiciled in Ohio, a different state than any of the defendants, and argued that the amount in controversy exceeded $75,000.

IV. Walker as an Exemplary Case to Teach Persuasive Legal Writing

Aside from its utility early in law students’ academic careers, Walker is a superb case through which to teach storytelling techniques in persuasive legal writing courses at more advanced levels. Clarence Darrow characterized a trial attorney’s challenge as follows: “The problem is to bring about a situation where court and jury want a lawyer’s client to win,” and storytelling—for which Darrow was legendary—“can be a powerful means of persuasion. Recently, several academic conferences and numerous articles have promoted “Applied Legal Storytelling,” whose underlying principle is that “stories convey meaning in the day-to-day practice of law.” Reading documents filed by Walker’s and Harvard’s attorneys, as well as the opinions of judges tasked with being neutral arbiters in the rancorous conflict between the parties, reveals starkly different narratives about Walker’s conduct. Once the parties’ overall narratives and use of macro- and micro-level narrative techniques are recognized, students can be prompted to assess the efficacy of such techniques in persuading the intended judicial audience. Optimally, students will employ the more compelling persuasive methods in their own assignments and in practice while avoiding the less convincing approaches.

One salient distinction between Walker’s and Harvard’s filings is their apparent intended audience, a key preliminary consideration in composing any document. Walker’s complaint, for example, at times seems to be penned more for the court of public opinion than for a trial judge. It employs hyperbolic language perhaps better suited to the jury context (such as the scarlet letter comment referenced above) and at one point needlessly defines what a legal brief is. Harvard’s documents tend to take a more technical approach pitched to appeal to a trial judge who had graduated with an LL.B. from Harvard Law School. The submissions focus on legal as opposed to emotionally resonant facts and often argue in the alternative without conceding an issue.

---

38 Marc Galanter, The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts, 1 J. EMPirical LEGAL STUD. 459, 459 (2004) (“The portion of federal civil cases resolved by trial fell from 11.5 percent in 1962 to 1.8 percent in 2002, continuing a long historic decline. More startling was the 60 percent decline in the absolute number of trials since the mid-1980s.”).


40 Complaint, supra note 11, at ¶ 8.

41 Quoted in Kevin Boyle, Arc of Justice: A Saga of Race, Civil Rights, and Murder in the Jazz Age 274 (2004).

42 Id. at 234.

43 Ruth Anne Robbins, An Introduction to Applied Storytelling and to This Symposium, 14 LEG. WRITING 3, 3 (2008).

44 Walker’s filings in the case depict Harvard as a malfeasor; her future is claimed to have been “destroyed by the wrongful actions of defendants.” Complaint, supra note 11, at ¶ 2. Harvard’s filings are at times equally acrimonious; its reply to Walker’s opposition to summary judgment contains this footnoted sentence: “Walker purports to ‘qualify’ any number of admitted facts with references to her self-serving deposition testimony, all in an attempt to create factual controversies where none exist.” Reply in Support of Defendants’ Motion for Summary Judgment at 2 n.1, Walker v. Harvard Coll., 82 F. Supp. 3d 524 (Feb. 21, 2014) (No. 1:12-cv-10811-RWZ).

45 Plaintiff Megon Walker’s Opposition to Defendants’ Motion for Summary Judgment, supra note 26, at 17.

46 Complaint, supra note 11, at ¶ 9.


48 For example, the facts section of Harvard’s summary judgment memorandum begins with the fact of Walker’s attending Harvard Law and the text of Harvard Law’s plagiarism policy while the complaint commences by emphasizing Walker’s longstanding academic prowess. Memorandum in Support of Defendants’ Motion for Summary Judgment, supra note 11, at 1; Complaint, supra note 11, at ¶ 1.

49 E.g., Memorandum in Support of Defendants’ Motion for Summary Judgment, supra note 11, at 8 (“Second, even assuming Walker had submitted evidence to the Board to substantiate her claims about the computer virus and her conversation with Ungberg [Andrew Ungberg, a JOLT editor]—which she did not—her February 24 draft violated the plagiarism rule in any event.”).
The bountiful case law supporting courts deferring to institutions of higher education on academic integrity-related matters\(^\text{50}\) likely shaped Harvard’s approach, while the central theme emerging from Walker’s filings is a more poignant, classic narrative of the American Dream on the cusp of attainment, but thwarted by a sinister institution. In the depth of the Great Depression, James Truslow Adams famously formulated the Dream as “a vision of a better, deeper, richer life for every individual, regardless of the position in society which he or she may occupy by the accident of birth. It has been a dream of a chance to rise in the economic scale, but quite as much, or more than that, of a chance to develop our capacities to the full, unhampered by unjust restrictions of caste or custom.”\(^\text{51}\) Adams’s exuberant vision of self-actualization is infused throughout Walker’s case filings, which portray her as a prodigy who earned a Bachelor’s degree in Biotechnology with Highest Honors at the age of 19, finished a Ph.D. in Bioinformatics while enrolled at Harvard Law, and received two employment offers after summering at renowned law firms.\(^\text{52}\) The court’s decision-making; Harvard’s summary judgment filings is contrastingly judicial deference to the predominant theme emerging from Harvard’s summary judgment memorandum cites several precedents to this effect\(^\text{53}\) and seeks to refute Walker’s fairness-based claims. Harvard notes that Walker’s latest draft was not accompanied by an email explaining the virus situation or otherwise alerting JOLT editors about citation problems,\(^\text{54}\) which can be seen to manifest either her negligence or deliberate omission of material facts. Moreover, the sources Walker gave the editors are alleged to have been in a useless format for editorial purposes and

