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## Two UW Law School Applicants, Two Paths

One got in, one didn't: They're part of a wider battle raging about affirmative action

**Stories by Heath Foster  
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P-I REPORTERS

In 1994, the University of Washington Law School waded through 2,552 applications to fill a class of 187. What follows are the stories of two applicants: Che Dawson, a minority man who gained admission, and Katuria Smith, a white woman who did not.

Smith has filed a federal reverse-discrimination suit against the Law School, claiming she was rejected to make room for less-qualified blacks and Hispanics.

The suit is unfolding as Washington residents prepare to vote on Initiative 200, which would ban the use of race and gender preferences in state contracting, hiring and public education. It would fundamentally change how the UW practices affirmative action, banning it from considering race in admissions.

Dawson, the son of a black father and a white mother, contacted the Post-Intelligencer to express his concern that coverage of the suit was focused on numbers, rather than people. He is not a party to the suit and does not claim to represent the 81 members of minorities in his Law School class.

But he agreed to share his experiences so that a minority perspective could be included in the intensifying public debate over affirmative action.

What follow are Dawson's and Smith's stories.

No one thought much of Katuria Smith's prospects when she was a lackluster student at Marysville-Pilchuck High School. Her home life was chaotic,

and her attendance record was spotty and her reputation as a hell raiser made her unpopular with principals and parents.

In Smith's white working-class family, no one had ever made it to college. But a decade after high school, the one-time factory worker had a bachelor's degree from the University of Washington and the ambition to become an attorney. Determined and pragmatic, Smith applied in 1994 to the UW Law School with grade point average of 3.28 and a score of 165 on her Law School Assessment Test, the 94th percentile.

She didn't get in.

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Che Dawson has lived his 28 years with each foot lodged in a different world. The son of a white bookkeeper and a black father who abandoned him early, Dawson spent his childhood in poor, mostly black northeast Portland.

Determined her son would know a better life, his mother cleaned houses so they could move to a white, middle-class neighborhood when he was a teenager.

The view his childhood gave him of two estranged Americas, one black, one white, drove him to apply to the UW Law School in 1994. The college basketball player wrote that as a lawyer he hoped "to help people understand and respect the differences of others." His college GPA was a 3.2, and his LSAT score was 152, in the 55th percentile. He got in.

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How race influenced whether Smith, Dawson and more than 2,000 other ap-

plicants were admitted in 1994 is now at the heart of the wrenching debate over the future of affirmative action.

Initiative 200 would prohibit the UW from giving minority applicants special consideration. And its supporters have made Smith their poster child of reverse discrimination, seizing on her solid academic record and the odds she overcame as evidence that race-based affirmative action is unfair.

The two sides have offered statistics purporting to show that unqualified blacks and Hispanics were admitted or that conversely Smith simply wasn't competitive.

The reality is far more complex. The school's goal in 1994 was not simply to find those who would make the best lawyers and legal scholars. It wanted to promote social change by increasing the diversity of the school and the legal profession.

"The highest-scoring applicants do not always make the best lawyers," the school's dean, Roland Hjorth, wrote last month in the Law School newsletter. "We hope to educate lawyers who have an abiding commitment to the search for justice (and) who are sensitive to the needs of all groups in our society."

Grades and test scores were seen as an important predictor of academic performance. But the race and life experiences of applicants also were critical. Being a minority was an undeniable advantage. In the end, 29 percent of the minorities were admitted, compared to 18 percent of the whites. And on average, the scores of the whites who were admitted were higher than those of the minorities.

Of the 210 minority applicants admitted, just over half had lower grades and scores than Smith, while 9 percent of the 336 whites admitted had lower scores.

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Katuria Smith was born when her mother was 17. Her father had “a severe alcohol problem,” and the family moved from one rental house to another, following his jobs around the state.

When Katuria was 11, her parents divorced, leaving her mother to raise three girls. Working three jobs, she managed to buy a modest home. A few years later she married a man who quit working soon afterward. He drained the family’s meager resources, and in the course of the three-year marriage Smith’s home was lost.

“My mom worked hard, but she didn’t always make the right choices,” Smith said in a recent interview.

By the time she stepped through the halls of Marysville-Pilchuck High School, Smith had little interest in her studies. She skipped school a lot and got in trouble for drinking before dances. She was a tough midfielder on the girls’ soccer team, but discipline problems sometimes threatened her eligibility to play.

“She wasn’t a particularly stellar student,” said Dave Carpentier, Smith’s sophomore English teacher. “It had nothing to do with aptitude. It had to do with application.”

After graduation, Smith bounced around for a few years, working as a cocktail waitress in a strip joint, a cashier, auto detailer, paint mixer and cattle auction hand.

When she was 20, her father, Warren Smith, slipped on the beauty bark in a restaurant parking lot after evening of drinking. He fell 15 feet to a paved lot below and died.

