LAW

ACCIDENTAL KNOWLEDGE

CASE STUDY

Michael was a fourth-year associate at a large litigation firm, working on a major lawsuit for a technology client. Discovery had stretched on for months, and the case was consuming everyone. Late one evening, Michael was reviewing a discovery index produced by opposing counsel—an Excel spreadsheet listing Bates ranges, brief descriptions, and confidentiality designations. It was routine work, necessary but tedious and rarely consequential. As he scrolled through, one entry gave him pause:

Bates: DEF_0049821–0049837
Description: Internal case assessment memorandum
Designation: Non-Privileged

That description seemed unusual. As Michael's cursor moved across the spreadsheet, the firm's document-review platform automatically populated a preview pane on the right side of the screen. Without any click or deliberate action on his part, a small portion of text became visible. It read:

> *"Primary litigation risk remains the licensing clause interpretation. If the court adopts plaintiffs' construction, exposure likely exceeds $180M. Recommend pursuing settlement in the $45–60M range prior to summary judgment."*

Michael closed the spreadsheet almost immediately. He had not opened a document. He had not searched for confidential material. The information had appeared as part of the ordinary interface of the software he was required to use. Still, the effect was immediate. The case looked different now. Opposing counsel's recent positions, which had seemed aggressive and confident, suddenly appeared defensive. Michael now understood where the real pressure lay.

He spoke with the senior partner, Mr. Allen, describing what had happened carefully and precisely. Allen listened, then said, "You didn't do anything improper. We'll handle the designation issue appropriately. But litigation is an information-gathering process. You learn things—sometimes from what people say deliberately, sometimes from what they accidentally say." Michael nodded, but said nothing. "Understanding the case better doesn't mean abusing the process," Allen continued. "It means exercising judgment."

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Back at his desk, Michael began drafting a memo outlining what he thought should be in the settlement. He could write it the way he would have the day before—or he could write it with greater confidence, narrower concessions, and firmer deadlines, informed by what he now understood about the other side's position. No one would know which path he chose. Nothing in the record would reveal it.

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