

Brooklyn Yeshiva's Monitorship Ends, Offering 'Roadmap' for Compliance

By Emily Saul

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In 2022, Brooklyn's largest yeshiva entered into a deferred prosecution agreement with the U.S. Attorney's Office for the Eastern District of New York. The DPA came after officials with the Central United Talmudic Academy were indicted and pleaded guilty to taking part in a wide-ranging fraud, which included diverting federal funding intended for children.

As part of the DPA, the school agreed to pay \$5 million in penalties, \$3 million in restitution, and to operate under a monitorship for 3 years.

On June 10, U.S. District Court Judge Nicholas Garaufis of the Eastern District of New York dismissed the case, following an application from prosecutors earlier this year. CUTA is now not only compliant, but it's also created a model that can be replicated by others facing similar circumstances.

Cooley's Andrew Goldstein and former U.S. Treasury official Mitchell Silk spoke with Law.com about the program, which they say serves as not only an archetype for non-profit and religious organizations in a bind, but also a roadmap for corporations that might find themselves in trouble with the Department of Justice.

Goldstein, a former prosecutor with the Southern District of New York, is head of Cooley's white-collar defense and investigations group and co-



Courtesy photos.

Andrew Goldstein, global head of Cooley's white-collar defense and investigations group and co-partner in charge of the Washington, DC, office; and Mitchell Silk, Former Assistant Secretary at U.S. Department of the Treasury.

partner in charge of the Washington, DC, office. He was retained by CUTA following the DPA to design and implement the program and liaise with the monitor, Charles La Bella, from Barnes & Thornburg, and the government.

Silk, a former big law partner who worked for decades at Allen & Overy (now A&O Shearman), served as outside counsel in the matter and helped form and lead the school's Oversight Committee that ran the restructuring and compliance. He became part of the effort due to his pro bono work with Agudath Israel of America, a non-profit that represents Haredi Jewish interests.

This conversation has been edited for length and clarity.

Law.com: I saw the court dismissed the single charge remaining against your client, conspiracy to commit mail and wire fraud. Congratulations! So, is that it? Is your work done? What happens next?

Mitchell Silk: The work's only starting now. We've laid the foundation, we've built on the foundation, but it's really critical that we keep up the work, and the work is really self-introspection, continued testing of the system, continued self-initiation, continued training, and that's what it's all about.

Andrew Goldstein: The school made the decision early in the monitorship that it wanted to create a compliance program and structure, including a form of self-testing, that would be durable and that would last well beyond the time period of the monitorship.

Tell me how the compliance program came together, how you approached it, and the different roles that you both played.

Goldstein: I think there are three tenets to it, all of which were critical to persuade the monitor and the government that Central UTA had its house in order and could effectively monitor itself going forward.

The first was a series of structural reforms, which included bringing in a new administration, making sure that any of the original wrongdoers were no longer with the school and creating a new position of Director of Compliance. We also created a new compliance manual that the school poured an enormous amount of resources into and that we, at Cooley, worked very closely with the school in creating. That manual not only set forth the policies of the school and how to deal with government programs, but also lays out a mechanism

for testing the school's compliance going forward: the creation of committees within the school and an oversight function within the school to make sure that the different policies that were spelled out in the manual are actually followed. And then, also as part of this original structural compliance program, there's been a massive effort to train the relevant individuals at the school—the leadership, the key administrators, faculty—on the manual itself and on the processes that need to happen in order for the school to be compliant.

Second, we set out—under the leadership of Mitch and the Oversight Committee—to do our own testing of the school's compliance. And so, Cooley, working with [the school's outside counsel] Shimon Sternhell and the oversight committee, went ahead and started testing the school's compliance with each of the different government programs that the school participates in. The reason we did that was to be able to show the government that we are taking compliance extraordinarily seriously, and that the school is both able and willing to do the hard work to police itself. We were straightforward and transparent with both the government and the monitor, with the kind of testing we did, what processes we would put in place, and our findings. There were times where we found things that were not all rosy, and we corrected them, but we were able to self-report. One of the key things that the government looks for with a successful compliance program is the ability of an institution to find things on its own and to self-correct.