Deep in depression, Smith desperately wanted to change her life. She had always believed that if she were ever to become “really something” she would be a lawyer. Drawing on an untapped reservoir of determination, she decided a college education was her way out. It would be seven years before Smith applied to law school. She first completed a paralegal program, followed by an associate’s

business degree from Shoreline Community College. She finished her bachelor’s in UW’s business program with a 3.65 GPA in the two years she was there.

“At the time, I wasn’t about to give up because I had found my way out of this lifestyle that I was so unhappy with,” she said.

After Smith scored in the 94th percentile on her LSAT, highly ranked schools - including the Universities of Michigan and Virginia - asked her to apply. She couldn’t afford to move, but she felt confident she would get into the UW.

Today, Smith will not discuss her application, citing the lawsuit. But her lawyers say it noted that she had been raised by a single mother and that her father had died.

In an affidavit, Richard Kummert, the UW’s Admissions Committee chairman, said Smith “did not indicate that she had grown up in impoverished circumstances, or describe any of the personal and family challenges she had met, which might have indicated academic potential in excess of her grades, or a contribution to the diversity of the student body.”

Instead, according to Kummert she focused on how poor study habits and the need to work full time during school had contributed to her lower community college grades.

“(These) factors did not distinguish her,” he said.

On March 11, 1994, the UW sent Smith a rejection letter.

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When Dawson was 10, his mother enrolled him in a prestigious private school in west Portland. The high tuition would leave her in debt, but she was determined her son would go to college.

For three years, Dawson took the bus across town from his neighborhood of run-down homes and heavy crime to the wooded campus of the Catlin Gabel School.

“It was like going to a foreign city with a totally different culture,” he said.

The elite school was filled with the well-dressed white children of doctors and lawyers. For them, college-bound meant headed for the Ivy League.

Dawson never felt comfortable there,

and in eighth grade he persuaded his mother to let him go back to public school. But this time he enrolled in the nearby upper-middleclass suburb of Beaverton.

Again, he was one of the few kids of African American heritage in the school, but he found friends there. He also found basketball.

The coach of his team at Sunset High, Ken Harris, took an immediate liking to the respectful kid with the loquacious, overattentive mother. Dawson had great potential. But Harris said the fatherless boy’s self-image had suffered under his mother’s intense expectations and the pressure of conforming in a white, moneyed world.

“I could see he was going to be a pretty accomplished basketball player, but I don’t think he believed it,” Harris said. “But each year, his confidence built up, and senior year he really blossomed.”

Dawson became an aggressive forward who “made things happen” in his drives to the basket, Harris said.

Dawson’s talents won him a basketball scholarship to mostly white Seattle University. He was a sharp, intellectual learner, but didn’t always get the top grades he was capable of, said Erik Olsen, his college adviser and political science professor. That changed in the second half of his college career, when he began studying African American history.

“He reached a point where he needed to learn what the sources of inequality, disadvantage and oppression had been for African Americans,” Olsen said. “He finally understood where he had come from.”

In his final year, Dawson began working as a rehabilitation counselor at Echo Glen, a juvenile prison in North Bend. He became deeply attached to many of the troubled, attention-starved kids he counseled and decided his future would include helping the disadvantaged.

Dawson graduated with a double major in political science and criminal justice. The following year, he applied to the UW Law School. The application asked what race he considered himself to be, and he checked “Black African American.” His written statement talked about the perspective his mixed heritage gave him his desire to advocate for, vic-

tims of greed and misunderstanding. His professors wrote about what an ethical lawyer he would make.

On his admissions letter, Assistant Dean Sandra Madrid handwrote: "Congratulations Che! We are very impressed pressed with your background. You could add much to the diversity of our student body. You've done great work with youth and know that a (law degree) will only add to what you can contribute to your community."

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Before 1990, the only diversity factors the UW considered were race and ethnicity. But complaints that focus was too narrow, highlighted by the rejection of a white welfare mother who that year got into Harvard prompted a redefinition.

The school's stated admission policy now is to look for "cultural background, activities or accomplishments, career goals, living experiences, such as growing up in a disadvantaged or unusual environment." That means whites with low scores could also be admitted in fact the lowest score among those who got in was held by a white student.

Smith's lawyers argue that these changes were cosmetic, and that in fact lower standards apply to certain minority groups. They point to data showing that of the 35 blacks admitted in 1994, just four had better scores than Smith.

Those at the UW cite studies showing that blacks and Hispanics generally score lower on their LSAT than do whites and Asians. Educators say that's because disproportionately high numbers of blacks and Hispanics come from poor, uneducated families or mediocre schools. They say whites, therefore, have a built-in advantage.