“...[T]he long-held traditions of deference to academic expertise, judgment, and autonomy continue to dominate judicial thinking on the student-university relationship.” See generally George L. Blum, Claims of Student Plagiarism and Student Claims Arising from Such Allegations, 83 A.L.R.6th 195 (2013) (summarizing cases).

\(\text{53}\) James Truslow Adams, America Faces 1933’s realities, N.Y. Times SM1, Jan. 1, 1933, \url{http://www.nytimes.com/learning/teachers/archive/19330101AmericanDream.pdf}

---

\(\text{50}\) Latourette, supra note 24, at 56–57 (“When the college or university serves as the forum for determinations of student plagiarism, the institution is rendered largely judgment-proof in that students will rarely emerge victorious in litigation arising from the plagiarism charge. ... [T]he long-held traditions of deference to academic expertise, judgment, and autonomy continue to dominate judicial thinking on the student-university relationship.”). See generally George L. Blum, Claims of Student Plagiarism and Student Claims Arising from Such Allegations, 83 A.L.R.6th 195 (2013) (summarizing cases).

\(\text{54}\) Id. at ¶ 71.

\(\text{55}\) Id. at ¶¶ 20, 29, 32.

\(\text{56}\) Id. at ¶ 32.

\(\text{57}\) Id. at ¶¶ 32(vii), 48–54.

\(\text{58}\) Memorandum in Support of Defendants’ Motion for Summary Judgment, supra note 11, at 8–9.

\(\text{59}\) Id. at 3.
irrelevant in any event because of her authorial responsibility to properly attribute sources instead of relying on JOLT.60 Harvard did not directly address the disparate treatment issue, which disappeared from the litigation, but did forcefully deny that Walker was denied due process in her hearing before the Board. Not only did Walker receive due process, Harvard asserted, but she incurred “only a formal reprimand, allowing her to graduate on time with her class,” as opposed to the typical sanction of suspension for plagiarism; she was also permitted to appeal the Board’s unanimous determination, despite having no right to do so.61 Harvard concluded about the Board’s decision: “The matter was thus resolved as favorably to Walker as possible, consistent with the maintenance of HLS’s [Harvard Law School’s] high academic and ethical standards.”62

Each party then linked its readily apprehensible themes to a legal theory of the case centered on what constituted Walker’s “reasonable expectation” in context. On this crucial issue, the First Circuit sided with Harvard’s objective reasonableness standard, determining that “[e]ven if, as Walker argues, the facts establish that she, indeed, believed her Note was badly incomplete, they do not establish that a student could reasonably expect that the words ‘[a]ll work submitted’ [from Harvard Law’s plagiarism policy] exempted such an incomplete draft.”63 While it may be that Walker lost on purely legal grounds, some questionable narrative choices may have contributed to judicial repudiation of her claims. Her complaint, for example, characterizes JOLT student editors as being motivated by malice and maligns Dean of Students Ellen Cosgrove64 as “Hostile Cosgrove.”65 More judicious language tethered to facts could have enforced the reasonability of Walker’s arguments. Other passages suggest doubtful logic; to rebut Harvard’s deference argument, Walker’s opposition to summary judgment compared Harvard Law’s plagiarism policy to a “commercial boilerplate contract” that should be construed against the drafter in case of ambiguities but claimed that “[u]nlike with the purchase of a bad car, the consequences of being found on the wrong side of a major school rule are irreversible.”66 Considering recent episodes of automotive defects having fatal, i.e. irreversible, consequences,67 the reader (such as a judge, or me for the purposes of this article) immediately questions this line of analysis in the document. Also, while no evidence suggests this happened in the case, Walker’s attorney’s focus on his client’s educational credentials could have backfired if the courts had found intent to be a relevant factor in evaluating whether the plagiarism charge was substantiated.68 In In re Lamberis, for example, the Supreme Court of Illinois agreed with a law school’s finding that “[i]n a subjective sense, it is inconceivable to us that a person who has completed undergraduate school and law school would not know that representing extensively copied material as one’s own work constitutes plagiarism.”69 Finally, Walker’s complaint’s emphasis on the gravity of a plagiarism charge70 was intended

