

Podcast with Jerry Buckley and Sasha Leonhardt of Buckley LLP

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- Jo Ann: [00:01](#) We have a fantastic show today because my guests are Jerry Buckley and Sasha Leonhardt from Buckley LLP and we are going to talk about a really interesting study that they have prepared called financial regulator's dilemma, administrative and regulatory hurdles to innovation. I want to thank you both for being our guests today.
- Jerry Buckley: [00:23](#) Our pleasure. Thank you.
- Jo Ann: [00:26](#) Okay. So I want to start by asking you to introduce yourselves. Jerry, you and I have known each other for many, many decades since we were young. We're not old now exactly, but we're not young either. Talk about your background a little bit.
- Jerry Buckley: [00:44](#) So when Jo Ann and I first met, we were both working on the staff of the United States Senate banking committee. I was working for Senator Brooke, who was the ranking Republican member, so I was the minority staff director. Jo Ann was working for Senator Proxmire and that was the era when many of the consumer financial services laws were passed. The ones that we all live with today. After my experience on the banking committee, I've entered private practice-
- Jo Ann: [01:10](#) Before you move on from that, I'll just say we shared a space, and we had a common wall in our cubicle and so we could hear each other, everything each other said, all day long even though we were.
- Jerry Buckley: [01:22](#) It was very bipartisan. We wouldn't have any secrets from each other.
- Jo Ann: [01:26](#) That's for sure. But go ahead.
- Jerry Buckley: [01:30](#) It was great to have Jo Ann as a neighbor. We became good friends and have been ever since. But then I went into private law practice and fast forward today we have a law firm which is called Buckley LLP because I guess I'm the oldest partner in the firm. But it's a firm of about 140 lawyers based here in

Washington with offices in Los Angeles, San Francisco, New York, Chicago, and London. And we focus primarily on retail financial services issues. The reason we did this project was because it was really Jo Ann's idea. Jo Ann thought it would be good to try to get the inside view from the regulators as to why innovation in regulation was not moving as quickly as it might. And so the Omidyar Foundation, which is affiliated with AIR, Jo Ann's organization, retained us on a pro bono basis to help interview the heads of innovation and other senior leaders at the regulatory agencies. And I think really it's because of the confidence that those folks have in Jo Ann that we were able to have these interviews, which it was agreed would be on a non attribution basis.

- Jo Ann: [02:59](#) So before we go into talking about the report, [crosstalk 00:03:02] Sasha to introduce himself. Sasha.
- Sasha Leonhardt: [03:05](#) Thank you, Jo Ann. Although my resume is not nearly as good as Jerry's, I've been at Buckley for almost 10 years now. Currently I'm a counsel in our DC office. My day to day isn't necessarily this area of practice. Rather, I spend most of my time representing clients, including banks, credit unions, financial institutions before and with the regulators that we spoke to in this report.
- Jo Ann: [03:41](#) So that's great.
- Jerry Buckley: [03:43](#) May I add one more thing about Sasha?
- Jo Ann: [03:44](#) Yes, please.
- Jerry Buckley: [03:46](#) His writing skills are well-deserved and he did a lot of the writing on this report. He was the press secretary to Governor O'Malley, the governor who ran for president or the governor of Maryland. So he has a good public policy experience as well as a legal.
- Jo Ann: [04:04](#) It's a beautifully written report. It's amazingly readable even for people who are not immersed in these topics. Well tell our listeners, this might sound like it's going to be a dry and boring legal conversation, but it's going to be fascinating. So the Genesis of this was that all of our interviews for this were off the record except I do cite one person who gave me the original idea and that was Daniel [Gorfine 00:04:35] when he was the head of lab CFTC at the Commodity Futures Trading Commission. And he and I were having lunch a long time ago, a couple of years ago maybe now. And he started talking about

the difficulties of being innovative inside the federal government.

