# THE GRAND JURY IN THE ADMINISTRATION OF JUSTICE:

THE CASE OF HARRIS COUNTY, TEXAS

A Thesis

Presented to

the Faculty of the Department of Political Science

University of Houston

In Partial Fulfillment

of the Requirement for the Degree

Master of Arts

Ъу

Claude Keran Rowland, Jr.

May 1976

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#### Abstract

The composition and outputs of Harris County grand juries was examined to determine the extent to which minorities, females, the young and the poor participated between 1969-1975 and the impact of such participation on grand jury performance.

Minorities, females, those under 35, and lower income individuals were excluded from participation over the six-year period to a statistically significant degree, with grand jurors reflecting the demographic characteristics of the grand jury commissioners who recruited them.

The number of cases heard tended to increase dramatically over time, with grand juries returning significantly more cases during each successive month of the three month term.

The composition of a grand jury was found to have an important influence on its propensity to return no bills. Those grand juries with high representation of low income individuals returned the lowest proportion of no bills, while those with the most heterogeneous income representation returned the highest proportion of no bills.

In sum, this thesis presents evidence that the demographic composition of Harris County grand juries does not represent a crosssection of the adult population and that demographic composition does effect the performance of grand juries in the creation and administration of criminal justice policy.

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#### Chapter 1

#### INTRODUCTION

The grand jury has the potential to exert a great deal of influence in the administration of justice. The Fifth Amendment of the Constitution of the United States guarantees that federal criminal charges involving capital or infamous crimes will be subject to review by a grand jury. Grand juries are also employed by 20 states, including Texas. In Texas, all felony charges must be submitted to a grand jury of 12 citizens from the community.<sup>1</sup>

Within the legal subsystem, the grand jury determines whether a felony charge against an individual is to be supported by returning an indictment or whether the charge should be no billed. In effect, a panel of laymen pass judgement on the states decision to file criminal charges. In a micro sense, review of a single case by a single grand jury may potentially constitute a review of the behavior and judgement of the police at the time of arrest. It also involves the opportunity to review the prosecutor's preparation of evidence and judgement in choosing whether to prosecute a given case. At the very least, the grand jury has the potential to act as a check on the over-zealous or politically motivated prosecutor.

Grand juries also have the potential to influence more general policy parameters. If grand juries in a given jurisdiction consistently require certain standards of police procedure, police must incorporate these standards or create difficulty for prosecutors in securing indictments. Likewise, if grand juries consistently require that evidence suggest the probability of guilt, prosecutors must meet these standards or face a low indictment rate. In fact, the discretion of the grand jury is such that entire categories of crimes could become impossible to prosecute because of the hesitance or even outright refusal of a citizens' panel to return indictments.

The grand jury also serves as an important component of the larger political system by acting as a vehicle for the participation of the public in the authoritative allocation of values within the criminal justice subsystem. While grand jury participation directly involves only a minute percentage of citizens, this involvement is important in symbolizing what Richardson and Vines have called the legal and democratic subcultures.<sup>2</sup>

As a vehicle for citizen participation in the legal system, grand juries have drawn the attention of critics from the legal profession and legislators who would like to see the nature of such participation modified. Both the quantity and quality of citizen participation in the legal subsystem have come under attack nationally and in Texas. In Texas, debate is underway as to whether grand juries and the commissioner system which produces them are performing properly in the administration of justice. Calls for reform of the grand jury system are heard in the legislative branch as well as in the courts. Some critical legislators wish to abolish the grand jury system while others wish to reform the system by replacing selection by commissioner with random selection from voter registration lists. Indeed, both abolition and reform were proposed in separate bills introduced during the most recent session of the Texas Legislature.<sup>3</sup>

Nationally, scholars such as Herbert Jacob contend that the legitimacy of public participation in the judicial process is under heavier attack than ever before. Grand and petit juries are frequent targets of such attacks, with many professionals seeking to restrict the use of juries.<sup>4</sup> Neither proponents nor opponents of the grand and petit jury systems have mustered much empirical evidence concerning the consequences of public participation. In Jacob's words, "Evaluation of these trends requires careful regard for the empirical consequences of public participation and its apparent consequences for the administration of justice in America."<sup>5</sup>

Given the important role of juries in the political system and the obvious status of the grand jury as a participatory vehicle, one would hope that political science would be able to offer some empirical evidence concerning the consequences of public participation via grand jury service in the setting of judicial policy and the administration of justice. Unfortunately, this has not been the case. Research has been reported concerning grand jury selection, composition and procedure, but no research has been reported which deals with the empirical consequences of the quantity or quality of public participation on grand juries. The absence of reported research in this area reveals an important void in understanding of the criminal justice subsystem and its links with the larger political system.

The existence of such a void served as the primary motivation for the research reported here, and it is the purpose of this thesis to contribute understanding of this important component of the criminal justice subsystem and its interaction with the larger political system. This thesis seeks to contribute to the understanding of grand juries by focusing on the universe of grand juries seated in Harris County (Houston),

Texas from 1964-1975. The study involves three major steps:

- 1. Description of the race, sex, age, and income composition of Harris County grand juries.
- 2. Description of the performance of Harris County grand juries in terms of their decision outputs.
- 3. Determining empirically whether the demographic composition of grand juries has consequences for their performance in the administration of justice.
- To the extent that the purpose of this thesis is fulfilled, two

related goals will be achieved:

- 1. As political scientists, we will better understand the nature and impact of public participation in one component of the criminal justice system and will be able to furnish empirical evidence concerning public participation on grand juries and its impact on grand jury performance.
- 2. The modest approach and findings of this thesis will help generate new questions and models which will be applied to more ambitious research in the future. If interesting, the findings reported here can be replicated in other jurisdictions and for other types of juries. Findings may then be compared and generalized among juries and jurisdictions. This research focuses on the group and its outputs rather than upon the individual group member and his/her decisions. Hopefully, this focus will generate new questions and prove applicable to the study of other, functionally analogous, small groups of political decision-makers.

In pursuance of these goals, the thesis is divided into five chapters. The remainder of Chapter 1 reviews relevant literature, and presents three specific aspects of Harris County grand juries to be analyzed. Chapter II presents the specific hypotheses to be tested and the methodology applied in the study. Chapter III is a description of the demographic composition of Harris County grand juries and an analysis of the extent to which these grand juries reflect a crosssection of the community. Chapter IV describes Harris County grand jury performance in terms of decision outputs and analyzes the extent to which performance is a function of grand jury composition. Chapter V is a review of findings and conclusions, with suggestions for further research.

## Literature Review

Four bodies of literature which deal directly or indirectly with the subject of this thesis will be reviewed.

- 1. The body of law contained in Federal court decisions pertaining to exclusion of certain classes from grand jury service.
- 2. Studies of jury composition and process by legal scholars and social scientists.
- 3. Studies by political scientists, sociologists, and social psychologists of small groups.
- 4. Studies by public law scholars of judicial decision-making and juries.

(The study of juries, which is most directly applicable to this thesis, is reviewed last because it leads naturally into the review of ongoing grand jury research in Harris County and the presentation of specific topics of inquiry which follow.)

#### Case Law

Supreme Court and lower federal court decisions will be reviewed to establish:

- a. The cognizable classes recognized by the courts as protected against exclusion from service on state grand juries.
- b. The current court standards of representation for each cognizable class.

<u>Cognizable Classes</u>. Chief Justice Earl Warren characterized a cognizable class as determined by:

Whether there exists in a particular community a particular class needing aid of the courts in securing equal treatment is a question of fact, and when the existence of a distinct class is demonstrated, and it is further shown that laws as written or as applied single out that class for different treatment not based on some reasonable classification, the guarantees of the Fourteenth Amendment have been violated, <u>Hernandez</u> v Texas 74 S. Ct. 667 (1954).

Cognizable classes have been recognized within racial, age, economic, and sex population categories. A long list of cases stretching from Strauder v West Virginia 100 U.S. 303 (1879) to Peters v Kiff 407 U.S. 493 (1972) has established Blacks as a cognizable class which may not be excluded from grand jury service. Exclusion is defined by the disparity between the percentage of black jurors and the percentage of Blacks in the eligible population. Disparities as small as 38 percent (Turner v Fouche 396 U.S. 346 (1970) have been declared a violation of the 14th Amendment equal protection clause. Blacks are further protected by statute: "No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as a grand or petit juror in any court of the United States or of any State on account of race, color, or previous condition of servitude" (18 USC @ 243). Hernandez v Texas, supra, a case originating in Yoakum, Texas, established Mexican-Americans, defined by Spanish-surname, as a cognizable class.

While most jury composition challenges before the Court have dealt with racial exclusion, classes taken from population categories other than race have also been recognized by the courts as cognizable classes which cannot be excluded from service on grand or petit juries. <u>Ballard</u> <u>v US</u> 329 US 187 (1946) established <u>women</u> as a cognizable class for purposes of federal jury challenges. Recent cases (cf Taylor v Louisiana,

95 S. Ct. 692 (1975) have extended that position to state juries. <u>Youth</u> were defined as those under 35 and recognized as a cognizable class in <u>U.S. v Butera</u> 420 F. 2d. 564 (1970). <u>Low income</u> wage earners were recognized as a cognizable class protected from exclusion from federal juries in <u>Thiel v U.S.</u> 382 U.S. 217 (1946). This protection was extended to state grand and petit juries in <u>Labat v Bennett</u> 365 F. 2d. 698 (Fifth Circuit enbanc), <u>cert. denied</u> 386 U.S. 991 (1966), although <u>Labat</u> involved exclusion of poor who were also black.

Thus, the courts have recognized five classes (Blacks, Spanishsurname, Women, Youth, and Low Income) from four population categories (Race, Sex, Age, Economic) as protected from exclusion from state grand juries.

## Court Standard of Representation

The most recent Supreme Court case involving grand jury representation (<u>Peters</u>, supra) is important in setting contemporary standards for grand jury representation on two counts. First, rather than follow almost 100 years of reliance on the equal protection clause, Justice Marshall, writing for the majority, based the Courts decision on due process:

> Due process requires a competent and impartial tribunal. Similarly, if a state chooses to use a grand jury, due process imposes limitations on the composition of that grand jury . . . even if there is no showing of actual bias, due process is denied by circumstances that create the likelihood or appearance of bias (p. 501-2).

Second, <u>Peters</u> is the first Supreme Court decision which held that a person challenging grand jury exclusion need not himself be a member of the excluded class.<sup>6</sup> (In this case the indictment of a white defend-

ant was overturned because blacks were excluded from the indicting grand jury.)

The court has recognized that the exclusion of a discernible class from jury service injures defendants of all classes in that it destroys the possibility that the jury will represent a cross section of the community (p. 500).

