

NEWS DESK

# HARVEY WEINSTEIN'S SECRET SETTLEMENTS

*The mogul used money from his brother and elaborate legal agreements to hide allegations of predation for decades.*

By Ronan Farrow 7:33 A.M.

On April 20, 2015, the Filipina-Italian model Ambra Battilana Gutierrez sat in an office in midtown Manhattan with an eighteen-page legal agreement in front of her. She had been advised by her attorney that signing the agreement was the best thing for her and her family. In exchange for a million-dollar payment from Harvey Weinstein, Gutierrez would agree never to talk publicly about an incident during which Weinstein groped her breasts and tried to stick his hand up her skirt.

“I didn’t even understand almost what I was doing with all those papers,” she told me, in her first interview discussing her settlement. “I was really disoriented. My English was very bad. All of the words in that agreement were super difficult to understand. I guess even now I can’t really comprehend everything.” She recalled that, across the table, Weinstein’s attorney was trembling visibly as she picked up the pen. “I saw him shaking and I realized how big this was. But then I thought I needed to support my mom and brother and how my life was being destroyed, and I did it,” she told me. “The moment I did it, I really felt it was wrong.”

Weinstein used nondisclosure agreements like the one Gutierrez signed to evade accountability for claims of sexual harassment and assault for at least twenty years. He used these kinds of agreements with employees, business partners, and women who made allegations—women who were often much younger and far less powerful than Weinstein, and who signed under pressure from attorneys on both sides.

Weinstein also hid the payments underwriting some of these settlements. In one case, in the nineteen-nineties, Bob Weinstein, who co-founded the film studio Miramax with his brother, paid two hundred and fifty thousand pounds, roughly six hundred thousand dollars today, to be split between two female employees in England who accused Harvey Weinstein of sexual harassment and assault. The funds

came from Bob Weinstein's personal bank account—a move that helped conceal the payment from executives at Miramax and its parent company, Disney, as well as from Harvey Weinstein's spouse.

In an interview, Bob Weinstein acknowledged the personal payout but said that his brother had misled him about the reasons behind it. “Regarding that payment, I only know what Harvey told me, and basically what he said was he was fooling around with two women and they were asking for money,” Bob Weinstein told me. “And he didn't want his wife to find out, so he asked me if I could write a check, and so I did, but there was nothing to indicate any kind of sexual harassment.” A former senior Miramax executive said that it was implausible that Bob Weinstein did not know about the nature of the allegations, which were reported to the company.

It has become common practice to use nondisclosure agreements to resolve allegations of sexual misconduct. Some legal experts, including the victim's-rights attorney Gloria Allred, who is representing some of Weinstein's accusers, stress that victims may actually prefer such agreements. Allred told me that her firm had represented “thousands” of people who have entered into confidential settlements and said, “some people don't want their parents, their friends, members of their community to know.”

But recent revelations of sexual abuse by powerful men in entertainment, politics, journalism, and other fields have raised questions about whether the use of these agreements should be curtailed, particularly when there is a stark power imbalance between the accuser and the accused. In numerous cases, such agreements have allowed abuses to continue unabated, sometimes for decades. The comedian Bill Cosby and the television personality Bill O'Reilly both repeatedly used secret settlements to resolve allegations of sexual misconduct. Last week, Congresswoman Jackie Speier disclosed that the House of Representatives had paid more than seventeen million dollars to settle two hundred and sixty claims of harassment over the past twenty years (a figure that includes sexual offenses as well as harassment based on race, age, or other factors). Speier is working with a bipartisan group of politicians to introduce federal legislation that would overhaul the way Congress handles harassment claims, including offering better legal counsel to employees with allegations, and removing a long-standing requirement that they sign nondisclosure agreements.

“The category of cases where I think we have a problem is the heavy hitters, the rainmakers,” Samuel Estreicher, a professor of law at New York University whose work focusses on employment issues, told me. In cases like Weinstein’s, Estreicher said, “repeat offenders are able to operate under a cloak of silence with the help of nondisclosure agreements.”

