

1 **OFFICE OF CIVIL RIGHTS**
2 **UNITED STATES STATE DEPARTMENT**

3 **Attachment to form DS-3079**

4 MARVIN E GREEN
5 UNIT 4360 Box 6035
6 DPO AP 96532
7 +1-202-657-4911
8 greenme@state.gov
9 marvin.e.green@gmail.com

10 vs. CIVIL ACTION NO. _____

11 Dept. of State
12 Office of Civil Rights

13 **COMPLAINT**

14 MEMORANDUM OF POINTS AND AUTHORITIES SEEKING RELIEF
15 FROM AGE DISCRIMINATION

16 I. INTRODUCTION

17 I submit this memorandum seeking relief from age discrimination. My
18 complaint asserts both specific age discrimination against myself in regards
19 to being pressured into working excessive amounts of overtime to compensate
20 for being older than the trainee my supervisor expected to train, and general
21 age discrimination against Foreign Service IRM employees over 50 years of

22 age who are being tenured more slowly than their younger less qualified
23 counterparts.

24 II. STATEMENT OF FACTS

25 (Exhibit 0.1) On March 11, 2005 I mailed in an application for one of
26 several openings as a Foreign Service Information Management Specialist to
27 the State Dept. Board of Examiners. The Job Announcement contained a
28 statement that I would not be discriminated against on the basis of my age. I
29 accepted this as fact and in large part it was my primary rational for seeking
30 to exit the safety of a tenured GS-12 position at the age of 52.

31 (Exhibit 0.2) On October 7, 2005 my paper qualifications were assessed
32 and I was found qualified by the Board of Examiners.

33 (Exhibit 0.3) On December 2, 2006 I was still found qualified after
34 passing both interview and timed written testing by members of the Board of
35 Examiners.

36 (Exhibit 0.4) On February 24, 2006 I passed medical screening—still
37 qualified.

38 (Exhibit 0.5) On November 7, 2007 The Board of Examiners accepted all
39 of my various qualifications, extended a 4 year limited appointment offer to
40 me as a qualified Information Management Specialist—ready for training.

41 On January 20, 2008 The Foreign Service Institute accepted me for 8
42 months of intensive training—with the proviso that I must pass all classes to

-- -- GREEN vs. STATE DEPT.
Age Discrimination

43 maintain my qualifications for the 4 year limited appointment. This was my

44 FSI training schedule:

PA451	Ethics Orientation for Ne	01/28/2008
PN106	Orientation - Foreign Ser	02/08/2008
PS380	IRM Orientation for New-H	02/15/2008
YW642	Desktop Systems	02/29/2008
YW141	Introduction to Telephone	03/03/2008
YW259	Computer Systems Networki	03/07/2008
YW279	DoS Applied Systems	03/28/2008
YW760	COMSEC & Crypto. Equipmen	03/31/2008
YW119	Basic Communications Oper	04/11/2008
YW184	Terminal Equip Replacemen	04/25/2008
YW285	CableXpress	05/02/2008
YW142	Basic Telephone	05/09/2008
YW268	Local Emergency and Evacu	05/16/2008
MQ116	Protocol & U.S. Represent	05/17/2008
YW286	Simulated Operations	05/30/2008
YW164	Refresher Communication	06/06/2008
YW497	Meridian 61C/11C	06/20/2008
YW291	Commercial Terminal Satel	06/27/2008
YW297	Nortel Business Communica	07/11/2008
YW496	Nortell CallPilot	07/18/2008
YW299	Common Transmission Facil	07/25/2008
MQ911	SOS: Security Overseas Se	07/29/2008
IA101	Information Assurance/ISSO	08/08/2008

45 In most of the classes there were timed tests to pass each class. In most
46 cases the students finished the tests in order of age, meaning younger
47 students completed timed tests much more quickly than older students. The
48 most poignant example of this phenomenon was the Dept of State
49 Applications Class where we had to follow written instructions to create e-
50 mail post offices and send test e-mails to indicate technical success. I, with 12
51 years of experience doing these exact procedures, finished next to last—and
52 the other 55 year old, dead last--failed. This event, more than any other,
53 ended my state of denial--that I was just as fast technically, as I'd always

____--____ GREEN vs. STATE DEPT.
Age Discrimination

54 been; just as fast as the younger students that had no experience with
55 exchange e-mail servers. I assert that my technical judgment in the area of
56 Microsoft Systems Administration was superior to my younger counterparts--
57 however my speed at executing instructions has slowed with age. The testing
58 process was a timed test that favored speed over judgment and experience. It
59 therefore favored younger less experience technical workers who are more
60 prone to error which would slow their throughput speed were technical
61 judgment to be included in the testing process. It is my observation that
62 younger technical workers will speedily attempt more tasks, have more
63 failures which are forgotten and be applauded and remembered solely on the
64 basis of their success—thus creating the illusion that they are better more
65 qualified workers. The DOS Applications class instructor, who administered
66 the timed test in a discriminatory fashion was in his 60s and recently died of
67 overexertion on a ski slope--indicating that he believed that he could keep up
68 physically with much younger skiers, thus physically demonstrating the
69 definitions of both irony and karma.