Justice Marshall concluded that failure of a grand jury to reflect a cross section of the community's cognizable classes would deny that grand jury benefit of the variety of the community's experience and human resources and have a negative impact on its performance:

> It is not necessary to assume that the excluded group will consistently vote as a class in order to conclude that their exclusion deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented (p. 502).

The <u>Peters</u> opinion reflected a cross section standard established earlier in the Fifth Circuit by <u>Brooks v Beto</u> 366 F. 2d. 1 (1966). <u>Brooks</u> had relied on an earlier opinion authored by Justice Black in <u>Smith v Texas</u> 311 U.S. 128 (1940), a case originating in Harris County. It is thus part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community.

The courts have used the exclusion of one or more classes as an indication that a jury does not represent a cross section of the community and have displayed a willingness to invalidate the policy outputs of those grand juries which exclude cognizable classes from participation.<sup>7</sup>

In addition to the explicit requirement that cognizable classes be represented, the emphasis in <u>Peters</u> and <u>Brooks</u> on the variety of human resources and experience implies that grand juries which contain a large

variety within each population category would perform differently from those which did not. Not only would the cross section grand jury include representative numbers of each cognizable class, it would include the greatest possible variety of the population category from which that class was taken. For example, not only would a grand jury include an appropriate number of young people, it would reflect the age heterogeneity of the community across all ages, thereby increasing its variety of human resources and experience.

Thus the courts seem to assume that both population category heterogeneity and cognizable class representation have a potential impact on grand jury performance and, by extension, on the administration of justice.

# Studies of Jury Representation and Procedure

Historically, grand juries were created to serve as a check against over-zealous prosecutors by subjecting criminal charges to review by a representative body from the community.<sup>8</sup> However, a growing body of literature indicates that most state grand juries are not representative of the community.<sup>9</sup> Indeed, the backgrounds represented on non-randomly selected juries tend to resemble a cross section of political elites more than they resemble a cross section of the community.<sup>10</sup>

Studies of grand jury procedure are also consistent in concluding that grand juries fail by and large in their traditional function as a check on the over-zealous prosecutor. Several authors have referred to grand juries as "rubber stamps," legitimizing the prosecutor's decision with symbolic citizen participation.<sup>11</sup>

Professor Robert Carp's study of 1969-1972 Harris County grand juries indicated that local grand juries followed the national pattern-i.e., as of 1972, they neither reflected a cross section of the community nor acted as an effective check on the prosecutor.<sup>12</sup>

#### Small Group Analysis

Most of the small group studies by political scientists, sociologists, and social psychologists have focused on the behavior of individuals within small groups rather than on the performance of the group. However, areas within the small group literature contribute conceptual and empirical referents for this study. For example, the grand jury meets the criteria by which small group theorists differentiate small groups from other collections of people:

1. There are from two to twenty members

2. There is some interaction.

3. A set of norms is established.

4. If interaction continues, roles are established.

5. A network of interpersonal attraction (revulsion) develops.<sup>13</sup>

Conceptually and empirically, the research reported here fits comfortably into an important and under-researched subfield of small group analysis. The study of grand jury outputs is the study of the policy outputs of an official ad-hoc, task-oriented small group, known as a focused gathering. The grand jury may be conceptualized as a task-oriented small group as by Fisher: "Task-oriented groups are those whose very existence depends on performing some task function."<sup>14</sup> In fact, Fisher uses juries as an example of the task-oriented group and classifies juries as a group whose task is to decide if a law has been violated. 15

Irving Goffman further distinguishes official ad hoc groups from the phenomenon being studied in the bulk of the small group literature. Goffman characterizes such groupings as "focused gatherings" and characterizes activity within such gatherings as "focused interaction."<sup>16</sup> Focused interaction occurs "when people effectively agree to sustain for a time a single focus of cognitive and visual attention, as in . . . a joint task sustained by a close face-to-face circle of contributors."<sup>17</sup> A crucial attribute of the focused gatherings in which focused interaction occurs is the relatively continuous focus on the official activity, so characteristic of grand juries.

The main thrust of empirical research into small groups by social scientists has been based on Lewin's group dynamics model or Bales' interaction process analysis model.<sup>19</sup> Political scientists have tended to apply Bales' model, focusing on the individual decision-makers and their behavior, rather than on the policy outputs of small groups of political decision-makers.<sup>20</sup> Unfortunately, the focus of both models on the individual and process rather than on the group and its outputs and their reliance on extensive interviewing and/or observation of group activity limit their applicability to this thesis. However. while the general emphasis of small group analysis on group dynamics and personal interaction is of limited applicability here, the attention paid by Kurt Lewin and his group dynamics disciplies to group cohesion is of interest. The field theorists have concluded in a series of studies that group homogeneity is related to group cohesiveness and that more cohesive groups tend to perform and reach decisions more quickly

than do less cohesive ones.<sup>21</sup> Triandis, for example, found that members are not able to communicate as well in psychologically heterogeneous groups as in groups that have homogeneous psychological profiles as measured by the Osgood Semantic Differential Test.<sup>22</sup>

On the other hand, studies have found personality and attitudinal heterogeneity of a group positively associated with successful problem solving in task oriented groups. Shepherd reviews the findings in this area and concludes that diverse skills and experience are factors which will encourage role differentiation and thus flexibility and corrective functions in the decision-making process, <sup>23</sup> especially in situations involving ambiguous or unfamiliar stimuli.<sup>24</sup>

The evidence then, indicates that increasing personality heterogeneity of a group has the ironic effect of increasing the difficulty of building interpersonal relationships within the group while also increasing the problem solving potential of the group.

Given the influence of group dynamics and interaction analysis on the study of small groups, it comes as no surprise that the bulk of the literature which treats group composition as a task related variable focuses on psychological, rather than demographic variables. However, age and sex characteristics of group members have received some limited attention.

The effect of sex representation in a group is problematic. One line of findings running from E.B. South in 1927<sup>25</sup> to Shaw<sup>26</sup> holds that single-sex groups are more efficient than mixed-sex groups because singlesex decision-making groups are more concerned with objective task performance and objective information, while mixed sex groups concern

themselves with social problems and social information.<sup>27</sup> However, at least one more recent study has found that mixed-sex (like mixedpersonality) groups are more effective, although slower, problem solvers than are single-sex groups.<sup>28</sup>

One piece of research found that the effect of a group member's sex on his or her group-related behavior was at least partially interrelated with the effect of that member's age. In a group problem solving situation, older males participated more than younger males, but younger females participated more than older females.<sup>29</sup> The participatory tendencies associated with other background characteristics have been examined in studies dealing specifically with juries and are reviewed below.

# Public Law-Judicial Decision-Making, Jury Studies

As with small group analysis, most of the limited research into the judicial decision is of the behavioral tradition and focuses on the individual decision-maker and his/her decision or upon interaction between members of collegial courts.<sup>30</sup> Studies which examine the effect of background on the judicial decision have found very little relationship between the two. For example, only political party is a consistent predictor of a judge's sentencing decision.<sup>31</sup> At first blush, this might seem discouraging, but the focus on individual judges and the extreme cognizable class homogeneity of the federal bench has prevented students of judicial behavior and sentencing behavior from analyzing variance in the background characteristics under investigation here and has limited the extent to which their work can be related to the study of collegial outputs. Public Law scholars have not devoted much attention to the study of grand or petit juries, and a review of the judicial decision-making literature reveals a complete void concerning the impact of the combined backgrounds on a grand jury on that grand jury's decisions. <u>The American</u> <u>Jury<sup>32</sup></u> reported no correlation between the backgrounds of seated jurors and the jury's decision; however, the authors had only two pieces of background information--city size and region--both of which are controlled in the local research reported here.

All other studies located by this writer which relate juror background to the judicial decision are of the behavioral tradition and focus on the background and decision of the individual juror rather than on the composite of backgrounds and the jury decision. While not directly applicable to this study, several studies focusing on the individual juror have implications for a study which focuses on the jury as the unit of analysis.

Of particular interest is a study by John Reed of jurors in Louisiana.<sup>33</sup> Reed mailed questionnaires to petit jurors who had served over a two year period, asking for background information and whether the respondents had voted to return a guilty or not guilty verdict. He discovered that jurors with high school education or less and jurors in lower status occupations reported a statistically significant frequency of not guilty verdicts, while the higher status jurors were more likely to report having voted for a guilty verdict. No relationship was found for age; and, perhaps because of their exclusion from Louisiana juries, no results were reported for Blacks or Women.

Dale Broeder, however, studied petit juries in North Carolina and

found that Black jurors were more "underdog oriented" than were whites. 34

15

Several scholars have studied the effect of background variables on mock jurors in laboratory settings. These studied have been effective primarily in cases involving only specific issues. For example, Theodore Becker was able to demonstrate that Catholics on simulated juries were more likely to convict in euthenasia cases than were non-Catholics.<sup>35</sup>

Psychologists studying juror attitudes have found that jurors with political conservative<sup>36</sup> and pro-death penalty attitudes<sup>37</sup> tended to exhibit a bias which favors the prosecution. However, attitudinal studies to date have not controlled for demographic background variables.

Also of interest to our study are a series of studies of the correlates of juror participation. All published research has concluded that high status jurors participate more than middle or lower status jurors and that men participate slightly more than women.<sup>38</sup> Strodtbeck argued that while there was only a slight quantitative difference between the participation levels of men and women, important qualitative differences exist in the type of participation. Men, according to Strodtbeck, tend to initiate discussion, while women tend to react to the contributions of others.<sup>39</sup> In a study of interrelations in a mock jury setting, Hurwitz and his co-researchers found that low status jurors reported a high liking for high status colleagues, that low status jurors over estimated the contributions of high status jurors to the deliberation process, and that low and high status jurors tended to return similar verdicts.<sup>40</sup>

In sum, published research concerning the relationship between jury

composition and jury performance is non-existent. Published research concerning the relationship between juror background and juror behavior is available but of uneven quality and only indirectly applicable.

To this writer's knowledge, the only published study by a political scientist into state grand jury composition and process based on original field research has been conducted by Professor Robert Carp in Harris County, (Houston) Texas.<sup>41</sup> Professor Carp determined via questionnaires sent to Harris County grand jurors who had served from 1969-1972 that Blacks were somewhat underrepresented and that Mexican-Americans, Youth, Women, those with middle and lower incomes, and the less educated were grossly underrepresented on Harris County grand juries during this period.

Professor Carp's survey and his own experiences as a grand juror also revealed interesting procedural patterns. For example, Harris County grand juries returned approximately 90 percent true bills. The Harris County grand jury on which he served voted on 80 percent of the cases which it heard without any discussion whatsoever and the prosecutor's recommendations were followed in 93 percent of the cases. Professor Carp's grand jury averaged seven minutes per case; however, the 1971 average was only five minutes per case.<sup>42</sup>

On the other hand, Professor Carp discovered that procedure was not uniform. Variety was found along three dimensions. First, grand juries differed from one another as to the average time spent per case. For example, Professor Carp's grand jury spent considerably more time per case than did the average 1971 grand jury.