Zelda Perkins, a former assistant to Harvey Weinstein, was one of the women involved in the sexual-harassment and assault settlement that was underwritten by Bob Weinstein. Even twenty years ago, when the settlement was signed, Perkins recognized that Weinstein was engaging in a pattern of behavior. She fought for—and obtained—requirements specifically intended to prevent Weinstein from continuing to victimize women. The settlement mandated that Weinstein receive treatment from a psychiatrist of Perkins’s choice and that Disney be notified of future harassment settlements made by him. Nonetheless, Weinstein’s misconduct continued, in secret, for decades. “What I want to talk about at this point is not what Harvey did,” Perkins told me. “It’s more about the system that protected him and that enabled him, because that’s the only thing that we can change. Money and power enabled, and the legal system has enabled. Ultimately, the reason Harvey Weinstein followed the route he did is because he was allowed to, and that’s our fault. As a culture, that’s our fault.”

Harvey Weinstein’s criminal-defense attorneys, Blair Berk and Ben Brafman, said in a statement, “Because of the pending civil litigation and related investigations, it is inappropriate to respond specifically to each of the unsupported and untruthful insinuations contained in this article. Suffice it to say, Mr. Weinstein strongly objects to any suggestion that his conduct at any time has ever been contrary to law. Be assured that we will respond in any appropriate legal forum, where necessary, and fully expect that Mr. Weinstein will prevail against any claim of legal wrongdoing. Mr. Weinstein categorically denies ever engaging in any non-consensual sexual conduct with anyone and any suggestion that he acted improperly to defend himself against such claims is simply wrong.”

**G**utierrez told me that she had grown up watching her Italian father, whom she described as a “Dr. Jekyll-and-Mr. Hyde person,” beat her Filipina mother. When Gutierrez tried to intervene, she was beaten as well. (Gutierrez’s father could not be reached for comment.) As an adolescent, Gutierrez became the caretaker of her family, supporting her mother and distracting her younger brother from the violence. “Because of trauma in my past, being touched for me was something that

was very big,” she said. Her first concern, she said, was protecting other women from violence. She only signed her secret settlement after her options for criminal justice were shut down.

After Gutierrez contacted the police, Weinstein drew upon a network of high-powered defense lawyers, former law-enforcement officials, and private investigators who help the wealthy try to thwart criminal investigations. Unbeknownst to her, Weinstein's attorneys hired the private intelligence firm K2, founded by the corporate-intelligence magnate Jules Kroll, and tasked its agents with insuring that the Manhattan District Attorney, Cyrus Vance, did not press charges against Weinstein. One of Weinstein's defense lawyers, Elkan Abramowitz, whose clients include New York Governor Andrew Cuomo and who is a partner at the firm that formerly employed Vance, oversaw K2's work. The intelligence firm hired Italian private investigators to dig up information on Gutierrez's sexual history, according to three individuals with knowledge of its work. (A spokesperson for K2 said that the firm's work in the Gutierrez case involved only online and public-records searches regarding her past.)

The investigators discovered that, as a young contestant in the Miss Italy beauty pageant, in 2010, she had attended a “Bunga Bunga” party hosted by Silvio Berlusconi, who was then the Italian Prime Minister, where he was accused of having sex with prostitutes. The Italian investigators also claimed that Gutierrez engaged in prostitution. (Asked if she was comfortable with *The New Yorker* printing those allegations, Gutierrez said, “Absolutely.” She flatly denied ever engaging in prostitution. She said she quickly left Berlusconi's party and later testified as a witness against him when Berlusconi was charged with abuse of power and having sex with a minor. He was acquitted on both charges but later was found guilty in a separate bribery case.)

Current and former K2 employees, all of whom had previously worked at the District Attorney's office, relayed the private investigators' information about Gutierrez in calls to prosecutors. Two K2 employees said that those contacts were part of a “revolving door” culture between the D.A. and high-priced private-investigation firms. Lawyers working for Weinstein also presented a dossier of the private investigator's findings to prosecutors in a face-to-face meeting. (Joan Vollero, a spokesperson for Vance's office, said that such interactions with defense attorneys are standard procedure.)

