

# Public Policy and the Origins of Bureaucratic Red Tape: Implications of the Stanford Yacht Scandal

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## Abstract

The so-called “Stanford yacht scandal” is used as a case to examine the public policy origins of bureaucratic red tape. The 1988 erroneous charge by Stanford University accountants of depreciation of the university Yacht to federal research accounts resulted in disastrous audits and then changes to U.S. research policies that adversely affect research universities. The seeds of red tape and organizational disaster were planted in ill-designed public policies and then exacerbated by Stanford officials’ missteps. Overcompliance, misplaced precision, and overcontrol are causes of red tape. A “convergent indicators” approach is offered to help judge when rules have become red tape.

## Keywords

red tape, organizational disaster, public policy

In 1988, a mid-level accountant in Stanford University’s budget and finance division erroneously charged US\$1.2 million depreciation for the university’s yacht, the *Victoria*, a donated yacht used by members of the Stanford

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Sailing Association, to federal research overhead accounts (Barinaga, 1990). This portentous action triggered a string of missteps and oversights that would fundamentally change the management of university research from that point onward (Folkenflik, 1994). From a legal standpoint, the episode that came to be known as the “Stanford yacht scandal” began in 1988 with an accusatory federal government audit report and ended in 1996 with a judicial decision in federal district court. A case can be made that the episode began long before, as the seeds for organizational disaster and bureaucratic red tape were sown in U.S. federal policy for research.

The Stanford yacht case is a cautionary tale about how organizations can fall prey to poorly designed and poorly implemented public policies, rules, and regulations. The present study focuses primarily on the case’s implications for understanding the evolution of administrative rules and regulations and, especially, the ways in which organizational disasters affect rules changes. Arguably (Folkenflik, 1994), one result of the rules changes occasioned by the Stanford yacht case was the creation of rules so burdensome as to be classed as red tape.

Three central research questions guide this study, each requiring and therefore receiving varying degrees of attention.

**Research Question 1:** What forces affect the evolution of rules and regulations and, specifically, how does public policy set the stage for red tape?

**Research Question 2:** In what ways and by what paths do organizational disasters create new rules and in some instances rule-evolved or stakeholder red tape?

**Research Question 3:** How does one distinguish red tape from beneficial, if perhaps burdensome, rules?

In considering these questions, a conceptual model is developed providing an account of possible effects of organization disaster on rule changes and rule-evolved red tape. The implications of the Stanford case are examined in relation to this organizational disaster-to-red-tape model. In seeking to determine whether rule changes should be judged red tape, the analysis employs a “convergent indicators” approach. This analytical approach takes into account the problems of developing a single clear-cut criterion for judging bureaucratic red tape.

## Red Tape Theory

One familiar definition of red tape is “rules, regulations and procedures that entail a compliance burden but do not achieve the functional objectives of the

organization” (Bozeman, 1993). Most studies of red tape have focused on its measurement or its impacts. Thus, we know that perceptions of red tape are effected by both the burden of the rule or procedure and the outcome (Kaufmann & Feeney, 2013), and increased levels of external control are associated with higher levels of perceived red tape (Brewer et al., 2012). We also know that red tape undercuts public service motivation (Scott & Pandey, 2005), constrains communication performance (Pandey & Garnett, 2006), impedes public managers’ interactions with the organizations’ stakeholders and external actors (Walker & Brewer, 2008), reduces risk-taking in both public and private organizations (Bozeman & Kingsley 1998), diminishes the quality of intranet and management information system (MIS) communication (Welch & Pandey, 2007), and undermines job satisfaction and job involvement (DeHart-Davis & Pandey, 2005). In a few cases, the impacts of red tape are not altogether negative, such as Moon and Bretschneider’s (2002) finding that high levels of red tape may spur innovativeness.

Despite considerable progress in red tape research, the bulk of research continues to examine primarily red tape *measurement* or *effects*; only a handful of studies (viz., Bozeman & DeHart-Davis, 1999; DeHart-Davis and Bozeman 2001); Pandey & Kingsley, 2000; Walker & Brewer, 2008) consider the *causes* of red tape. The near exclusive focus of empirical studies of red tape’s effects and measurement limits the prospects for developing more powerful explanatory theories.

Red tape research has been characterized by a degree of homogeneity in method. The great majority of the published work involves statistical analysis of survey data. There is some concern that extensive reliance on questionnaires, especially questionnaire-based research relying on similar variables and scales, can raise concerns about common methods bias (Doty & Glick, 1998). Even if the ubiquitous use of questionnaires does not give rise to this problem, it is nonetheless the case, at least according to many observers (e.g., Campbell & Fiske, 1959; Clark, 2010), that theory-seeking research proves more robust when multiple methods are applied to the same general research topic.

The red tape literature’s limited progress in developing theories about the causes of red tape is due in part to common method bias but also to the difficulty of sorting red tape from formalization and “ordinary” rules and regulations (Pandey & Scott, 2002). Questionnaire-based studies, usually cross-sectional rather than longitudinal in their focus, are much better adapted to examining red tape’s effects than its causes and are ill-suited for parsing out differences among red tape, formalization, and ordinary rules. It is perhaps no accident that the few studies (e.g., Guriev, 2004; Rosenfeld, 1984; Bozeman and DeHart-Davis, 1999) focused on the causes of red tape are case studies or studies mixing quantitative and qualitative approaches.