70 Mental processing speed slows in much the same manner as visible
71 physical processes. However, with age one normally acquires the
72 compensating attributes of judgment, patience, even wisdom one might say—
73 attributes that the State Dept. does not weight as heavily for in the FSI
74 testing or tenuring assessment processing of older IRM candidates.

____--____ GREEN vs. STATE DEPT.
Age Discrimination

75 During training in Virginia I worked slightly less than 8 hours per day. I
76 studied an average of about 2 hours a day at home. I slept an average of
77 about 7 hours a night. I mention this because the work related stress I was
78 subjected to in Freetown, in it's application upon an older candidate such as
79 myself—had a negative impact when applied to an older worker. Where
80 normally stress will cause a younger employee to produce more, in the case of
81 older workers such as myself, the result is less sleep, more worry, poorer
82 memory performance and slower rates of learning. This is why I sought relief
83 from MO Ola Criss.

84 At 55 years of age, on August 24, 2008 I was transferred from the
85 Foreign Service [training] Institute to Embassy Freetown, Sierra Leone.



86
87 (Exhibit 01), On September 2, 2008 I began work as an Information
88 Management Specialist for Information Management Officer, Josh
89 Hromatka; also 55, a mere 3 weeks difference in age.

-- -- GREEN vs. STATE DEPT.
Age Discrimination

90 On September 22, 2008 I was issued a Work Requirement's DS-1829,
91 which included the following final statement:

- 92 • "Sierra Leone is ranked last among all nations of the world on the United Nation's Development
93 Index. As a result, Sierra Leone presents an exceptionally difficult working environment [emphasis
94 added] when it comes to management functions and quality of life issues. Simple logistical tasks are
95 frustrated by the country's abysmal infrastructure. Efforts at improving services run up against the
96 severe constraints of an extremely poor country coming out of a horrendously brutal civil war. Because
97 of these factors, Freetown is a 30 percent hardship differential post."

98 (Exhibit 02), On September 23, 2008 I received the following DS-1974,
99 Counseling Certification:

- 100 • "The rated officer was advised and encouraged to become as familiar with as much as possible about
101 Freetown IRM operations as quickly as possible [emphasis added] in order to become an integral part
102 of the team and to help balance the work load [emphasis added]."
103 • "...a minimum of two discussions must occur in each rating cycle, and at least one of them must be
104 documented on this form..."
105 • "...The rated officer began work in Freetown on September 2, 2008 and is learning to perform basic
106 skills [emphasis added] related to his new position..."
107 • "As a new-hire IMS, you really need to concentrate on the job and integrate yourself as quickly as
108 possible[emphasis added] ..."
109 • "...hands-on involvement with each and every facet of Freetown IRM operations."
110 • "...This is a lot of information and will take time and effort on your part to complete[emphasis added],
111 especially when we are forced to multitask in order to get things done [emphasis added] ...Our job is
112 demanding[emphasis added] and new challenges and problems come up all the time.
113 • "The goal of a favorable EER and recommendation for tenure [emphasis added] involves working
114 efficiently and effectively and getting the job done properly

115 All of these counseling statements favor younger faster workers over
116 mature workers who might seek shortcuts or avoid unproductive optional
117 tasking based on their experiences with similar work.

118 All of these counseling statements demonstrate that the overtime work
119 that the overtime I performed was wanted and needed by my supervisor and
120 that my perception at that time—that I must perform this work to secure his
121 recommendation for tenure, paid or not—was a reasonable action on my part.

----- -- ----- GREEN vs. STATE DEPT.
Age Discrimination

122 On one occasion during this time period I became forgetful of routine
123 daily task and on one occasion could not remember the CAA door combination
124 and had to call and wait for Josh to come in and open the door for me. I
125 consulted the Physician’s Assistant, Laura Kustalaborder, and according to
126 TDY Regional Medical Officer Dr. Trehan, Laura wrote an extensive report
127 on me prior to her departure.