When Martha Bashford, the head of the District Attorney's sex-crimes unit, subsequently questioned Gutierrez, she grilled her about Berlusconi and her personal sexual history with unusual hostility, according to two law-enforcement sources. "They went at her like they were Weinstein's defense attorneys," one of the law-enforcement sources told me. (A source from the D.A.'s office who was present for the questioning acknowledged that the meeting focussed on Gutierrez's past in Italy but said that Bashford was "professional" and not hostile.) Gutierrez remembers being baffled by the line of questioning. She had found the N.Y.P.D. supportive and, at the request of police investigators, had participated in a sting operation in which she met Weinstein and secretly recorded a conversation in which he admitted that he had groped her. "It was weird," she told me. "I'm, like, 'What is the connection? I don't understand. Just listen to the proof.'"

On April 10, 2015, two weeks after Gutierrez reported Weinstein to the police, the D.A.'s office announced that it wasn't going to press charges. Two law-enforcement sources told me that the N.Y.P.D. was troubled by the decision, and, shortly afterward, the department's Special Victims Division conducted an internal review of the last ten criminal complaints in Manhattan stemming from similar allegations, of groping or forcible touching. "They didn't have a quarter of the evidence we had," one law-enforcement official said of the other cases. "There were no controlled meets, and only rarely controlled calls." Yet, the source said, "All of them resulted in arrests." (Vollero said that many of the arrests cited in the review involved subway groping, including some that were witnessed by police. "Cases involving sex abuse on the subway typically have many more witnesses than other types of misdemeanor sexual abuse," she said.)

Before and after the D.A.'s decision not to press charges, several of Weinstein's attorneys made donations to Cyrus Vance's campaigns. All told, Abramowitz, who presented the K2 dossier to the D.A.'s office, has contributed \$26,450 to Vance since 2008. In an interview, Abramowitz said that the donations were appropriate. "Cy and I were friends and partners long before Harvey Weinstein came into my life," Abramowitz told me. "My contributions to his campaign were based on my belief that he is a solid choice for District Attorney."

David Boies, another member of Weinstein's legal team, donated ten thousand dollars to Vance's reelection campaign in the months following Vance's decision not to press charges. "The idea that my contributions to Cy Vance's campaign had any relationship to that investigation, I think, is absurd," Boies told me, adding that he

had a close relationship with Vance but never called him about the Gutierrez case. Boies argued that Vance's office had made a reasonable decision and accused Gutierrez of engaging in prostitution in Italy. "There were transcripts of Italian proceedings where it was described how for years she had performed various sexual acts for various specified amounts of money," Boies told me.

Gutierrez said that any records of the type Boies referred to were a product of her testimony against Berlusconi, who she said used his power to smear her and others involved in the case. "They said that I was a Bunga Bunga girl, that I was having affairs with sugar daddies," Gutierrez said. "What the hell else were they going to say, that I killed someone? Anyone who knows me knows those things are completely fake."

Gutierrez said that the decision not to press charges shocked her. "We had so much proof of everything," she recalled. "Everyone was telling me, 'Congratulations, we stopped a monster.'" She began to worry about her future. "I couldn't sleep, I couldn't eat," she told me. New York tabloids, including the New York *Post*, to which Weinstein had fed stories in the past, had been publishing lurid reports about Gutierrez that mirrored the information in K2's dossier. "What did I do wrong?" Gutierrez said. "The only thing I did was exposing something bad that happened to me." The coverage sometimes included photos from Gutierrez's modelling career. It was as if "just because I am a lingerie model or whatever, I had to be in the wrong," Gutierrez said. "I had people telling me, 'Maybe it was how you dressed.'" (Gutierrez had dressed in professional office attire to meet Weinstein, with thick tights because of the cold weather.) Gutierrez, who still supports her brother financially, began to worry that she wouldn't be able to make a living. "My work depends on image, and my image was destroyed," she said.