Jo Ann: [04:53](#) At this point today, all of our federal financial regulatory agencies have some form of an innovation initiative underway looking at FinTech Innovation in the marketplace. They also all have RegTech or Supervisory Tech, SupTech, initiatives in some form as well. And we started hearing more and more from people that their hands were tied and trying to do things that seem like common sense ways of learning about innovation, trying innovation because they were running into rules, and processes, and requirements that binds the federal government. So that as you say, Jerry gave me the idea of asking you who had been offering to be helpful to the RegTech innovation work we were doing if you all would be willing to do a pro bono project on this. And as you say you did it for the Omidyar Network's Foundation and their affiliate Flourish Ventures is the funder of our Alliance for Innovative Regulation or AIR, my nonprofit.

Jo Ann: [06:06](#) So with that as the background, we set out to just listen off the record to the people who are trying to speed things up, make things happen in new ways inside the federal agencies without attribution and let them tell us. And that's what this report is. It's there ... But they reported to us, supplemented by the legal analysis that you all did on the laws and procedures that were citing. So with that as background, what would you like to add on what our methodology was?

Jerry Buckley: [06:44](#) Well, it was, as you know, Jo Ann, a process of achieving the confidence of those people that we interviewed, so they could be candid and tell us what was on their mind without fear of direct attribution. Not that they were fearful of that, but it would not have been conducive to a candid discussion. And we met with, I can't remember whether it's, 10, interviewed some in person and some by phone. The interviews would take an hour or more. And then after we had summarized their thoughts, many of which were parallel, we went back and did the legal research, the laws which they cited as being issues. And then wrote up their thoughts in gross to get across their ... they brought together the different threats that we were given and attach the [inaudible 00:07:53] that and produce the report. I want to emphasize one thing and that is it's administrative and regulatory hurdles to innovation. We didn't say there were barriers, and so we're hoping that this report, having identified the hurdles will help the agencies surmount those hurdles and move on to progress.

Jo Ann: [08:14](#) Yeah, well said. And another thing we want to emphasize is as we start going into what are these hurdles, it's important to note that they all are there for a good reason. There are important principles embodied in many of these areas to assure no conflicts of interest, and transparency in government, and good intentions such as reducing paperwork, for example. So we are very respectful of that, but at the same time they were all written long before the digital age. And today we know that our regulatory bodies need to speed up. They need to be able to move faster. They need to be able to try things. So how can we balance the important goals with working in a digital era environment?

Jerry Buckley: [09:03](#) And I think it's important to emphasize, although it's certainly obvious, that these are not our views. These are not things that either our law firm or AIR is putting forward as things that need to be changed. These are views expressed to us by those who are on the front lines within the regulatory agencies trying to bring about change. And as you say, Jo Ann, these statutes and behaviors are not things that have any bad motivation in the first instance. They actually are many good government ideas, but they do need to be, it appears, updated and streamlined.

Jo Ann: [09:46](#) Yeah. So with that, tell us about some of the things that you found.

Jerry Buckley: [09:52](#) Well, I'll start off with one, which is sort of the granddaddy of federal regulation, The Federal Administrative Procedure Act, which arose during the 1940s, has a purpose of gathering public opinion before promulgation of regulations. So Congress of course gathers public opinion through the hearing process, passes legislation, and then when legislation is implemented, the agencies refining and clarifying the legislation as it's to be implemented, will put out regulations. We found that this process involved proposal of regulations, sometimes an advanced rulemaking notice, then proposal of regulations, then the comments.

Jo Ann: [10:51](#) And sometimes that's the brief up, which stands for what small business kind of a level something or other to check impact on small business. It was just yet another step in that [crosstalk 00:11:02]. Yeah.