128 (Exhibit 03), On November 12, 2008 my supervisor departed Freetown
129 for the United States on his first Home Leave in 10 years:

- 130 • “I will be away on home leave in the USA from November 12 until December 16. Please contact IMS
131 Marvin E. Green if you need assistance before that time”

132 For over 4 weeks, between November 12, 2008 and December 16, 2008 I
133 performed the combined duties of an IMO and an IMS and my execution of
134 those duties was rated as “excellent” by Management Officer Ola Criss. When
135 Josh left it was exhilarating to be on my own and see if I could handle the
136 work. I think I performed at about the 40% level and was glad to see Josh
137 return to catch things back up. It was my happiest moment when he left and
138 my second happiest when he returned...

139 (Exhibit 04), Between my arrival at post on September 2, 2008 and
140 December 14, 2009 [date Josh informed me of the existence of “irregular or
141 occasional” overtime], I attempted to secure a tenure recommendation [per
142 Josh’s exhortations in Exhibit 02] by working both types of overtime
143 [scheduled and irregular] without claiming or knowing I could claim most of

____--____ GREEN vs. STATE DEPT.
Age Discrimination

144 it, following the example and statements made by Josh, that “[he] worked lots
145 of unpaid overtime but only claimed, for example, the [Regularly Scheduled]
146 courier runs [all day diplomatic pouch run to airport]”.

147 On two occasions after Josh’s return from Home Leave I could not
148 remember the IPC door combination and had to call and wait for Josh to
149 come in and open the door for me. I was working about 2 hours a day extra
150 and sleeping about 6 hours a night.

151 On or about this time in the sequence of facts, one of my 99th classmates
152 reported accidentally disabling all the phones on an entire floor of his embassy
153 while attempting to diagnose a phone problem. He received tenure. As an
154 older more cautious employee I am proud to say that in my 2 years I have
155 made no major errors, nor caused any unnecessary work for others. I was not
156 tenured. Caution receives no merit in the tenuring process. Technical speed,
157 even reckless speed, is rewarded by the conferring of tenure.

158 (Exhibit 05.1), on January 12, 2009, I began to use the Embassy Entry
159 Log Book [if you read Exhibit 05.1 you will notice the organizing lines drawn
160 in Entry Log Book from January 12, 2009 to present are my daily
161 contribution]--to record my Embassy entrances and exits to and from my
162 place of work. At first Josh was pleased that I was following his instruction to
163 use the log book to record all entries and exits that were outside of normal
164 business hours—but when he realized I was also using the log to record my

____--____ GREEN vs. STATE DEPT.
Age Discrimination

165 hours for my time card he became annoyed—but what could he say? My
166 hours always started before the embassy opened for the business day and I
167 usually left after business hours—so I was following his instruction and
168 recording my overtime—which motivated him to produce Exhibit 06, below.

169 (Exhibit 5.2) Embassy hours of operation are: Mon-Thu 8:00-17:15, Fri
170 8:00-13:15. My work hours are: Mon-Thu 07:15-16:30, Fri 07:15-12:15.

171 (Exhibit 06 – 2 part), on January 19, 2009, (exactly one week after I
172 began recording all hours at work in the Embassy Entry Log Book), Josh
173 rebuked me for recording my exact work hours with (Exhibit 06 - e-mail
174 portion):

175 • “[...]based on my observations, and after having worked with several other new-hire IMS over the
176 years, I believe that you are not putting forth enough effort[emphasis added, see Exhibit 05.3 for
177 average 13 hrs per week of uncompensated overtime up to this point] to get involved with learning all
178 of the facets of your new job in an efficient manner--and thus not contributing to your fair share of the
179 work load here. I really want you to excel and succeed and believe that you can do this if you want to.
180 The main point is that we really need your undivided assistance and support as IMS to contribute fully
181 to completing the IRM mission. We expect and require your cooperation to make this happen.”

182 At this point I had been working an average of 25 hours per 2 week pay
183 period of unpaid overtime--only claiming the 4 week period where Josh was
184 on Home Leave. Furthermore, since I was a new trainee we worked almost
185 all of it together--except for the early daily portion where I was opening the
186 shop by coming in at 7:15 and he would come in at 9 or 10, (but in those early
187 days we always left together after I had worked about 2 extra hours each
188 day). Here I am asserting that my supervisor knew of the overtime I was
189 putting in and it was unreasonable of him to later demand that I justify with
190 explanation each past instance of overtime before he would retroactively

GREEN vs. STATE DEPT.
Age Discrimination

191 approve it. He was there, he doesn't think age has affected his memory, it is
192 more reasonable for him to do the recalling and justification of each instance
193 and demonstrate that the work I was doing was personal in nature—but he
194 can't recall and demonstrate my personal time spent in the Embassy because
195 there was none.