Attorneys that Gutierrez consulted advised her to accept a settlement. "I felt pressured," she told me. "I said no at first." Eventually, however, she relented. "I was forced by the fact that newspapers completely bashed me, by the fact that I was alone, by the fact that I was twenty-two years old," Gutierrez told me. "I knew if he could move the press in this way, I couldn't fight him." Gutierrez said that she knows that many people will judge her harshly for taking the money. "A lot of people are not empathetic," she said. "They don't put themselves in the situation."

Gutierrez's settlement, a copy of which I reviewed, bears Weinstein's signature and orders the destruction of all copies of audio recordings of Weinstein admitting to the

groping. Gutierrez agreed to give her phone and any other devices that might have contained copies of the recording to Kroll, another private-security firm retained by Weinstein. She also agreed to surrender the passwords to her e-mail account and other forms of digital communication that could have been used to spirit out copies. A sworn statement, pre-signed by Gutierrez, is attached to the agreement, to be released in the event of any breach. It states that the behavior Weinstein admits to in the audio tape never happened. “The Weinstein confidentiality agreement is perhaps the most usurious one I have seen in decades of practice,” an attorney familiar with the agreement told me.

After the contract was signed, Gutierrez became depressed and developed an eating disorder. Eventually, her brother, who was concerned, came to the United States. “He knew I was really bad,” she said. He took her to Italy and then the Philippines “to start again.” She told me, “I was completely destroyed.”

**H**arvey Weinstein had been using similar tactics with women for more than twenty years. Zelda Perkins, the assistant who signed a nondisclosure agreement with Weinstein twenty years ago, in the U.K., said that she also regrets her decision. In recent weeks, she has begun talking to the press, flouting an agreement that she now feels is unjust. “I think it’s a really important symbolic thing to do right now,” she said. “To stand up and question its legitimacy publicly.”

Perkins said that while working for Weinstein she experienced nearly constant sexual harassment. “From my very first time left alone with Harvey, I had to deal with him being present either in his underpants or totally naked,” Perkins said. She told me that she had to buy condoms for him and clean up after his hotel-room encounters. “We had to bring girls to him,” she said. “Though I wasn’t aware of it at first, I was a honeypot.” Weinstein, she said, never succeeded in pressuring her into sex or any physical contact, but she called the barrage of advances “exhausting.”

In 1998, Perkins hired an assistant of her own. She warned candidates for the job that Weinstein would make sexual advances, and rejected “very overtly attractive” applicants. In the end, she chose a “prodigiously bright” Oxford graduate, who asked not to be named in this story because she fears legal retaliation. In 1998, during the Venice Film Festival, the new assistant emerged from her first meeting alone with Weinstein distraught, saying that he had sexually assaulted her in his hotel room. “She was shaking and she was crying,” Perkins recalled.

Perkins confronted Weinstein immediately. “He stood there and he lied and lied and lied,” Perkins recalled. “I said, ‘Harvey, you are lying,’ and he said, ‘I’m not lying; I swear on the lives of my children.’” The assistant was too frightened to go to the police, especially in a foreign country. After returning to England, Perkins notified Donna Gigliotti, a producer who worked with them on the Academy Award-winning film “Shakespeare in Love.” Gigliotti, who recalled Perkins coming to her about the incident, told me that she was an outside contractor and “could not report it internally.”

Perkins and the assistant resigned from Miramax and sent notice of impending legal action to Weinstein. Their letter set in motion frantic meetings at Miramax, according to former employees, and a fusillade of calls directed at Perkins and the assistant. Perkins said that the night after she resigned she received seventeen calls from Weinstein and other executives with “increasing desperation.” Perkins played me some of the messages, recorded on her answering machine and preserved because she thought she “might need them as protection.” In them, Weinstein veers between anxious pleading and terse demands. “Please, please, please, please, please, please call me. I’m begging you,” he says in one.

