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**Negligence Trial to Begin in Teena Brandon Case**

**BY CHRISTOPHER BURBACH, WORLD-HERALD STAFF WRITER**

Falls City, Neb. - Nearly six years after Teena Brandon's murder in rural Humboldt, Neb., her mother will have her day in court to confront the former sheriff whom she blames, in part, for her daughter's death.

Trial begins today in Richardson County District Court in JoAnn Brandon's wrongful-death lawsuit against Charles Laux and Richardson County.

JoAnn Brandon, of Lincoln, alleges among other things that Laux, while Richardson County sheriff, negligently caused Teena Brandon's death by not arresting two Falls City men whom Teena Brandon had accused of raping and beating her on Christmas Day 1993.

Brandon, Lisa Lambert of Pawnee City and Phillip DeVine of Fairfield, Iowa, were slain Dec. 31, 1993. The alleged rapists, John Lotter and Marvin Nissen, were convicted of the murders. Nissen testified that they killed Teena Brandon to silence her and killed Lambert and DeVine because they were potential witnesses to Brandon's death.

Nissen was sentenced to life in prison; Lotter was sentenced to death.

JoAnn Brandon, acting on behalf of her daughter's estate, is seeking unspecified damages on the negligence claim and on another claim that Laux deliberately inflicted emotional distress on her daughter. The lawsuit also seeks \$6,200 in funeral and burial expenses.

The trial, to be presided over by District Judge Orville Coady of Hebron, is expected to last three days.

JoAnn Brandon's attorney, Herbert Friedman of Lincoln, said Tuesday the evidence will show clearly that Laux was negligent. Not only did Laux fail to perform his duty to protect Teena Brandon, Friedman said, he actively prevented his deputies from arresting Lotter and Nissen despite evidence supporting her claims.

Neither Laux, now a Richardson County commissioner, nor his attorneys, Richard Boucher and Kim Sturzenegger, could be reached for comment Tuesday.

In court documents, Laux denies that he was negligent or that his actions caused Teena Brandon's death. His attorneys contend, among other things, that Brandon appeared to be an unreliable witness because she made

inconsistent statements to officers and missed appointments with them.

Laux's lawyers also argue that Brandon failed to protect herself because she did not leave Richardson County and that Laux could not reasonably have foreseen that she was in imminent danger.

Laux contends that he did not want to arrest Lotter and Nissen prematurely and risk compromising the criminal case, according to documents filed by his attorneys. They argue that Richardson County and Laux are protected from the suit by the Nebraska Political Subdivision Tort Claims Act.

Laux was Richardson County sheriff on Dec. 25, 1993, when Teena Brandon reported that she had been beaten and raped by Lotter and Nissen. They were angry that she had pretended to be a man and had dated Falls City women, including Lana Tisdell, a friend of Lotter's and Nissen's.

Officers later questioned Lotter and Nissen and found physical evidence at the scene of the alleged crime that corroborated Teena Brandon's claims.

Tom Olberding, then a Richardson County sheriff's deputy, told Laux he wanted to arrest Lotter and Nissen, but Laux refused to allow him to do so, the lawsuit claims.

The suit also accuses Laux of intentionally inflicting emotional distress on Brandon while interviewing her Dec. 25, 1993.

"During Laux's interview with Teena Brandon . . . he intentionally, recklessly and outrageously harassed and intimidated Teena Brandon by the outrageous manner, scope and content of his questions of her," the lawsuit says. "Laux's conduct was so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and is to be regarded as atrocious and utterly intolerable in a civilized community."

The case had been thrown out by Richardson County District Judge William Rist. He had ruled against JoAnn Brandon and her daughter's estate before the case went to trial on grounds the Brandons did not have a legal claim.

But the Nebraska Supreme Court reversed Rist's ruling and ordered the case to trial.

"Notwithstanding his knowledge of the threat to the victim's life, Laux informed the perpetrators of the victim's complaint," Supreme Court Judge D. Nick Caporale wrote in a concurring opinion. "It seems to me that the moment the perpetrators were made so aware, Laux acquired a duty to protect the

victim. If the allegations are proved, by talking with the perpetrators but not arresting them, Laux laid an essential link in the chain that led to the victim's death."

[Fenceberry note: Although this article consistently refers to a female named Teena Brandon, the murder victim had lived as a male named Brandon Teena.]