These studies demonstrate that red tape has many origins, both within the particular organizations (Walker & Brewer, 2008) and in broader public policies and institutional settings (Guriev, 2004; Rosenfeld, 1984). Bozeman (1993) uses the term “rule-inception” red tape for those causes originating in the rule’s content and “rule-evolved” in cases where red tape develops when rules are implemented or changed. Speaking in general terms, rule-inception red tape flows from public policies and rule-evolved red tape from management. But the two interact dynamically. Accordingly, the idea of multidimensional red tape (Bozeman, 2012) posits that rules and red tape may be pathological in some, but not all, elements and that this pathology may be stakeholder specific. A particular advantage of the Stanford yacht case is that it requires an understanding of the interplay of public policy and organizational implementation in the evolution of rules and red tape.

The concept of stakeholder red tape is especially relevant to the present case. Stakeholder red tape (Bozeman, 2000, 83) is defined as “a rule that remains in force and entails a compliance burden but serves no objective valued by a given stakeholder group.” By this definition, a rule that is red tape for one group (e.g., university researchers) may not be red tape for another group (e.g., university compliance officers or funding agencies). While this red tape concept is obviously more fluid, it is still possible to make judgments about red tape. Thus, for example, a rule focusing on laboratory animal safety, when applied to, say, public administration researchers who do not perform research on animals could perhaps be viewed as red tape by all major stakeholder groups. Such a rule would exert a compliance cost (e.g., paperwork) but would not serve the objectives of any of the diverse stakeholders to research administration.

Although red tape theory has evolved to take on a life independent of rules theory, many instances remain, including the present case, where rule theory (or theories) continue to contribute to the advancement of red tape theory. One researcher (Schulz, 2003) defines rules as describing “what ought to be done and by whom in response to a given situation” (p. 1079). The study of organizational rules has venerable roots (March & Simon, 1958) that have grown to include a vast network of interrelated lines of inquiry. Early red tape theory in the field of public administration (Bozeman, 1993) used rules theory as scaffolding for idea advancement. However, most research and theory about organizational rules has been outside public administration, especially in management studies and sociology (Zhou, 1993). Particularly relevant here is the literature focusing on the ways in which rules are formed and how they evolve (March, Schulz, & Zhou, 2000; Miner, 1991; Zhou, 1993). In a study of rule formation and change in a university from 1891 to 1987, Zhou (1993) finds that organizational rules are generally formed in response to

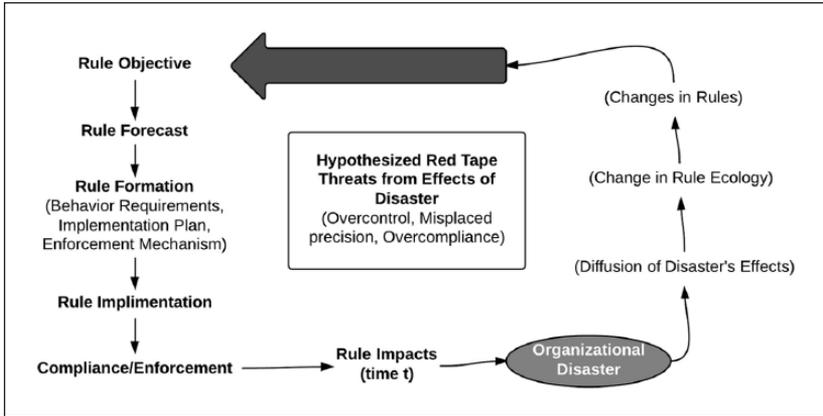
external crisis and shocks and change as a result of internal learning and adaptation.

## A Preliminary Model of Disaster-to-Red-Tape

The organization theory literature includes dozens of studies developing concepts and explanations of organizational disaster (for an overview of the organization disaster literature, see (Bozeman, 2010). However, there is no consensus definition of organizational disaster. Let us posit that an *organization disaster* occurs (for a given organization) if *highly disruptive events bring extremely negative consequences to the organization or its stakeholders* (Bozeman, 2011). Accordingly, in this section we introduce a conceptual model of disaster-to-red-tape that provides reasons to expect that disasters will generate red tape. To situate the present analysis, let us first consider general thinking on rule development and the threat of red tape to rules (Bozeman, 1993), which theorizes that all formal rules have three common dimensions—behavioral requirements, implementation mechanisms, and enforcement provisions—and that rules are threatened at each point by red tape. Rule-inception red tape remains a threat during all stages of rule formulation. Once the rule is implemented and evolves, it is subject to a new set of threats related to rule-evolved red tape, including, according to previous theory (Bozeman & Feeney, 2011), change in rule ecology, rule drift, change in implementation, change in the functional objective of the rule, and incompatibility among rules or sets of rules.

