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**Judge: Arrests Could Have Been Made in Brandon Case**  
**BY DAVID HENDEE, WORLD-HERALD STAFF WRITER**

Falls City, Neb. -- There was reasonable probable cause to arrest Marvin Nissen and John Lotter before they murdered Teena Brandon and two others nearly six years ago, District Court Judge Orville Coady ruled Thursday.

Coady's ruling came during the second day of a civil trial in Richardson County District Court on a wrongful-death lawsuit filed by JoAnn Brandon against former Sheriff Charles Laux and Richardson County. Teena Brandon was the daughter of JoAnn Brandon.

JoAnn Brandon's lawsuit alleges that Laux, while sheriff, negligently caused Teena Brandon's death Dec. 31, 1993, by not arresting Nissen and Lotter, whom Teena Brandon had accused of raping and beating her a week earlier on Christmas Day. Lotter and Nissen later were convicted of the murders.

Coady said uncontested evidence compelled him to make the ruling in the interest of speeding along the trial. The civil case is being heard without a jury.

The first two days of the trial were dominated by witnesses -- including JoAnn Brandon -- called by Lincoln attorney Herbert Friedman to testify about Laux's alleged negligence.

Richard Boucher of Lincoln, one of Laux's attorneys, argued that Laux was not negligent and that, under state law, probable cause to make an arrest does not require a law enforcement officer to make an arrest. He also says Laux made no promises to Teena Brandon that he could protect her, nor did she ask for protection.

Former colleagues and others testified that Laux was insensitive to and tough on Brandon during his Christmas Day interview with her about the assault. Brandon, who recently had moved to Richardson County from Lincoln, had taken on the dress and life of a man, including dating young women.

Tuesday's testimony ended with Laux -- now a truck driver and Richardson County commissioner -- on the stand explaining how he investigated Brandon's report that she had been raped.

Kim Sturzenegger of Lincoln, Laux's other attorney, asked Laux why his interview style, including questions about Brandon's sexual identity, was forceful and rude.

"I was just trying to find out for sure if she was a lady . . . and get enough evidence for the county attorney," he replied.

Laux said he was suspicious of Brandon's claim to have been raped because she took a long time to answer questions.

"Like she was trying to make up a story or something," he said.

JoAnn Brandon, her voice cracking at times and her eyes filling with tears, testified that her daughter was scared of Laux because of the way he treated her.

Thursday's testimony opened with Tom Olberding, who as Laux's chief deputy investigated Teena Brandon's rape report, saying Lotter and Nissen were the first suspects he thought of when the slaying victims were found that New Year's Eve. The two were arrested without a warrant later that day in connection with the sexual assault Brandon reported a week earlier.

Laux's interview of Brandon and his failure to arrest Lotter and Nissen earlier for the rape was criticized in testimony from three current or former law enforcement officers who investigated either the rape or the slayings.

Richardson County Sheriff Keith Hayes, who was a Falls City Police investigator in 1993, said arrests should be made quickly to preserve evidence and to prevent suspects from fleeing. He also said rape victims

should not be asked questions about their sexuality.

Hayes acknowledged under questioning by Boucher, however, that arrests are sometimes delayed so more facts can be gathered.

Falls City Police Chief John Caverzagie, in a videotaped deposition, said Lotter and Nissen should have been interviewed the same day the rape and an earlier beating of Brandon were reported in order to gather evidence, such as scuffed knuckles.

Caverzagie, then the assistant police chief, said he was at work reading a transcript of the interview at midnight the night of Dec. 30. Based on the interview, Caverzagie said, he wondered why Lotter and Nissen hadn't yet been arrested.

Caverzagie said he didn't act then to try to find Lotter and Nissen because he first wanted to check with other officers for the latest details.

As it turned out, Lotter and Nissen were at that moment en route to kill Brandon.

"Evidence is a fleeting thing," said Jack Wyant, a Lincoln private investigator and former State Patrol criminal investigator who investigated the slayings. "All they had to do was wash their clothes and take a shower."

After Friedman rested his case, Boucher asked Coady to end the lawsuit by finding that the evidence presented did not prove JoAnn Brandon's case.

Coady declined, saying that the lawsuit deals with the state's duty to protect its citizens. Sturzenegger then called Laux as the first witness in his own defense.

JoAnn Brandon's lawsuit on behalf of her daughter's estate is seeking unspecified damages on the negligence claim and another that Laux deliberately inflicted emotional distress on Teena Brandon. The lawsuit also asks for funeral and burial expenses.

In addition to Teena Brandon, Lotter and Nissen killed Lisa Lambert of Pawnee City, Neb., and Phillip DeVine of Fairfield, Iowa. Nissen was sentenced to life in prison. Lotter was sentenced to death and is on Nebraska's death row.