Second, certain types of crimes were discussed more than were other

types. For example, both Professor Carp and his questionnaire respondents felt that drug crimes and crimes of passion received more attention than did other crimes.

Third, 84 percent of Professor Carp's respondents felt that the amount of time and discussion per case decreased as the term progressed.

Professor Carp's original exploratory study raised at least as many questions as it answered and generated ongoing research into Harris County grand juries at the University of Houston. Participation in this project led to examination of Harris County grand jury records by this writer and Jerome Reid, which revealed three additional unexplained areas of variance between grand juries:<sup>44</sup>

- 1. Patterns of representation on Harris County grand juries are not uniform. The extent to which cognizable classes are exclused varies from grand jury to grand jury; this includes variance between grand juries meeting during the same term.
- 2. The number of cases heard and decided during its term varies from grand jury to grand jury; this includes variance between grand juries meeting during the same term.
- 3. The propensity of grand juries to return no bills varies from grand jury to grand jury; this includes variance among grand juries seated during the same term.

# Specific Topics of Inquiry

In sum, both the nature of participation and performance, measured in decision outputs, varies among grand juries. This thesis seeks to describe and explain that variance. As noted in the introduction, the general purpose of this thesis is to partially fill a void in knowledge of the effect of public participation in the criminal justice system on the administration of justice. More specifically, this research looks at participation by the public on grand juries and its effect on the administration of justice in Harris County. In pursuing this purpose, three specific inquiries into Harris County grand juries will be under-

taken:

- 1. A description of public participation. This description will be couched in terms of the extent to which members of each of the courts' cognizable classes have participated on Harris County grand juries. Such a description will serve to update and replicate Prof. Carp's finding that cognizable classes were excluded from Harris County grand juries. It will also facilitate comparison of participation levels on Harris County grand juries with participation standards established by the courts.
- 2. A description of grand jury outputs. This description will include the number of decisions returned, the number of no bills returned, and the ratio of no bills for each grand jury. Each grand jury's outputs will be recorded for the threemonth term and for each month of the term. This monthly record will facilitate replication of Prof. Carp's tentative finding that grand juries process cases more rapidly as their term progresses.
- 3. A description of the association (if any) between participation and outputs. Grand jury composition as described in step one and grand jury outputs as described in step two will be compared to answer the question: Given that there is variance among grand juries in their composition and in their outputs, can the variance in outputs be explained by the variance in composition?

Methods used to investigate each aspect and the hypothesized findings are discussed in the following chapter.

#### FOOTNOTES

<sup>1</sup>Details of grand jury appointment and deliberation procedure are presented in Appendix A. Statutory Source: Texas Code of Criminal Procedure, Annotated, Cert. 19 and 20 (Supp. 1974).

<sup>2</sup>R. J. Richardson and K.N. Vines, <u>The Politics of Federal Courts</u> (Boston: Little, Brown and Company, 1970), espec. Chap. One. See also David Easton, <u>The Political System</u> (New York: Alfred A. Knopf, 1953), 129. Given Easton's definition of politics as the authoritative llocation of values in the society, grand jurors are political actors and the grand jury decision is a political decision.

<sup>3</sup>See <u>HB794</u>; <u>HB309</u>; both introduced and heard before the House Judiciary Committee, 64th Legislature, 1975. The author of a bill which would require that grand jurors be selected at random from voter registration lists has informed this writer that he plans to introduce a similar bill next session. Interview with Rep. Craig Washington, 201 S. Main, Houston, November, 1975.

<sup>4</sup>Herbert Jacob, <u>Justice in America: Courts Lawyers</u>, and the Judicial <u>Process</u> (Boston: Little, Brown, & Co., 1972).

<sup>5</sup>Ibid, p. 121.

<sup>6</sup>Earlier discussions at the Court of Appeals level had reached similar conclusions. See, for example, Brooks v Beto 366 F 2d. 1 (1966).

<sup>7</sup>See Sidney Ulmer, "Supreme Court Behavior in Racial Exclusion Cases: 1935-60," <u>American Political Science Review</u>, LVI (June, 1962), 325-30. Ulmer argues that while the Supreme Court does not explicitly rely on statistical probability, they tend to find unconstitutional exclusion in those cases involving N  $\ge$  60 and a disparity which could have occurred by chance <.05. Ulmer's criteria are of limited applicability to a large N in which even a small disparity is statistically significant beyond .05.

<sup>8</sup>See B.C. Keeny, <u>Judgement By Peers</u> (Cambridge, Mass.: Harvard University Press, 1949). Also, see Justice W. Douglas' concurring in <u>Alexander v Louisiana</u> 405 U.S. 625 (1972); R.D. Younger, <u>The People's</u> <u>Panel: The Grand Jury in the United States, 1639-1961</u> (Providence, R.I.: Brown Univ. Press, 1963).

<sup>9</sup>Howard S. Erlanger "Jury Research in America: Its Past and its Future," <u>Law and Society Review</u> (Fall, 1970), p. 395-370. For an excellent discussion of racial exclusion see F. Kuhn, "Jury Discrimination: The Next Phase," <u>Southern California Law Review</u>, 41, (1970), 235-249. For application of fairly sophisticated probability tests of disparities see M.O. Finklestein, "The Application of Statistical Decision Theory to the Jury Discrimination Cases," <u>Harvard Law Review</u>, 80, (1966); David Kairys, "Juror Selection: The Law, A Mathematical Method of Analysis, and a Case Study," American Criminal Law Review, 10, (1970), 771.

<sup>10</sup>See Kenneth Prewitt, <u>The Recruitment of Political Leaders</u> (Indianapolis: Bobbs-Merrill, 1970).

<sup>11</sup>B. W. Coates, "Grand Jury, The Prosecutor's Puppet: Wasteful Nonsense of Criminal Jurisprudence," <u>Pennsylvania Bar Association</u> <u>Quarterly</u>, 33 (1962), p. 311.

X 12 Robert A. Carp, "The Harris County Grand Jury--A Case Study," <u>Houston Law Review</u>, XII, No. 1 (Oct., 1974), 90-120. Carp, "The Behavior of Grand Juries: Acquiescence or Justice," <u>Social Science</u> <u>Quarterly</u>, 55 (March, 1975), 853-870.

<sup>13</sup>A. Paul Hare, <u>Handbook of Small Group Research</u> (New York: Free Press of Glencoe, 1962), vi.

<sup>14</sup>B. Aubrey Fisher, <u>Small Group Decision-Making: Communication and</u> the Group Process (New York: McGraw-Hill, 1974), 9.

<sup>15</sup>Ibid, 10.

16 Irving Goffman, <u>Encounters: Two Studies In the Sociology of</u> <u>Interaction</u> (Indianapolis: Bobbs-Merrill, 1961).

<sup>17</sup>Goffman, <u>Interaction Rituals: Essays on Face-to-Face Behavior</u> (New York: Doubleday, 1967), 113.

<sup>18</sup>The group dynamics approach grew out of Kurt Lewin's general field theory work and focuses on group cohesion. See Lewin "Frontiers in Group Dynamics" <u>Human Relations</u>, 1947, 5-42. G. Cartwright and A Zanders, eds., <u>Group Dynamics: Research and Theory</u> (Evanston, Ill.: Row-Peterson, 1953).

<sup>19</sup>Interaction Process Analysis, pioneered by sociologist Robert Bales, focuses on the individual group member and seeks primarily to explain leadership and interaction between group members. Bales' model was originally defined in Bales, <u>Interaction Process Analysis</u>: <u>A Method for the Study of Small Groups</u> (Cambridge, Mass.: Harvard Univ. Press, 1950). An updated version is presented in Bales, <u>Personality and</u> <u>Interpersonal Behavior</u> (New York: Holt, Rinehart and Winston, 1970).

<sup>20</sup>The most sophisticated and extensive applications are Sidney Verba, Small Groups and Political Behavior: A Study of Leadership (Princeton, N.J: Princeton University Press, 1961), and R. T. Golembiewski, The Small Group: An Analysis of Research Concepts and Operations (Chicago: Univ. of Chicago Press, 1962).

<sup>21</sup>Lewin <u>op cit</u>.; Cartwright <u>et</u>. <u>al</u>., <u>op cit</u>. It is interesting to note that prior to the social science movement toward focusing on the individual actor (see Lewin and Bales), the end (rather than means) of group problem solving received considerable attention. For example, see E.B. South, "Some Psychological Aspects of Committee Work," Journal of Applied Psychology, XI (1927), 348, and H. Munsterberg, Psychology and Social Sanity (New York: Doubleday, p. 1914) for studies of the differences between individual and group solutions to similar problems. J. F. Daishell focused on jury process and found that collective understanding and recall were enhanced by discussion in the jury room. Daishell, "Experimental Studies of the Influence of Social Situations," in C. Murchison (ed.), Handbook of Social Psychology (Worchester, Mass.: Clark Univ. Press, 1935).

<sup>22</sup>H. C. Triandis, "Some Determinants of Interpersonal Communication," Human Relations, 13, (1960), 279-287.

<sup>23</sup>Clovis Shepherd, <u>Small Groups: Some Sociological Perspectives</u> (Scranton, Pa.: Chandler Publishing, 1964). See also, M.E. Shaw, "A Note Concerning Homogeneity of Membership and Group Problem Solving," Journal of Abnormal Social Psychology, 60, (1960), 448.

<sup>24</sup>See L. R. Hoffman, "Homogeneity of Member Personality and its Effect on Group Problem Solving," Journal of Abnormal Social Psychology, 58, (1959), 27-32.

<sup>25</sup>E. B. South, 348.

26 Shaw presents a summary and interpretation of findings in this area in Group Dynamics: The Psychology of Small Group Behavior (New York: McGraw-Hill, 1971).

<sup>27</sup>It should be pointed out that this line of findings is the product of neither sophisticated design nor rigorous methodology. Most studies focus on adolescents and rely on one-variable explanations. Groups of college sophomores are conspicuously well studied.

<sup>28</sup> R. L. Hoffman and N. R. Maier, "Quality and Acceptance of Problem Solutions by Members of Homogeneous and Heterogeneous Groups," Journal of Abnormal and Social Psychology, 62, (1961), 401-407.

<sup>29</sup>R. C. Ziller and R. V. Exline, "Consequences of Age Heterogeneity in Decision-making Groups," <u>Sociometry</u>, 21, (1958), 198-211.

