

THE CONCESSION

CASE STUDY

Marcus Marsh had been practicing employment law for eleven years, long enough to have developed strong opinions about opposing counsel, especially the many with whom he interacted frequently. Most of them were professional opinions about preparation, careful drafting, strategy, and who could be trusted and who couldn't. A few had shaded into something more personal. Kevin Doherty fell into a category he couldn't quite articulate.

They had been on opposite sides of the Patel case for twenty-two months. It had been contentious in the way that employment cases sometimes were. There had been no moments of major drama, but it had been grinding—full of discovery disputes, competing motions, and the kind of low-grade friction that could accumulate into genuine animosity if one wasn't careful. Marcus had been careful, but he wasn't sure Doherty felt the same way.

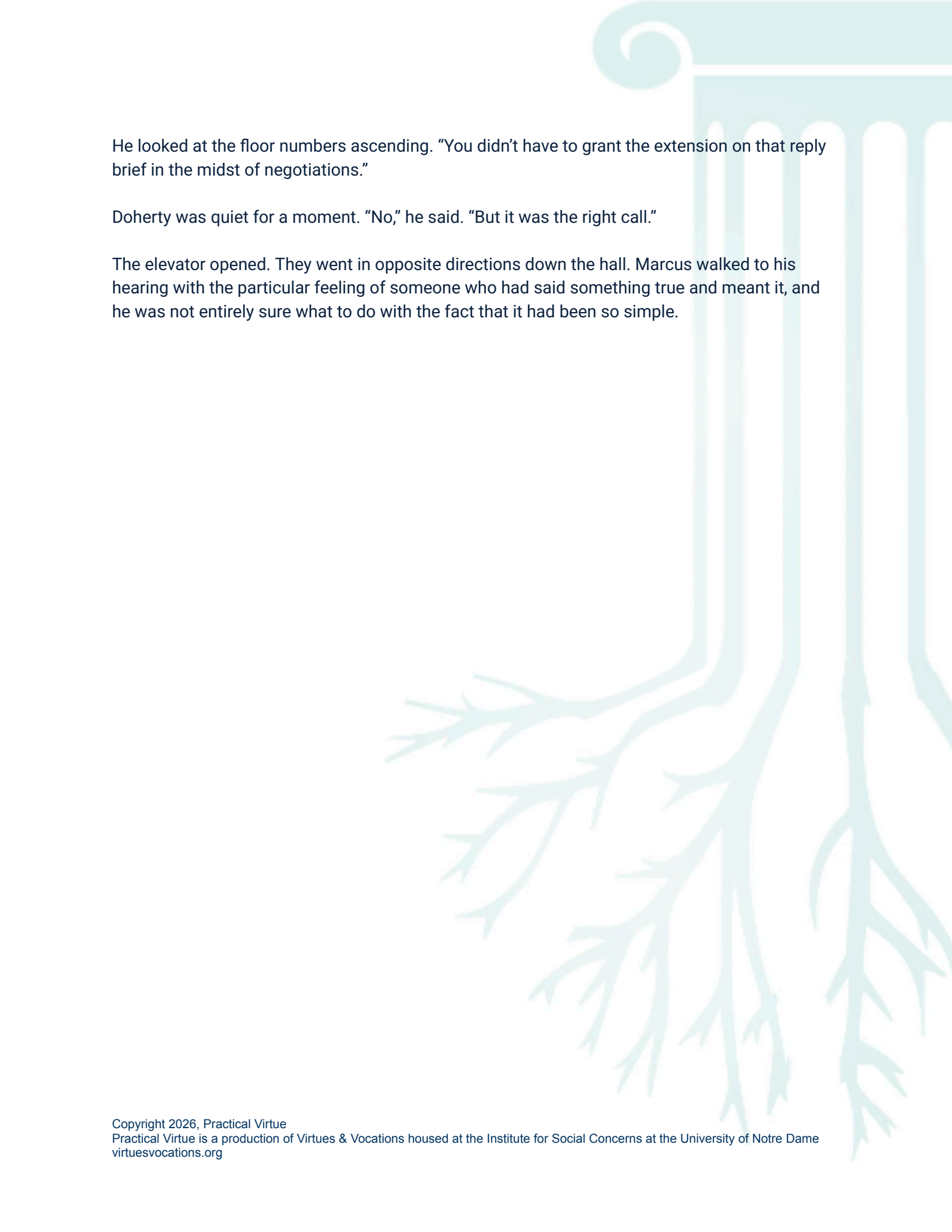
The case had settled two weeks ago, on terms that were good for his client. In the final stretch, when the negotiations had stalled and briefing was still due to the court, Doherty had critically agreed to give Marsh a two-day extension on a filing that he was not obligated to make. It was not a major gesture, but Doherty knew that if he had not granted the extra time it would have been detrimental to Marsh's ability to make his case before the court. It was a single professional decision that made Marsh's week and other obligations feasible—and if the case hadn't settled, it improved his briefing before the court.

Marsh had not said anything particular to Doherty at the time. The settlement and closing had been efficient and professional, and then it was over and they had gone back to their respective offices. Marsh had thought about sending an email, something brief and professional, acknowledging what Doherty had done, but he never did. He was also not sure what the email would mean, or how it would be received, or whether gratitude expressed across adversarial lines was a professional courtesy or something that complicated the separation that made the advocacy for clients possible.

Three weeks later he ran into Doherty in the lobby of the courthouse, both of them waiting for the same elevator. He nodded. Doherty nodded. The elevator arrived.

"Patel worked out," he said, as the doors closed.

"It did," Doherty said.

A decorative background featuring a teal column on the right side and a network of teal roots extending from the column towards the bottom left.

He looked at the floor numbers ascending. “You didn’t have to grant the extension on that reply brief in the midst of negotiations.”

Doherty was quiet for a moment. “No,” he said. “But it was the right call.”

The elevator opened. They went in opposite directions down the hall. Marcus walked to his hearing with the particular feeling of someone who had said something true and meant it, and he was not entirely sure what to do with the fact that it had been so simple.