Figure 1 builds upon this thinking. The key component being the set of propositions about why organizational disasters sometimes give rise to red tape. Let us begin by noting that the model assumes that organizational disasters (at least those qualifying as disasters according to the definition presented here) lead to substantial rules changes (for an example, see Vaughan, 1999). New or changed rules may or may not give rise to red tape, but the model suggests three interrelated reasons why post-disaster rules may lead to red tape.

In many cases, the causal chain between disaster and bureaucratic red tape seems linked by overreaction. Bad things happen and policy makers and managers overreact by creating rules or policies with strong potential for new, entirely different bad things. The tendency to overreact is well documented (e.g., Massey & Wu, 2005; Perrow, 1999). In part, overreaction is explained by a common aspect of human learning—the use of single most salient events in framing decision-making. When the single (or small number) of highly salient events have extremely negative outcomes, it is quite human, if generally ill advised, to allow these events to drive out other



**Figure 1.** Organizational Disaster to Rule Evolved Red Tape (adapted from Bozeman and Feeny, 2011).

experiences and other decision criteria (Baron & Hershey, 1988; March, Sproull, & Tamuz, 1991).

To some extent, post-disaster rules are well explained by overcontrol. Overcontrol occurs when rules requirements exceed the ability of persons to comply, when rules' compliance burden clearly exceeds the level of benefits likely from the rules, and when the rules seek to control behaviors or outcomes that cannot be controlled by rules. Overcontrol can have multiple dimensions. Early theorizing about overcontrol and red tape included consideration of managerial, political, internal, and external dimensions of overcontrol (Bozeman, 1993). For example, managerial overcontrol has been identified as a possible source of rule-inception red tape (Bozeman, 1993) and the exercise of external political authority rather than government ownership is a suggested cause of red tape in public organizations (Bozeman and Bretschneider 1994). Thus, overcontrol is familiar, but it is the motivation for overcontrol that is of especial interest. The present case extends the nuanced treatment of overcontrol as a source of red tape. Often, new rules are developed in an attempt, sometimes vain, to reduce uncertainty.

A second threat of red tape, one especially prominent in post-disaster instances, is "misplaced precision" (Campbell & Stanley, 1963). In the present context, we can think of misplaced precision as an attempt to either measure the immeasurable or an effort to measure with a degree of precision not permitted by one's measuring instruments. In the aftermath of organizational disasters, misplaced precision is likely a common reaction as policy makers

and managers seek to avoid disaster by developing more information, including such detailed information that there is no realistic hope of providing valid information.

The third component of the model of post-disaster red tape threats is “overcompliance.” The idea of overcompliance red tape was initially explored in one of the few red tape case studies published thus far (Bozeman and DeHart-Davis, 1999), a study of the regulated firms’ responses to Title V Air Quality Act Amendment regulations. In this case, it was clear that many firms were, at substantial cost, providing information well beyond the requirements of the law. Overcompliance was due to a lack of clarity of specific rules but it was also due in part to a fear of the sanctions anticipated as emanating from a rapidly changing and more restrictive regulatory environment. In the present case, it is expected that overcompliance may be especially likely in the aftermath of disaster as organizations not directly involved in disaster, but empathizing with a similar organization’s fate, begin to overcompensate by exceeding the requirements of policy and rules.

It is important to distinguish overcompliance from so-called “beyond compliance” behaviors. Raines and Prakash (2005) use the term “beyond compliance” to characterize the sort of conscientious overcompliance an organization may adopt in efforts to signal benevolent intentions to consumers, the public, and regulators. When such behaviors are adopted, though burdensome, they remain effective.

While the post-disaster red tape model presented in Figure 1 does not suggest a direct and inexorable causal flow among the three hypothesized disaster threats, it is expected that the three will often be related: (a) Organization disasters lead affected institutions and external controllers to develop additional rules, these rules may *overcontrol*; (b) overcontrolled rules often are accompanied by *misplaced precision* in record-keeping, accounting, or other compliance behavior; and (c) in an atmosphere of overcontrol and misplaced precision, affected organizations will have difficulty ascertaining rules-specific requirements and sanctions and, thus, will tend to “play it safe” by *overcomplying*.

## **The Seeds of Disaster and Red Tape: Early Federal Policy for University Research Cost Reimbursement**

For many years, it has been the practice of U.S. universities with federal research and development (R&D) contracts to split R&D budgets, accounts, and expenditures into two categories—direct costs and indirect costs. Direct costs are those related directly to the conduct of funded research. Indirect

costs are those related to university infrastructure required for doing research. Often, costs are so general that they cannot be precisely allocated to any specific project. Referred to variously as indirect costs, overhead or, most recently, facilities and administrative (F&A), these costs have always been somewhat controversial because it is not easy to establish their exact amounts or their exact proportionate costs for particular projects or university campuses (Zuiches & Valley, 1987). Indirect costs are the focus of controversy in the Stanford yacht scandal.

Indirect costs have been eligible expenses for federal research grants since the early 1950s. In 1958, the federal government, through U.S. Bureau of the Budget Circular A-21, established comprehensive directives for assessing indirect costs for federal research grants (National Science Board [NSB], 2009, p. 27). These included a universal fixed indirect cost rate (initially 8%) that evolved into a negotiated and university-specific reimbursement calculation. Circular A-21 remains today the governing policy for a wide array of university–federal government relations relative to research cost sharing (Council on Government Relations, 2007; NSB, 2009).