Perkins and the assistant hired lawyers from the London-based firm Simons Muirhead & Burton. Perkins said that, in hindsight, the attorneys seemed intent on foreclosing any outcome except a settlement. The lawyers told the women that because neither had gone to the police immediately after the incident, reporting the attack at that time was “very clearly not an option.” Perkins said that she asked about reporting the incidents to Michael Eisner, the C.E.O. of Disney, which at the time owned Miramax, because she knew that Weinstein’s relationship with Eisner was under strain. The lawyers dissuaded her from that, too. “They just said, ‘No way. Disney will crush you. Miramax will crush you. They will drag you, your family, your friends, your pets through the mud and show that you are unreliable, insane. Whatever they need to do to silence you.’” Perkins said that she felt trapped. “I was, like, ‘Right. O.K. So, we can’t go to police because it’s too late. We can’t go to Disney ’cause they don’t give a shit. So who do we tell? Where’s the grownup? Where’s the law?’” (Razi Mireskandari, the managing partner at Simons Muirhead & Burton, declined to comment on the negotiations or the final settlement, saying that the terms of the agreement barred him from discussing it.)

Perkins initially pushed back on accepting what she called “blood money,” saying she wanted a donation made to a charity for rape victims. Her attorneys told her that the

idea was a nonstarter. “I was a twenty-three- or twenty-four-year-old girl sitting in a room with often up to six men telling me I had no options,” she told me. (She did note that one of her own lawyers was a woman.) “That’s just downright wrong.”

In the end, the women’s attorneys agreed on the settlement of two hundred and fifty thousand pounds to be evenly split between the two former employees.

Unbeknownst to Perkins, the money came from Bob Weinstein’s personal bank account. While Bob Weinstein said that he had no knowledge of the purpose of the payments and has previously maintained that he and the rest of the board found the allegations against his brother to be an “utter surprise,” several former employees said that they found the idea that he lacked any knowledge of the misconduct implausible. “Bob may not have done the things, but he was complicit in covering it up for years,” one said. (Last month, *Variety* reported that a female showrunner who worked on the Weinstein Company drama “The Mist” accused Bob Weinstein of sexual harassment in 2016. He denied the claim.)

The agreement that Bob Weinstein underwrote with Perkins and the assistant required the women to have any of their lawyers, accountants, and therapists who might become aware of the settlement sign their own nondisclosure agreements. One clause required that they personally make calls “to tell people to shut up,” as Perkins put it. But Perkins also successfully demanded that provisions be added to the contract that she hoped would change Weinstein’s behavior. The agreement mandated the appointment of three “handlers,” one an attorney, to respond to sexual-harassment allegations at Miramax. Miramax was obligated to provide proof that Weinstein was receiving counselling for three years or “as long as his therapist deems necessary.” Perkins had to approve the therapist and attend the first session. The agreement also required Miramax to report Weinstein’s behavior to Disney and fire him if a subsequent sexual-harassment settlement was reached in the following two years.

But Miramax, Perkins said, “stalled and stalled and stalled.” The company implemented the human-resources changes, but other parts of the agreement were not enforced. She pressed for months, then gave up. “I was exhausted. I was humiliated. I couldn’t work in the industry in the U.K. because the stories that were going around about what had happened made it impossible,” she said. In the end, Perkins moved to Central America. “I’d had enough,” she said.

After Perkins decided to go public with her story, some law firms she approached for advice were reluctant to represent her, she told me. One said it worried that doing so would undermine confidence in its own nondisclosure agreements. “It appears fraternizing with me may put these other ‘big hitter’ law firms into a conflicted position,” she said. She has only been able to obtain a few pages of her own legal agreement. Both her former law firm and Weinstein’s continue to adhere to a stipulation that she never personally possess a full copy.

Weinstein’s agreements appear to have become more restrictive over time. Prior to his agreement with Perkins, Weinstein reached a hundred-thousand-dollar settlement with the actress Rose McGowan, who has publicly claimed that Weinstein raped her, in 1997, at the Sundance Film Festival. Notably, the agreement did not include a nondisclosure provision, but McGowan signed away her right to sue Weinstein. She said that she wanted to pursue charges at the time, but that her lawyer instead convinced her to sign the agreement. “That was very painful,” McGowan said. “I thought a hundred thousand dollars was a lot of money at the time, because I was a kid.”

