An Interview with Michael Kim

"Don't expect clients to praise you for having a clean kitchen."

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Michael Kim is the co-founder of Kobre & Kim, a global law firm—with offices in the United States, Asia, Europe, the Middle East, and the Caribbean—that focuses on disputes and investigations. Before starting the firm, Kim was an assistant U.S. attorney at the Department of Justice for the Southern District of New York, where he worked on white-collar criminal cases. One of his cases—the Sterling Foster scam—is purportedly the inspiration for the Ben Affleck movie *The Boiler Room*. (Spoiler alert: The FBI comes in at the end of the movie, before the prosecutors get involved. Don't see it to find out who plays Kim; he is not featured.)

Earlier in his career, Kim practiced at Davis Polk & Wardwell, and before that, he served as an infantry officer in the U.S. Army. Kobre & Kim, founded just 15 years ago, made its first appearance on the AmLaw 200 in 2017 and ranked among the largest-grossing firms in the country. *See* Passarella & Barker, *Hot Product*, Am. Law., June 2017. Working with his business partner, Steven Kobre, Kim has positioned the firm as one of the top go-to, high-stakes international litigation firms. *See* Parnell, *Steven Kobre and Michael Kim on Technology, Strategy, Luck and Running a Firm Like a Business*, Forbes, Oct. 3, 2017, https://www.forbes.com/sites/davidparnell/2017/10/03/steven-kobre-michael-kim-strategy-luck-running-firm-like-business/#558ada86a189.

The firm's unorthodox business model focuses on offering end users (Kim doesn't call them "clients") service products (not "practice areas"), creating a culture that emphasizes its products over its superstar lawyers while "staying within its lane" and avoiding repeat clients to minimize, if not eliminate, conflicts. Kim views his firm's services as specialized products that are scalable and that can be commoditized and sold in different parts of the world with uniformity and consistency.

Despite the firm's professional accolades, soaring revenues, and global success, Kim is worried about the growth, but not in the way we would think. Kim sees growth as a problem. For

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Kim, maintaining quality control and giving clients consistency in their experience with the firm takes precedence over growth. "Growth happens *despite* what we're trying to do," he says. *See* Passarella & Barker, *supra*.

Kim and I met at his firm's Manhattan offices. He was generous with his time and genuinely enthusiastic about discussing artificial intelligence, "market inefficiencies," "uniform user experience," "specialized service products," "conflict footprint," "margin discipline," and other worldly wonders that are at the heart of Kobre & Kim's business model.

AJ: Let's talk about the founding of Kobre & Kim. What led you to strike out on your own instead of joining big law?

MK: Steve and I were at the U.S. Attorney's Office in the Southern District of New York. Both of us wanted to start a business. It wasn't so much that we wanted to get away from big law, but we really were entrepreneurs at heart. We wanted to test our ideas about how the litigation industry could be improved. We saw inefficiencies in the marketplace and we believed that we could exploit them. One, for example, was the lack of a truly disciplined, litigation-only firm that was international and primarily geared toward what we call secondary distribution—that is, getting work from other service providers as opposed to the end users themselves.

AJ: Why would you call that an inefficiency?

MK: Because typically a referral is made from an existing law firm or a professional services provider of a smaller case, so economically they don't want to do it, or there's a conflict, or it involves a specialty that the referring firm doesn't have. By and large, those opportunities were being absorbed by small, local boutiques. But there also were cases that were very large, international, and with features that the primary law firm lacked the specialization to do or didn't have the geographic coverage to do or had a conflict with. In those situations, there was no international firm that was disciplined to absorb that type of referral and be trusted by other law firms to stay within its lane and be a team player. We wanted to create an AmLaw 100 firm that was international, but disciplined in working with other service providers, rather than pursuing broad, repeat relationships with the end users themselves. We saw that as a major inefficiency in the worldwide market for disputes and investigations.

AJ: What's wrong with pursuing broad, repeat relationships with the clients?

MK: It's a simple business concept that if you have a differentiated product, it is most efficiently distributed through distributors and resellers, rather than through trying to find end users directly. Yet, what happens is that lawyers who sell specialized litigation services often try to hunt for end users themselves and become very frustrated. In their earlier years, when they were small, they might have gotten referrals from other law firms or financial advisors, but because they never truly understood their business, when they ran across opportunities to get additional work from the same end user by doing something else, they took it.