Universities successfully lobbied to increase the initial 8% indirect cost rate first to 15% then to 20%, in 1963 and 1966, respectively. They argued that the initial low rate resulted in an unfair shift of university resources to federal initiatives (Brown, 1981). In late 1966, the federal Bureau of the Budget (now the Office of Management and Budget [OMB]) implemented Bureau of the Budget Circular A-74 (U.S. Bureau of the Budget, 1965), a directive permitting grant receiving universities to negotiate university-specific indirect costs rates and used Department of Health, Education, and Welfare (now Department of Health and Human Services) and Department of Defense auditors to work with university officials to develop these negotiated rates.

Between 1966 and 1975, the average of these newly negotiated indirect costs as a percentage of all research costs (for all universities) rose steadily from 12.3% to 25% with some universities exceeding 50%. Congress grew alarmed at the ever-rising indirect costs of research, with members of the joint conference of the House and Senate Appropriations Committees calling for actions bringing “the spiraling indirect cost rates under control” (Brown, 1991, p. 212).

According to Brown’s (1981) interviews with OMB officials, it was Congress members’ concerns that motivated the major restructuring of indirect cost reimbursement rules. The revised Circular A-21 guidelines, titled “Cost Principles for Educational Institutions,” were implemented in 1979 and to this day, through periodic minor revision, direct most university indirect cost reimbursement (U.S. OMB, 1979). Circular A-21 has brought a

great deal more precision to university R&D accounting than existed previously, yet controversies remain and negotiations over indirect costs are often intense or even acrimonious (Johnson, 1991). For all parties, the stakes are enormous (Goldberg, 1995).<sup>1</sup>

The 1979 version of Circular A-21 requires use of generally accepted accounting principles and seeks to determine “reasonable reimbursement” of indirect costs. It provides specific accounting definitions of direct and indirect costs and seeks to bring more precision to calculation of indirect costs rates (Johnson, 1991). It is this set of guidelines that is at the heart of the Stanford yacht case and which provides grist for analysis of rule evolution and red tape. Goldman, Rosenblat, and Williams (2000) and Sedwick (2009) identify changes to Circular A-21 from its inception, through the Stanford incident and up to the year 2000. Table 1 catalogs these changes over time. Critical events in the timeline of the Stanford disaster are added to provide context.

Table 1 demonstrates that many changes to A-21 were underway prior to the incident. However, the nature and frequency of these events change in the years following the incident. Specifically, in the 28 years from 1958 to 1986 a total of 17 changes are cataloged. Most of the substantive changes relate to establishing or clarifying practices, standards, and allowances. Conversely, in the 18 years beginning with the investigation in 1990 and ending in 1998 a total of 25 changes have been cataloged. Seven of these changes include measures that require a direct documentation, procedural or analytical compliance burden. It is safe to say that changes have been occurring to Circular A-21 regularly since its inception but the nature and frequency of change before and after the Stanford yacht scandal are substantively different.

## **The Stanford Scandal: Precipitating Events**

Since 1967, all U.S. research universities receiving federal research funds have operated under a Memorandum of Understanding (MoU) negotiated between the individual university and its officially assigned federal auditors that set the allowable indirect cost rate and specific procedures used in their accounting (U.S. OMB, 1979). Universities are allowed to periodically renegotiate the terms of their MoUs including indirect cost rates. At the time of the scandal’s inception, the Stanford approach, similar to other universities, was to take expenditure categories that were multipurpose and allocate a rotating fixed percentage to various allowable account types, including indirect costs (Barinaga, 1990).

Two individuals were at the center of the Stanford disaster, defining it and setting it in motion: Office of Naval Research (ONR) auditor Paul Biddle and

**Table I.** Changes to OMB Circular A-21 From 1958 to 2000<sup>a</sup> and Stanford Yacht Scandal Events.

Year	Summary of Changes
1958	Circular A-21 is issued. Defines direct and indirect costs. Sets accountability standards.
1961-1962	Revisions clarify methods for classifying and distributing indirect costs.
1967-1968	Revisions modify effort reporting requirements. <sup>b</sup>
1969	Funding limit for short form method is raised to US\$1 million. Guidelines established for assessing costs for training and educational service agreements.
1973	Transfer of administration from OMB to GSA. Name change to Management Circular 73-8.
1976	Enhanced precision in standards for allowable costs.
1979	Transfer of administration back to OMB from GSA. Name reverted back to Circular A-21. Established MTDC for calculating project distribution of indirect costs. Funding limit for short form method is raised to US\$3 million.
1982	Revisions reduce effort reporting requirements. Revisions allow for interests costs of debt associated with research facilities and equipment.
1986	Established fixed allowances for departmental administration.
<b>1988</b>	<b><i>Stanford university accountants mistakenly charge depreciation of the university yacht to federal research overhead accounts</i></b>
<b>1990</b>	<b><i>Office of Naval Research auditor Paul Biddle claims that Stanford fails to comply with indirect cost regulations.</i></b> <b><i>Congressional investigation into Stanford's indirect costs accounting begins.</i></b> <b><i>ABC television program 20/20 reports on the Stanford case, interviews Paul Biddle.</i></b>
1991	Costs in the administrative category of indirect costs were subject to a 26% cap. Clarification of ambiguities surrounding the shifting of capped and uncapped indirect costs. Imposed requirement that universities were to issue assurances that building reimbursements are for research facility expenditures only.
<b>1991</b>	<b><i>Donald Kennedy resigns as president of Stanford University.</i></b>
1993	Reduction of cost categories into facilities and administration. Allowed optional allowance of 24% MTDC for administration indirect costs or 95% of most recently negotiated rate of previously defined administration related indirect cost pools. Establishment of documentation requirements for universities electing 24% MTDC rates for admin. indirect costs. <sup>b</sup> Extension of time from 3 to 4 years for use of previously determined fixed indirect costs rates. Imposed government cost accounting standards. <sup>b</sup> Imposed disclosure of cost accounting practices. <sup>b</sup> Funding limit for short form method is raised to US\$10 million.