196 (Exhibit 6 – Counseling Certification portion):

197 • “[...]”
The goal of a favorable EER and recommendation for tenure involves working efficiently and effectively and getting the job done properly, as well as looking for methods and results to improve the mission and provide outstanding customer service and support.
You have made some progress with learning the duties and responsibilities of your IMS position. I see that you are capable of doing quality work. However, I have observed the following performance issues that you really need to improve upon in your work here:
-- You need to put forth more effort, display more initiative, accept more responsibility and get more involved in all facets of IRM operations--and not just the few projects that may interest you. Therefore, you need to work at a faster pace, prioritize work and not procrastinate. We are swamped with IRM projects and expect your cooperation and involvement to help carry the heavy work load.
-- You need to work more closely as a team member with your colleagues and not expect to perform all tasks on your own or without coordinating with others on the team--especially if you don't know how to do something. Ask questions and look for ways to resolve problems efficiently and effectively. You need to take more interest, be more pro-active and get more directly involved with our LES teams on a daily basis so that you know what they are working on and to provide them with useful guidance, assistance and support.
198
199 ”

200 Restatement: “The goal of a favorable EER and recommendation for
201 tenure involves [...] putting forth more effort [...] work at a faster pace,
202 prioritize and not procrastinate [...] to carry the heavy work load.” – Josh’s
203 words, the overtime was necessary to secure a tenure recommendation.

204 I was now sleeping about 5 hours per night and found myself feeling
205 mentally fuzzy when I would open. I found that often when I could not
206 remember a combination I would just start turning the lock and it would just
207 sort of come back to me as I turned the lock. I think the book I read called
208 that “mechanical memory” as differentiated from “cognitive” or “short term”
209 memory which was becoming attenuated with the stress. At one point
210 somewhere around this time I became so disoriented that I couldn't figure out

-- -- GREEN vs. STATE DEPT.
Age Discrimination

211 which server I was logging into or what the usercode was supposed to be. I
212 thought I was going to pass out—so I went and ate something and then saw
213 the nurse. I think we agreed it was stress. I resolved to have myself check out
214 during my upcoming home leave by a neurologist.

215 (Exhibit 07) On Wednesday February 11, 2009, I sought relief from the
216 high volume of overtime from the MO. On Friday the 13th, after a 2 hour
217 meeting with the MO, the MO ordered Josh to seek MO approval for ALL
218 overtime to be worked by anyone under Josh’s supervision. Josh has yet, (as
219 of April 14, 2010), failed to even once seek advance approval for Regularly
220 Scheduled overtime work (see Exhibit 4), for me.

221 (Exhibit 08) On March 1, 2009 while I was on R&R in Calif., I received
222 from Josh a draft EER where the Tenure box was not checked:

V. EVALUATION OF POTENTIAL <i>(Completed by Rater)</i>	
A. For Career Candidates only: Assessment of career potential as a Foreign Service Officer or Foreign Service Specialist:	
<input type="checkbox"/>	Unable to assess potential from observations to date
<input type="checkbox"/>	Candidate is unlikely to serve effectively even with additional experience
<input type="checkbox"/>	Candidate is likely to serve effectively but judgment is contingent on additional evaluated experience
<input type="checkbox"/>	Candidate is recommended for tenure and can be expected to serve successfully across a normal career span (see Instructions.) <small>(Support your choice by discussing below the candidate's potential for successful service across a normal career span, citing examples which illustrate strengths and weaknesses in each of the competencies cited below.)</small>

223
224 This graphic, along with his obvious displeasure over the log book and
225 my complaint to the MO convinced me that Josh would not recommend me
226 for tenure.

227 (Exhibit 8.5) On March 25, 2009 I met an appointment for neurological
228 testing to determine if my workplace deficiencies had a biological cause.
229 Apparently they do--somewhat. I passed the memory test but the blood work
230 determined that I was running low on B and D vitamins. I was directed by

-- -- GREEN vs. STATE DEPT.
Age Discrimination

231 my neurologist to take supplemental B and D vitamins—which I have been
232 doing.

233 On April 1, 2009 I returned to work from 4 weeks of R & R.

234 (Exhibit 09) On June 1, 2009, I received confirmation when on the final
235 EER the “recommended for tenure” box was not checked.

V. EVALUATION OF POTENTIAL <i>(Completed by Rater)</i>	
A. For Career Candidates only: Assessment of career potential as a Foreign Service Officer or Foreign Service Specialist:	
<input type="checkbox"/>	Unable to assess potential from observations to date
<input type="checkbox"/>	Candidate is unlikely to serve effectively even with additional experience
<input checked="" type="checkbox"/>	Candidate is likely to serve effectively but judgment is contingent on additional evaluated experience
<input type="checkbox"/>	Candidate is recommended for tenure and can be expected to serve successfully across a normal career span <i>(see instructions)</i>
<i>(Support your choice by discussing below the candidate's potential for successful service across a normal career span, citing examples which illustrate strengths and weaknesses in each of the competencies cited below.)</i>	

236

237 (Exhibit 10) During July/August 2009, Josh reminded me three times of
238 my untenured status. My sleep time was about 5 hours, sometimes less.

