Study shows judges' backgrounds matter in high court selection

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Some federal judges are tossing out civil cases based on their own opinions, a disturbing trend that makes background checks even more important in the search for a new associate justice for the U.S. Supreme Court, a University of Illinois legal expert says.

A study by law professor Suja A. Thomas found that judges improperly dismiss cases based on their own view of evidence because legal standards - which require them to gauge whether evidence is sufficient to sway a reasonable jury - are "fatally flawed."

"This idea that judges could actually determine what a reasonable jury would do is impossible," she said. "One of the reasons that they're using their own opinion of evidence is that the current standards call for an impossible determination."

Thomas hopes her research, published in the *Boston College Law Review,* yields new guidelines that weed out opinion and also steers decision-makers toward deeper background checks as they mull candidates to replace retiring U.S. Supreme Court Associate Justice David Souter.

"Judges are using their own opinions to decide cases, and their opinions are shaped by their background," she said. "So background really matters, from their experiences to where they grew up. We also need to look at the background of the other justices and try to find a background that's different and adds to the court's diversity."

Thomas examined rulings by federal judges on defense motions to dismiss civil complaints as part of her ongoing research into a decline in civil jury trials in federal courts.

She found that judges are throwing out complaints based on their own opinion of the evidence, rather than by the legal standard of whether a reasonable jury could find for the plaintiff based on the evidence.

"Those flawed rulings are denying plaintiffs their constitutional right to a jury trial," Thomas said. "Plaintiffs who would have had a chance to win their cases in a jury trial are being forbidden that right."

Signs of opinion show up in judges' written rulings, the study found, with judges describing their personal view of evidence as they explain why complaints are being dismissed.

Judges also interchangeably use terms with different meanings - such as a reasonable jury vs. a reasonable juror - which the study says signals flaws in the current standard that leave judges with no choice but to decide cases based on their own views. What a jury might find is not necessarily the same as what an individual juror might find because group dynamics can sway decision-making, the study says.

Perhaps most telling, Thomas said, are the contrasting rulings of judges themselves as cases make their way through courts on appeal, including split decisions by the Supreme Court.

"If there can be such wide and differing points of view about evidence among different judges, that's a sign that jurors could do exactly the same thing if the case went to trial," she said.

Thomas says the solution is revising rules for summary judgments, which she argues are fatally flawed because the reasonable jury

guideline creates an impossible standard that leaves judges with little alternative but to inject their own opinions.

Instead, judges should be required to take evidence at face value, she said. For example, an injury lawsuit against a property owner who claims the plaintiff was trespassing could be thrown out if the injured party's only defense was that he was hunting because law does not allow people on private ground to hunt without permission.

"But those are rare situations where the facts are clear cut," Thomas said. "In most cases they aren't, so it should be up to a jury to decide, not for a judge to decide."

She says eliminating the vague reasonable jury standard would restore both the constitutional right to jury trials and principles of fairness that should rule the U.S. court system.

"I think judges are trying to do the right thing, but there's a clear fallacy going on here," she said. "What people have not recognized is that this standard of what a reasonable jury would decide is in fact just a determination of what an individual judge thinks."

Thomas says the new case of Ashcroft vs. Iqbal decided Monday by the Supreme Court makes her study even more relevant. In that case, the court continued the trend of permitting early dismissal of cases if the judge determines a claim is not plausible.

Source: University of Illinois at Urbana-Champaign (news : web)