60 Plaintiff Megan Walker’s Opposition to Defendants’ Motion for Summary Judgment, supra note 26, at 16. The argument here about construing adhesion contract terms against the drafter in the university-student context also relied on a dissenting opinion that in turn cited a non-binding Eighth Circuit decision. Schae v. Brandeis Univ., 735 N.E. 2d 373, 382 (Mass. 2000) (Ireland, J., and Cowin, J., dissenting) (citing Corso v. Creighton Univ., 731 F.2d 529, 532-33 (8th Cir. 1984)). However, the majority opinion in Schae, from Massachusetts’ high court, did not endorse that contractual interpretation principle in the case. See id. at 378. This example can limn for students the distinction between mandatory and persuasive authority and instigate a discussion about how to address adverse authority in persuasive legal writing.

61 Id. at 6, 11.
62 Id. at 15.
64 Who, for full disclosure purposes, was the Dean of Students at the University of Chicago Law School during my attendance there.
65 Complaint, supra note 11, at ¶ 59, 70.
67 See, e.g., Kristen Loiacono, Firestone/Ford Fallout, 36 Trials 11, 11 (2000) (“In the past decade, more than 100 people died and hundreds were injured in Ford Explorer rollovers caused by Firestone tire failures.”)
68 “Plagiarism, which is a form of academic dishonesty, is a very serious matter. It brands the student involved as dishonest and untrustworthy, two of the greatest risks any prospective employer can run when contemplating the hiring of a young lawyer or law school graduate. The practice of law depends on its essence for
to advance the unfairness theme in the case but may have also accentuated the enormity of her (mis)conduct, in light of which a formal reprimand could have seemed a justifiable penalty to judges.

Once the importance of crafting a cogent theme and theory of the case tailored to the audience has been illustrated to students drafting persuasive briefs, a more granular comparative analysis of the parties’ rhetorical strategies in Walker may be edifying. Litigants are barred from misrepresenting the law or facts to courts, but they may still exercise creativity within constraints by carefully selecting and framing rules and facts. In their filings, parties may choose to underscore more favorable interpretations of governing rules and more beneficial facts while de-emphasizing less favorable legal interpretations and facts, or potentially omitting them entirely if ethical rules permit; parties may also draw divergent legal conclusions from the same rules and facts, all of which demonstrates that rules and facts are not self-defining. Students can see these persuasive principles in action through the parties’ manipulation of rules and facts in Walker, in addition to evidencing the parties’ inventiveness in reaching propitious legal conclusions when applying governing precedents to undisputed facts. Harvard’s summary judgment memorandum and Walker’s opposition to Harvard’s summary judgment motion delineate the interplay between included and excluded rules. The memorandum cites the basic Rule 56 standard but then adds a benignant gloss from case law: “The nonmoving party ‘may not rest on mere allegations or denials,’ but instead ‘must set forth specific facts showing there is a genuine issue for trial.’” Walker’s opposition does not dispute Harvard’s characterization of the included rules but points out that Harvard’s memorandum “omits that the evidence relevant to the motion must be ‘viewed in the light most flattering to the party opposing the motion.’” Even where the parties cite the same rule, particularly the “reasonable expectation” test, in assessing whether Harvard breached its contract with Walker, their perspectives vary based on their different litigation objectives. Walker’s filings focus on her reasonable expectation of Harvard while Harvard’s filings concentrate on its reasonable expectation of her.

Walker and Harvard are similarly strategic in their use of facts, which, to use a sonic metaphor, are amplified, diminished, or muted entirely to advance each party’s theme and theory of the case. Walker is portrayed as having an unblemished academic record before the plagiarism incident, and proof of her disclosing the tentative state of her draft to JOLT editors is elucidated at length. JOLT editors’ communications to her indicating they understood the incomplete status of her article are also highlighted. While Harvard Law’s plagiarism rule disregarded intent as a mitigating factor, Walker’s filings amassed these facts as potential evidence of her good faith compliance efforts and reasonable expectations.