(continued)

Table I. (continued)

Year	Summary of Changes
<b>1994</b>	<b>Federal government announces no further claims against Stanford relative to indirect costs reimbursements.</b>
1996	<p>The term “facilities and administrative costs” or “F&amp;A” replaces the term “indirect costs.”</p> <p>Incorporation of four cost accounting standards for educational institutions into the document.</p> <p>Imposed requirement that universities receiving more than US\$25 million in federal research grants were to submit DS-2 accounting practices disclosure statement.<sup>b</sup></p> <p>Clarifications of eligible use allowances and depreciations methodologies are made.</p> <p>Threshold for equipment capitalization raised to US\$5,000.</p> <p>Tuition benefits for employee dependents disallowed from fringe benefit costs.</p> <p>Imposed requirement that interest costs on capital assets greater than US\$500,000 be supported by analysis of lease versus purchase.<sup>b</sup></p> <p>Imposed requirement that F&amp;A rates effective at the time of award be used for the duration of the award.</p> <p>Established negotiating responsibilities for cognizant agencies.<sup>b</sup></p>
1997	Established conditional exceptions from OMB grant management requirements for specific federal nonentitlement grants.
1998	<p>Imposed requirements for review and documentation of reasonableness of costs related to large-scale research facilities.<sup>b</sup></p> <p>Added guidance for assessment of depreciation and use allowances for buildings and equipment.<sup>b</sup></p> <p>Allowed for trustee travel expenses to be included in costs.</p> <p>Allowed universities using short form method to use salary and wages or MTDC for distributing F&amp;A costs.</p> <p>Allowed for utility costs recover of 1.3% in lieu of special cost studies.</p>

Note. Stanford events in shaded boxes. OMB = Office of Management and Budget; GSA = General Services Administration; MTDC = modified total direct costs.

<sup>a</sup>As summarized in Goldman, Rosenblat, and Williams (2000) and Sedwick (2009).

<sup>b</sup>An imposed measure that requires a direct documentation, procedural or analytical compliance burden.

Rep. John Dingell, Congressman from Michigan’s 15th District, then at the time chair of the House Energy and Commerce Subcommittee on Oversight and Investigations.

In March 1990, Biddle wrote a memo to his ONR superiors suggesting that a “cozy relationship” had developed between Stanford University and ONR, the federal agency assigned to audit Stanford’s accounting for indirect costs (Folkenflik, 1994). Biddle suggested that Stanford had been able to recoup more indirect costs from the federal government than was allowable

(Friedly, 1996). The ONR did not act on the Biddle memorandum and subsequently Biddle made the memorandum public and he (or others, this part is not public record) contacted Rep. Dingell's staff about the allegations. Shortly thereafter, investigations were begun by Rep. Dingell's sub-committee, as well as (at Dingell's request) by the General Accounting Office (now Government Accountability Office), and the Defense Department's Defense Contract Audit Agency (DCAA; DeWitt, 1991).

Among the items brought to the attention of ONR and, ultimately, the Dingell sub-committee as well as the news media, was the allocation of depreciation on Stanford's US\$1.2 million, 72-ft yacht, *Victoria*, a 1987 gift to the university, used chiefly by the university's sailing club. Stanford University accountants admitted the mistake (Friedly, 1996) and agreed to repay US\$184,286 in unallowed charges made by the athletic department (Gottlieb, 1990). University spokesman Larry Horton pointed out that this amount was only 0.04% of the US\$443 million in research indirect costs charged to the government during the time in which these mistakes occurred (Gottlieb, 1990).

In the course of the investigations, it was revealed that a number of seemingly inappropriate but lawful items had been charged, in part (20%), to indirect costs accounts (DeWitt, 1991). In September 1990, the ABC television news program *20/20* interviewed Biddle for a telecast watched by tens of millions. By this point, the shockwaves from the allegations and the subsequent investigations had reached virtually all university research administrators, responsible federal officials, and much of the newspaper-reading general public.