239 (Exhibit 11) Sometime before August 18, 2009 I confronted Josh in the
240 IPC, (Information Programs Center, (our work space)), and got about 12
241 inches from his face, leaning over his desk, looking him directly in the eye
242 and asked: “Are you planning to recommend me for tenure?” No answer...
243 then: “What will I have to do to be recommended” [for tenure]?” Just so you
244 don’t think I making things up, on August 18, 2009 I documented the
245 question, and its’ answer in a draft message to the MO, quoted here:

- 246 • “After our last meeting, I confronted Josh and asked him if he intended to recommend me for tenure.
247 He would not answer.
- 248 • When I asked him what I would have to do to be recommended, he said I would have to demonstrate
249 greater commitment by working whenever needed and for as long as needed. When I pointed out that
250 overtime was not authorized, he stated: ‘That’s not my problem’ ”

251 (Exhibit 12) On September 9, 2009 I attempted resolution of the matter
252 by requesting State Dept. Regional Medical Officer – Psychiatry, Dr. Howard

____--____ GREEN vs. STATE DEPT.
Age Discrimination

253 Gershenfeld, to arbitrate the matter between ourselves in the IPC. In the
254 session Josh labeled “clock watchers” as “lazy” in reference to my desire to
255 leave at 16:30 when my shift was completed.

256 (Exhibit 13) On February 17, 2010 State Dept. cable 13857 announced
257 my tenure eligibility along with the rest of the 10 IRM members of the 99th
258 specialist class.

259 (Exhibit 14) On March 5, 2010 a timely and favorable EER was
260 submitted with a strong recommendation for tenure by both Josh and a
261 separate and stronger recommendation for tenure by the MO.

262 After the tenure recommendation was submitted, I prepared overtime
263 slips for only about 80 hours which was from overtime worked from January
264 to March. My intent was to use the comp time on my second R&R. I
265 submitted the overtime slips for signature to Josh. I only asked for both types
266 of worked overtime from January. It only asked for enough overtime to cover
267 my R&R in April (that I never got because he refused to sign any of them and
268 I was only asking for about 10% of the overtime of the last year and a half). I
269 was willing to settle for 15 cents on the dollar and he acted betrayed because
270 he had given me the tenure recommendation and seemed to feel I had been
271 adequately compensated for my overtime. He kept showing me the required
272 tenuring attributes—to go beyond assigned duties, to demonstrate
273 initiative—and he really believed at this time that it meant I had to put in
274 uncompensated overtime and that he could come in after the work was

____--____ GREEN vs. STATE DEPT.
Age Discrimination

275 performed to impress him—and evaluate the usefulness of the work already
276 performed and arbitrarily decide to not compensate me for time he didn't feel
277 or think I deserved to get paid for. He thought he had a line item veto on my
278 completed time cards.

279 (Exhibit 13 – first paragraph) On March 24, 2010 the tenure board
280 began its deliberations.

281 On or about the morning of March 25, 2010 I was called to a meeting by
282 Josh in the MO's office to resolve the overtime issue. Josh asserted that I was
283 failing to provide descriptive information detailing each instance of overtime
284 so as to enable Josh to be able to differentiate the management directed
285 overtime from my voluntary personal time spent at work. I asserted that
286 Josh was not following the MO direction to seek approval in writing for all
287 overtime worked--in advance of the work to be done. I further asserted that I
288 have no personal items or business in the embassy on which to spend
289 personal time. All time spent in the embassy is spent doing work and only
290 work.

291 (Exhibit 4 – last paragraph) In the same meeting on or about March 25,
292 2010, the AFSA union representative, James Yorke, was called, (by Josh, on
293 speaker phone with Josh, myself and the MO present), to instruct me and/or
294 arbitrate the matter. At approximately 12:30 I was dismissed for a lunch
295 break.

____--____ GREEN vs. STATE DEPT.
Age Discrimination

296 (Exhibit 15) At approximately 2 pm (still March 25) I was recalled to the
297 same meeting (previous paragraph) by Josh. Conference call participant
298 Jeffrey D. Miller stated that overtime could only be ordered by management
299 and that disciplinary measures could be taken against employees who
300 continue to claim unauthorized overtime [actually, up until now, I have asked
301 for compensatory time off rather than monetary payment]. At this point Josh
302 leaned into the phone and asserted that I was making baseless assertions
303 that I had to work the overtime in order to get recommended for tenure,
304 Jeffrey Miller responded: “Stop right there. I don’t want to hear this. This is
305 matter for the OIG. The least that could be done would be to send the
306 supervisor in for re-training.” This statement, combined with Josh’s
307 intransigence in signing for even 80 hours of unpaid overtime has motivated
308 me to file this complaint.