Jerry Buckley: [11:02](#) That's right. There are many accretions to the original statute, which we found resulted in, according to the people we interviewed, sometimes a year or more between the initial thought and getting to a regulation. And sometimes even longer, sometimes 18 months. And lots of effort. And that was

they found a cause of discouragement from making new proposals or changing regulations because it was just such a daunting process. So that's something that has to be refined and speeded up. We've had a few thoughts about how that might be done, but let's talk first about what they told us and then we can turn later to some ideas about things that we think might be done.

Jo Ann: [11:55](#)

Yeah, Sasha, do you want to add anything on that.

Sasha Leonhardt: [11:58](#)

No, I think Jerry's got it quite right. And one of the themes we heard time and again was not only the time and effort required to put rules into place in the first instance, but that there often wasn't data to evaluate rules that had been in place. There have been rules and regulations in the financial sphere for decades. And in some instances, regulators were telling us that they didn't feel there was enough data on hand to show the weaknesses, some of the concerns in a FinTech space that merited devoting the time, and effort, and significant resources throughout the agency to a further revision and a rule writing on that.

Jerry Buckley: [12:33](#)

So some among the thoughts that were advanced were the idea of a sunset on regulations. Now that has pluses and minuses. Or a requirement of regular reviews built into the regulations so that you can't just say, "Oh, that's too daunting. I'm not going to do it." Because you're required to do a review. And there are other ideas that they have that might be helpful, but it's an area that clearly needs a lot of attention.

Jo Ann: [13:07](#)

I should say we did a briefing on this report on Capitol Hill last month and had a wonderful turnout for it. It was right in the middle of the impeachment proceedings actually. But-

Jerry Buckley: [13:21](#)

People were fleeing from that to come to your [crosstalk 00:13:23].

Jo Ann: [13:23](#)

[crosstalk 00:13:23] our turnout. And then I've had tremendous input on it already from policy makers, including very thoughtful comments on issues like how would a sunset work and so on. And we do want to encourage listeners to be thinking about these questions, especially the policymakers. And on the APA, the Administrative Procedures Act, if we can trust the process you're describing to how tech innovation works ... the secret to technology innovation is it's continuous. If Apple is going to put out an update to the iPhone, they just send it to our phone, right? Or we just plug the phone in and we've got the iOS update. The technology is moving so fast in the financial sphere

and we're going to have to figure out, I think we are going to need to figure out, how regulation can begin to move toward an easy with appropriate input and all of it, but an easy frequent way of keeping up with the pace of change.

Jerry Buckley: [14:35](#) Not to divert too much from the catalog of issues we found, but your observation does bring to mind the fact that the Financial Conduct Authority in the United Kingdom, Singapore authorities, and others have found ways to speed up the process and there is a lot of learning that we can do from them. Yes, we have our own set of procedures and protections built in here, but we could look and see, is all of that needed if others are able to solve the problem other ways. And I think it's important to realize, and this is something that Jo Ann and I have talked about, that the strength of our financial system is really one of the strategic strengths of the nation. That our ability to be a leader in finance is almost as important as our ability to have a strong Defense Department. And letting us fall behind in this area because we have incrustations of procedures and policies that are slowing us up, will really not be helpful to the national security.

Jerry Buckley: [15:51](#) So I don't want to make too big an issue of it, but I think it is very important that we realize this is not just, "Oh, wouldn't it be nice if we could do things faster?" This is, the rest of the world is moving ahead and we have to be ready to do so too.

Jo Ann: [16:06](#) Yeah, I think that's so well taken. And we do have a particularly complex system here because we have multiple federal regulatory agencies as well as all the States. The things the agencies would like to do, maybe we should just put some of this out in case it's not obvious, some of it is they'd like to be able to affect change more rapidly. They would like to be able to talk and confer easily with people and not be too bound by formal channels that are difficult to just ... in other countries, regulators and the industry sit down and brainstorm together and it's hard for our leaders to do that.

