

## Bunch, Koos and Roberts in Law360: 5th Circ. Ruling Shows Need for Proffer Terms Negotiation

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PRACTICES Litigation

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Haynes Boone Partner [Nick Bunch](#) and Associates Ashley Koos and Payton Roberts authored an article in *Law360* on the need for the criminal defense bar to be adamant that the government negotiate the terms of a proffer agreement.

Read an excerpt below:

With life and liberty at stake, criminal defense attorneys avoid venturing into uncharted waters with the prosecution. Challenging the government's standard terms for proffer agreements is one such example.

Proffer agreements, also known as "king for a day" or "queen for a day" agreements, are contracts between the government and someone under criminal investigation.

Prosecutors use proffer agreements to incentivize individuals who are hoping to receive reduced charges, a favorable sentencing recommendation or avoidance of an indictment altogether to encourage — or coerce — cooperation.

Each U.S. attorney's office maintains its own standard proffer agreement, and prosecutors are generally unwilling or unable to negotiate the terms.

The result is that proffer agreements are effectively adhesion contracts: The standard terms are nonnegotiable, and the government holds all the power.

On Oct. 2, the U.S. Court of Appeals for the Fifth Circuit issued a decision that illustrates the perils that come with proffer agreements and why defense attorneys should be wary of their perceived benefits.

To read the full article in *Law360*, click [here](#).