

THE LEGALITY OF CONFIDENTIALITY: WHY THE U.S. GOVERNMENT CONTRACTS NDAS

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One of the four basic principles of U.S. civil service is the obligation of government workers to do their job to the best of their ability regardless of personal biases or individual viewpoints. For some, this means doing things that their boss/job requires them to do whether they agree with it or not. In a very recent light, for one of my highly notable and heavy discussion-based lecture classes, as we were going through the topic of the civil service and individuals in government, my professor discussed one jaw-dropping story that moved me and is the purpose of my article today.

In his years earning a graduate degree in Political Science, my professor walked in on one of his professors -- who he also calls a friend -- in one of his lecture rooms and saw him saddened. His professor then asked him to lunch and he explained what had happened. His professor got a call saying he was released from his NDA with the government and was now able to discuss with his family and friends the secret assignment he went on as a government agent in Germany post-Nazi Regime. My professor stated that "because he spoke fluent German and was tall, with blonde hair and blue eyes, he was posted in Post-WWII Germany as a German who had been living overseas as a student and who returned to his homeland post-war." He was tasked with identifying former Nazi agents who had tried to reintegrate into German society after the war in an attempt to avoid prosecution for their war crimes. This was 40 years ago. Within that time as an undercover agent for the U.S., he had over 30 Nazis arrested, where most were imprisoned for long sentences and others were put to death because of their work related to the "final solution." Of course, one would have many mixed feelings about being able to discuss those matters, and the emotions my professor received from him were just that: a mix of sadness, relief, and bewilderment. My professor continued that he was overwhelmed by their discussion because he "never suspected such a kind, gentle man was capable of being an undercover agent for the U.S. government post-WWII."

In the case of the undercover agent that I was privileged to hear about as an undergraduate student from my professor, his NDA was a pure example of a unilateral contract. In simple terms, this was a one-sided offer, in which the offeror paid a certain amount to the offeree to further benefit the offeror. An NDA is signed in exchange for the offeree's silence on what the offeror asks of them. My professor stated that “if he broke it, he could have been prosecuted, with a punishment of up to 10 years in federal prison.” An unfortunate truth that I have a hard time digesting is the mental strain that NDAs have on individuals. Conflicting with my better judgment, I would like to think that the government only does good work -- my definition of good work does not involve hurting or abusing good-willed individuals in our societies. However, that is not always the case. My professor described his former undercover agent professor as “a farm boy from the Midwest who loved being a music major at college.” So for him, the assignment he was tasked with was “a bit much.” My professor described to me that his former teacher did not support the death penalty, but he understood the importance of his job; this was one of his many regrets.



If we take a step back and look at the individual characteristics of this man who was tasked with such a heroic yet gut-wrenching job, we would think how can anyone ask such a man to complete this act? He was not only left with the regret of sending other men to their deaths, but he could not talk about what he had done for 40 years. And his punishment if he did? Up to 10 years in federal prison. Any therapeutic measure for the mental strain he must have gone through would automatically entail discussing what had happened. But he not only wasn't allowed to, he would be punished if he did. But why? For one practical reason, his safety would have been jeopardized. A more drastic reason, I believe, is the hypocrisy of the U.S. government. We interfered to stop the mass murder of millions of people, and yet we are inflicting the same fate onto them as they have onto others. For many U.S. citizens, this behavior would be deemed unconstitutional -- which is a reason for maintaining confidentiality in many governmental tasks -- and this is, in many ways, catastrophic to democracy.