Jerry Buckley: [16:51](#) So one of the issues we did identify Jo Ann, as you know, is the Federal Advisory Committee Act. I admitted in our ... FACA as it's called. I admitted in our meeting at the Rayburn Building where I worked in the earliest part of my career, even before I met Jo Ann. I did the primary staff work on the Federal Advisory Committee Act. It's an example as in the statutes that are passed in the Senate of not understanding how much impact those words would have as they are embraced by the process and embellished by the OMB and embellished by others. But as it turns out, one of the things that was identified was that the

Federal Advisory Committee Act and all the limitations on how you can convene advisers is acting as a hurdle to getting advice. So I think that's something we really do have to look at. It is an issue.

Jo Ann: [17:52](#)

Yeah. Sasha, do you want to amplify that?

Sasha Leonhardt: [17:54](#)

Well, actually I want to talk about a different area, which is the Paperwork Reduction Act, which we're talking about FinTech. We live in a digital age where paper is less and less relevant, but the Paperwork Reduction Act is being applied in the digital space. And I think it's really slowing down the ability of agencies to gain information. Under the PRA if a government agency attempts to gather information from 10 or more individuals, it must go through a very complicated process of justifying its collection of that information, getting comments of it, getting approval from the Office of Management and Budget. Only then can it finally request this information. At this point, several weeks, several months could have passed. We've heard of six months to a year passing between wanting to obtain information and an agency being able to go out and get it. And this creates obviously a problem both in terms of getting real time information, in terms of dissuading agencies, and it also seems to be a misalignment of priorities.

Sasha Leonhardt: [18:49](#)

In particular, the Paperwork Reduction Act applies to voluntary submissions of information. So if a member of a federal agency wanted to request information voluntarily from 15 individuals in the public or 15 companies, even something as simple as that would have to go through this complicated process. And we're hearing time and again, just as Jerry was talking about, obtaining data to justify moving forward with innovation, that this too is another way that is perhaps unintended ways, but nevertheless handicapping the ability to move forward.

Jerry Buckley: [19:21](#)

So as you've indicated before, the digital age is one in which things are moving along at a certain speed. And if the ability to have conversations with people under the Advisory Committee Act or the ability to get data from people regarding the way financial instruments are performing and so forth with the Paperwork Reduction Act standing in the way, there's just a limit which had its good motivations. But there's a limit on the ability to actually gather the information in a timely way because by the time we comply with the Paperwork Reduction Act and all its iterations, the data is no longer relevant. So that's the type of thing that we really do have to come to grips with.

Jo Ann: [20:20](#) And we heard from quite a few regulators that those two laws in particular are leaving them. It's hard for them to get clear sight into what's going on. They need input in this highly dynamic environment. We've got exponential rates of change in the tech world and linear change in the regulatory world, so the gap is widening between the two. And I think another thing we heard, Sasha, was that the Paperwork Reduction Act kicks in after you request 10. So therefore there's a lot of decisions being shaped by getting input from 10 entities where we might get better results if we were able to, as you say, on a voluntary basis get more input.

Sasha Leonhardt: [21:11](#) No, exactly right. I think, we're talking to a FinTech audience and a lot of tech is based upon getting a lot of data and processing and analyzing it. It's the same way that the industry is moving forward, but we're seeing some in the government telling us that they're trying to limit their acceptance of information at any one time just so they can comply with these strictures and get things done in what they think is a meaningful speed.

Jo Ann: [21:34](#) And as you said, it can dissuade them from even trying because it's such a burdensome undertaking to try.

Jerry Buckley: [21:40](#) And even in the area of acquisition, and I think Sasha it would be good if you spoke to that as well. The government restrictions and how we can go about acquiring the tools that you need to do the analytics-

Jo Ann: [21:59](#) Yeah, before you speak to that Sasha, another thing that these agencies want to be able to do is to pilot test technology for themselves, get their hands on it, try it out. And we did hear some catch 22 type scenarios where it's very difficult for them under the procurement procedures they have to follow to be able to do that.