<sup>30</sup>For example, Walter Murphey's discussion of Courts as small groups in Balesian, focusing on interaction and leadership, rather than on group performance; W. Murphey, "Courts As Small Groups," <u>Harvard Law Review</u>, 79, (1966), 1565. See also Danelski, "The Influence of the Chief Justice In the Decisional Process of the Supreme Court," in <u>Courts, Judges, and Politics</u>, Murphey and C. H. Pritchett, eds., (New York: Random House, 1961). Danelski relies heavily on the functioning categories of task and social leadership adapted from M. Deustch's earlier theoretical distinction between task function and group (social) function. Deustch, "A Theory of Cooperation and Competition," <u>Human Relations</u>, II, (1949), 129-152.

<sup>131</sup>Most scholars who have searched for a relationship between background and judicial-decision making have focused on judges and sentencing behavior, finding little relationship between the two. See Glendon Shubert, <u>Quantitative Analysis of Judicial Behavior</u>, (1959); Stuart Nagel, "Political Party Affiliation and Judges' Decisions," <u>American Political Science Review</u>, 55, (1961), 843; Bowen, "The Explanation of Judicial Voting Behavior from Sociological Characteristics of Judges," and Grossman, "Social Background and Judicial Decision-making," <u>Harvard Law</u> Review, 79 (1966).

<sup>32</sup>H. Kalvin, Jr. and H. Zeisel, <u>The American Jury</u> (Boston: Little Brown, 1966).

<sup>, 33</sup>John Reed, "Jury Deliberations, Voting, and Verdict Trends," Southwest Social Science Quarterly, XLV, (March, 1965).

<sup>34</sup>Dale Broeder, "The Negro in Court," <u>Duke Law Journal</u> (Winter, 1965), 19-31. It should be noted that Mr. Broeder's findings are based on observation of only three juries.

<sup>35</sup>T. Becker, "Juror's Values and Their Verdicts," <u>Social Science</u> <u>Quarterly</u>, LXVI (Sept. 1965), 130-140; See also, Rita James Simon, <u>The Jury and The Defense of Insanity</u> (Boston: Little, Brown, and Co., 1967); Elisabeth Casper, "Jurors View Mental Illness: Review of the Literature," Pennsylvania Psychiatric Quarterly, IV, (1964) 63-67.

<sup>36</sup>V. Boehm, "Mr. Predjudice, Miss Sympathy, and the Authoritarian Personality: An Application of Psychological Measuring Techniques to the Problems of Jury Bias," Wisconsin Law Review, No. 3, (1968), 734-747. <sup>37</sup>Robert E. Thayer, "Attitude and Personality Differences Between Potential Jurors Who Could Return a Death Verdict and Those That Could Not," <u>Proceedings of the Annual Convention of the American Psychological</u> Association, V (1970), 445-446.

<sup>38</sup>Fred Strodbeck, Rita M. James, and Charles Hawkins, "Social Status in Jury Deliberations," <u>American Sociological Review</u> (Dec., 1957), 713-719; James, "Status and Competence of Jurors," <u>American Sociological</u> <u>Review</u> (May, 1959), 563.

<sup>39</sup>Strodbeck and R. D. Mann, "Sex Role Differentiation in Jury Deliberations," XIX, (March, 1956), 3-21.

<sup>40</sup>J. Hurwitz, A. Zander, and B. Hymovitch, "Some Effects of Power Relations Among Group Members," in <u>Group Dynamics: Research and Theory</u>, ed. by D. Cartwright and A. Zander (Evanston, Ill.: Ron, Peterson, and Company, 1953).

✓ 41 Carp, <u>The Harris County Grand Jury: A Case Study</u>, 94.

<sup>42</sup>Ibid, 100-103.

43<sub>Ibid</sub>.

<sup>44</sup> Mr. Reid and this writer originally intended to explore the background and behavior of grand jury foremen. However, the preliminary investigation of this material indicated that jury foremen in Harris County were almost totally homogeneous. In the last six years there has been one black foreman, one spanish surname, one woman, and one under thirty-five years of age. This lack of variance prohibited inclusion of foreman characteristics as possible predictors in the research discussed below. For a discussion of the foreman's role, see Carp, p. 106, and William Bevan, et al., "Jury Behavior as a Function of the Prestige of the Foreman," Journal of Public Law, 1958, p. 419.

#### Chapter Two

#### METHODOLOGY AND HYPOTHESES

Chapter Two outlines the methodology applied in this study and the specific hypotheses to be tested. This presentation is accomplished in four steps. First, the sources and methods of gathering relevant data are presented. Second, operational definitions are developed for indicators of participation and of performance. In step three, hypotheses are presented concerning participation, procedure, and the relationship between grand jury composition and grand jury outputs. Finally, in step four, methods of data analysis appropriate for testing the hypotheses developed in step three are presented.

# Data Sources and Methods of Gathering

Three sets of information will be required to explore the research topics posed here:

- 1. <u>Output Data-The total number of cases decided and the total</u> number of no bills returned by each grand jury seated and the combined total for each set of three grand juries seated during the same term.
  - la. The number of cases decided and the number of no bills returned by each grand jury for each month of its threemonth term.
  - 1b. The number of cases heard and the number of no bills returned by each grand jury and each three-jury set in the following categories of cases:
    - (1) Theft
    - (2) Burglary
    - (3) Robbery of a Person
    - (4) General Assault
    - (5) Assault to Murder
    - (6) Sexual Assault
    - (7) Victimless Sex Crime
    - (8) Driving while Intoxicated
    - (9) Embezzlement/White Collar Crime

- (10) Possession of Marijuana
- (11) Sale of Marijuana
- (12) Possession of Hard Drug
- (13) Sale of Hard Drug

(The above catetories were selected after examining the District Attorney's classification system and represent a condensation of that system. It was anticipated that some may be further collapsed for purposes of analysis.)

- 2. <u>Population Data-The proportion of the Harris County population</u> which is made up of each of the cognizable classes.
- 3. <u>Composition Data-The representation of each cognizable class</u> (and the heterogeneity of each population <u>category</u>) on each grand jury, which requires knowledge of the age, race, sex, and approximate income of each juror seated during this period.

#### Output Data

The data on each grand jury's outputs was acquired from the Harris County District Attorney's grand jury division. A record of each day's activities is maintained for each grand jury. This record includes the nature of each charge and whether it was no billed or true billed. These daily records are compiled and placed into a file from which this writer was able to determine the number of cases decided and the number of no bills returned for each crime category and for all crime categories by a grand jury during its term. The basic output data was supplemented by information from interviews with employees of the District Attorney's grand jury division.

Output data was originally gathered for the 13 categories of crime. However, in gathering the data it became apparent that the reporting scheme and codes followed by the district attorney's grand jury division were inconsistent and did not always accurately differentiate among the 13 categories. For example, at times "Sodomy" referred to a victimless sex crime, but some cases coded as sodomy grew out of rape or assault charges. Clear distinctions were not drawn between other, more common, charges involving property-related crimes. For example, some worthless check charges were coded as theft while some were coded specifically as worthless checks. Although it was difficult to distinguish between property-related crimes, it was possible to distinguish a general category of property-related crimes from those not involving property.

Other categories were reported in a consistent, unambiguous fashion. These crimes included: 1. Marijuana Possession

- 2. Marijuana Sale
- 3. Narcotic Possession
- 4. Narcotic Sale
- 5. Murder, Attempted Murder
- 6. Rape, Attempted Rape
- 7. Assault
- Property-related Crimes (Theft, Burglary, etc.)

#### Population Data

Population figures are based on the 1970 Census report and discussions with Houston city officials.<sup>1</sup>

# Composition Data

Photocopies of each grand jury convened during this time frame were obtained from the Harris County District Criminal Clerk's Office. Each list indicates the supervising judge, the date convened, the sex of each juror seated and which jurors' surnames were Spanish. In cases where the sex or surname of a juror was unclear, that juror was contacted by telephone for verification. Age was determined by crossreferencing the grand juror lists and the 1974 voter registration list. Again, when age information was unavailable or unclear from the voter list, grand jurors were contacted by telephone for clarification. In all cases the appropriate number of years was subtracted to indicate age at time of grand jury service.

The number of Blacks called for grand jury service was not available in aggregate form; however, the number of Blacks seated on each grand jury was determined by telephone contact with a minimum of two members of each grand jury. In only one case was there disagreement and this was resolved by contacting all 12 grand jurors and asking each his/her race.

No economic data per se is available; however, each grand jurors' income was estimated by the buying power assigned his residence by <u>Coles</u> <u>Crisscross Directory</u>.<sup>2</sup> This publication divides the county into housing areas such that each area (called a trade zone) represents homogeneous housing values.<sup>3</sup> Then, using housing value as an indicator of buying power, <u>Coles</u> assigns each trade zone and each residence within that trade zone a buying power rating of A, B, C, D, or E, with A representing the highest buying power and E the lowest. Therefore, each grand jurors' income was estimated by determining the rating assigned his address in the Coles Directory.

Supplemental data for minority and female grand jurors was gained from previously unanalyzed questionnaire data made available by Professor Carp and from the unpublished results of a questionnaire sent to Harris County grand jury commissioners by Professor Carp, Jerome Reid, and this writer.<sup>4</sup>

The data outlined above will be used to describe grand jury composition and grand jury outputs and to test hypotheses relating to both; however, prior to this description, composition and outputs must be

operationalized to facilitate description and measurement.

# DEFINITIONS AND OPERATIONALIZATION OF DEPENDENT AND INDEPENDENT VARIABLES Dependent variables - Relative outputs

Absolute measures of grand jury decision-making proficiency and no bill propensity are appropriate for measuring central tendency and variance in these outputs for the universe of grand juries. Grand jury outputs will be measured along two dimensions:

- 1. Decision-making proficiency-measured by the number of decisions a grand jury returns during its term.
- 2. No bill propensity-measured by
  - a. the number of no bills returned by a grand jury during its term, and
  - b. the percentage of no bills returned by a grand jury during its term.

A grand jury's outputs might more accurately be described relative to other grand juries meeting at the same time. However, since three grand juries are seated at a time, the mean percentage of cases decided by the universe of grand juries will always be 33 percent. However, relative measures are more applicable for measuring the relationship between a single grand jury's composition and its outputs. The number of decisions and number of no bills which any grand jury can return during one term is limited by the number of cases brought before grand juries during its term, which is limited by the number of arrests. Measuring each grand jury's outputs relative to the other two grand juries seated during the same term functions as a control for the constraints which the number of felony arrests during its term places on the potential number of cases a grand jury can hear.<sup>5</sup>

Relative Decision-making proficiency will be measured by: relative

number of cases decided by a grand jury during its term (<u>RELDEC</u>), to be determined by dividing the number of cases decided by a given grand jury by the total number of cases which it had the potential to decide and multiplying the dividend by 100. For example, if a grand jury decided 1000 of 3000 cases decided during the time which it met, its <u>RELDEC</u> score would be  $10/30 \times 100 = 33$ .