Imagine, for example, that initially you were hired for a criminal case. Then the client needs employment services, so you start doing employment litigation for them. If you do that, you threaten your own distributor/seller relationships. You also start diluting your margins by selling products of different value to the buyer. Remember, anything that buyers buy repeatedly regresses to be essentially price-competitive.

These basic business concepts led us to see the type of law firm we wanted to create. But the two of us were coming from the government, had very little money, and were operating initially out of Steve's apartment with just our home computers. So it was more like a dream than a business plan. We had neither the money nor the business nor the connections to actually do it. We just had the concept.

AJ: Are disputes and investigations your firm's specialty?

MK: For us as a law firm to say that our specialty lies in disputes and investigations is like opening a restaurant and saying our specialty is food. Disputes and investigations are not products in themselves; they're product categories. A product is defined by how a *buyer* defines his need, not how a *producer* defines what it's making. The problem is that lawyers define themselves by the products they sell. "I am a criminal defense specialist," for example. But very few people want to buy criminal defense services. They want to buy "Not Guilty" or they want to buy "I'm not going to jail"; but they don't want to buy criminal defense. Criminal defense is a process. That's what *you're* making. It's not what *they're* buying.

When we say "disputes and investigations," that's just a broad description of our product categories. What we have within those categories are highly specific products. The best way to describe our focus is that all our products are clustered around international fraud or conflict cases. Everything from defending against government enforcement to investigating that alleged misconduct—the seizure of assets, recovering stolen proceeds, defending assets that have been taken during an alleged crime, using legal defenses to protect assets from being confiscated by government officials. They're basically all clustered around international fraud or misconduct.

AJ: How do you ensure that your firm remains conflict-free to capitalize on the opportunities as they arise?

MK: That actually is very hard to do in law firms because most law firms put individual lawyers under pressure to acquire revenue. If you do that, you're going to erode your ability to remain

conflict-free. We have two screening processes. First, when a potential matter comes in, we weigh the potential profitability versus the size of the conflict footprint. Let's say a very large bank wants us to do an engagement that would generate $300,000 in fees and perhaps $150,000 in profit, and that engagement is expected to last six months. We wouldn't take it. The lost profits of being unable to serve adversely against that big bank for six months is many multiples more than $150,000.

AJ: You're weighing the opportunity cost.

MK: Exactly. Many firms have a business model that's simply, "If we have empty offices and idle associates, then there isn't a piece of revenue we don't like." They'll engage with anybody who wants to give them money, because otherwise the associates and empty offices are all going to go to waste. What I'm talking about is margin discipline combined with conflict footprint discipline. We make conflict footprint a factor in calculating what kind of profitability we're going to get.

AJ: How do you do that?

MK: We begin by assessing how large is the conflict footprint. What are the probable types of matters we will *not* be able to get if we take this matter? The second process we have is that once we complete an engagement for an end user that was introduced to us by a distributor or reseller, we will not go and pitch that end user for new business. And if that end user contacts us for a second or subsequent case, we will get the permission of the original reseller or distributor before accepting the case, if at all possible.

AJ: It is one thing to start a firm on all these principles, but as you grow, how do you mollify the mutinous voices within the firm that might say, "This is crazy; we are turning business away!"?

MK: You have to reward people for doing what the firm wants them to do, which is to pursue one-off, highly profitable business that's within our specialty area, and not let people offer discounted services or chase repeat revenue at lower margins or go beyond our specialty areas just to get more revenue. The firm management has to be very much in the weeds with each partner's behavior to help them understand what is in the interest of the firm and what isn't, and to financially reward behavior that creates profit for the firm and reinforces our model. If you put people under pressure to generate a certain amount of revenue and you don't do anything else, you can't maintain that model.

It's also about giving our lawyers a lot of support to develop business and to help them succeed; to help them understand that forgoing certain types of opportunities is only going to strengthen their relationship with the referral sources and that forgoing things that are outside our specialty is going to strengthen their ability to go after the business that we really want. By definition, everybody here chose this model. We don't buy books of business. We hire technically superior lawyers. That's why it works. But it requires a huge amount of constant discipline and a lot of internal control systems to manage it.