74 Plaintiff Megan Walker’s Opposition to Defendants’ Motion for Summary Judgment, supra note 26, at 12.
75 “[W]hat meaning the party making the manifestation, the university, should reasonably expect the other party to give it.” Schaer v. Brandeis Univ., 735 N.E.2d 373, 378 (Mass. 2000) (quotations and citations omitted).
76 Memorandum in Support of Defendants’ Motion for Summary Judgment, supra note 11, at 7 (“Walker must establish that Harvard could not reasonably expect her to understand that the Handbook’s plagiarism rule applied to the February 24 draft that she turned in to JOLT”); Plaintiff Megan Walker’s Opposition to Defendants’ Motion for Summary Judgment, supra note 26, at 13 (“There is a double question here which Harvard’s memo does not address ... It is not simply ... whether Harvard would ‘reasonably expect her [Walker] to understand that the Handbook’s plagiarism rule applied to the February draft ... It is also whether the school’s interpretation given to a particular handbook provision is in line with the student’s reasonable expectation.”) (citation omitted).
77 Complaint, supra note 11, at ¶¶ 16, 17, 32.
78 Plaintiff Megan Walker’s Opposition to Defendants’ Motion for Summary Judgment, supra note 26, at 5-10. The First Circuit, however, rejected the argument that, based on these communications, JOLT senior staff could exempt Walker from Harvard Law’s general plagiarism policy. The court cited its own precedent holding that a university could reasonably expect students not to rely on faculty or administrators’ “oral statements as binding promises by the university when such statements” contravened the university’s catalog. Walker v. Harvard Coll., 840 F.3d 57, 63 (1st Cir. 2016) (citing Mangla v. Brown Univ., 135 F.3d 80, 83 (1st Cir. 1998)).
Harvard disclaims the relevance of intent in its filings but in the alternative emphasizes how Walker did not unknowingly commit a slight infraction. Her experience editing for JOLT is mentioned within the first paragraph of Harvard’s memorandum supporting summary judgment—and later recapitulated—as indicative of the fact that Walker knew intimately about JOLT’s editing processes. Specifically, Harvard argues she was aware that her last draft was expected to be fully sourced for JOLT’s editorial review preceding publication. As a later filing asserts, “Walker has admitted the material facts: she not only should have expected but actually knew that her February 24 draft needed to include citations to all her sources and that, as with any work a student turns in, the Handbook’s plagiarism rule applied.” Walker’s complaint does not mention her journal work but a subsequent filing conceded the fact while trying to use it to draw a more favorable legal conclusion than Harvard did about her reasonable expectations, namely that she would have another opportunity to revise the article.

In another of Harvard’s strategic factual moves, Walker’s disclosures to JOLT editors are downplayed or claimed to be inadequate while the breadth of her plagiarism is magnified: at least “twenty-three” instances, proving “the Board’s decision was supported by overwhelming evidence of blatant, pervasive plagiarism” that would render her expectations of avoiding the plagiarism policy’s application manifestly unreasonable. Walker’s complaint does not mention the number of plagiarized passages JOLT identified and omits one of the plagiarism policy’s most pertinent, and damning, provisions: “Students who submit work that is not their own without clear attribution of all sources, even if inadvertently, will be subject to disciplinary action.” Harvard’s memorandum supporting summary judgment relies substantially on the plagiarism policy’s lack of exceptions in this regard to parry many of Walker’s challenges. As discussed previously, the First Circuit ultimately endorsed Harvard’s expansive interpretation of the policy in affirming the trial court’s summary judgment grant for the university.

V. Conclusion

The preceding discussion hardly exhausts the possibilities for incorporating Walker v. Harvard College into the curriculum in a range of law school settings, including academic integrity sessions, legal writing classrooms, professional responsibility courses, and academic success programs. This article, though, does suggest several generative pedagogical uses for the case, including vividly introducing students to plagiarism’s practical consequences and ethical implications in law school and in their future careers. Other more mundane purposes for teaching Walker may be to explicate legal analysis methods, procedural topics, and strategies for persuasion through a memorable, contemporary, and germane case. An additional benefit for law schools from publicizing a case like Walker is potentially reducing plagiarism incidents that tax institutional resources and may tarnish the institution’s reputation even if it prevails in internal proceedings and in litigation. Fully banishing the specter of plagiarism is likely not feasible, but keeping the phantasm at bay while honing students’ legal skills remains a laudable endeavor for law schools tasked with educating prospective lawyers to honestly and effectively serve society.

79 Memorandum in Support of Defendants’ Motion for Summary Judgment, supra note 11, at 1, 2.
80 Id. at 2.
81 Reply in Support of Defendants’ Motion for Summary Judgment, supra note 45, at 4.
82 Plaintiff Megan Walker’s Opposition to Defendants’ Motion for Summary Judgment, supra note 26, at 4 (“Her past involvement had taught her when the various stages of the article-editing process were triggered and the state of completeness required before each, alone making it unlikely that she would have understood that her ‘latest draft ... would be understood to be a submission subjecting it to scrutiny for plagiarism.’”).
83 Memorandum in Support of Defendants’ Motion for Summary Judgment, supra note 11, at 2, 3.
84 Id. at 4, 17.
87 For example, appellate brief formatting and issue framing could be taught by analyzing the parties’ briefs on appeal, and Harvard Law’s plagiarism policy could be parsed in a legal interpretation or contract drafting class.