## Relative no bill propensity will be measured by:

1. Relative number of no bills (<u>RELNB</u>), to be determined by dividing the number of no bills returned by a given grand jury by the total of no bills returned for its term and multiplying the dividend by 100. If a grand jury returned 100 of 300 no bills, its <u>RELNB</u> score would be  $10/30 \times 100 = 33$ .

2. Relative percentage of no bills returned by a grand jury during its term,  $(\underline{\text{RELNBP}})$  to be determined by dividing a grand jury's no bill percentage by the summed percentages of grand juries meeting at the same time. For example, if grand jury A returned 10 percent no bills, grand jury B returned 13 percent and grand jury C nine percent, grand jury <u>RELNBP</u> scores would be 31 (.10/.32 x 100), 41, and 28 respectively. This measure of no bill propensity controls for the possible colinearity between <u>RELDEC</u> and <u>RELNB</u>.

# Composition Measures-Operationalization of Independent Variables

An attempt will be made to explain the variance in each of the three relative output measures from observed values of independent composition variables as operationalized below.

Explanation of variance in each of the three dependent variables will be sought by examining variance in grand jury composition measured along two dimensions--(1) Population Category Heterogeneity (<u>PCH</u>) and (2) Cognizable Class Representation (CCR).

## Population Category Heterogeneity

The absolute and relative heterogeneity present on a grand jury within four population categories (race, age, sex, and economic) will be measured as follows. The most <u>racially heterogeneous</u> grand jury will be defined as consisting of equal numbers of each of Harris County's three racial groups--Blacks, Whites, Mexican-Americans. Thus, the
highest score should be assigned to a grand jury consisting of four representatives from each racial grouping. This heterogeneity will be operationalized by assigning three points each to only the first four representatives of each race and assigning each grand jury a race PCH score equal to the sum of the individual scores, A grand jury's race PCH could vary between 12 and 36.

| 36                             | 12 = 12 Anglos                |
|--------------------------------|-------------------------------|
| 4 Blacks x 3 = $\overline{12}$ | $0 \text{ Blacks } x \ 3 = 0$ |
| 4  Mex-Am x  3 = 12            | 0  Mex-Am x  3 = 0            |
| 4 Anglos x 3 = 12              | 4 Anglos x 3 =12              |
| RACE HETERO $= 36$             | 8 Anglos $x 0 = 0$            |
|                                | TOTAL =12                     |

A grand jury's PCH for <u>age</u> will be operationalized at the variance of the ages represented on that grand jury; variance to be defined by the formula: -2

$$s^{2} = \frac{(X_{1} - \overline{X})^{2}}{N-1}$$

Where- $-s^2 = variance$ 

X<sub>.</sub> = grand juror age

X = mean grand juror age for that grand jury

N = number of grand jurors on that grand jury

The most <u>sexually heterogeneous</u> grand jury would consist of six men and six women. This heterogeneity will be operationalized by awarding the grand jury four "points" each for only the first six representatives of each sex and assigning the grand jury a sex PCH score equal to the sum of these points. A perfectly sexually heterogeneous grand jury would score 48, while a perfectly sexually homogeneous grand jury would score 24. .

|   |       |    |   |   | 48 |   |       |   |   | 24  | (12 | Males) |
|---|-------|----|---|---|----|---|-------|---|---|-----|-----|--------|
| 6 | Women | х  | 4 | 2 | 24 | 0 | Women | х | 4 | = 0 |     |        |
| 6 | Men   | x. | 4 | = | 24 | 6 | Men   | x | 4 | =24 |     |        |
|   |       |    |   |   | 48 | 6 | Men   | х | 0 | = 0 |     |        |
|   |       |    |   |   |    |   |       |   |   | 21  |     |        |

A grand jury reflecting perfect <u>income heterogeneity</u> would include three representatives from four income categories. Due to the low representation of individuals residing in Trade zones D and E, these zones have been combined in defining income heterogeneity. Thus, each grand jury will be assigned three points for each of the first three representatives from each rating, and assigned a PCH income score equal to the sum of these points. A grand jury reflecting perfect income heterogeneity would score 36, while a grand jury reflecting perfect income homogeneity would score nine.<sup>7</sup>

3 "A" incomes x 3 = 9 3 "B" incomes x 3 = 9 3 "C" incomes x 3 = 9 3 "D/E" x 3 = 9 TOTAL = 36 9 - all one income category

<u>Relative PCH</u> - Each grand jury will also be assigned PCH scores relative to the other two grand juries seated during its term. Since a case has the potential to be heard by one of three grand juries at any point in time, a grand jury's heterogeneity relative to its two contemporaries may be a stronger predictor of the number, type, and disposition of cases than is its absolute heterogeneity. Relative PCH scores will be assigned to each grand jury for each category by summing the raw scores of all three grand juries seated during the same term for

that category and assigning each grand jury a relative score for each category equal to its proportion of that sum x 100. For example, if three hypothetical sex heterogeneity scores were--Grand jury A = 30; B = 36; C = 44; A's relative PCH score would be 30/110 = 27.

## Cognizable Class Representation (CCR)

We shall utilize the courts' indicators of Youth (under 35) and Mexican-American (Spanish surname).<sup>8</sup> However, economic classes have been recognized by the courts without being explicitly defined. In order to test for the presence of Low Income individuals on the grand juries and to test for the effect of their presence on grand jury outputs, Low Income individuals will be defined as those whose residences are assigned a rating of "E" in the <u>Coles'</u> buying power guide. Eleven percent of Harris County residences are rated at E.

A grand jury's CCH score for Blacks, Mexican-Americans and Women is equal to the number of that class on the grand jury. The CCR score for Youth and Low Income individuals is equal to the percentage of the grand jury made up of that class.<sup>9</sup> For example, a grand jury with three youth will be assigned a youth CCR score of 3/12 = .25.

<u>Relative CCR-</u> Each grand jury will be assigned a relative CCR score for each class based on its percentage of the three grand juries seated during its term. (See examples for PCH above.)

# Hypotheses To Be Tested

The hypotheses presented will be tested in the body of the thesis with conclusions concerning them discussed in the body of the thesis and in the concluding chapter.

Three sets of hypotheses are presented, one for each area of inquiry. Each set of hypotheses is derived from the body of literature relating to it and from local ongoing research. Therefore, hypotheses concerning grand jury composition are presented with some degree of confidence in that they are consistent with an extensive body of findings from Harris County and elsewhere. The hypothesis associated with the second topic is presented with some confidence in that it is based upon a fairly sophisticated body of group dynamics literature and on the perceptions of Professor Carp and his local respondents. The set of hypotheses associated with topic three are presented with much less confidence in that they are presented in the complete absence of prior research relating grand jury composition to grand jury performance and based on work which is at best indirectly related to the specific topic under exploration. Nonetheless, the study of topic three is an exploratory one and the hypotheses are presented in that spirit.

#### Representation Hypothesis

- H1: There will be a statistically significant disparity between the representation of cognizable classes on Harris County grand juries and the percentage of cognizable classes in the eligible population.
- Ho: % Population = % Grand jurors
- H1: % Population  $\neq$  % Grand jurors
- Hla: There will be a statistically significant disparity between the proportion of Blacks on Harris County juries and the proportion of Blacks in the adult population.

- Hlb: There will be a statistically significant disparity between the proportion of Spanish surname on Harris County grand juries and the proportion of Spanish surname in the adult population.
- Hlc: There will be a statistically significant disparity between the proportion of Women on Harris County juries and the proportion of Women in the adult population.
- Hld: There will be a statistically significant disparity between the proportion of Youth on Harris County juries and the proportion of Youth in the adult population.
- Hle: There will be a statistically significant disparity between the proportion of Low Income individuals on Harris County grand juries and the proportion of Low Income individuals in the adult population.

### Output Hypothesis

The experience of Professor Carp, the perceptions of his respondents, and the findings of small group analysts, especially the field theorists, all point to the following hypothesis concerning the effect of time on the grand jury decision-making process.

H2: There will be a statistically significant increase among months in the mean number of cases returned by Harris County grand juries.

Hypothesized Relationship Between Grand Jury Composition and Grand Jury Outputs

Most of the small group and jury literature reviewed dealt with the individual group member rather than the performance of the group. Much of it dealt with individual participation. The literature does suggest, however, that homogeneous groups are quicker to reach decisions and that cognizable classes on petit juries tend to be somewhat defendent oriented. Admittedly, the picture is sketchy, but this is consistent with the exploratory nature of the research.

- H3: Variance in grand jury Absolute and Relative Population Category Heterogeneity will explain variance in grand jury relative decisions.
- H3a: There will be a negative relationship between grand jury Race Heterogeneity and a grand jury's relative decisions.

- H3b: There will be a negative relationship between grand jury Sex Heterogeneity and a grand jury's relative decisions.
- H3c: There will be a negative relationship between grand jury Age Heterogeneity and a grand jury's relative decisions.
- H3d: There will be a negative relationship between grand jury Income Heterogeneity and a grand jury's relative decisions.
- H4: Variance in grand jury Absolute and Relative Class Representation will explain variance in grand jury Relative No Bills.
- H4a: There will be a positive relationship between the Absolute and Relative Representation of Blacks on grand juries and grand jury Relative No Bills.
- H4b: There will be a positive relationship between the Absolute and Relative Representation of Spanish surname individuals on grand juries and grand jury Relative No Bills.
- H4c: There will be a positive relationship between the Absolute and Relative Representation of Women on grand juries and grand jury Relative No Bills.
- H4d: There will be a positive relationship between the Absolute and Relative Representation of Youth on grand juries and grand jury Relative No Bills.
- H4e: There will be a positive relationship between the Absolute and Relative Representation of Low Income individuals on grand juries and grand jury Relative No Bills.
- H5: Variance in grand jury Absolute and Relative Cognizable Class Representation will explain variance in grand jury Relative No Bill Percentage.
- H5a: There will be a positive relationship between the Absolute and Relative Representation of Blacks on grand juries and grand jury Relative No Bill Percentage.
- H5b: There will be a positive relationship between the Absolute and Relative Representation of Spanish surname individuals on grand juries and grand jury Relative No Bill Percentage.
- H5c: There will be a positive relationship between the Absolute and Relative Representation of Women on grand juries and grand jury No Bill Percentage.
- H5d: There will be a positive relationship between the Absolute and Relative Representation of Youth on grand juries and grand jury Relative No Bill Percentage.

H5e: There will be a positive relationship between the Absolute and Relative Representation of Low Income individuals on grand juries and grand jury Relative No Bill Percentage.