Sasha Leonhardt: [22:21](#) Exactly right. So there's two federal laws that kind of are working at cross purposes here. The Antideficiency Act and the Federal Acquisition Regulations.

Jo Ann: [22:31](#) And how old is the Antideficiency Act, you recall?

Sasha Leonhardt: [22:32](#) Oh, it's since 1870.

Jo Ann: [22:34](#) There we go.

Sasha Leonhardt: [22:36](#) Yeah, and-

Jerry Buckley: [22:36](#) That was when the digital age was young.

Sasha Leonhardt: [22:41](#) No, so the Antideficiency Act was ... and I don't think a history lesson is always helpful, but here I think it's just so poignant. It was created to keep the executive branch of the government from incurring what are called moral obligations. Essentially obtaining free resources and then putting an obligation upon Congress to later allocate funds to pay for them. Congress retains the power of the purse, so they passed the Antideficiency Act to make sure that they in fact retain that authority. And while helpful at the time, we find ourselves now in a position where there are criminal penalties for accepting free goods or services if you are a member of the federal government. And there's a lot of concern.

Sasha Leonhardt: [23:22](#) And I think rightfully so in many instances, but as you were saying, Jo Ann, if you want to pilot test a program, you have to go through a full acquisition for that. And that can be a timely process and involves bids, and and competitive analysis, and putting this out in the public register. And so the entire process can take a year or more for a relatively small acquisition to do a pilot test. And at that point, as we were saying, technology has moved on and left it behind.

Jerry Buckley: [23:55](#) Now the innovation heads that we spoke to obviously have to turn to the legal advisers within their agency. And it is a question of interpretation. We did see there was some more liberal willingness to go along with some changes among some of the general counsel, but others had a more conservative view. Jo Ann and I talked a little earlier about the fact that it seems like the Defense Department has found ways to resolve some of these issues and obviously is able to get some pretty advanced technology available for review and get it into operation. So we think maybe there would be some benefit, this is beyond the scope of this project, in creating some lines of communication between the Defense Department and some of our financial regulatory agencies and their legal advisors.

Sasha Leonhardt: [24:54](#) Right. And the Defense Department is in a unique position because it has what's called other transaction authorities, which are created by Congress and exempted from this. Obviously, DOD has a different mandate than the financial regulators, and therefore it has a flexibility that we don't generally see on the financial regulatory side. There also, we know some financial regulators that although not bound by these laws formerly as a legal matter, have in fact adopted them as policies, so they're on par in protecting public funds. So even though there is no mandate to deal with ... they're nevertheless trying to go above

and beyond which, while helpful, is creating many of the same concerns that we're seeing at the agencies that are bound by these two laws.

Jo Ann: [25:35](#) Yeah. One agency said to us that his organization is not covered by the federal procurement rules from GSA, but that if they don't follow them, their inspector general will criticize them for not following best practice. So they do so voluntarily. So I really want to put a punctuation mark on this one because we had at least one person say to us that they need to pilot test. I mean, people have to be able to test. You can't innovate unless you can try things. That's the nature of innovation. And people would say to us, "We can't buy it because it would require this whole full blown procurement process." And we all there trying to test it out. We don't want to buy it. We don't want to buy it for our whole agency. We want to test it, but nor can we take it for free. And so we can't test. We're stuck. And surely there's got to be a way to enable for R&D type purposes to have some opportunity for a certain amount of testing with whatever it may be, some disclosure, some transparency around it.

Jo Ann: [26:49](#) And there have been bills on the Hill for both the CFTC and FinCEN to give them the opportunity to have some leeway relating to the Antideficiency Act, I believe. But neither has made much progress at that I know of. So what else did we find?

