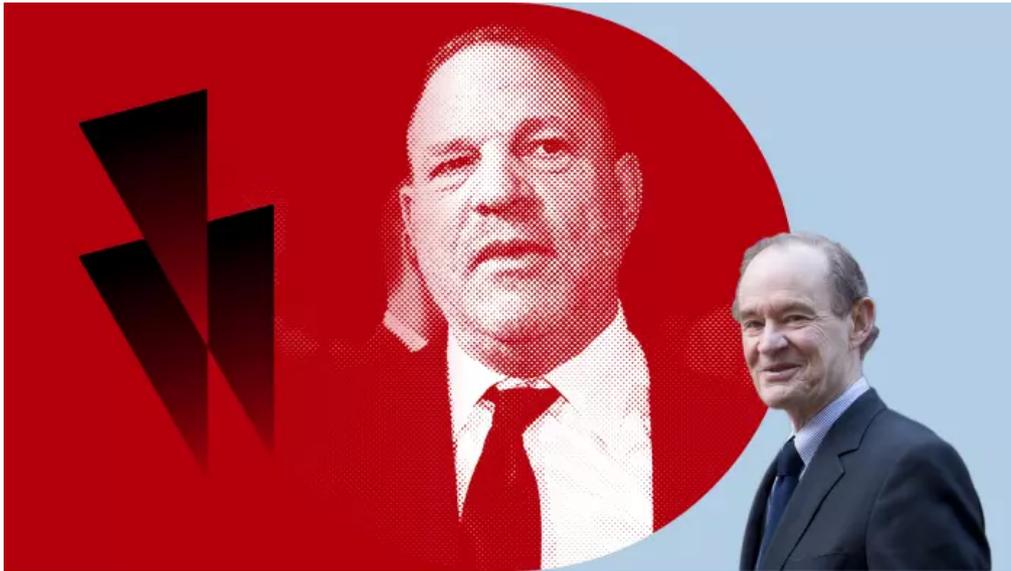


Harvey Weinstein**Weinstein board members claim lawyers hindered sex inquiry**

Independent directors fear they were misled when access was blocked to personnel file in 2015



Independent TWC board members say Harvey Weinstein, represented by a legal team including personal lawyer David Boies, right, obstructed attempts to scrutinise his conduct and record © FT montage / Bloomberg

YESTERDAY by Matthew Garrahan in Los Angeles

Two board members of The Weinstein Company tried for years to investigate co-founder Harvey Weinstein, only to run into “super lawyers” who acted for him after allegations of sexual misconduct and questionable financial dealings and expenses.

The concerns by the independent directors predate the accusations of sexual harassment that erupted against Mr Weinstein this month. They surface in correspondence between the directors and Mr Weinstein’s attorneys — including David Boies, the lawyer who acted for Al Gore in the contested 2000 presidential election.

The letters, seen by the Financial Times, reveal a tug of war between Mr Weinstein’s lawyers and the independent board members over an explosive personnel file the directors say they were denied access to.

More than 40 women have complained about Mr Weinstein’s conduct, including stars such as Angelina Jolie and Oscar winner Lupita Nyong’o, as well as former employees of Miramax and TWC, the film companies he co-founded.

Police in London, New York and Los Angeles are also investigating harassment and sexual assault allegations involving Mr Weinstein in a case that has exposed the “casting couch” culture in Hollywood and provoked a broad debate about abuse of women in the workplace.

Efforts by the independent directors to gain access to Mr Weinstein's file took on fresh urgency in the summer of 2015 when Ambra Battilana Gutierrez complained to the New York police that Mr Weinstein had groped her in his office.



TWC board member Lance Maerov says Weinstein's legal team 'shielded him from the indignity of being asked questions by the board' Fried, Frank, the New York law firm representing the independent directors, wrote to Mr Boies on August 6 2015, expressing shock that Mr Weinstein had refused to provide board members with his own personnel records.

“It is astounding that Harvey himself has reviewed the file, in violation of the customary practice that executives do not have access to their own employment files so that lower level employees are not discouraged from complaints out of fear of retribution.