The UW has argued that if it were to admit on the basis of scores alone, minority enrollment would plummet to the point it would be illegally discriminating against minorities.

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After she recovered from her rejection, Smith applied to the Seattle University Law School. She was accepted and started class that year.

There she sought out Dean Jim Bond, adviser to the student Federalist Society

and a well-known conservative. A student from the school of bootstraps and elbow grease himself, Bond sympathized with her situation.

"She is the kind of person who by dint of hard work has created a future for herself that many from her background would not have been able to achieve," Bond said.

Through an attorney the dean knew, Smith was put in contact with the Center for Individual Rights, a non-profit Washington, D.C., firm dedicated to ending affirmative action. It agreed to represent her.

While the lawsuit was gestating, Smith studied hard. Professors describe her as a conscientious student, aggressive and passionate, sharpened in a positive way. But her outspokenness and competitiveness didn't endear her to some classmates.

Smith did well, but did not make Law Review, a distinction earned by only a handful of top students. By her third year, after on-campus interviews with the big Seattle law firms, Smith had a file of rejection letters.

"There's a big difference between a degree from the University of Washington and the Seattle University School of Law," Smith said.

A couple of months before graduating, in 1997, she filed her lawsuit.

Instead of the high-paying, corporate law job she wanted, she ended up in the securities division of the state Office for Financial Institutions. Later she moved to the National Securities Dealers Association, which regulates securities brokers and dealers. There she examines registered members to make sure they're in compliance with securities law.

Smith says filing the lawsuit was a matter of principle. It's wrong, she says, to treat people differently based on race.

"I know the kind of efforts I had to go through to go where I was trying to go," she said in a 1997 interview. "If we're going to give preferential treatment to someone, or if we're going to recognize other characteristics, that make for a diverse group, I think economic hardship should be one of them."

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Dawson found the UW Law School liberating. Being around so many other

minorities was a relief. More than two-fifths of his class were people of color.

But the diversity he found was about much more than race, Dawson said. One close friend was a 47-year-old mother from Kirkland; another was a well-traveled, wealthy white man fluent in several languages. A Hispanic friend grew up in a Boston housing project.

In that atmosphere, conversations about everything from why people rape to the damage materialism has done to society were common. Dawson was a passionate contributor, said classmate Nina Dillon: "He was a leader in the class, not for his academic greatness, but because of his ability to emphasize and communicate."

He also dedicated long hours to the UW's Child Advocacy Clinic.

After graduation, Dawson took a job with Karr Tuttle Campbell, a well-regarded, medium-sized Seattle firm, where he practices immigration and corporate law.

The firm values community involvement. And Dawson is now a basketball coach at Chief Sealth High School in southwest Seattle, guiding kids with backgrounds not unlike his own. He also does pro bono work for the homeless.

Dawson knows that his UW degree contributed to his current success, and that he wouldn't have gotten in based on his scores alone. But he said his first year of practicing law has shown him that scores aren't nearly as important as personal skills.

"It has become very obvious to me that the most successful lawyers bring something more than just superior intellect to the table," he said.

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On Nov. 3, well before Smith's suit goes to trial early next year, voters decide whether the consideration being given to minorities in public education should continue.

Even if the initiative passes, as polls show is likely, Smith's case will go to trial. She will continue to seek monetary damages for being forced to attend a less prestigious, more expensive school.

And her lawyers say they'll go forward with a case that may be decisive in their crusade to end affirmative action in America.

## How the UW Law School Application Process Works

The University of Washington Law School accepts 450 to 475 students a year out of about 2,000 applicants. The school hopes that about 165 of those admitted will enroll and tries to balance the class so that about 70 percent of the students are from Washington state.

1. Applicants submit forms that reveal their colleges grades, LSAT scores, race, sex, past job experience and any scholastic honors. Two recommendations are optional, although most applicants submit them. They also are asked to submit a 700-word personal statement identifying "factors such as racial or ethnic origin, cultural background, activities or accomplishments, career goals, living experiences, such as growing up in a disadvantaged or unusual environment, or with physical disability or special talents that you believe would contribute to the diversity of the Law School community."

2. Admission officials use grades and test scores as the baseline predictor of academic performance. About 250 students with the very highest scores are automatically reviewed first. An admissions coordinator examines each application to confirm its credentials. About 240 people are offered admission. If there is a substantial question about an applicant's qualifications - such as an undergraduate college of questionable quality - the file is referred to the Admissions Committee for an in-depth review. Only about 30 or 40 of these top students end up enrolling at the UW Law School.

3. The assistant dean of admissions (currently Sandra Madrid), reads the rest of the 1,500 to 2,000 applications, using her judgment to decide whether to admit, deny or refer applicants to the Admissions Committee. She admits about 150 more students who are clearly outstanding. She rejects those

she decides lack strong academic records and backgrounds interesting or significant enough to contribute to the educational diversity of the school. Madrid refers about 300 files to the Admissions Committee.