We also differentiate ourselves by our products-based approach, which in turn is defined by what the buyer wants. So rather than saying "We practice in asset forfeiture," we say to the billionaires whose assets are being attacked by governments around the world that we have a specific set of legal strategies to remove the trustees that are inclined to violate their own fiduciary duties and hand over assets to a government without submitting it to judicial scrutiny. We say that we have a specific strategy—service product, if you will—to put trustees in place that will submit issues to the court for a decision, to see if the assets can be protected.

The firm management has to be very much in the weeds with each partner's behavior to help them understand what is in the interest of the firm and what isn't.

AJ: How is that different from marketing a particular end result to a potential client?

MK: It's the difference between telling people you're a dermatologist and saying, "I clear up skin." And it's crucial. Help buyers to find out how *they* define the solutions to their problems. That appears completely obvious because almost every product that we buy is based on product-based marketing.

AJ: Then why isn't that the case in the legal industry?

MK: Because law is one of the very few industries where there are legal barriers to people owning property. Those restrictions can cause distortions in the legal services marketplace. The other thing about a product-based approach is that a lot of lawyers market themselves by saying, "We're really good; we're better than other lawyers" or "We think about the clients' interests and put

them first." That's like marketing a restaurant by saying "Come on in; we have food and our kitchen is clean!"

When you walk into a restaurant, you're basically assuming that's the case. That's why you're actually willing to eat there. You would expect that, right? You would think that anyone who hires a law firm would want those lawyers to be competent and service-oriented. That's bare minimum.

A product-based approach gets away from lawyers marketing themselves by how *they* think about themselves. A lot of lawyers think, "I went to that law school and I have this résumé, so I'm better than other lawyers who don't have my credentials," and that, therefore, clients must think of which lawyer to hire based on the way that lawyers think of how impressive they are, that clients must care where their lawyer went to law school and what credentials their lawyer has.

Well, yes, they do, but only to the extent that they want to ensure that you're competent. They're not sitting there obsessed with whether you were the deputy chief of this or that or whether you went to Yale Law School or somewhere else. The only thing they really care about is solving their own problem. You're really just a tool to get it done. So don't tell clients to come praise you for having a clean kitchen. If you don't have one, you should just get out of the business.

The thing that the buyer is trying to buy is resolution of a particular situation. They're not buying an FCPA investigation.

AJ: Let's say you are trying to pitch your services to a client that is embroiled in a Foreign Corrupt Practices Act [FCPA] investigation. How does your pitch differ from the one typically made by other firms?

MK: Typically, law firms go to companies and tell them of all the things that they do. They say, "Look, we have our securities litigation department; we have our criminal defense department—look how impressive they are! This lawyer has all these incredible credentials. Very impressive. Everyone's so smart."

All the client hears is that every one of these law firms basically has exactly the same thing. The probability that any particular company would need a specialized service such as an FCPA matter is extremely small. So, by the time they actually need it, it might be three years after they met you. In the meantime, 10 other firms have come to tell them how wonderful they are on the very same basis. So, probably, the most recent person to tell them that gets the job. Or, when the crisis happens, the CEO just calls the lawyer they usually talk to, typically their chief M&A lawyer or another highly valued transactional advisor who deals with them all the time, and asks, "What should I do?" And that lawyer just gets one of their white-collar partners to come in. That's how business gets distributed a lot of the time.

For us, it's different. We don't have a transactional department. Nor do we have those high-level regular relationships with end users. Instead, we go to the law firms that have the relationships with a particular set of companies that operate in high-risk areas. They operate in Africa, the Middle East, Latin America. We don't know which company has an FCPA problem, but we know that this set of companies has a realistic chance of having an FCPA problem. We would go to the primary law firm and say, "We have ex-DOJ people in China, Korea, Hong Kong, Argentina, around the globe. We are completely conflict-free and all we do is investigations."

Those primary law firms are distributors. They are incentivized to try to introduce us because it prevents one of their competitors from getting in front of their client. They know we're going to do a competent job, and more importantly they know that we have no ties to other industry participants and that they are hiring a law firm that doesn't have any interest in competing with them for the end user's repeat business.

