

## **Robert “Bobby” Unser – Overcriminalization Victim**

### **Subcommittee on Crime, Terrorism, and Homeland Security – September 28, 2010**

Three-time Indianapolis 500 winner Bobby Unser has been an avid adventurer and outdoorsman all his life. But never did he think that his love for the outdoors would land him on a path to being deemed a federal criminal. Since his retirement from competitive auto racing, Bobby has spent much of his time in and around the mountains of northern New Mexico and southern Colorado. In December 1996, he and a friend got lost in those mountains while snowmobiling and nearly died, but Bobby’s resourcefulness and determination saved his friend’s life. Bobby suffered dehydration and frostbite and had to be hospitalized. After returning home, Unser soon learned that he faced a possible \$5000 fine and up to six months imprisonment. How is it that someone who nearly lost his life in a blizzard suddenly became the target of federal prosecution?

- Just before Christmas, Bobby Unser and his friend got caught in a 50 to 70 mile an hour ground blizzard that came up suddenly while they were lawfully snowmobiling in permitted areas of a mountainous national forest just north of the Colorado-New Mexico border.
- With very little visibility in the blizzard, Bobby and his friend quickly got lost and disoriented. When the snowmobiles got stuck and broke down, the two men were forced to abandon their sleds and dig a snow cave for shelter to survive the first night. They spent the following day and night trekking through deep snow in 20-below temperatures before finally reaching help. Bobby was hospitalized for frostbite, dehydration, and exhaustion.
- Following his recovery in January, Bobby sought the assistance of the National Forest Service to locate his lost snowmobile. He reviewed maps with Forest Service personnel, openly discussed his ordeal, and identified a potential location for pursuing the search. The Forest Service personnel never identified themselves as law enforcement agents or indicated that they had opened a criminal investigation against him.
- At the end of the second day’s discussion, federal officials charged Bobby with operating a motorized vehicle inside a National Wilderness area, a federal crime which carries a maximum sentence of up to six months in jail or prison. Given the nature of his ordeal and the absurdity of the criminal charge, Bobby opted for a trial.
- 16 U.S.C. § 551 and 36 C.F.R. § 261.18(a) fail to state clearly whether the government is required to prove that a person accused of these offenses acted with criminal intent. At trial, the government argued that they did not have to prove that Bobby acted with criminal intent. According to prosecutors, the offenses are strict liability and Unser could be convicted even though he had no intention of entering a wilderness area and had not knowledge that he had done so. The federal trial judge agreed with the government and found Bobby guilty.
- No one knows for certain whether Bobby’s snowmobile had entered the wilderness area after he and his friend got lost. Yet the judge deemed conclusive on this hotly disputed question the testimony of a rescue worker who twice described his own estimate of where the snowmobile was ultimately found as “a guess.” The federal court of appeals called this witness’s testimony “far from precise,” but affirmed Bobby’s conviction nonetheless.

Because of this ordeal, Bobby has become an active supporter of overcriminalization reform and is determined to help see that no one is convicted for actions they took without any intending to violate a law or knowing that what they were doing was illegal or otherwise wrongful.