Jerry Buckley: [27:13](#) Well, one we were not looking for, but bubbled up anyway was the question of workplace culture and hiring. And as you know, in this area, data scientists are in high demand. Many of them can command very large compensation in the private sector, but some are certainly willing to be engaged by the federal government for many reasons, whether their patriotism or the interest in the work or whatever. And we found that ... we were told that the hiring process and the personnel process once they were hired were acting as hurdles as well, various preferences that must be considered. And the process of reviewing people made it burdensome to hire the best minds that they could get. And then once hired, they also had the problem of, well, how do we place them within the agency in a way where they can do the most good and have cross-departmental functions.

Jerry Buckley: [28:29](#) And that also seems to be a burden as we're told. We also heard, and this is probably not meant to be critical of federal personnel, but the fact is that the financial regulators were criticized because they did not identify the causes of the financial crisis before it happened. They were called up to

Capitol Hill and put through their paces. And what happens in that situation is that the examination staff and the supervisors who are the bank supervisors who are responsible, obviously decided to up their game. But that is to go and find those problems, root out those problems that might cause a problem in the future now and when the focus is on rooting out problems rather than creating opportunities for the future because you don't get any credit for creating opportunities for the future. But if you fail to root out a problem, you will get blame.

Jerry Buckley: [29:45](#) That whole mindset was identified as a problem. And that is something that clearly has to be resolved by leadership at the agencies. And I think that this is happening, but this certainly reinforces coming up from the bottom to them, the importance of their providing leadership, saying, "Innovation is where we must be." Referencing back to the earlier comments about how if we don't as a country advance in this area at least as fast or faster than others, we'll lose our edge. So that has to be something that is articulated regularly and throughout the agency staff and given as a direction to those that lead supervision.

Jo Ann: [30:34](#) Yeah. Our regular listeners have heard me say many times, I think the regulators have the hardest job in this whole innovation landscape. As you just said, Jerry, they have to prevent harm, but also enable opportunity out of innovation and they're very often intertwined. The good and the bad with innovation, it's very hard to do that. And these agencies were intentionally designed to be prudent and careful.

Jerry Buckley: [31:09](#) Well, they're called the prudential regulators.

Jo Ann: [31:09](#) [crosstalk 00:31:09] is why they're called prudential regulators. Exactly. So it's not a criticism of them, it's just thinking about how can we keep those roots that they are so strong in, but then help them also move into this more nimble environment in a way that's going to work for them. I'm a former deputy controller of the currency myself as our regular listeners know. So I know they have a tough job. Before we leave the point that you made on hiring, I'm going to link in the show to a couple of shows we've done with the agencies.

Jo Ann: [31:50](#) We did two with the CFTC, one with Daniel Gorfine, whom I mentioned before and actually two with the former chairman, Chris [Jen Carlo 00:31:59]. And they talked about their success in bringing data science talent into their agency in a big way. And there's a tremendous hurdle to make people believe that

the jobs are going to be interesting and meaningful. But once you start to get that flowing ... and we'll also link in the notes to my recent episodes with the chairman of the FTIC and the controller of the currency. They are both working on the same kinds of recruiting goals. And if we look around the world to the Financial Conduct Authority, we keep mentioning in the UK, they've got now a 200 person innovation function and about half of those are data scientists. That's going to be the future of regulation is to have people who can use the explosion of data we have today to find the patterns of risk as well as opportunity. What else should we talk about?

Sasha Leonhardt:

[32:58](#)

To build on what Jerry said about hiring and culture, we had some really interesting ideas from people we spoke to about different ways to address the culture, some forward thoughts on how to bring people in and how to make sure that the right people get connected to the right work. And I think it's helpful just to share them because to show that people within the agency themselves are thinking about these problems daily and trying to resolve them themselves. One idea was doing rotations into government service from the private sector for a small period of time, but bring in that expertise from the private sector to the public and at the same time teach those in the private sector what their counterparts in the regulatory agencies are doing from the ground up. Similarly, rotations within and among different government agencies.