## The Stanford Response

The initial Stanford response was to acknowledge the one clearly agreed upon accounting error (the yacht depreciation) and to point out that all other costs were allowable. They further noted the inevitability of such mistakes, given the size and scope of the organization and an intent to continue conducting business as usual (Gottlieb, 1990). This tone was short lived; Stanford soon hired a public relations firm and the accounting firm Arthur Andersen to assist with an audit and voluntarily returning more than US\$800,000 in presumably allowable, but controversial, indirect cost charges (Folkenflik, 1994). Stanford President Donald Kennedy appointed an advisory committee to review Stanford research accounting practices and recommend changes (Pollack, 1991). The investigations and audits continued for years, requiring a substantial administrative burden to the university's research accounting team (Friedly, 1996).

By February 1991, a report had been issued by the ONR Inspector General that failed to substantiate Biddle's estimate that Stanford had overbilled the federal government by as much as US\$200 million (Friedly, 1996). However, the DCAA analysis was more critical (Hamilton, 1991) and recommended the Stanford that negotiated indirect cost rate be dropped from 70% to 52%. This recommendation (actually changed to 55.5%) was unilaterally implemented later in 1992, resulting in an estimated US\$24 million of foregone cost recovery for Stanford (Gordon, 1991). On July 28, 1991, the embattled Kennedy submitted his letter of resignation (effective 1 year from that date). As the federal government moved to change the Stanford indirect cost rate and its MoU, Stanford officials and some other critics began to cry "foul." As both the 70% indirect cost rate had been legal and negotiated with ONR, and as most of the disputed indirect cost charges were legal, some critics viewed the move as punitive (Gordon, 1991).

While it is not clear exactly when Stanford's disaster concluded, October 18, 1994 is an important marker; it was the day the federal government announced officially that it had no further claims against Stanford relative to this issue (Stanford University News Service, 1994). Ultimately, through a settlement, Stanford agreed to pay US\$1.2 million in adjustments. Nearly 2 years later, a federal judge dismissed a citizen's suit that had been brought by Biddle on grounds that there was no evidence of fraud or illicit charges beyond those admitted and that Biddle deserved no compensation for simply doing his job (Friedly, 1996).

## Aftermath of the Stanford Yacht Scandal

The initial effects from the Stanford debacle were not new government regulations but a scrambling among universities trying to insure that they were not in the federal government's crosshairs. This involved many cases of universities voluntarily returning money to the federal government. For example, as early as May 1991, MIT, Harvard, and Cal Tech have all withdrawn US\$500,000 or more in *allowable* expenses such as for decorations for the presidents' homes, receptions and foreign travel and more (Palca, 1991b). At the same time, the OMB was developing new regulations and acting to limit reimbursements (Mervis, 1991).

In a 2005 article titled "The Ghosts of Stanford," *Chronicle of Higher Education* reporter Jeffrey Brainard (2005) interviewed a number of university administrators concerning the aftermath of the Stanford yacht scandal. Almost all agreed that the number of "unfunded federal mandates" for research was ever-increasing but not the resources available through indirect costs.

As a result of the new research accounting rules regime, most research universities exert extensive research administration controls, well beyond official requirements, and they continue to undercharge for indirect costs. In 2000, the Rand Corporation estimated that underpayments on indirect costs amounted to between US\$700 million and US\$1.5 billion for all institutions receiving federal research funds (as reported in Brainard, 2005). The average indirect cost rate for universities in 2006 was 51.8%, about the same as in 1991 but with many additional expenses.

## Are These Changes Red Tape or Merely Rules?

As we seek to determine which of the vast number of research administration rules of the past two decades should be deemed red tape, we confront a crucial enigma affecting all red tape research and theory: How does one sort out *rules*, especially burdensome, high compliance requirement rules, from *red tape*? Relevant to the present study is the considerable body of work (for a review, see Pandey & Scott, 2002) employing indirect measures of red tape, including number of sign-offs required, administrative intensity ratios and, especially, the amount of time required for core administrative tasks (Pandey & Bretschneider, 1997; Rainey, Pandey and Bozeman, 1995). However, none of the published papers using indirect measures of red tape claims fully to have captured the concept and most of these studies, being cross-sectional, fail to provide insights on changes over time.

As there are many forms of red tape, a good place to begin this exercise is to specify the form most relevant to the present case. While the organizational red tape concept is more familiar, stakeholder red tape, “a rule that remains in force and entails a compliance burden, but serves no objective valued by a given stakeholder group,” (Bozeman, 2000, 83) is more relevant to this case. By this definition, a rule that is red tape for one group (e.g., university researchers) may not be red tape for another group (e.g., university compliance officers or funding agencies). While this red tape concept is obviously more fluid, it is still possible to make judgments about red tape.

## Convergent Red Tape Indicators

Red tape theory has not yet advanced to the point that clear-cut judgments are possible about rules and red tape and, thus, no matter how much detailed history of rules is provided in case studies, the sorting of rules from red tape remains problematic. Certainly, the Stanford case gives no clear instruction for sorting rules from red tape. Nonetheless, the case is at least suggestive, especially if one is receptive to the red tape approach proffered here, namely “convergent red tape indicators.”