“Harvey’s decision to engage a phalanx of lawyers and law firms to address a mere request for his HR file and his unyielding unwillingness to produce the file speak volumes about what it contains.”

Other startling revelations about TWC and its co-founder in the correspondence with Mr Weinstein’s law firms include that:

- Mr Weinstein used company money to buy \$75,000 of dresses from Marchesa, his wife’s fashion company, which he then gave to a prominent Qatari;
- He used TWC’s credit facility to advance himself funds against the licensing of movies that he owned personally;
- TWC “never made a profit” and generated a loss of \$65m in 2015.

The independent directors of TWC represented early investors in TWC when it was founded by Harvey and Bob Weinstein as the successor company to Miramax. These investors included Goldman Sachs, Fidelity, WPP and the French television channel TF1.

The independent directors were led by Lance Maerov of WPP and Tarak Ben Ammar, who represented TF1. Together they tried in vain to investigate and remove Mr Weinstein over a possible financial impropriety in 2014 and again in 2015 following allegations about the assault of Ms Gutierrez.

They felt thwarted by Mr Weinstein's lawyers and an ironclad employment contract, drawn up when the film company was created in 2005, which stated that the mogul could only be fired if he was convicted of a felony.

Mr Weinstein is now gone, fired after the allegations of sexual harassment put him in breach of a code of conduct Mr Maerov and Mr Ben Ammar inserted in a new employment contract that went into effect at the end of 2015.

Mr Maerov and Mr Ben Ammar have been appointed to lead an independent committee that will investigate the disgraced mogul.

In an interview with the Financial Times, they said the investigation would have the power to look through company phone and email records, in an effort "to make sure this never happens again".

Mr Maerov and Mr Ben Ammar confided that two of the lawyers involved in the Weinstein case had conflicts of interest: Rodgin Cohen, the senior partner of Sullivan & Cromwell, which had once acted for TWC on a debt restructuring, and Mr Boies.



TWC board member Tarak Ben Ammar says Weinstein's legal team had conflicts of interest © AFP

Although Mr Boies was Mr Weinstein's personal lawyer, his firm Boies Schiller Flexner has also acted for TWC.

Mr Cohen, the lawyer eventually instructed to review Mr Weinstein's personnel file, also had ties to TWC. His son, Jonathan, worked for TWC at the time he reviewed Mr Weinstein's file.

A person close to Mr Cohen maintained that the board knew of his son's connection to the company but when pressed which directors had been informed said: "Bob Weinstein."

Mr Cohen told the FT: "The lawyer who represented the independent directors was advised before he received my review of the Weinstein personnel file that my son worked for TWC."

Mr Boies, who has alleged Mr Maerov had "personal animus" towards Harvey Weinstein, has denied he had any conflict of interest. TWC and its board "were always aware of the extent to which I represented Harvey Weinstein in his personal capacity," he told the FT.

Harvey Weinstein's galaxy of hits

US box office revenues, at Jan 2015 prices (\$m)