309 (Exhibit 16) On March 30, 2010 Josh outlined his position in an e-mail
310 to AFSAssociation representative James Yorke. Josh stated: “—Fraudulent
311 claims of overtime is an OIG issue.”

312 (Exhibit 5.3) On April 14, 2010, acting on Jeffery Miller’s statement as
313 to the illegality of working unpaid overtime to secure a tenure
314 recommendation, I presented Josh with a fully delineated request for all
315 unpaid overtime between my arrival at post and the point in time where he
316 recommended me for tenure—in the presence of the MO. He refused it
317 making the unreasonable demand that I justify from memory each instance

____--____ GREEN vs. STATE DEPT.
Age Discrimination

318 of management approved overtime as contrasted from the voluntarily worked
319 un-payable overtime--of which there was none.

320 (Exhibit 17) On April 19, 2010 I submitted the matter to the OIG for a
321 ruling on whether Jeffrey Miller's assertions that allowing an untenured
322 employee to work overtime in exchange for a tenure recommendation was
323 illegal. Other than the automated receipt, they have not responded—leaving
324 me no choice but to file this complaint in different form, in a different venue
325 with age discrimination as the emphasis, where the requirements upon me,
326 in terms of proof and time spent, are much greater.

327 (Exhibit 18) Eight days later, on April 27, 2010 I was informed that I did
328 not as yet qualify for Tenure, nor did the other 2 candidates over 50. However
329 6 of the 7 younger candidates were all tenured—many having gained less
330 experience than myself by working at large embassies like Moscow and New
331 Dehli where they gained a more narrow set of experiences than I have— I
332 being tasked to learn a little of everything at a smaller post with only 2 IRM
333 American employees.

334 (Exhibit 19) May 1, 2010 the results of the tenure board are published--
335 of the 10 IMS/IMTS members of the 99th specialist class: 6 of 7 under 50 are
336 tenured, 3 of 3 over 50 are not tenured. Statistically, a sampling of 10 from
337 an IRM pool of 827 is not statistically significant, having a plus or minus
338 likelihood of error in the even odds range—however it certainly merits a data
339 call on the IRM/HR personnel database records.

_____ -- _____ GREEN vs. STATE DEPT.
Age Discrimination

340 A=birth year, b=start year, c=tenure year.

341 c-a=age at tenure. c-b=number of years to achieve tenure.

342 Plot the number of years to achieve tenure on the vertical axis and age
343 at tenure on the horizontal axis and you will find a rising graph of age
344 discrimination--in spite of AFSAs participation in formulating the tenure
345 precepts. Incredible. Why hasn't this been done before?

346 On or about Sept 5 2010 I learned that my HHE and UAB were both
347 being held in Freetown because I had failed to complete the required
348 checkout procedure. I state that I did complete most of the checkout,
349 inspection, paying of bills—but refused to “sign HR documents” which were
350 an attempt by my supervisor, Josh Hromatka, to force me to sign off on 391
351 hours of overtime rather than the full 526.75 hours that I actually worked,
352 unpaid. Holding my HHE and UAB is continuing coercion to vacate my claim
353 of age discrimination and a reprisal for which I am suffering additional
354 injury. I will have no cloths to wear to work when I get to Wellington and
355 must go out today in Spokane to buy additional clothing before I arrive at
356 post. All of my exhibits for this complaint are in my HHE as well as other
357 documents that are reminders of the events and necessary for me to complete
358 the complaint process. By holding my HHE post Freetown is actively
359 preventing me from taking legal action through this Office of Civil Rights and
360 following through to the courts should remediation prove inadequate. There
361 was medical information related to my son's epilepsy that was in my UAB

____--____ GREEN vs. STATE DEPT.
Age Discrimination

362 that I will not be able to review with my son or his doctor next Monday the
363 13th where I have an appointment at 11:50 with my neurologist and my son
364 has one with his doctor at 11:30.