That's one example of how we're marketing our product. Remember, the thing that the buyer is trying to buy is resolution of a particular situation. They're not buying an FCPA investigation. Nobody wants to be investigated. What they want is the situation resolved. We're selling the resolution.

AJ: Given that Kobre & Kim operates in many different countries, how do you ensure that a client of yours will have the same uniform experience whether it goes to the firm's New York office or to the one in Hong Kong?

MK: This is one of our major areas of focus. We do a number of things to try to mimic institutions like the Four Seasons hotel company. If you walk into a Four Seasons hotel anywhere in the world and ask a random person who works there where the bathroom is, you will be taken directly to the bathroom and pointed toward the door. They'll never just point you in the general direction or fob you off on someone else to do it. Try it. Walk into any Four Seasons, anywhere in the world! It's because they were all centrally trained to respond to that inquiry in the same way.

We try to do that with our lawyers. We have a massive set of

best practices on how to react to different situations. We have an internal training and certification system so that if you are going to work on a client engagement, you have to be certified as knowing those best practices.

We also are investing in developing an artificial intelligence system that will help in detecting when to use one of our best practices. Say you're brought onto a case and it turns out that the co-counsel who selected you has made a terrible mistake that the client doesn't yet know about. That client needs to be told because the mistake needs to be corrected. But what is the most diplomatic way to make sure that the client's interests are served without embarrassing your co-counsel horribly? There are a lot of lessons learned about different ways of doing that, which we push out to the person facing the situation. Right now, we do it manually, but eventually we'll do it by our artificial intelligence system. The problem we're talking about is much more complex than "Where's the bathroom?" but it's the same principle.

AJ: One of the joys of practicing law is its creativity and the opportunity it offers for human ingenuity. Do you think that having such best practices would stifle creativity or discourage lawyers from coming up with innovative solutions to complex legal problems?

MK: That's a very good point. That's why we don't have best practices around the practice of law itself. The best practices are all about business issues, client relations issues, client communication issues, things of that sort, rather than how to practice law.

On how to practice law, we actually take the extreme opposite approach, which is to make it as creative as possible. What I want the client or adversary to feel when dealing with Kobre & Kim is that we're always doing something unexpected, always coming up with a new idea that was unexpected. That's the uniform experience I want them to have.

On the client relations end, I want them to experience predictability. On the legal end, I want them to experience unpredictability.

AJ: Peter Drucker famously said, "Culture eats strategy for breakfast." How do you institutionalize a culture of unpredictability?

MK: What we do, on all our cases, is to have the team meet once a month. We start with having the lowest-ranking member of the team criticize—in a constructive manner—how the case is being run and say if there's something that we should be doing that we're not doing or what could be our adversary's next possible move. Each person comes up with a new idea of how things could change.

Ultimately, the person in charge of the engagement has to make a decision, but people from outside the engagement listen in. Steve and I sometimes listen in; a person from a different team might listen in. We all try to assess and look for good ideas, so that people in charge of our teams don't feel that because he or she didn't come up with the idea, it should be squashed.

There's a lot of external transparency into that idea-generation process. And when ideas are adopted, we actually give cash prizes so that people are incentivized to brainstorm new ideas before coming to the meeting. But I actually agree with you about the legal work itself—I want that to be as free-flowing and creative as possible.

AJ: You mentioned artificial intelligence. Do you think that AI will dramatically change the practice of litigation?

MK: Yes. But it's going to take a lot longer than people think. Because of the lack of outside ownership of law firms, you don't have the best and smartest owners owning law firms. You only have lawyers owning law firms. What I've heard a lot of lawyers say is "Why should we adopt AI in any of the high-margin areas?" They understand that in the low-margin areas where the clients are exerting incredible price pressure and things are done on a fixed fee or on a budget, reducing the cost of production by having AI do legal research may increase margins.

But there are categories in law in which the client has no budget constraint, where it will pay whatever it's told to pay, because the value of a solution to a problem is far greater than anything the firm could charge on an hourly basis. Then lawyers typically say, "Why should I reduce the time it takes for something to get done when the client is willing to pay on an hourly basis and there's no fee cap?" That type of thinking inhibits AI from really taking hold and doing what it can do.