**W**einstein also regularly used nondisclosure agreements in his business dealings. Early this year, in a story first reported by the *Times*, a dispute arose among members of the board of amfAR, a foundation focussed on AIDS, over allegations that Weinstein improperly used six hundred thousand dollars in proceeds from foundation fund-raising to underwrite his own theatrical productions. Weinstein offered the foundation a payout of a million dollars in exchange for every member of the board signing a restrictive nondisclosure agreement, which would ban members from speaking not only about the amfAR matter but also about Weinstein’s “personal” activities. In an e-mail, Kenneth Cole, the chair of the board, pressed the rest of the board members to sign, warning that they might be sued if they didn’t. (In an interview, Cole said that he viewed Weinstein’s directing of amfAR funds to a theatrical nonprofit “legitimate,” and that he encouraged others to sign the N.D.A., which he considered a “risk-free proposition,” after consulting an attorney.)

Weinstein’s employees were, and are, bound by confidentiality agreements included in their employment contracts with Miramax and the Weinstein Company. While nondisclosure agreements are a standard feature of employment contracts, the clauses in Weinstein’s included a special provision about information “concerning the personal, social or business activities” of “the co-Chairmen”—namely, Harvey and

Bob Weinstein. Estreicher, the expert on employment law, told me that the nondisclosure clause regarding the personal lives of both Weinstein brothers was unusual. “That’s not generally found, the personal conduct of an individual being part of a contract like that.”

Many employees I spoke with said that these contractual provisions made it impossible to talk about suspicious behavior they witnessed at the company. Irwin Reiter, who worked for Weinstein for nearly three decades and is currently the Weinstein Company’s executive vice president for accounting and financial reporting, had previously declined requests to participate in stories. “I hope there’s no reprisal,” he told me, referring to legal action against employees. He said that he was nevertheless going public because he felt the culture of silence at the company deserved further scrutiny. Weinstein, he told me, “was so dominant that I think a lot of people were afraid of him, afraid to confront him, or question him, and that was the environment.” Reiter also raised doubts about the fairness of lifetime nondisclosure agreements. “A forever N.D.A. should not be legal,” he told me. “People should not be made to live with that. He’s created so many victims that have been burdened for so many years, and it’s just not right.”

These contractual constraints are perfectly legal. Allred, the victim’s-rights attorney, said that courts usually enforce them and view efforts to break them as “buyer’s remorse.” But in recent weeks lawmakers and legal experts have called for reforms to this system. Estreicher has proposed that the Equal Employment Opportunity Commission, the government body that oversees workplace discrimination, track sexual-misconduct-related settlements and investigate employers who use them repeatedly. In addition to Congresswoman Jackie Speier’s legislation regarding congressional employees, state lawmakers in New York and California are pushing legislation to curtail the use of nondisclosure agreements in sexual-abuse cases. “These secret settlements perpetuate the problem. They allow rich men to continue to be sexual predators,” Connie Leyva, the California state senator who has announced legislation in that state, told me. “I hope that we can get this done in California, and that it will spread like wildfire around the country.”

Allred raised concerns about the potential reforms, which she feared could limit victims’ options. She noted that “anyone who agrees to enter into a settlement has a choice” and accepts both the costs and the—sometimes considerable—benefits. Good attorneys, she argued, explain the full implications of such agreements. “And then the client makes an informed choice.”

Gutierrez, Perkins, and other women who signed agreements with Weinstein told me that they felt their consent was far from informed. Gutierrez said that she wished she had been aware that Weinstein had faced similar allegations in the past. When, after the fact, she learned that his behavior with her was part of a pattern, she was filled with guilt. “I couldn’t even think of that person touching someone else,” she told me. “It made me have chills.” Gutierrez said that she wants to warn people of the risks of silence. “People need to really change right now,” she said. “To listen and speak. That was the worst thing—people not speaking.”

*Ronan Farrow, a television and print reporter, is the author of the upcoming book “War on Peace: The End of Diplomacy and the Decline of American Influence.” [Read more »](#)*

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## Video

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*Harvey Weinstein's Secret Settlements*

*Ronan Farrow discusses his investigation of the sexual-assault allegations against Harvey Weinstein.*

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