Sasha Leonhardt:

[33:43](#)

There was a concern that people sometimes get siloed in their career being asked to do one thing and while they become absolute experts in that area, sharing that knowledge with others in the agency and with other agencies would be helpful for everyone involved. Similarly, ensuring that agency supervisory culture, as Jerry said, rewards staff for finding problems and for solving them - more of a cooperative model of regulation where they're not only finding issues, but helping the institutions identify solutions. And so I thought those were just some really interesting ideas we heard from people.

Jo Ann:

[34:20](#)

I know we had some feedback on ... So another thing that these regulators want to be able to do, some of them, is run innovation labs, sometimes called sandboxes, greenhouses, areas where they can take a close look at innovation that's coming in from the private sector, and vetted, and give feedback and so on. And I know we did hear a little input on that regarding protecting intellectual property. Do you want to speak to that?

Jerry Buckley: [35:15](#) So yes, we did hear that the Freedom of Information Act was an issue. Again, that law originated in the 1970s. And I was not the staff around that, but I was present when it came out of the House government operations committee and was designed clearly in an era of good government to shine the sunshine on what was happening inside the government. So when people submit their information to the government to be used for the purpose of analytics, they look for protection of their intellectual property. And that is supposed to be granted through FOIA.

Jerry Buckley: [36:05](#) There are provisions and Sasha may cite the specific provisions, but there are provisions to protect that intellectual property. The problem is there it's been weaponized and competitors are going in with their attorneys trying to get access to that information and sometimes they're successful. Those successes have made people reluctant to submit their intellectual property, their secret sauce, their black box for analysis by federal regulators for fear that it will later be discovered and given out to their competitors. And you might even get the firmest promise from the current incumbent in that agency only to, a few years later when there's another incumbent, have that change. So that is the concern that was expressed. The solutions I guess more ironclad protections for this property. We might be able to create more rights in those that have submitted it to challenge and deny those seeking the information, the access to it.

Jerry Buckley: [37:33](#) But it is a problem. And as you know, much of the technology that's being developed is extremely valuable and not something that should be available to competitors. On the other hand, sometimes those who are concerned about the effects of these technologies, people who may be concerned about fair lending issues or discrimination, they may say, "Well, I have to have access to that in order to show that it's not having a fair impact." So there's going to be a tension here and something we're going to have to work through.

Sasha Leonhardt: [38:16](#) Yeah. And regulators find themselves as the arbiter of this tension, but a lot of this is brought on just because of the way that the Freedom of Information Act was written. It is a congressional statute. Those exemptions are written in the US code. So the regulators feel that they have little leeway to issue their own guidance around them. While the agencies have published their own rules implementing it, in most instances the rules hue very closely to the statutory text. And just to add to the uncertainty, not only do we have changes in administration, beauty being in the eye of the beholder so to speak, but also

different judges hear these when there's a challenge to whether or not information is released. So if you have something that is your silver bullet at a company, are you really willing to put it out there and risk that on the off chance that it could be released inadvertently or by a misjudgment by a regulator or a court?

Sasha Leonhardt: [39:09](#) It's a tough call to make. And we were hearing from regulators that this has a significant chilling effect on keeping them from getting the best and the brightest to contribute to these sort of sandboxes competitions.

Jo Ann: [39:22](#) Yeah. There's a lot more in the report and there are lots of stories and examples that I think kind of bring a lot of this to life. We will link to the report in the show notes at [josbarefoot.com](#) and [regulationinnovation.org](#), and also will be on the website at [regulationinnovation.org](#). So what we've talked about so far has been what we heard from the regulators. I want to invite you, if you want to offer any further thoughts as you've been able to contemplate what we learned. If you were in the role of a policy maker, do you have any thoughts on what we might want to encourage as some steps that again, preserve the good intentions of all these laws, but start to update and modernize a little bit?