What the lawyers really should be asking themselves is *not* "Why should I do things faster, given that we charge by the hour and the client has a budget with no fee cap?" What lawyers should be thinking about instead is whether the client has a certain amount of money it will pay because of the value of the problem. Instead of charging by the hour, lawyers should just tell the client to pay that amount. By definition, the client will pay it because it's worth it to them.

That's true whenever you buy something. Take the cuff links you're wearing—say you paid $100 for them. You did that because those cuff links are worth more than $100 to you. Otherwise, it would be totally irrational for you to buy them. The same is true in law. Take for example a motion for summary disposition. Charging by the hour, it may end up being $200,000 or it may end up being $600,000. We don't know. But what if the client was willing to pay up to $600,000 because the client valued getting the case dismissed at far greater than $600,000. If the client is spending $600,000 by the hour, then the client values dismissal at more than $600,000. That law firm should think about saying to its client, "We will do it for $400,000, but if we win, you will pay us another million dollars."

AJ: You're talking about success-fee arrangements?

MK: Right. If you're specialized enough, no amount of tricky pricing is going to substitute for the fact that you're a commodity. If the client can substitute others for you, then you really can't have any kind of pricing leverage. Rather, the client actually must pursue you as a scarce resource, seeing that there are not substitutes for you. Once you're in that position, you can basically tell the client, "This is the value of the problem and this is the price of my solution." If it's worth it to them, the client will pay it.

In the meantime, what you can do is make as much profit as possible out of your pricing by reducing your cost of production. But you don't want to reduce it in a way that affects the quality because then it will affect the probability of the outcome and, therefore, the amount of money that you can get paid. You want to cut your costs in a way that doesn't affect quality, where the user experience and the outcome will be the same.

That's where I think AI will change the game. The fact that AI in law has not progressed as fast as in many other fields, again, comes down to the restrictions on law firm ownership, because if professional owners, like hedge funds, filled with very smart business-oriented people, could buy law firms, that is how they would think, that is how they would price, as opposed to lawyers, who for the most part are more interested in earning an income that's good enough and keeping the producers within the firm happy, rather than in maximizing financial returns for their business.

AJ: Now that ROSS AI software can do low-margin tasks such as legal research and document reviews, why would law firms want to invest in training young associates to do those tasks? And if firms don't offer those basic opportunities to young litigators, how can firms develop the next generation of litigators and trial lawyers?

MK: This is the same reason that, for example, the U.S. Army has a lot of soldiers who couldn't find their way from point A to point B in a forest if we took away their GPS. I used to be in the army. We used to train with a lensatic compass—the type with the needle that spins around and points north. Try using it to figure out where you are on a map. It's very ineffective, compared to GPS. You get lost a lot because you have to make a lot of judgment calls about where you are. It's a lot more prone to error than GPS. But once you just give GPS to everyone instead, when the GPS fails you have a bunch of people unable to navigate themselves through the woods.

That's what's happening in law. The AI for document review and legal research works very well. In one sense, because it works really well, one can say, "Well, then, why should we have lawyers for those tasks?"

Of course, there are a lot of things that lawyers don't do today that used to be part of a lawyer's function. For example, Shepardization. It was a major task of a young lawyer. It would take me days to figure out if a brief had all the correct law. Now a program does that and does it quite effectively. I think a lot of things that we still define as a lawyer's function are going to be mined away and permanently moved out of the scope of what a lawyer is.

There are certain tasks—the process of analyzing cases to see the ambiguities or the nuances in the law, for example, and learning how to exploit them—that firms are going to have to try to invest in. Also, a lot of lawyers hired today cannot do a jury trial. It used to be, not long ago, that most lawyers in litigation at least got to do some jury trials when they were young. That's simply not true anymore.

AJ: How do you grapple with that problem at your firm?

MK: We have among the highest concentration of former DOJ people in the marketplace. We have a core amount of trial experience in the firm. What we have tried to do includes getting people certified within the firm to do witness examinations to a certain quality. We do mock exercises within the firm, and we have a pro bono program where people can get experience and be observed and acknowledged as being good enough if they're in a client matter. Those are some of the things that we try to do. Industry-wide, the number of jury trials has plummeted since the sentencing guidelines came out in 1986.