(No hypotheses are offered concerning the relationship between composition and crime specific outputs. It is hoped that exploration of the topic will generate hypotheses suitable for testing in future research.)

### Data Analysis

Three levels of analysis will be required to test the hypotheses posed by this research.

First, one must describe the extent to which each class is represented on Harris County grand juries, the outputs of each grand jury, and the representation and output differences between grand juries. For this, descriptive statistics of central tendency and distribution will be utilized.

Next, the level of representation for each class must be compared with the level which would be predicted by each class' proportion of the eligible population. Disparities between the representation of a class on grand juries and that class' proportion of the population will be defined by the formula:

# % population - % on grand jury % population

More importantly, the statistical significance of disparities between population means and grand jury representation means will be measured by "Z" and "t" test statistics. For analysis focusing on grand jurors (N>100), Z scores will be used to determine significance; for example, the significance of the disparity between the presence of women in the population sample defined by this universe of grand juries and in the parent county population. For analysis focusing on grand juries as a unit (N<100), "t" scores will be used.<sup>10</sup> Simple Analysis of Variance is used to establish the statistical significance of differences across sample means; for example, comparison of grand jury outputs among months.<sup>11</sup>

Since the two measures of class representation and the two measures of population category heterogeneity each include several variables, each of the four relationships will be explored on two levels:

- 1. The relationship between each independent measure and each dependent measure.
- 2. The relationship between each of the variables comprising the independent measure and the dependent variable.

For example, attention will be focused on the variance in no bill propensity explained by the representation of women on the grand jury and also upon the amount of such variance explained by the combined representation of all five classes.

Given the goal of explaining variance in a single interval level dependent variable from a combination of interval level independent variables, <u>The Statistical Package for the Social Sciences</u><sup>12</sup> multiple regression program is used to analyze the association between composition and outputs. This program provides the researcher with:

- a. Simple bivariate correlation coefficients for measuring strength and association of the variance in a dependent variable and variance in a single independent variable.
- b. Standardized multiple correlation coefficients to determine the strength of the association between variance in a single dependent variable (Y) and variance in an independent measure composed of more than one independent variable; i.e., the relationship between Y and a linear least square combination of  $X_1, X_2 \dots X_k$ .

c. The stepwise multiple regression equation of the relationship

between a single dependent variable and a combination of independent variables. The stepwise linear regression reports the relative contribution of each independent variable within an independent composition measure to variance in a single dependent variable.

The small N and exploratory nature of the associational hypotheses dictate that less attention be devoted to interaction between independent variables within the composition measures. Likewise, no attempt is made to generalize to the population as a whole. This is a description of the associations found in one small universe of grand juries. Therefore, no tests of statistical significance are appropriate concerning explained variance and none are reported. The possibility of curvilinear relationships will be investigated by examination of scatterplots of the simple linear regression of each composition variable on each independent variable.

The door to more sophisticated analysis in the future will, however, be opened by predictive linear models generated by the linear regression of each dependent variable on the combination of independent variables which best predicts the dependent variable's value.

The observed relationship between Y and a set of independent predictors is  $Y = a+b_1X_1 + b_2X_2 + b_kX_k + e$ where: Y = the observed value of the dependent variable  $a = the constant, or Y intercept (\overline{Y} - b_1X_1 - ... b_k\overline{X}_k)$  $b_i = the slope of X on Y, equal to the change in X for each$ one unit change in Y. $<math>X_i = the observed value of X$ e = the error term; the variance in Y not predicted by the combined variance in the independent variables,

The predicted relationship between Y and the combination of inde-

pendent variables is:  $Y' = a + b_1 X_1 + b_2 X_2 + b_1 X_k$ , where Y' is the predicted value of Y.

For example, the hypothesized relationship between a grand jury's proclivity to return no bills and its PCH is:

 $Y' = a + b_1 X_1 + B_2 X_2 + b_3 X_3 + b_4 X_4$ 

Where

Y' = predicted percentage of no bills b<sub>i</sub> = slope of Y'<sub>i</sub> X<sub>1</sub> = Race heterogeneity (observed) X<sub>2</sub> = Sex heterogeneity (observed) X<sub>3</sub> = Age heterogeneity (observed) X<sub>4</sub> = Income heterogeneity (observed)

Thus, error is equal to Y - Y' and this research will seek to develop a linear model which minimizes the difference between the predicted and observed values for each output measure and which can be tested in future research involving a larger set of juries.

Such models have the potential to be fit to larger samples with tests for interaction among independent variables and tests for statistical significance and possible generalizability of findings. As such, they will be discussed in the concluding chapter by way of summarizing relationships developed and generating proposals for further research based upon these relationships.

The description of Harris County grand juries and grand jurors begins in the next chapter.

Before presentation of linear models of association, the analysis of Harris County grand juries begins in Chapter Three with a description of their demographic composition.

### FOOTNOTES

<sup>1</sup><u>County and City Data Book - 1972</u> (U.S. Dept. of Commerce, Bureau of Census (Washington, D. C.: Government Printing Office, 1970); Interview with Houston, Texas Controller Lionel Castillo, April, 1975. Mr. Castillo has supervised extensive research into current and projected minority and low income population patterns in the Houston area as part of his effort to secure federal funds for the city.

<sup>2</sup><u>Coles Crisscross Directory</u>, Vol. 2, (Houston: Houston Chronicle Publishing Co., 1975).

 $\checkmark$ <sup>3</sup>No hard data is available as to the accuracy of <u>Coles'</u> ratings in estimating the value of an individual housing unit within a given trade zone. However, an examination of a Houston map which defines trade zones indicates that geographically large trade zones occupy intuitively homogeneous suburban areas while center city areas with sharply contrasting housing values are defined by smaller trade zones. In the final analysis it must be said that while this is an imperfect economic estimate, it is the best available.

<sup>4</sup>The commissioner questionnaire was sent to 258 grand jury commissioners who served from 1969-1974, with a 51% return rate.

<sup>9</sup>It was anticipated that RELNB would be partially a function of RELDEC - i.e., the more decisions a grand jury returns, the more no bills it returns. However, the relationship between the two is relatively weak, with RELDEC explaining approximately seven percent of the variance in RELNB.

<sup>6</sup>Age variance was measured only for the years 1972-1975 due to the questionable reliability of voter registration figures for grand jurors seated before that date. In no case was age known for less than 10 of the 12 grand jurors. For those grand juries with less than 12 ages known, N was set equal to ages known. See H. M. Blalock, <u>Social Statistics</u> (New York: McGraw-Hill, 1960), Chapter Six.

<sup>7</sup>Less than ten trade zones were known for two grand juries. These cases were treated as missing values, using conventions described in Norman Nie, et al., <u>Statistical Package for the Social Sciences</u> (New York: McGraw-Hill, 1975) 16-17. For grand juries in which 10 trade zones were known, each trade zone known was assigned a weighted value of 1.2; when 11 trade zones were known, each was assigned a weighted value of 1.09.

<sup>8</sup>Unpublished research in Harris County by sociologist T. Mindiola of the University of Houston indicates that a Spanish surname is an accurate indicator of Mexican-American racial background 85 percent of the time. The remaining 15 percent is divided equally between Mexican Americans with Anglo surnames and Anglos with Spanish surnames. Both deviant cases are usually the result of marriage.

<sup>9</sup>The use of percentages simplified the treatment of missing data for these two classes (see footnotes 6 and 7 above). If two youth were seated on a grand jury with 11 ages known, the youth CCR score was  $2/11 \times 100 = 18$ .

<sup>10</sup>See Blalock, <u>op</u>. <u>cit</u>.

<sup>11</sup>W. J. Dixon and F. J. Massey, <u>Introduction to Statistical Analysis</u> (New York: McGraw-Hill, 1969), Chap. 10.

<sup>12</sup>Nie <u>et</u>. <u>al</u>., Chap. 20. Also, see F. N. Kerlinger and E. Pedhazer, <u>Multiple Regression in Behavioral Research</u> (New York: Holt, Rinehart and Winston, 1973).

<sup>13</sup>Kerlinger presents the basic regression model Y' =  $a + B_1 X_1 + B_2 X_2 \dots B_1 X_2$ , where  $B_1$  is the expected change in Y with a change of one unit in  $X_1$  when  $X_2$  is held constant or otherwise controlled for.  $B_2$  is the expected change in Y with one unit change in  $X_2$  when the two groups are equal on  $X_1$ . Blalock, <u>op</u>. <u>cit</u>., Chap. 19, is the source for the analogous application of multiple correlation.

## Chapter Three

# GRAND JURY COMPOSITION

Chapter Three addresses the first two questions posed by this research:

- la. What is the representation of each cognizable class on Harris County grand juries convened between 1969-1975?
- 1b. Does the representation of each cognizable class meet the standards of representation established by the courts?

The chapter begins with a summary of the statutory requirements concerning the selection of grand jurors in Texas and a brief review of the constitutional standards for cognizable class representation which have been established by the courts. In answering question one, one may also test the hypothesis that each cognizable class will be excluded to a statistically significant degree (H1) and examine the substantive disparities between population proportion and grand juror proportion for each class in light of the courts' standards of representation for that class. Examination of question one will conclude with a discussion of how closely Harris County grand juries represent a cross-section of the community.

## Statutory and Constitutional Standards

Texas grand jurors are selected by commissioners who have been selected by district judges.<sup>1</sup> For a given grand jury, a judge selects not fewer than three nor more than five commissioners. This group of commissioners is to furnish the judge with a list of at least 15 and not more than 20 names from which the 12 grand jurors are to be chosen by the presiding judge. Any citizen of "good moral character" who is not a convicted felon, not under indictment for a felony, illiteratre, nor otherwise ineligible to become a registered voter is eligible to become a grand juror.<sup>2</sup> Thus, the statutes give the commissioners a great deal of discretion in calling the pool of 15 to 20 grand jurors from which 12 will be seated. Professor Carp's research indicates that such discretion results in most commissioners selecting either direct or indirect personal acquaintances as grand jurors.<sup>3</sup> In practice, this discretion extends to the seating as well as the calling of grand jurors. Before submitting the list of names to the presiding judge, the commissioners meet to determine the sequence of the names on the list. Typically, the judge selects the first 12 names unless one of the first 12 is unable or unqualified to serve.<sup>4</sup> Thus, commissioners not only determine who is called by may order the names of those called so as to determine who is seated as well.