The English

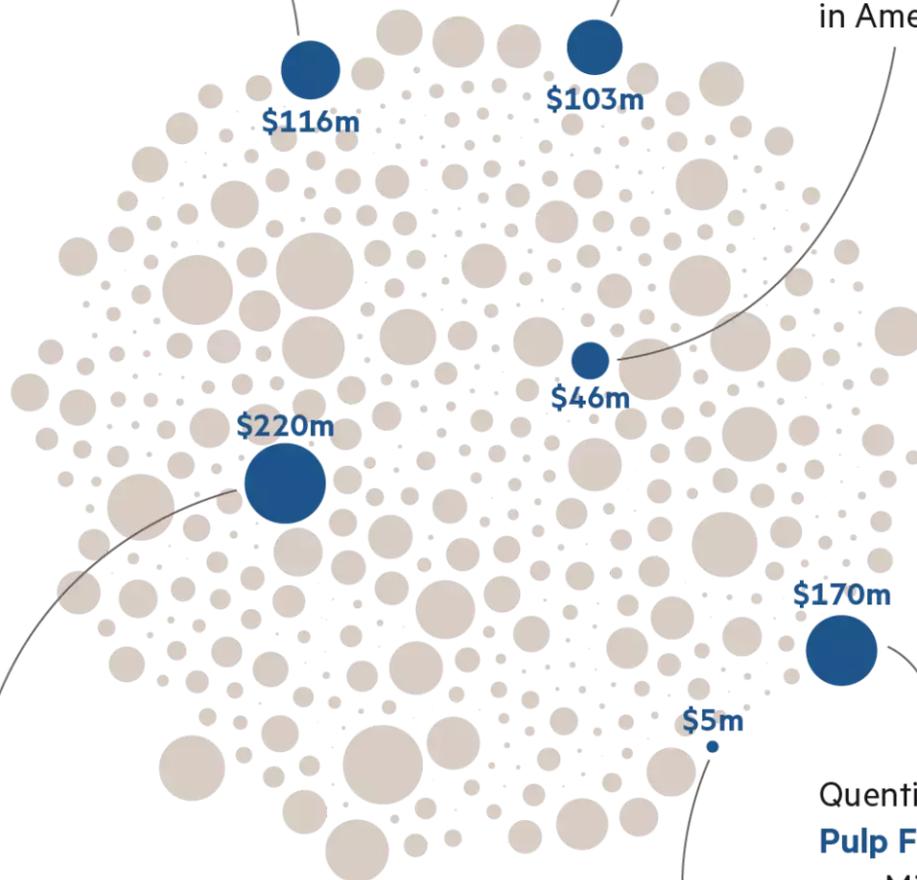
Patient (1996) was Miramax's first Academy Award for Best Picture

Disney bought Miramax after the success of **The Crying Game** (1992)

Steven Soderbergh's **sex, lies, and videotape** (1989) helped make Miramax the leading independent studio in America

Chicago (2002) is Miramax's biggest US box office hit and won six Academy Awards

Quentin Tarantino's **Pulp Fiction** (1994) was Miramax's first blockbuster hit. The studio also released his breakthrough **Reservoir Dogs** (1992)



Source Box Office Mojo

© FT

After the review of Mr Weinstein's personnel file in September 2015, Mr Cohen wrote to the board saying there were "no unresolved claims that could result in a liability to TWC or its directors". There was "no pending or threatened litigation" in the file, he added in the letter, which was seen by the FT.

The independent directors had tried — and failed — to gain access to the contested file before negotiating a new employment contract with Mr Weinstein in 2015 but feel they were obstructed by Mr Boies. “Listening to the reasoning for not sharing information requested by the board felt like I was at the Mad Hatter’s tea party,” said Mr Maerov.

Mr Boies told the FT that he did not withhold the file. “I never in any way blocked any directors from access to Mr Weinstein’s personnel file,” he said. “They had access to that personnel file if they wished and they chose to have [it] reviewed by a lawyer from Sullivan & Cromwell rather than reviewing it themselves.”



Bob, left, and Harvey Weinstein have clashed increasingly in recent years

Correspondence from August 2015 reveals that Mr Boies had been involved in numerous telephone and written communications with the independent directors over the issue of access to the file.

Mr Boies said the independent directors knew he was representing his client’s views. “I expressed to them that Mr Weinstein objected to their having his personnel file,” he said, alleging that they had previously leaked material to the media. The independent directors, he added, were trying to “rewrite history”.

Although Mr Weinstein is now out of the picture the dispute shows no sign of ending. “The lawyers shielded him,” said Mr Maerov. “They shielded him from the indignity of being asked questions by the board. Today we are left wondering if we were misled.”

Conflicts within TWC’s board

Half of the TWC board quit this month in the wake of [allegations in the New York Times](#) about Mr Weinstein’s conduct. But Mr Maerov and Mr Ben Ammar chose to stay on. The two were involved in [negotiations this week](#) with Tom Barrack’s Colony Capital, the investment firm that has thrown a cash lifeline to the company and plans to change its name and buy it outright.

