

Judicial Independence

Judge Greg Galler

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It's the day of the big game. Your team is playing its' biggest rival for the championship. You're confident and excited. But before the game starts the officials announce that they will favor the other team to guarantee that it wins. Could you even imagine such a thing happening? Does that sound fair? How much would that upset you?

You may be surprised to learn that in some parts of the world, judicial systems openly behave in that very way.

Last week one of the metro papers ran a short article quoting the Head of China's Supreme People's Court stating that the idea of an independent judiciary is an "erroneous Western ideal." He further instructed China's judges to "draw your swords" against words or actions that run counter to the dictates of China's Communist Party. In our analogy, that is functionally the same as sports officials saying that they will favor one team with the intent of insuring that it always wins.

The American system of justice is very different. Our system strives for an uncorrupted scale. The same law and the same standards always apply no matter the type of controversy or the identity of those involved in the case.

We strive for truly independent judges who will decide cases solely on the basis of the Constitution and the law. We are not looking to help or hinder any party - no matter who they are. We do not tolerate, much less condone, favors for some or penalties for others. All are viewed and treated the same. Cases are to be decided on merit alone.

This is how our government was designed. Alexander Hamilton, in Federalist #78 wrote, "The complete independence of the courts is peculiarly essential in a limited Constitution." And, "There is no liberty, if the power of judging be not separated from the legislative and executive powers." The Chinese system is different. The Chinese central government controls all things, including the courts. Clearly, individual liberty is less valued.

The key is that our Constitution limits the power of government to preserve as much freedom as is possible for the people. Our way of life values the person more than the state. We value individual liberty - the right to be free from dictatorial control. Many other nations do not.

Do you recall the statute of Lady Justice? She stands holding the scales of justice as she decides the relative merits of a case. She also wears a blindfold because the identity of the litigants is of no concern. She considers only the facts and the law. In other parts of the world the scales of justice are first affected by peeking to see the identity of the litigants. Such justice is really no justice at all.

Our Supreme Court has stated that, "Impartiality is the very foundation of the American judicial system." This way of thinking about citizens and government is so fully ingrained in our thinking that we sometimes forget that people in other nations don't always enjoy this fundamental right.

*Judge Galler is chambered in Washington County. If you have a general question about the law or courts for Judge Galler, send your question to the editor of this newspaper. Learn more about Judge Galler, or listen to a podcast of his columns at [www.judgegreggaller.com](http://www.judgegreggaller.com).*