

Where Prosecutors Say Votes Are Sold

By James Dao

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It was not so long ago, historians say, that some voting places in eastern Kentucky were virtual vote-buying bazaars. Brokers bartered half pints of whiskey and \$10 bills for votes just outside polling station doors. The cheap ones could be bought for beer. The smart voters always sold twice.

Those brazen days are gone. But, prosecutors and political experts say, the mountain tradition of vote-selling is not. And in a wide-ranging conspiracy trial that opened here this week, federal prosecutors are contending that influential people still try to buy elections in eastern Kentucky, just in more artful ways.

At the heart of the case is a coal miner's son turned wealthy coal mine operator named Ross Harris, one of eastern Kentucky's most prominent political fund-raisers. Judges, sheriffs and legislators call him friend, particularly when they call him for money. Critics say he uses his fortune to bully opponents.

Prosecutors contend that in the fall of 2002, Mr. Harris funneled \$41,000 in illegal contributions to the campaign of John Doug Hays, a candidate for a Pike County district judgeship. The money financed a vote-buying scheme disguised as a program to pay people \$50 each to transport, or haul, voters to the polls, the prosecutors contend.

"There was no systematic plan for hauling," Kenneth Taylor, an assistant United States attorney, told jurors this week. "It was a ruse."

Mr. Harris and his nine co-defendants have pleaded not guilty, arguing that the people who received \$50 checks really did drive voters to the polls. State law allows campaigns to pay for "vote hauling," a practice that began decades ago when many poor and elderly voters in isolated hollows lacked transportation.

"It can't be a plan to use vote-hauling to buy votes if voters were, in fact, hauled," Larry A. Mackey, Mr. Harris's lawyer, said in his opening remarks. "There may not be many states where it is legal, but it is in Kentucky."

Only Mr. Harris and one of his employees, Loren Glenn Turner, are currently on trial. The other eight defendants, including Mr. Hays, are scheduled for trial in October.

The Harris case is one of several in Kentucky and West Virginia that prosecutors say confirm longstanding suspicions that vote-buying remains common in Appalachia.

Last year, Donnie Newsome, the judge-executive of Knott County in eastern Kentucky, was convicted of buying votes for \$50 to \$100 a piece in a 1998 primary race. He has been sentenced to 26 months in prison.

Seeking to reduce his sentence, Mr. Newsome has agreed to testify that Mr. Harris gave him about \$20,000 in cash for his re-election campaign in 2002. Mr. Harris's lawyers say Mr. Newsome is lying in exchange for leniency.

In West Virginia, Johnny Mendez, the sheriff of Logan County, pleaded guilty last month to federal charges that he accepted \$10,000 in illegal contributions and used the money to buy votes in 2000 and 2004.

Vote fraud, of course, is a fact of life in many places. In Kentucky, it ruined the career of Edward F. Prichard Jr., a former law clerk to Justice Felix Frankfurter of the Supreme Court who was widely seen as a future governor. Mr. Prichard was sentenced to two years for stuffing ballot boxes in 1948. He later distinguished himself as an education reformer.

In the mountains of eastern Kentucky, one of the poorest regions of the country, vote fraud has most often taken the form of vote-buying, experts said.

"It is basically conceded in Kentucky that people have a constitutional right to sell their vote," a former assistant state attorney general was quoted by Larry J. Sabato, the political scientist, in his book, "Dirty Little Secrets: The Persistence of Corruption in America Politics."

Gordon McKinney, director of the Appalachian Center at Berea College, said vote-buying became common in the early 1900's when an emerging class of coal, timber and railroad barons sought to break the power of local party bosses.

"They wanted control at the county level because that's where their business was," he said. "They began directly to buy votes. And they won."

The system has evolved and adapted, he said, but remains the same in many ways.

In the Hays campaign, prosecutors contend, 686 people were sent \$50 checks and sample ballots showing how to vote: with huge X's next to Mr. Hays's name. No other instructions were needed, the prosecutors say. "This is what we call a wink-and-nod conspiracy," Mr. Taylor, the assistant United States attorney, said.

In a taped conversation played for jurors, Tom Varney, a supporter of Mr. Hays, tells a woman that vote-hauling is "a figure of speech" and warns, "If anybody ever asks you, don't tell them its buying votes."

Defense lawyers say that Mr. Varney gave the woman \$50 to buy a coat and that his words were taken out of context.

Prosecutors also called a witness who said he received money for vote-hauling even though he could not drive because of a diabetic condition. Another witness said that although he was paid to drive voters to polls, he was not told whom to transport, and made no effort to find out.

But both of those witnesses said no one told them that the checks were to buy their votes -- even though they had signed affidavits saying as much several months before.

Mr. Mackey, Mr. Harris's lawyer, said the government had no evidence linking Mr. Harris to illegal contributions or vote-buying.

The prosecution will also have trouble convincing jurors that anything wrong occurred, he argued, since almost all eastern Kentucky politicians pay for vote-hauling.

"Some say this is legislation through prosecution," Mr. Mackey said. "It clearly could have a chilling effect on a long-term, historical and widely accepted practice in eastern Kentucky."

Indeed, attempts to ban vote-hauling have been blocked over the years by legislators from eastern Kentucky, including Gregory D. Stumbo, a Democrat who was the House floor leader for over a decade and is now the state's attorney general.

A spokeswoman for Mr. Stumbo said he considered vote-hauling a useful method of getting disabled or disadvantaged voters to the polls, provided it is done legally.

Even if the prosecution can demonstrate the Hays campaign's vote-hauling was really vote-buying, it may face another obstacle: the perception among at least some eastern Kentucky residents that vote-buying is not a serious crime.

Concerns that jurors would be too sympathetic toward, or easily intimidated by, the defendants caused Judge Karen K. Caldwell of Federal District Court to move the trial from Pikeville to London, 90 miles away.

F. Chris Gorman, the state's attorney general from 1992 to 1996, said he was once threatened when he called for cracking down on vote-buying in eastern Kentucky. Mr. Gorman, who ran unsuccessfully against Mr. Stumbo last year, called for banning vote-hauling during the campaign.

"We tried to prosecute some vote-buying cases while I was attorney general, and it was very difficult to get a guilty conviction in eastern Kentucky," he said. "It's so ingrained in the culture."