The last piece is making sure that the processes that we put in place are going to be durable and will last into the future, and part of that is the compliance manual and the structural reforms. Part of that is this new role of a Director of Compliance, and both the oversight committee and Cooley are committed to working with the

school going forward to make sure that even now that the deferred prosecution agreement is over, the reforms that we put in place all stay there.

Silk: I'm thinking back to the Passover liturgy. Why is this night different from all other nights? Why is this compliance program different from all other compliance programs? I'd point to two things.

Point number one I encapsulate with reference to a very simple Talmudic thought: the difference between the longer-shorter route and the shorter-longer route. The imagery is of somebody that needs to get from point A to point B. The shorter-longer route by which the crow flies has a lot of thorns and bushes and trees, almost impossible to make it through. The longer-shorter route is the one that actually has a path, but is much more circuitous and takes learning. And the executive function at the school took the conscious decision up front that they were going to take the longer-shorter route, even though it required a lot more pain, it required a lot more time to do the testing, it required a lot more rigor, it required heads down, it required self-introspection, it required a ton of money that they had to raise to pay for outside expert consultants. That is one key point that I think carried the day.

The other is what I would characterize as a distinguishingly positive approach that this administration took versus others that I've worked with, on a communal basis. When I was in practice, I represented a lot of banks in investigations with regulators, particularly Anti-Money Laundering regulations, Bank Secrecy Act stuff with the Fed, or within New York the Department of Financial Services. I've seen kind of two radically different approaches, those guys that are just like kind of putting up with it, kicking cans down the road, doing as little as they need to in order to keep the regulators at bay, in which case a matter that

could take two years to resolve might take 10 years. These folks decided to be proactive, head on, deal with matters irrespective of how much pain and cost was involved, and I think, ultimately, it's those two points that led to the successes that we achieved.

You both have alluded to the challenges or pain points. What were some of those? And how did you work through them?

Goldstein: Under the deferred prosecution agreement, the government could extend the monitorship for another year, and we understood from talking with the prosecutor that the government expected that this monitorship was going to end up lasting longer than it did. Early on, there were decision points about, to Mitchell's point, which path the school was going to take: to try to keep its head down and cooperate with the monitor as needed but no more, or pour in the resources and put in the hard work that would be necessary to actually create a reformed institution that would be durable and long lasting, and be able to show the government that Central UTA was actually doing everything the right way. There was a period of time early in the process where the government was skeptical that Central UTA was actually embarking on the latter path, the better path, and it took the better part of the last two plus years to persuade the government that the steps that the school was taking were real and that the compliance program was genuine.

Silk: Imagine this: you've got a client, and that client looks after 5000 kids in school. You're looking at some really, really challenging, highly, highly technical legal issues. Your client is a bunch of folks who may have high native intelligence, but have never attended a secular school, certainly never went to college, are not the folks that you'd expect would be the greatest at parsing administrative regulations or statutes. And who

are non-native English speakers, right? I speak Yiddish, but I'm not fluent in administrative phrases or federal funding in Yiddish. It was interesting and refreshing how our clients just completely grabbed on and sank their teeth into all of the work that they needed to do in a highly professional manner.

How do you prove to someone that your clients are working in good faith when the government can't see it?

Goldstein: The first answer is that the reforms have to be real. We had to have actual proof of what we were doing to be able to show that. The government was naturally skeptical of whether the school would be willing to put the resources into the kind of reforms that they believed were necessary. There were reasons for their skepticism, and that's why the hill that we had to climb was as high as it was. We ended up having a series of meetings with the prosecutors and meetings with the monitor, where we showed our work. We did our own, you know, comprehensive testing program, looking at each area where the school receives federal or state or local funding and testing the compliance across a whole host of measures with each area. And we shared those findings with both the monitor and the government, and I think part of what helped persuade the government that we were doing this the right way is that we shared the good and the bad. There were some things that we uncovered as we were doing our work that were not the way that things should have been done and we were open and honest about that. And I think that helped persuade the government. The last piece is that we ultimately had to persuade the monitor that we were doing things the right way and that there was enough in place that the monitor could certify the school's compliance and could represent to the government that, under their professional determination, the school was ready to be on its own.