As discussed in Chapter One, the Supreme Court and the lower federal courts have ruled that grand juries should represent a fair cross-section of the community's human resources.<sup>5</sup> Typically, exclusion of one or more cognizable classes from grand jury service has served as an indication that a set of grand juries does not represent a crosssection of the community.<sup>6</sup> The courts have been particularly strict concerning the exclusion of Blacks and other racial minorities, as evidenced by <u>Turner v Fouche</u>, supra, in which a 38 percent disparity between Blacks on the grand jury and Blacks in the population was held in violation of Fourteenth Amendment guarantees.<sup>7</sup> Women have also been established as a class which may not be excluded,<sup>8</sup> although the case law has not developed to the point of establishing minimum allowed disparities. Youth and Low Income individuals have also been recognized

as classes, but neither has been embraced very enthusiastically by the Courts.<sup>9</sup> Neither Youth nor Low Income has been recognized by the Supreme Court in cases involving state juries.

When exclusion is combined with a selection system that affords the selectors an opportunity to discriminate, the Supreme Court and lower courts have ruled the grand juries selected under such a system to be in violation of the equal protection and/or due process clause of the Fourteenth Amendment.<sup>10</sup> Clearly the discretion afforded Harris County grand jury commissioners in theory and in practice establishes the opportunity to discriminate, a fact established by 1940 with Justice Black's opinion in <u>Smith v Texas</u>, supra. However, <u>Smith</u> also held that the Texas commissioner system was not inherently unconstitutional and had the potential to be operated constitutionally.<sup>11</sup> Thus, the first question posed by this research might be paraphrased as, is this opportunity to discriminate associated with exclusion of one or more cognizable classes from representation on Harris County grand juries?

## Cognizable Class Representation

Disparities between each class' representation on the set of grand juries and in the population will be tested for statistical significance and substantive significance. Statistically significant differences will be defined as those which could have occurred by chance less than five times in 100, and used to test Hypothesis 1: There will be a statistically significant disparity between the representation of each cognizable class on Harris County grand juries and its representation in the eligible population.

H1: Population representation Grand Jury representation Ho: Population representation = Grand Jury representation

Substantively significant disparities for each class will be defined as those equal to or greater than disparities which have been held unconstitutional for minorities by the courts.

The population/grand juror comparison for each class is presented in Table One.

As indicated by Table 1, each cognizable class is excluded from Harris County grand juries to a degree which would have occurred by chance less than one time in one hundred had grand jurors been selected from the adult population in an unbiased manner. Thus, Hypothesis 1 is confirmed and the null hypothesis is rejected; however, major differences appear in the degree to which various classes are excluded and between statistically significant exclusion on the one hand and substantively significant exclusion as defined by the courts on the other.<sup>12</sup>

Blacks, the class most recognized by the courts, are the least excluded class in Harris County. While the test statistic computed for the disparity between Blacks on the grand juries and Blacks in the population is statistically significant, the disparity figure (20 percent) is far below the minimum disparity figure acknowledged by Court as evidence of unconstitutional exclusion (38 percent).

A similar situation exists for the Spanish surname class. The statistically significant disparity is not of a magnitude which has been viewed as substantively significant by the courts in racial exclusion cases.



BLUE = Population Proportion

RED = Grand Juror Proportion



In the case of Low Income exclusion, the situation is somewhat complicated. The substantive disparity approximates the 38 percent standard; however, <u>Turner</u> involved exclusion of Blacks. Unlike race, economic class has not been recognized by the Supreme Court in state jury cases and neither the Supreme Court nor lower courts have clearly and consistently defined the class.<sup>13</sup> Therefore, it is unlikely that the courts would rule the exclusion of Low Income individuals as defined here in violation of constitutional standards of representation.

Unlike the implicitly dichotomous sex, race, and age categories, the economic category variance as defined here occurs between five classes. Of particular interest in examining the Low Income class is the representation of the opposite extreme, High Income individuals. As reflected in Table 1, High Income individuals are grossly overrepresented. In fact, the overrepresentation of those in the highest buying power category indicates that, as operationally defined, four income categories are underrepresented, with their combined disparities balanced by the overrepresentation of the single highest economic class. Specifically, the economic disparities are: Trade zone B = 18 percent; Trade zone C = 22 percent; Trade zone D = 30 percent; Trade zone E = 40 percent. Thus, as one moves down the income ladder, the disparities increase, leaving their combined exclusion to be explained only by the minus 80 percent disparity between High Income grand jurors and the population of High Income adults. Clearly, overrepresentation of the upper economic strata is statistically and substantively greater than the underrepresentation of the lower strata; however, to date no challenge to the overrepresentation of a class on grand juries has been ruled upon by the

courts.14

The two remaining classes, Women and Youth, represent the exclusion of the greatest number of eligible grand juries in Harris County.

Substantively and significantly, Youth appears to be the class most excluded from Harris County grand juries. Even if the more conservative definition of Youth as those under 35 and over 21 (rather than 18) is used, a 62 percent disparity exists which is statistically significant well beyond the .001 level. However, as with the Low Income class, the substantive significance of this disparity is difficult to establish. The Supreme Court has not ruled on the question of whether Youth is a cognizable class in jury exclusion cases, and the Butera opinion, while recognizing Youth as a class, characterized it as a "not very distinct class,"<sup>15</sup> and failed to report the magnitude of the disparity in question before ruling that federal juries in Southern Maine had not unconstitutionally excluded members of that class. Furthermore, Butera is a federal case and in Rabinowitz v U.S., supra, the Fifth Circuit has interpreted the Jury Selection Act of 1968 as meaning that federal juries are intended to meet higher standards of representation than are state juries. It would, therefore, seem questionable whether even a disparity of the magnitude revealed in Table 1 would constitute unconstitutional exclusion for this class.

Women, on the other hand, represent a clearly defined and more frequently recognized class.<sup>16</sup> No maximum allowable level of exclusion has been established, but the <sup>4</sup>5 percent disparity is well above the racial minimum established by the Court in <u>Turner</u>. More importantly, the joint magnitude of the disparity and of the statistical test of

significance (z = 16.7) indicate not only that such exclusion could not have occured by chance, but also that a very substantial proportion of a majority (51 percent) of the county's population is being excluded. In light of the Court's recent willingness to recognize Women as a cognizable class, the disparity between females on the grand juries and females in the population would seem to violate the standards established by the higher federal courts.

#### Differences Between Judges and Between Years

The disparities revealed in Table 1 leave open the question of whether said disparities are evenly distributed between judges and between years, or whether there are substantial differences between years and/or judges.

Table 2 addresses the question of differences between years and adds several interesting details to the general picture reflected in Table 1.

The weak substantive disparity between the adult population of Blacks and Spanish surname individuals and the Black and Spanish surname grand jurors has disappeared by 1974. In fact, by 1975 the proportion of grand jurors from each class is greater than the 1970 Census estimate of the proportion of the population from those classes.

Table 2 also reveals that in 1974 a substantial decrease in the number of High Income grand jurors is paired with an almost exactly equal increase in the representation of Low Income grand jurors.

The two most excluded classes -- Women and Youth -- show only minor

|        | BLK  | SSN  | FMLE | YTH  | TZA  | TZB  | TZC  | TZD  | <u>TZE</u> | <u>TZD/E</u> |
|--------|------|------|------|------|------|------|------|------|------------|--------------|
| 1969   | .18  | .03  | .28  | .07  | .44  | .21  | .10  | .11  | .19        | .25          |
| 6 gjs  | (13) | (2)  | (20) | (5)  | (28) | (13) | (6)  | (7)  | (9)        | (16)         |
| 1970   | .16  | .04  | .21  | .11  | .49  | .16  | .14  | .14  | .06        | .20          |
| 16 gjs | (30) | (8)  | (41) | (20) | (75) | (25) | (22) | (21) | (10)       | (31)         |
| 1971   | .15  | .03  | .27  | .18  | .41  | .22  | .14  | .18  | .05        | .23          |
| 15 gjs | (27) | (6)  | (49) | (30) | (63) | (34) | (22) | (27) | (7)        | (34)         |
| 1972   | .14  | .06  | .26  | .12  | .48  | .18  | .12  | .12  | .10        | .22          |
| 12 gjs | (18) | (9)  | (37) | (16) | (61) | (24) | (15) | (15) | (13)       | (28)         |
| 1973   | .15  | .05  | .31  | .16  | •55  | .19  | .11  | .08  | .07        | .15          |
| 12 gjs | (22) | (7)  | (44) | (22) | (71) | (25) | (14) | (11) | (9)        | (20)         |
| 1974   | .18  | .15  | .36  | .14  | .38  | .13  | .19  | .18  | .12        | .30          |
| 12 gjs | (26) | (22) | (53) | (17) | (52) | (18) | (26) | (25) | (16)       | (41)         |
| 1975   | .24  | .15  | .26  | .11  | .36  | .18  | .15  | .16  | .15        | •31          |
| 6 gjs  | (17) | (11) | (19) | (07) | (20) | (10) | (08) | (09) | (08)       | (17)         |

TABLE 2: Between-Year Comparison of Mean Representation of EachCognizable Class on 1969-1975 Harris County Grand Juries

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fluctuations between years. In fact, the 26 percent female representation in 1975 is the lowest for that class since 1970. The ll percent figure for Youth is the lowest since 1971. Thus, sex and age categories have remained static, while sharp fluctuation has occurred in racial and economic categories. How might one explain such fluctuation in the representation of racial minorities and those with below average incomes? First, the minority proportion of the county's population has increased over this five-year period; the median income of minorities is lower than the county averge, resulting in a concurrent increase in the number of Low Income individuals.<sup>17</sup> City officials have estimated the increase in the county's Mexican American population at more than 50 percent over the last five years, and the Houston City Controller projects a Mexican-American majority for the city by 1990. In sum. population increases account for a portion of the increase in the number of minority grand jurors. Yet these population increases cannot account entirely for the magnitude of the rapidity of the change.

Population change is especially deficient in explaining the 300 percent increase in Spanish surname grand jurors between 1973 and 1974. A more persuasive explanation lies in a decision handed down by a Harris County state district judge in the Spring of 1974. In <u>Berriga</u> <u>et al. v State of Texas</u>, a group of five defendants (three of whom were Mexican-American) moved to have their indictments for assault to murder a police officer during a demonstration quashed because Spanish surname individuals had been excluded from Harris County grand juries in general and the indicating grand jury in particular. In a well publicized decision, Judge Andrew Jefferson granted the defense motion and quashed

the indictments.<sup>19</sup> No formal changes have been made in the grand jury selection system since the <u>Berriga</u> ruling; however, since the Jefferson decision Spanish surname individuals have not been excluded from Harris County grand juries. In fact, if one compares their proportion of the grand jurors to the 1970 census estimate of their proportion of the population, Spanish surname individuals have been <u>overrepresented</u>.<sup>20</sup> While no conclusive causal link can be established from this aggregate data, one may reasonably infer that the other presiding judges and their commissioners have taken steps to prevent the quashing of future indictments.