The idea of convergent indicators is derived from the notion of convergent validity, a concept long used in social science research (Campbell & Fiske, 1959; Courvoisier et al., 2008), especially organizational research (Carlson & Herdman, 2012; Rossiter, 2008). Convergent validity recognizes that it is often the case in the social sciences that no single measure captures a phenomenon of interest. The argument from convergent validity is that when independent measures of a phenomenon are employed and yield similar results, the causal claims, while not proved, are stronger. Accordingly, the convergent red tape indicators approach recognizes that often a single measure of red tape may be insufficient for identification, especially in the organizational context where experience with rules may vary depending on rule exposure. The convergent red tape indicators approach is especially relevant to instances of multidimensional or stakeholder red tape. Unlike convergent validity, the convergent red tape indicators approach is not an exercise in mathematical precision. In fact, the approach is especially well suited for implementation in the context of rich qualitative or case study evidence. Thus, the idea of convergent red tape indicators borrows from the notion of convergent validity but only in a limited fashion.

Convergent indicators in the Stanford case suggest the strong possibility of stakeholder red tape. Consider first the possibility that there has been a vast increase in the administrative burden for principal investigators, individuals who have expended resources complying with a rule but who have not received much if any benefit from these efforts (stakeholder red tape). Few university faculty contracts mention or give explicit credit to administration and most tenure and promotion guidelines provide little or no credit for administration. Yet, recent survey findings indicate that faculty who have been awarded federal research grants spend nearly as much time on administering those grants as conducting the research itself (Rockwell, 2009).<sup>2</sup> According to the editors (Fang & Casadeval, 2009) of a major microbiology journal, "Although scientists owe society full accountability on these important issues [of research administration], the enormous energies spent on paperwork introduce friction into the scientific process that contributes to inefficiency and lower productivity" (p. 929).

Another indicator of possible red tape is overcompliance with requirements. When rules controls are so extreme and enforcement so dire that those governed by them voluntarily forgo resources, then the hypothesis that over-control has led to red tape is at least worth entertaining. As discussed above, in the wake of the Stanford scandal several universities, including Harvard Medical School, Cal Tech, and MIT, actually returned millions of dollars worth of allowed expenses (Anderson, 1992; Palca, 1991a). We noted above the Rand Corporation study (Brainard, 2005) estimating US\$700 million to US\$1.5 billion of underpayments, based on reduced indirect cost

reimbursement claims, to U.S. universities. Even today, many universities remain quite conservative in pressing indirect cost reimbursement claims (Goldman et al., 2000).

Another convergent indicator suggested by the Stanford case is the growth rate of rules (Zhou, 1993). Clearly, it is possible for rules to grow at an extremely high rate and yet for all the rules be effective. However, existing red tape theory suggests that we should be wary of bursts of new rules. Even when rules are well designed, it is useful to be cognizant of the red tape threats referred to as “rule strain.” Rule strain occurs when the volume of rules in an organization increases along with a corresponding compliance burden to the point that the marginal benefits of additional rules decrease and eventually become negative, likely at the hands of inadequate resources (Bozeman and Feeney, 2011, 64). While there seems little doubt that rule strain occurred, further investigation is required to determine if the new rules were diminished in their effectiveness.

When taken together, the three convergent indicators—increases in the administrative burden of rules, overcompliance with requirements, and the growth rate of rules—show a rapid increase in rules, many instances of voluntary overcompliance and an extensive compliance burden for one key group of stakeholders (with no obvious benefit to those stakeholders). Arguably, these converging indicators at least signal red tape.

## **Did the Stanford Yacht Case Cause Red Tape?**

Policy makers are on record verifying that the Stanford scandal affected their motivations and behavior and the Stanford case was cited in Congress’ efforts to draft new indirect costs rules (Palca, 1991b). Likewise, OMB officials specifically identified the Stanford case in their deliberations aimed at establishing new indirect cost rules (Anderson, 1992). Mervis (1991) reports that as a result of the Stanford incident

several government agencies are now examining the practices of some two dozen research universities . . . [the OMB] is sifting through comments on its proposal to cap administrative expenses and . . . Congress is mulling over several bills intended to accomplish the same ends. (p. 3)

Cornelius Pings, a former president of the Association of American Universities (AAU), summarized the Stanford incident’s impact on the university research community: “Unfortunately, I think the whole incident left the feeling that there was something wrong at Stanford and, by extension, all universities” (Friedly, 1996, p. 1488). Remnants of this sentiment lived on for years.

None of these prove that the Stanford disaster *caused* red tape. Nevertheless, if we take the convergent indicators as evidence that some of the new rules and rules changes should be deemed as red tape, then we can at least suggest that the Stanford case is in the causal stream—not the only factor in the rule-evolved red tape, but a significant one. The case is even stronger if the concept of red tape employed is stakeholder red tape rather than the more narrowly defined organizational red tape. If the Stanford scandal was a factor in motivating rules changes, which it almost certainly was, and some of the rules changes are deemed red tape, then the leap to causality is no greater here than in many instances of inference from historiography (see Aron, Keller, & Davison, 1958; Skocpol, 1984).