365 III. ARGUMENTS

366 My first argument is that the selection process, (application, interview,
367 security screening, medical screening, training, internship, tenure selection),
368 is intentionally and increasingly stressful as one moves forward through the
369 different processes in order to winnow out the best candidates. In the early
370 application, interview and security screening--the primary criteria for
371 selection is experience and reliability. In the intermediate medical screening
372 phase--it is viability. In the later training phase it becomes a timed
373 competition between young and old. In the final internship phase, overtime
374 must be ordered by management—and being slow is considered insufficient
375 cause to allocate or pay overtime, so to be old is to be non-competitive. It is
376 designed to winnow out for selection, the best possible candidates while
377 deemphasizing positive age related attributes. Young and old compete with
378 each other. Speediness, time to completion, these are the prime
379 measurements used by management when evaluating the various
380 competencies required from tenure candidates. This from John Hopkins:
381 “Add to ordinary human limitations the physiological effects of normal aging--the shrinking, slowing
382 prefrontal cortex, the diminution of neurotransmitters circulating in the brain, the weakening synaptic
383 bonds, the death of synapses, all of which was normal, too. Still, there was some good news. According to
384 the authors of the Johns Hopkins white paper on memory, studies repeatedly show that older people who do

____ -- _____ GREEN vs. STATE DEPT.
Age Discrimination

385 poorly on timed tests actually do as well or better than their college-age counterparts when they are
386 permitted to work at their own pace.”¹

387 As you grow older you slow down, and since the job announcement
388 invites persons up to 59 years of age to apply, the department may not
389 continually narrow or refine the requirements, seeking the best possible
390 candidates by stressing technical speed over technical judgment. Both myself
391 and my “Stockholm Syndrome” supervisor worked hundreds of extra hours
392 each of the last 2 years, much of it for free, in order to keep up with the heavy
393 work load. We both do this to compensate for our age. He believes it is “part
394 of the job” and that as you get older you must compensate to remain
395 competitive with the younger workers who stand ready to take your place. He
396 has long since given up arguing with management and now only preaches to
397 the choir (me).

398 My second argument is that as you grow older you do slow down, but
399 your experience improves your judgment and that improves your
400 productivity. When considering a technical problem the younger technician
401 will examine and discard more alternatives while the experienced worker will
402 need to explore fewer alternatives often arriving at a solution just as quickly.
403 Example: Last year about this time, at the start of the rainy season in Sierra
404 Leone, a late twenty something technician arrived at post to upgrade a
405 satellite feed horn. In two days he removed/replaced the feed horn assembly,

¹ CAN’T REMEMBER WHAT I FORGOT – THE GOOD NEWS FROM THE FRONT LINES OF MEMORY RESEARCH. By Sue Halpern.

____--_____ GREEN vs. STATE DEPT.
Age Discrimination

406 configured the routers, talked to his wife and transferred money into her
407 account over the phone—all pretty much simultaneous. He was impressively
408 fast, multi-tasking at a pace I had trouble following. He left, and then after
409 the first big rain--the system started to degrade. He had failed to moisture
410 seal the feed horn properly. Josh took 2 days to repeat all of his work with a
411 nearly 2 year error free result. Experience gets the job done. Speed makes
412 more work for the experienced. The State Dept. cables on this incident
413 erroneously show that speed got the job done. Why should management order
414 overtime for a job that has already been completed (per the cable)? How do
415 older workers get credit for throughput when management only notices the
416 most rapidly moving technicians?

417 My third argument is that the mixing of promotion and tenure
418 materials, reviewed by FSO generalists—that DON'T know the candidates
419 age, leads to age discrimination. Please take a look at the job announcement.
420 You are inviting 59 year olds to apply for the IMS positions and in the same
421 document you say you don't discriminate on the basis of age. I'm 57 with 15
422 years of transferable time in service. After my next directed 2 year tour I will
423 be 59 with one three year tour before I'm 62 with 20 years of service. Small
424 Embassy IMOs are FS-3s and it normally takes an average of 8 years to move
425 from 4 to 3. Should I be “demonstrate[ing] potential, assuming normal growth
426 and career development, to serve effectively as a Foreign Service Officer over
427 a normal career span, extending to and including grade FS-01” or should I be

____--____ GREEN vs. STATE DEPT.
Age Discrimination

428 the best lieutenant I can be, to my inevitably younger IMO, assisting the next
429 generation of technicians with some potential for management to reach for
430 more responsibility and success? I used the FSO criteria intentionally
431 because I believe that the CTB consists of senior FSOs that cursorily scan
432 tenure submissions for key statements involving aspirations--without
433 knowing the candidate's age. By not knowing the specialist's age they
434 unintentionally commit age discrimination by holding 59 year olds
435 accountable for their more limited but also more realistic career aspirations.
436 This is how 6 out of 7 under 50 received tenure and 3 out of 3 over 50 have to
437 show more "potential, assuming normal growth and development, to perform
438 effectively at higher levels (with greater responsibilities) of the candidate's
439 occupational category." So if an IMS is hired at 59, trained by 60, completes 2
440 directed tours at 64—what sort of deluded statements would have to be put
441 in his/her EER to convince a bunch of FSO generalists that there was
442 "potential, assuming normal growth and development, to perform effectively
443 at higher levels...". I'm sorry but the congressionally allowed mandatory
444 retirement age of 65 is in direct conflict with the EEO age discrimination
445 provisions; most certainly in the case of IRM, possibly for other specialties as
446 well.