In 2014, after a tip from a TWC employee, Mr Maerov found “evidence” that Mr Weinstein had used TWC’s credit facility to advance himself funds against the licensing of movies that he owned personally.

Mr Maerov and Mr Ben Ammar demanded an explanation and threatened to fire Mr Weinstein. They then received a lengthy explanation from Gibson Dunn, another law firm that had been retained by Mr Weinstein.

In the letter, Orin Snyder, who has been lead counsel for [Facebook](#) and [Apple](#), among others, wrote that Mr Weinstein’s “personal bank” had “agreed to repay the advance to the facility”. Mr Weinstein later reimbursed the company and the matter was dropped.

Mr Maerov and Mr Ben Ammar had other concerns, such as the purchase of \$75,000 worth of Marchesa clothing by Mr Weinstein using company funds. Marchesa is the fashion label owned by Georgina Chapman, Mr Weinstein’s wife, [who left him](#) following this month’s sexual harassment revelations.

In 2014, Mr Weinstein gave the clothing to a prominent individual in Qatar, a gift which Mr Maerov and Mr Ben Ammar queried. In the letter from Gibson Dunn, Mr Snyder wrote that the clothing had been given to an individual who had “indicated” he was prepared to invest \$20m in an animation movie fund planned by Mr Weinstein — a fund that had not been authorised by the TWC board. As with the credit facility advance, the funds were reimbursed by Mr Weinstein.

Disputed employment contract

Mr Maerov and Mr Ben Ammar angrily rejected [a claim that was made by Mr Boies](#) in the New York Times last week that the board knew about confidential settlements with women before it approved a new contract with Mr Weinstein in 2015. He told the FT that Mr Maerov and Mr Ben Ammar knew of settlements and even investigated whether they had been paid for by TWC or Mr Weinstein.

Mr Maerov disputed this. “We had no specific knowledge of any settlements before approving Harvey’s new contract in October of 2015,” Mr Maerov said. “We certainly never suspected anything remotely similar to unconscionable acts now widely reported in the media.”

Despite mounting concerns about Mr Weinstein’s conduct, Mr Ben Ammar and Mr Maerov said they had no choice but to sign Mr Weinstein to a new contract in 2015. Without one, Mr Weinstein would have controlled the company through the super voting shares he held in TWC, they said — and they would have no recourse to fire him.

The latter was “the only way to take away Harvey’s ability to run the company if he engaged in any behaviour that violated the code”.

It was because of Mr Weinstein's apparent violation of this code of conduct, when several women told the New York Times and [the New Yorker](#) that he had sexually harassed them, that the board was able to fire him, Mr Ben Ammar said. "Were it not for that code of conduct, he would still control TWC today."

"We are questioning whether we were misled," added Mr Maerov. "If the question is: how was Harvey's conduct enabled? It was largely enabled by his attorneys and their obfuscatory tactics."

Weinstein law firm had stellar reputation

Sullivan & Cromwell is one of the US's most prestigious white-shoe law firms, counting many of the world's biggest banks among its clients. As senior partner, Rodgin Cohen has been at the table for many major bank negotiations of the past several decades, *writes Shannon Bond in New York*.

The firm also has deep ties to the US government: past partners at the firm range from John Foster Dulles, Dwight Eisenhower's secretary of state, to Jay Clayton, who Donald Trump appointed this year to run the Securities and Exchange Commission.

It was this stellar reputation that caught Harvey Weinstein's attention. He had read of Mr Cohen's pivotal involvement advising institutions including Bear Stearns and Lehman Brothers during the financial crisis, and was spurred to contact the lawyer when his company needed help, as it refinanced its debt in 2010.

"As I remember it, he called me and said, 'My name is Harvey Weinstein and I make movies,' Mr Cohen told Bloomberg TV in 2011. "And I said, 'Actually, I know who you are because my son is in film school.'"

It was Mr Cohen who later reviewed Mr Weinstein's personnel file in September 2015 and wrote to the board, saying there were no unresolved claims or pending or threatened litigation that could result in a liability to the company.

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