The Value of Legal Astuteness

I'm not sure how, but I recently came across this interesting article by Harvard's Constance Bagley – “Winning Legally - The Value of Legal Astuteness”:

http://cbagleyhbs.edu.tripod.com/cases/winninglegallyamr.pdf

My take-away quotes, especially for in-house counsel, are:

- “The effective management of the legal dimensions of business is based on socially complex relations between counsel and the non-lawyer managers in a firm and is context specific. Like other dynamic capabilities legal astuteness is arguably idiosyncratic to individual firms in its details and path dependent in its emergence”.

- “Law is not an exact science—legal rules are not applied formulaically. Seemingly minor changes in facts can result in dramatically different legal outcomes. Often, there is no clear precedent to serve as a guide. Dealing effectively with the uncertainties inherent in many decisions having legal aspects requires the exercise of informed judgment. Legally astute managers … appreciate the importance of selecting a true counsellor at law who combines knowledge of the black-letter law with judgment and wisdom …. wisdom is more than technical skill; it is the capacity to offer deliberative advice—that is, to go beyond merely supplying whatever means are needed to achieve the client's goals and to deliberate with the client about the wisdom of the client's ends. Certain courses of action may be legal but not wise”. 
“Legally astute Top Management Teams (TMTs) understand that every legal dispute is a **business problem requiring a business solution**”.

Bagley concludes:

“The categorization of an issue as an opportunity or a threat can affect the decision maker’s subsequent cognitions, motivations, level of risk taking, involvement, and commitment. Legally astute management teams practice strategic compliance management. They view the cost of complying with government regulations as an investment, not an expense. Instead of just complying with the letter of the law, they seek out and embrace operational changes that will enable them to convert regulatory constraints into innovation opportunities”.

So effective in-house counsel will have an intimate understanding of their company and its commercial drivers (including its regulatory and social mandates); recognise that legal “problems” ultimately involve business solutions; and ensure that their relevant senior executives are legally astute so that they can “use the law effectively [and legally] to protect, realise and leverage the value of the [company’s] resources”.

Some food for thought when discussing the true value of in-house legal counsel.

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