But no matter what we do at Kobre & Kim, we're not able to change that industry-wide phenomenon. Fewer and fewer lawyers have actual trial experience. That's really unfortunate. A lawyer who hasn't experienced trial is a little bit like a soldier who hasn't actually been to battle. If you are trying to prepare for a war, you can achieve only a certain quality if you haven't done the real thing. The challenges of training and trial experience are profession-wide issues. No individual firm is able to do enough or has the right incentives to fix the problem.

AJ: In your mind, is there a difference between owning and running a law practice versus owning and running a business?

MK: Most of the time, law firms aggrandize particular lawyers and sell them to clients with various other lawyers supporting that effort. That model is scalable only to a certain point. Even then, you can sell only a certain volume of it. If the product were "Hire me—Michael Kim—because I'm good at X," there's a limited supply of Michael Kim. That's the key difference between running a law practice and running a business—a *practice* is focused on individual lawyers and their quality, whereas the *business* of law is focused on the fact that all the lawyers must have the right level of quality, but what the client is buying is the specialism of that law firm that other law firms don't have.

We do have lawyers here whom clients seek out because they think those lawyers have special abilities that others don't have.

But that's not a scalable product. It's just something that happens along the way, and it's not part of our strategy. Our strategy is to sell specialized products.

AJ: Do you then discourage having superstar lawyers at Kobre & Kim to avoid aggrandizing particular individuals?

MK: Yes and no. There are a number of lawyers who are much more skilled than others at particular things. One has to acknowledge that that is what creates client valuation and really help support it. But on the flip side, it's not our firm's strategy to try to grow the reputations of our individual lawyers. Our firm's strategy is to come up with new products that end users want and to sell those products to maximize profits. What that means is that—while along the way there are superstars at Kobre & Kim and we support them—the primary strategy is on the firm's products and having the superstars support the products. Not the other way around.

I have completely let go of the concept of eating or sleeping at particular times and just do it whenever I am able to.

AJ: How do you get your lawyers to practice law and the business professionals to run the firm?

MK: It's immensely difficult if you're not sure what the goal of your organization is. In many law firms, if you strip it down, their goal is not to maximize profit, but to keep the rainmakers at the firm and not have them leave. Of course, the two are closely related. The reason the rainmakers are retained is because those firms think that leads to higher profit. But there are many paths to making profits. Keeping rainmakers in-house is only one of them.

And that path has its own costs. If you have an organization in which the primary goal is to keep the rainmakers happy, then you won't be able to have a firm that truly is professionally managed. Sometimes decisions will be made that are very financially and business-savvy, but other times they won't be. Just because some lawyers are very good at producing legal work doesn't mean they're good at running law businesses. In fact, the two are usually opposite. Many good lawyers are terrible business people. Not only are they bad at it—they actually mistakenly believe that they know everything, so they refuse to listen to other people.

What we've endeavored to do here is *not* to try to retain rainmakers. That's not our goal because fundamentally no one here has an open business in a traditional sense. People here are good technical lawyers who excel at what they do. They don't really feel like they need to decide what kind of furniture an office should have or what kind of accounting software the firm should use. To them, that is not really a part of what they want. And as the firm, what *we* really want is for the firm's performance to be maximized.

AJ: Last question: What's it like to be in the shoes of Michael Kim? How do you manage your time among your firm's many global offices?

MK: I'm in Asia about one to two weeks a month. I'm in Europe or Latin America quite often as well. But I actually go wherever I'm needed. I don't really regard myself as practicing law out of any one of our offices. I'm usually on the road quite a bit.

Many years ago, I read about this primitive tribe discovered in the Amazon, one of those tribes that have not had any human contact for a millennium. The unusual thing about this tribe was that it had no sense of communal meal times or sleep times. In most societies, people eat together or there's a time when most everyone goes to sleep, but this tribe had no concept like that; so the people just ate whenever they were hungry, whether by themselves or in groups, and if people were tired, they'd just flop over and go to sleep, at any time in the 24-hour cycle.

I've become like that. I have completely let go of the concept of eating or sleeping at particular times and just do it whenever I am able to. ■

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