

March 24, 1975

SENATOR CAVANAUGH: Well that disturbs me. You're talking here about a hearing as to whether the case will be tried in the juvenile court, or whether it will be tried in the district court. You're suspending the rules of evidence and you're allowing the introduction of substantive evidence relative to the nature of the crime, as I understand it there.

SENATOR LUEDTKE: Well they never were followed in this kind of a hearing, because as I say it's in the nature of a hearing that never did apply to customary rules of evidence. It's no different than anything we've been doing in the past except that we're placing it in word by word, so that under 29-1816 you won't be confused by the fact that the customary rules of evidence shall be followed, because they shall not be. They have not been followed. You haven't followed them now.

SENATOR CAVANAUGH: Well, but are you allowing them also to go to the merits of the case? I mean can the county attorney present evidence as to the nature of the crime?

SENATOR LUEDTKE: Yes. Well I think that the nature of the crime . . . now that would be how far you'd go into your evidence because . . .

SENATOR CAVANAUGH: Well the facts surrounding the circumstances of the crime?

SENATOR LUEDTKE: Perhaps they could get to that point to show whether or not this is a dangerous offender that would require handling outside of the juvenile court, because, as you know under certain murder, rape, etc. there are exceptions here.

SENATOR CAVANAUGH: Well my concern is that if you're going to suspend the rules of evidence you're going to allow the county attorney to present evidence relative to the facts surrounding the alleged crime, then you may have a determination by a district court not to transfer. Would that district court then try the case, and they have already been availed of the evidence without the rules of evidence. I think you . . .

SENATOR LUEDTKE: No, I don't think that would be possible, nor would . . . I think you could certainly then request that that court disqualify itself if you did. I think you'd run into that sort of thing.

SENATOR CAVANAUGH: But that's what the procedure seems to set out here.

SENATOR LUEDTKE: This procedure is to utilize the same type of evidentiary hearing which is without the customary rules of evidence which a preliminary hearing type thing. That's what they follow. They always have followed them in this kind of hearing. That's all they do. Now I can see that you'd have a situation where, in bringing in this explanation to the court, you could touch upon the kind of evidence that you're worried about. Therefore, prejudice is what you're worrying about in the case. If they took it into the district court they would have already heard it without the customary rules of evidence. That's what you're saying. I concede . . .