

SEP 09 2008

Adam v. Norton, No. 04-17365+MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

REINHARDT, Circuit Judge, concurring in part and dissenting in part.

At a speech delivered shortly before the round of firings that led to the present case, Dr. Gordon Eaton, the Director of the United States Geological Survey (“USGS”), asked his audience: “What is the difference between Jurassic Park and the Geological Division of the Geologic Survey?” The answer: “One is an amusement park filled with dinosaurs and the other is a movie.” A poster announcing an employee meeting to discuss the workforce reduction contained the following cartoon caption: “You gotta help me, Mom . . . This assignment is due tomorrow, and Gramps doesn’t understand the new tricks.” These ‘jokes’ by no means reflect the isolated humor of individual USGS employees. Rather, a 1993 official report setting forth the agency’s “Vision for the 21st Century” explained that “[s]ome segments of the USGS currently are suffering from an aging, high-grade workforce” and that this is “a critical problem that must be addressed . . .”

On this record, I cannot agree with the majority’s acquiescence in the district court’s finding that “there is *no* evidence that the relevant decision makers were acting in accordance with age-based discriminatory animus.” (emphasis added). I would hold that where there is irrefutable evidence of an officially sponsored culture of discrimination in a workplace, it is not necessary to demonstrate that the

individual who ultimately undertook the challenged adverse employment action was motivated to do so by his own discriminatory animus. *See, e.g., Galmadez v. Potter*, 415 F.3d 1015, 1026 n.9 (9th Cir. 2005) (explaining that discrimination occurs “where the ultimate decision-maker, lacking individual discriminatory intent, takes an adverse employment action in reliance on factors affected by another decision-maker’s discriminatory animus”). Because the record in this case contains ample evidence of an officially sponsored culture of age-based discrimination at USGS, I would reach the merits of the employees’ mixed-motive claim and find discrimination in violation of the ADEA. Accordingly, although I concur in the majority disposition in most respects, I respectfully dissent from Part I.B.