If part of your question is 'What were the key aspects of this representation that actually got us the outcome?' I think the one area that we haven't fully covered is it was also critical that Cooley, as outside counsel to the school, had the kind of relationship that we did with Mitch and the oversight committee and the leadership of the school. That was critical, because we, as counsel, had to often make tough recommendations that would potentially cost a lot of money, and may also require changes in the way that the school was approaching different issues.

Can you share a ballpark figure of about how much this whole endeavor has cost until now?

Goldstein: It's in the millions of dollars. The school had to pay a total of \$8 million in restitution and fines, but on top of that, the cost of experts and consultants and additional administrators at the school, legal fees, all of that has been in the millions of dollars.

Silk: This is a school that, historically, has run a deficit. The school has had to pay for this compliance program through fundraising, through donors in the community and elsewhere to step up.

Given the price tag, is this replicable for other schools or non-profits who might be in a similar circumstance?

Silk: Yes. The folks at the school have shared know-how and shared learning with many, many schools in the broader tri-state yeshiva area. In addition to that, we have encouraged, and the school has participated in very formal programming. We did a program in Brooklyn, attended by over 200 yeshivas' senior leadership on the administrative side. We went through all of the key areas that were covered by our program, sharing best practices, and practical experience. The school has even made the manual available

to other schools. Now, granted, the efficacy of our manual is that it's not just something that somebody took off a shelf and then slapped the name CUTA on. So, we constantly have to put out the health warning that this is a starting point, but this is the process that you need to go through in order to ensure that whatever you may build off of, this base will be the most impactful for your institution.

Goldstein: I think there's a broader lesson: if there's an institution that is as financially stretched as Central UTA is, if it can, in response to criminal conduct and an enforcement action by the government, create this kind of program, I think that shows a way for much larger institutions. We represent large companies that have to deal with the government and enforcement actions all the time, and the roadmap that Central UTA found—to be able to persuade the government that it was now a good actor and that it had its own house in order—is the kind of roadmap the other institutions should be able to follow.

Monitorships are said to be somewhat out of favor in the current white-collar enforcement space and there's a heavy emphasis on self-reporting. Do you think both have their own place in today's white-collar practice area?

Goldstein: The Department of Justice has put out statements about trying to cabin the use of monitors to where they are absolutely needed, and to make sure that their focus is on the conduct that gave rise to the need for the monitorship in the first place. Our experience here has been entirely consistent with that. One reason that I think we were able to persuade the

government to end this monitorship was to do everything that we could to make the monitor himself obsolete. We were doing our own thing, we were doing our own testing, and then sharing our results that made it so that the government could rely on us and what we were doing, and ultimately there wasn't a need for a monitor to be overseeing the school going forward.

You both shared some of the lessons you learned while working on this program. Are there any others that might be useful?

Goldstein: I think the key lessons are one, you need full buy-in from your client. They need to understand the benefits to making the kind of reforms that are needed to persuade the government that you have your house in order.

Number two, you need to work very closely with your client to be able to make the kind of representations to the government that are trustworthy and that the government can then take to the bank and know that your client is doing the right thing here. And like that combination where your client is on board, you're communicating well, and then you have the goods to be able to show the government what you're doing. Those to me are the key lessons as to why this was successful.

Silk: My big five in a short number of words are: take responsibility up front, which is what our guys did, as painful as it may have been. Rebuild, don't just retouch. Test as you go along to ensure that the reforms are appropriately fitted and sized to address the issues. Ensure that compliance is a living organism within the institution, not just something that's pesky. Finally, lead by example.