



Written by [Bob Adelman](#) on March 1, 2016

## Family Gets \$3.6M; Deputy Gets Off; 4th Amendment Gets Trashed

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On Wednesday, May 28, 2014, nine sheriff's deputies from Rabun, Stephen, and Habersham Counties in Georgia enforced a "no-knock" warrant at 2:25 a.m. by battering down the door where Alecia and Bounkham Phonesavanh and their four children were staying. To stun and incapacitate them a deputy launched a "flash-bang" grenade, which inadvertently landed in the crib where 19-month-old "Bou Bou" was sleeping, nearly killing him.



According to Jacob Sullum at *Reason* magazine, baby Bou Bou suffered "blast burn injuries to the face and chest; a complex laceration of the nose, upper lip and face; 20% of the right upper lip missing; the external nose being separated from the underlying bone; and a large avulsion burn injury to [his] chest with a resulting left pulmonary contusion and sepsis."

It was a "wrong house," "wrong door" incident based on faulty information provided by an "unsubstantiated" informant that allowed the "no-knock" search warrant to be issued.

Last Friday, a federal judge [gave final approval](#) for settlements totaling \$3.6 million to the Phonesavanh family from Rabun, Stephen, and Habersham counties. Said the family's attorney: "We have worked diligently ... to obtain the best possible result for Baby Bou Bou and his family. What we achieved will not fix what happened or take away [their] nightmares, but we hope it helps them move forward as a family."

To be clear, the settlements are costing those three Georgia counties nothing at all. Instead, hapless taxpayers will be paying it, thanks to the attack that a grand jury investigation called "sloppy and hurried" and "not in accordance with best practices." The jury's statement added: "The zeal [of law enforcement] to hold [drug dealers] accountable must not override cautious and patient judgment."

When that grand jury failed to indict any of the deputies, especially Deputy Nikki Autry, who had provided the information to the judge from an informant who had allegedly purchased \$50 worth of meth from someone living at the house, the family filed a civil suit. The \$3.6 million settled that suit on Friday.

The FBI indicted Autry in July, 2015:

In May 2014, Nikki Autry and a team of special agents and informants from the local Narcotics Criminal Investigation and Suppression Team were "attempting undercover narcotics buys." Autry



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presented an affidavit to a magistrate judge falsely swearing that a “true and reliable informant” had bought a small amount of methamphetamine at a residence.

In December 2015 the jury returned a not guilty verdict on all counts. Nikki Autry’s claim that she thought the informant was reliable, coupled with her experience in dealing with the drug culture while a deputy, plus her claim that she was trying to “remove some of the poison from this community” impressed the jurors. Her attorney told the jury she had no ill intent, that it made no sense for her to risk her career on a \$50 drug buy, and that she was likely being used as a “sacrificial lamb” in the case involving eight other officers.

So far there have been all losers and no winners in the Baby Bou Bou incident: The taxpayers are out millions, the Phonesavans still have millions in future surgeries to pay for as their young child continues to recover, Deputy Autry is now former Deputy Autry, and the sheriffs’ departments have each suffered a black eye.

The biggest loser, however, is the Fourth Amendment, which guarantees “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches, and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” In the 1995 decision in *Wilson v. Arkansas* the Supreme Court opened the door slightly in cases where the officers serving the warrant might be endangered based on foreknowledge of the suspect’s past behavior (i.e., owning a semi-automatic weapon, and evidence of his willingness to use it) or that evidence needed for conviction might easily be disposed of. The court ruled that, in those cases, police officers must “knock and announce” before entering a house.

Radley Balko, author of *Overkill: The Rise of Paramilitary Police Raids in America*, writes:

In the real world, the exigent-circumstances exceptions [to the Fourth Amendment] have been so broadly interpreted since *Wilson*, they’ve overwhelmed the rule. No-knock raids have been justified on the flimsiest of reasons, including ... that the mere presence of indoor plumbing could be enough to trigger the “destruction of evidence” exception.

The real damage in the Baby Bou Bou case wasn’t just to the infant who had his face blown up while he was sleeping in his crib, or to his family suffering from nightmares and medical bills, or to taxpayers forced to pay damages, or to the deputies (past and present) involved in the attack. The real damage was done to the Fourth Amendment, which is supposed to guarantee that such atrocities never occur.

*Photo of Alecia, Bounkham, and “Bou Bou” Phonesavanh from December 2015: AP Images*

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