

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Jeff King at 10:40am on Thursday, January 28, 2016, 346-S of the Capitol.

All members were present

Committee staff present:

Robert Gallimore, Legislative Research Department
Jason Thompson, Office of Revisor of Statutes
Natalie Scott, Office of Revisor of Statutes
Lauren Douglass, Legislative Research Department
Natalie Nelson, Legislative Research Department
Suzanne Nelson, Kansas Legislative Committee Assistant

Conferees appearing before the Committee:

No conferees present

Others in attendance:

[See Attached List](#)

Overview and Discussion on: Solomon vs. State and impact on separation of powers

Chair King asked for bill requests or introductions from the committee and from the audience. There were none.

The Chair turned the committee's attention to today's presentation regarding the impact of the *Solomon* decision. Chair King related that the *Solomon v. State* decision had a broader impact including a lengthy and detailed discussion of separation of powers in Kansas.

The Chair summarized the topic and introduced the participants in today's discussion. Professor Lumen Mulligan, Earl B. Shurtz Research Professor of Law, and Director, Shook Hardy & Bacon Center for Excellence in Advocacy at the University of Kansas School of Law spoke regarding the separation of powers, both federally and how it has evolved in Kansas courts since statehood.

Professor Mulligan related that the separation of powers refers to the need for fair and impartial courts to be free from outside influence or political intimidation. He described how judicial independence has been the bedrock of Kansas' republican form of government since the state's founding. Further, he related that the independence of the judiciary is not maintained for the benefit of the judges -- but for the free citizens of a democratic republic governed by rule of law and for whom the courts stand as fair and impartial tribunals.

Professor Mulligan continued by speaking to these broad points:

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- The vast majority of time, the Kansas courts act as implementers of legislative policy.
- Our history, tradition, and law compel the conclusion that an independent judiciary must be able to strike statutes to protect constitutional rights.
- Our recent history shows how essential the power to strike unconstitutional legislation is today.
- Our system of independent courts, while not perfect, remains the envy of the world.
- An independent judiciary is subject to checks and balances.

He concluded by saying we should not forget that the Supreme Court is just as essential to our system of government as is the President or the Congress and we should respect its duties and responsibilities, even if we do not always agree with each of their decisions. ([Attachment 1](#))

There was discussion and Professor Mulligan answered questions from Senators Smith, Knox, Pilcher-Cook and Chair King.

Next, Jason Thompson, Senior Assistant Revisor of Statutes gave an overview of the *Solomon* case and more details on the separation of powers. He reported that the Kansas Supreme Court held in *Solomon v. State* that section 11 of 2014 HB2338, allowing the district judges in each judicial district to elect a chief judge of such district court, was an unconstitutional violation of the separation of powers doctrine. The Kansas Constitution says that all judicial power is vested in only one court of justice consisting of one supreme court, district courts and such other courts as are provided by law. The supreme court shall have general administrative authority over all courts in the state of Kansas. The *Solomon* decision concluded that the "general administrative authority" includes "the power to make rules for process, practice, and procedure at all levels of the unified court system."

Finally, Jason noted that **2016 SB320** and **2016 HB2449** are both pending and would repeal the nonseverability clause at K.S.A. 2015 Supp. 20-1a18, and declare that the remainder of the provisions of 2015 HB2005 shall remain in force. ([Attachment 2](#)) There was discussion and Jason answered questions from Senators Knox, Smith, Pettey, and Lynn.

Lastly, Bob Gallimore, Principal Research Analyst with Kansas Legislative Research Department, gave an overview of the history of docket fees and collections for federal and Kansas courts. He also included an article containing statistics for FY 2015 Actual and FY 2016 estimated revenues from docket fees; the fees from fines, penalties and forfeitures; and other fees and assessments. ([Attachment 3](#))

There being no additional questions or other business for today, the meeting adjourned at 11:50 am.

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MINUTES of the Committee on Judiciary at 10:40am on Thursday, January 28, 2016 in Room 346-S of the Capitol.

The next meeting will be Tuesday, February 2, 2016.

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