447 Which leads to my 4th argument: the mixing of promotion and tenure
448 criteria leads to age discrimination. "The CTB considers all EERs, training
449 reports, award nominations, and official letters of commendation in the file

____--____ GREEN vs. STATE DEPT.
Age Discrimination

450 when making tenure decisions.”² How is this different from the materials
451 used in promotion decisions? It’s not. When my IMO asked for “notable
452 accomplishments” was he asking for “[my] ability to perform satisfactorily in
453 the occupational category in which the candidate is serving” or my
454 “...potential, assuming normal growth and development, to perform
455 effectively at higher levels...”. The two criteria are compatible before 50 but
456 mutually exclusive after 50 when a candidate need only “perform
457 satisfactorily in the occupational category in which the candidate is serving”
458 since the mandatory retirement age of 65 curtails “normal growth and
459 development” of a “normal career span”.

460 IV. CONCLUSION

461 There are two facets, both discriminatory. I worked unpaid overtime to
462 secure a tenure recommendation because I’m old and needed to work more
463 hours to create the perception that I could accomplish as much work as a
464 younger employee. I and other over 50 IRM tenure candidates are not being
465 tenured at the same rate as our younger competitors. It is almost like we are
466 invited to join the State Dept with a promise of no discrimination and then
467 the Tenure Board encourages us to leave utilizing the “hear no evil, speak no
468 evil, see no evil” approach. Their defense is that “they didn’t know” they were
469 discriminating. Weak. It is time they faced up to some objective statistical

² <http://intranet.hr.state.sbu/Workforce/PerformanceManagement/Pages/CommissioningandTenureBoard>

----- -- ----- GREEN vs. STATE DEPT.
Age Discrimination

470 analysis—which will demonstrate that I have been discriminated against by
471 my supervisor and the Tenuring Board. A good statistical analysis will
472 demonstrate that I am not alone or unusual. It will demonstrate that the
473 discrimination directed at me by the Tenuring Board, while unintentional, is
474 yet pervasive. I wish to remove the normal reaction by to most complaints:
475 the system is OK because there are so many participants and they have been
476 doing business this way for a long time—so there must be something wrong
477 with the complainer. I'm normal, even slightly above average, even at my
478 current age. The overtime issue is a bit of an unusual circumstance but the
479 Tenuring process is unintentionally corrupted by prevailing attitudes that
480 favor younger IRM employees.

481 V. RELIEVE SOUGHT

482 Josh paid me about $\frac{3}{4}$ of my unpaid overtime, I'm still due about 136
483 hours of unpaid overtime that he refuses to authorize. The regulations say
484 that I am entitled to 8 hours to prepare my complaint—but I have spent at
485 least 500 hours on documenting this complaint and I still think getting the
486 statistical analysis done is going to be like pulling teeth.

487 I'll settle for 644 additional hours of overtime and a statistical analysis
488 that will objectively verify whether the discrimination against me is part of a
489 larger pattern involving all IRM candidates for tenure.

----- -- ----- GREEN vs. STATE DEPT.
Age Discrimination

490 If the IRM Tenuring Board begins to consider IRM candidates solely on
491 their ability to do the work rather than their future potential then I believe
492 that I and other older IRM candidates will begin to be tenured at the same
493 rate as our younger less experienced, less qualified competitors.

494 Logically, I'm suggesting that if the Tenuring Board changes the
495 consideration criteria for IRM candidates to remove the criteria that assess
496 future potential and evaluates only on the ability to perform at the FS-4
497 level—then the tenuring results should become more even as they relate to
498 age.

499 Succinct Summary: I want 644 hours of overtime pay and an eye-popping
500 statistical analysis of IRM technicians that will change the way the Tenuring
501 Board considers candidates for Tenure so that age is no longer a relevant
502 factor.

503 Dated: Sept 09, 2010

504
505
506
507
508
509
510
511
512
513
514

By //s// *Marvin E Green*

Marvin E. Green

MARVIN E GREEN
UNIT 4360 Box 6035
DPO AP 96532

Desk: +64-4-462-6116 (after Sept 30)
Skype: +1-202-657-4911
e-Mail: greenme@state.gov (Sept 30)
p-Mail: marvin.e.green@gmail.com

____--____ GREEN vs. STATE DEPT.
Age Discrimination