Returning to the conceptual model presented in Figure 1, all three of the hypothesized red tape threats seem to have been in play in the Stanford case. The evidence is strongest for overcompliance. When universities return money received as legal reimbursements, then overcompliance is clear enough. The evidence for the other two threats, overcontrol and misplaced precision, is not so clear-cut. From the standpoint of stakeholder red tape, it is certainly the case that many university administrators and researchers view at least some accounting restrictions and reporting requirements as overcontrolled red tape (Lescher, 2008; Rockwell, 2009). Likewise, rules about time-effort reporting, requiring specific and precise amounts of time accounting between overlapping work categories, certainly seem to be the red tape of misplaced precision.

## Conclusion

In the Stanford yacht case, a set of ill-defined and erratically implemented policies played a major role in creating the organizational disaster that began with Stanford and spread to other institutions. The organizational disaster centered initially at Stanford led to a vast increase in research administration rules and regulations, at least some of which seem (from convergent indicators) to be red tape. The chain appears to have been as follows: Ill-defined policy led to an organization disaster, which gave rise to overcontrol, overcompliance, misplaced precision, and red tape. This is a fairly common chain of events, reflecting characteristic reactions to perceived disaster, especially the response of overcontrol.

The Stanford case is notable for suggesting overcompliance as a red tape indicator. The case suggests that organizational disaster, especially when linked to uncertainty and fear of punishment among those regulated, often results in overcompliance with rules and regulations, sometimes to great disadvantage. Even among organizations that are not guilty of transgression, the actions taken against similar organizations will be sufficiently intimidating to

spur overcompliance. One example of this behavior is the response to increases in corporate tax audits in a given industry or sector; those who are in compliance and who have not been audited nonetheless begin to err on the side of paying more taxes than they owe (Levmore, 1988). Similarly, many universities not only claimed less in indirect charges than they were entitled to but also returned OMB money that seemed to be well within the guidelines allowable under OMB A-21 (Palca, 1991a).

Previous theory and research on red tape has given little or no attention to overcompliance as a leading indicator of red tape. The case presented here suggests that this may be a fertile area for red tape theory. In at least some cases, those producing new and extensive rules and regulations are in a dynamic relationship with those complying with the rules and regulations, such that the compliance level may depend less on particular specifications of the rules and more on the degree of trust and the recent history between producers of rules and those affected by them (Dirks & Ferrin, 2001; Grey & Garsten, 2001).

The Stanford disaster occurred more than 20 years ago, yet the affects of red tape resonate today. One may reasonably wonder what this environment may look like in another 10 or 20 years. The cycle depicted in Figure 1 is a continuous one and while it is exceedingly difficult to predict step changes in red tape in the research administration domain, some current trends provide clues. In the first place, new protections are increasingly being added to research with no sign that old ones are being taken away. From a policy standpoint, this may be quite desirable. Thus, for example, as new potential abuses appear due to, just to give a few examples, new technology related to gene manipulation, or use surveillance drones in “unobtrusive” research, or data mining capabilities in “big data,” projects, we may well be supportive of additional controls. But the history on increased controls is also one of increased red tape.

We can also expect red tape to grow because universities are increasingly sharing power and cooperating in multiples: universities working together in consortia, universities working with industry, or universities helping create entirely new institutions. These new institutional forms require new rules and the complexities of new institutions often spawn poor rules and, thus, red tape.

A final example, one just on the horizon, pertains to for-profit universities. While for-profit universities, a growth industry, have heretofore focused on education, generally eschewing traditional research, market segmentation, and competitive advantage are likely to give rise to forays into applied and cooperative research. This will require new rules in part because the tax code treats for-profit research quite differently than research in public and non-profit institutions.

While the Stanford case is especially dramatic, it is nonetheless typical of instances where the rules are negotiated and, in a sense, tailor-made by different tailors. A rich literature in political science warns of the problems that sometimes arise among competing, poorly coordinated bureaucratic agencies (Downs, 1967; Holden, 1966; Rourke, 1972). Often, the development of red tape has less to do with particular organizations and managers than the policy environment within which they operate. When disasters are in part due to poorly articulated or ambiguous rules, there is a tendency to overcompensate with more rules, more precise rules, and more controlling rules. Such is the recipe for red tape.

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### **Notes**

1. Today, nearly 30% of university research and development (R&D) funding goes to indirect costs and in some universities the indirect costs rates are as high as 70%. With total federal funding of university research (excluding temporary funds provided by the American Recovery and Reinvestment Act of 2009) exceeding US\$35 billion (National Science Foundation, 2012), a change here and there in the indirect cost rate sometimes has the effect of redistributing tens of millions of dollars.
2. The lead author conducted a highly informal but suggestive analysis of the increase in research grants rules. Having had National Science Foundation grants in each of the decades since the 1980s, he examined the sheer page number size of grant proposals. Examining proposals between the 1980s and 2010, he found no change in the average number of pages devoted to explaining the proposed research, but a threefold increase in pages devoted to ancillary topics pertaining to factors such as human subjects regulations, hiring practices, safety standards, accounting and contract provisions, animal protection, and a wide array of other topics. A considerable portion of the compliance reporting deals with topics (e.g., handling hazardous substances, care of laboratory animals) not relevant to most social science research.

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