Jerry Buckley: [40:20](#) Well, we did mention the idea of looking to the Defense Department and perhaps getting congressional authorization for some of the acquisition and communications that have to occur in the defense context to be brought over to the financial services context. That's not something we talked to the regulators about, but it is something we think would be worth considering. We talked about the introduction of machine learning to the Administrative Procedures Act process, speeding it up. That we think is worth considering and something probably can be done without much in the way of statutory amendment.

Jerry Buckley: [41:08](#) We tend to look for those things which don't require statutory amendments because that's a laborious process in a highly contentious political environment in which we live. But some of the other things like the Federal Advisory Committee Act, those regulations promulgated by OMB could be revisited. I know that the Federal Advisory Committee Act wasn't intended to tie people in knots when they were trying to get information. So those kinds of reviews can be done and I think that there probably would be a willingness to do them. It's just takes the mandate to do them from senior leadership. So, other thoughts you might have for-

- Sasha Leonhardt: [41:54](#) I think that's exactly right Jerry. Things like the Paperwork Reduction Act and the Federal Advisory Committee Act, there's no clamor for these to be revised publicly, obviously, they're very technical, DC rules. But having some sort of champion within the financial regulators to actually take up the mantle of these and say, "We know this is not a sexy, interesting issue, but it's an important one and it's one that Congress should focus on that we should all marshall our thoughts across the financial regulators working with industry just to highlight these issues." Part of the reason we were delighted to take on this assignment is that it gave us a unique look under the hood. But our hope is that it would be just a first step in a conversation to shine a light on some of these issues on a no-names basis and let people speak candidly and share their thoughts through us. The hope is that others read this, and take up the mantle, and hear things in this report that they're seeing in their own lives and then move forward with those as well.
- Jo Ann: [42:51](#) Yeah. As I went through this process, but before we started the projects and then during it, the thing I kept realizing was that the people who are trying to help their agencies adopt new technology have been paralyzed or what was your word? They had these hurdles in front of them and they kind of assume that that's just the way it is. That you can't do anything about it. So part of our goal with this study has been, as you just said Sasha, to shine a light on it and help people think about what's at stake. Because if these agencies cannot adopt new technology and keep pace ... if technology is changing at an exponential pace, regulators are going to have to change at an exponential pace. So they're not used to that.
- Jo Ann: [43:48](#) So how can we equip them and what are the principles that should shape that including high transparency if there's going to be any areas where there should be some rethinking of some of these kinds of things? You could layer some transparency on top of it. Maybe that's another layer of bureaucracy, but still to be sure that there's not anything going on that's opaque. But again, for purposes of research, development, technology innovation, as you said Jerry, other regulators all over the world are finding ways to do this and it seems really critical that ours be able to move in the same direction.
- Jerry Buckley: [44:31](#) And just one other point, Jo Ann, I think if you were to say, "What do we hope this report might achieve?"
- Jerry Buckley: [44:46](#) The Federal Financial Institutions Examination Council, which is the body made up of all of the banking regulators FDIC, OCC, CFPB, and NCUA and so forth. If they were to have some work

streams around how do we deal with these issues ... We're only reporting what we heard. These may not be as big a hurdle as something they are, but if they were to establish some work streams around this and say, "Well, how are we dealing with that? How should we deal with that?" And establish that at least it's something they ought to grapple with. Maybe they'll say, "This isn't such a big problem. It's solved." Maybe they're going to be some that require more work, but some work streams around this that would be cross agency, I think that would be very helpful.

- Jo Ann: [45:41](#) Yeah, I agree with you. Is there anything we haven't talked about that we should? Where can people get information about the Buckley firm?
- Jerry Buckley: [45:53](#) It's at buckleyfirm.com.
- Jo Ann: [45:57](#) Excellent. Good. And again, we'll have information on the report at regulationinnovation.org and in the show notes. I cannot thank you enough. Jerry Buckley, Sasha Leonhardt, thank you for being our guests today and thank you for this important work.
- Jerry Buckley: [46:12](#) Thank you.
- Sasha Leonhardt: [46:13](#) Thank you.