4. The Admissions Committee of six Law School professors and three law students goes through the referred applications and ranks them. Members evaluate how difficult the undergraduate curriculum was, their advanced degrees, post-college experience, recommendations, changes in academic achievement and social or economic disadvantage that might have affected past academic performance. Typically, 50 to 75 of these students rank high enough to get admitted - about 10 percent to 15 percent of the offers. Another 150 or so are placed on a waiting list. Madrid makes actual offers of admission based on the recommendations of the committee.

## Strategies of civil rights movement now work against it

**By HEATH FOSTER**  
P-I STATE CORRESPONDENT

When Katuria Smith's frustration with her rejection by the University of Washington Law School peaked, she put a call into the Washington, D.C.-based Center for Individual Rights.

The 32-year-old white woman could not have reached out to a law firm more finely attuned to her complaints of reverse discrimination.

Over the past eight years, the well-funded libertarian-leaning non-profit firm has been dispatching its attorneys around the country to take on government institutions that employ race-based affirmative action policies.

Its stated aim is to place the issue of race, like religion, beyond the reach of government.

And to the alarm of civil rights groups the CIR, as it's known, has been winning.

"They have made it perfectly clear their objective is to use the strategies of the left to do us in, hoisting us up on our own petard," said Barbara Arnwine, executive director of the Lawyers Committee for Civil Rights Under Law in Washington, D.C., a non-profit advocacy group.

"They're getting as many strategic wins as they can, chipping away at the foundation of affirmative action."

The CIR's media-savvy executive director, Michael Greve, isn't

shy about admitting that his "litigation boutique" owes its success in part to its co-option of the strategies of the civil rights movement.

The CIR has copied the methodical tactics that Thurgood Marshall, chief lawyer for the NAACP's legal defense fund, used in a campaign to outlaw racial segregation more than 40 years ago.

Marshall carefully selected his cases to create a series of legal precedents that eventually led him to the Supreme Court in 1954 to successfully argue *Brown vs. the Board of Education*. In his landmark victory, the high court undid America's "separate but equal" approach to public education in which black and white children attended different schools.

Under the leadership of Greve, the CIR, like the National Association for the Advancement of Colored People, has selected its legal battles with both the press and the judiciary in mind.

In an ongoing federal challenge to the University of Michigan's affirmative action policies, it sorted through dozens of students' resumes, and conducted one-on-one interviews to find the perfect plaintiff.

Greve points out that unlike the NAACP and those it represented," his lawyers and plaintiffs don't face lynch mobs when they walk into courthouses.

"But we do litigate cases on the basis that they will be precedent setting," he said. "Segregation wasn't defeated with one decision. Institutions won't succumb to changing law voluntarily, so you have to force them by coming back again and again."

The CIR's best-known victory was in the 1996 Hopwood vs. State of Texas case. The 5th U.S. Circuit Court of Appeals ruled that the University of Texas' affirmative action admissions policies to boost enrollment of blacks and Mexican Americans amounted to an illegal bias against whites.

To the chagrin of civil rights leaders, the conservative New Or-

leans-based circuit took the case a step further than anticipated.

It ruled that the Supreme Court ruling in University of California vs. Bakke - a landmark reverse discrimination case - is no longer good law. In the 1978 Bakke ruling, the high court allowed the use of race as one factor in college admissions, but said separate admissions tracks for Whites and minorities were illegal.

The CIR hopes to extend the 5th Circuit's rejection of Bakke across the country. That ruling is currently binding only in Texas, Louisiana and Mississippi.

In addition, the CIR has helped defend California's Proposition 209 from legal challenges, ensuring that race-based admissions policies remain outlawed at state universities there. Proposition 209 banned the use of race and gender preferences in state contracting, hiring and public education.

And in what it calls its "clone" cases in Michigan and Washington state, the CIR hopes to persuade two other circuits to reject the use of race as a factor in admissions.

The University of Washington Law School and the University of Michigan practice affirmative action differently than the way Texas did.

AT UT, lower test-score standards were set for black and Mexican American applicants and a separate board reviewed their applications.

At the UW Law School, race is considered to be one of many factors, and no such separate standards existed when Katuria Smith applied.

CIR attorneys have said they'll prove at trial that race has ended up being the determining factor allowing certain minority groups to get into the UW Law School.

With three different federal circuits likely to have ruled on the issue by the end of next year, there's a fair chance it could land before the U.S. Supreme Court.

Greve says that's not the CIR's goal. It's better for his clients, he argues, to leave favorable rulings in place.

But Arnwine of the Lawyers Committee for Civil Rights Under Law doubts that's true: "They're just praying that they get a case that will take them to the Supreme Court. It's obvious."

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