No such decision is available to add explanation to the increase in number of Black grand jurors. Therefore, explanation will be sought in comparing differences between judges in cognizable class representation.

Table 3 furnishes several possible explanations for the increase in the proportion of Black grand jurors. Three judges--McMaster (.31), Jefferson (.29), and, to a lesser extent, Price (.21)--have convened grand juries with a mean of 27 percent Blacks. The mean proportion of Blacks for the grand juries convened by the remaining 12 judges is 14.5 percent. The difference between these means is significant at the .05 level,<sup>21</sup> indicating a 95 percent probability that Judge McMaster, Jefferson, and Price are convening grand jurors from a different population than are their 12 colleagues. The fact that each of these judges has been on the bench and seating frand jurors less than three years further identifies them as probable agents of the change in Black representation. This probability is further supported by the fact that

|               | BLK  | SSN  | FMLE | TZA  | <u>B</u> | <u>c</u> | <u>D</u> | E   | YOUTH |
|---------------|------|------|------|------|----------|----------|----------|-----|-------|
| <u>Odom</u>   | .17  | .028 | .305 | •53  | .13      | .09      | .06      | .19 | .14   |
| N=36          | (6)  | (1)  | (11) | (17) | (4)      | (3)      | (2)      | (6) | (5)   |
| <u>Love</u>   | .135 | .03  | •33  | .49  | .15      | .13      | .16      | .08 | .15   |
| N=96          | (13) | (3)  | (32) | (37) | (11)     | (10)     | (12)     | (6) | (13)  |
| Ebdug         | .18  | .014 | .22  | .46  | .27      | .10      | .13      | .05 | .06   |
| N=72          | (13) | ( 1) | (16) | (29) | (17)     | ( 6)     | ( 8)     | (3) | (4)   |
| <u>Hooey</u>  | .19  | .07  | .25  | .43  | .19      | .16      | .14      | .08 | .22   |
| N=96          | (18) | (7)  | (24) | (32) | (14)     | (12)     | (10)     | (6) | (20)  |
| <u>L. Dug</u> | .20  | .07  | .27  | .40  | .16      | .17      | .16      | .11 | .15   |
| N=84          | (17) | (6)  | (23) | (30) | (12)     | (13)     | (12)     | (8) | (11)  |
| <u>Guar</u>   | .18  | .095 | .20  | .45  | .19      | .11      | .14      | .11 | .10   |
| N=89          | (15) | (8)  | (17) | (33) | (14)     | ( 8)     | (10)     | (8) | ( 8)  |
| <u>Moore</u>  | .11  | .155 | •31  | .43  | .25      | .15      | .15      | .03 | .15   |
| N=72/84       | ( 8) | (13) | (26) | (32) | (19)     | (11)     | (11)     | (2) | (12)  |
| <u>Walker</u> | .08  | .027 | .236 | .43  | .22      | .16      | .13      | .06 | .18   |
| N=72          | (6)  | (2)  | (17) | (27) | (19)     | (10)     | (8)      | (4) | (12)  |
| <u>Hatten</u> | .18  | .07  | •32  | .45  | .21      | .12      | .16      | .07 | .15   |
| N=72          | (13) | (5)  | (23) | (26) | (12)     | (7)      | (9)      | (4) | (10)  |
| <u>Walton</u> | .19  | .07  | .25  | .44  | .12      | .19      | .15      | .10 | .09   |
| N=84          | (16) | (6)  | (21) | (36) | (10)     | (15)     | (12)     | (8) | (8)   |
| McMast        | .31  | .06  | •33  | .40  | .11      | .20      | .17      | .11 | .09   |
| N=36          | (11) | (2)  | (12) | (14) | ( 4)     | (7)      | ( 6)     | (4) | (3)   |
| Bates         | .08  | .04  | .25  | .68  | .18      | .00      | .05      | .09 | .19   |
| N=24          | (2)  | ( 1) | (6)  | (15) | ( 4)     | ( 0)     | ( 1)     | (2) | ( 4)  |
| <u>Davis</u>  | .05  | .03  | .25  | .56  | .17      | .15      | .06      | .06 | .11   |
| N=60          | (3)  | (2)  | (15) | (27) | ( 8)     | (7)      | (3)      | (3) | ( 6)  |
| Price         | .21  | .17  | .42  | .30  | .20      | .05      | •30      | .15 | .06   |
| N=24          | (5)  | ( 4) | (10) | (6)  | ( 4)     | (1)      | (6)      | (3) | ( 1)  |
| <u>Jefson</u> | .29  | .17  | .42  | •38  | .08      | .13      | .21      | .21 | .10   |
| N=24          | (7)  | ( 4) | (10) | (9)  | (2)      | (3)      | (5)      | (5) | (20)  |

TABLE 3: Between-Judge Comparison of Mean Representation of Each Cognizable Class on 1969-1975 Harris County Grand Juries

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Judge McMaster replaced Judge Sam Davis, who convened the set of grand juries with the lowest (.05) proportion of Blacks.

The same general situation is reflected in the extent to which the increase noted in the 1974-1975 proportion of Low Income individuals is reflected in the proportion of TZE individuals represented on Judge Price and Judge Jeffersons' grand juries. While the difference is not statistically significant, it is substantial.<sup>22</sup> Just as between-years, the increase in Low Income individuals mirrors a decrease in High Income individuals, with the Jefferson/Price TZA proportion (.34) substantially lower than their colleagues' mean proportion (.47), although again the difference is not statistically significant.<sup>23</sup>

This same line of reasoning presents problems when one examines the differences between Judges in the representation of Women. Two of the same judges, Price and Jefferson, have convened grand juries whose mean proportion of women (.42) is significantly larger than the mean for the remaining 13 judges (.27).<sup>24</sup> Both Price and Jefferson were appointed in 1973, therefore, all of their appointments are reflected in the 1974 and 1975 figures; yet, the proportion of female grand jurors has dropped from .31 in 1973 to .26 in 1975. The explanation for this probably lies in the fact that the high percentage is reflected in only four of the 78 grand juries convened over the six-year period, and the 17 percent difference is not as large a relative increase as are the differences for minorities.

Finally, just as with between-year differences, differences among judges reveal neither substantively nor statistically significant differences in proportions of Youth on Harris County grand juries.

# Summary and Discussion of Cognizable Class Representation

The above discussion indicates that Harris County grand juries meet the Courts' criteria for a cross-section of the community in regard to race, but that they fall short in representation of Women. Two excluded classes, Youth and Low Income individuals, have not been well defined by the Court, nor have standards of representation been established. The Supreme Court has never granted certiorari in a case challenging exclusion of either of these classes from a state petit or grand jury.

Thus, it appears that only one class--Women--is sufficiently recognized by the courts and excluded from Harris County grand juries to raise the probability that such exclusion is in violation of the equal protection and/or due process clause of the 14th Amendment. However, it is the contention of this writer that the courts' reliance on non-exclusion of cognizable classes is an inaccurate criterion for determining whether or not a set of grand jurors represent a cross section of the community from which they are selected, and that under examination by more exacting criteria, Harris County's grand juries do not represent a cross section of Harris County's adult population. Research by Professor Carp and by this writer has produced several pieces of evidence which support such a contention.

Data presented in Table 4 are based on the aggregate data collected by this writer for all grand jurors who served from 1969 to 1975.

As indicated in Table 4, minority females were excluded from this set of grand juries compared to their sexual and racial parent populations.

TABLE 4: A Comparison of the Representation of Minority Females on Harris County Grand Juries With the Representation of Anglo Females and With the Representation of Minority Males

| Black Females (N=40) |    |     |       | SI           | ani             | ish S    | Surname F       | emales ( | N=22)    |        |      |
|----------------------|----|-----|-------|--------------|-----------------|----------|-----------------|----------|----------|--------|------|
| 1969-1975            |    |     |       |              |                 |          |                 |          |          |        |      |
| %                    | of | all | grand | jurors       | .04             | %        | of              | all      | grand ju | rors   | .02  |
| %                    | of | all | Black | grand jurors | .26             | <b>%</b> | of <sub>.</sub> | all      | SS grand | jurors | • 34 |
|                      |    |     |       |              | <u> 1974–19</u> | 975      | 5               |          |          |        |      |
| 0%<br>10             | of | all | grand | jurors       | .02             | %        | of              | all      | grand ju | rors   | .04  |
| <b>%</b>             | of | all | Black | grand jurors | .23             | %        | of              | all      | SS grand | jurors | • 34 |

However, the courts' criteria would focus on race and sex separately, ignoring the minority female population which accounts for more than 15 percent of the County's population. Indeed, by increasing the proportion of white females, officials could remedy their exclusion of women, without modifying the exclusion of minority females at all.<sup>25</sup>

Given the increase in minority grand jurors in 1974 and in 1975, one might expect a similar improvement in the representation of minority females. Table 4 indicates that this is not the case. The representation of minority females for the last two years is virtually identical to the same categories over the last six years.

A similar situation exists regarding minority representation. While the percentage of Blacks on Harris County grand juries approximates the percentage of Blacks in the adult population, Black grand jurors hardly reflect a cross section of the Black adult population. Heretofore unpublished data from Professor Carp's study analyzed by this writer, indicate that most segments of the Black population remain excluded from Harris County grand juries.<sup>26</sup>

Indeed, Table 5 indicates that Harris County's Black grand jurors far exceed the adult population mean in each category and closely resemble other grand jurors socio-economically. Of particular interest is the education level of Black grand jurors. Fully 50 percent have graduate degrees and this includes five of the eight female respondents. In fact, the median education for Black grand jurors exceeds that of white grand jurors.

Harris County grand juries superficially represent a racial cross section of the community. On closer examination, however, they represent anything but a cross section of the county's minority community. Other than skin color, minority grand jurors bear a much closer resemblance to white grand jurors than to the county's minority population. The same sex and socio-economic categories which are underrepresented in the white population are underrepresented in the minority population.

Finding female and lower socio-economic status minorities excluded comes as no surprise. Yet, the question remains--why? Grand jurors are appointed by judge-appointed commissioners who have a great deal of discretion in determining those called and those seated. Furthermore, research reviewed above has indicated that commissioners often choose acquaintances. This leads to an examination of minority commissioners in attempting to explain the unrepresentative nature of minority grand jurors. Several pieces of information from a body of data on Harris County grand jury commissioners who served from 1960-1974 gathered by Professor Carp, Jerome Reid, and this writer offer at least a plausible

TABLE 5: Socio-economic Characteristics of Black Harris County Grand Jurors Compared With All Grand Jurors and With the Adult Population

|                 | Black<br><u>Grand Jurors</u><br>(N=22) | All<br><u>Grand Jurors</u><br>(N=158) | County<br><u>Population</u><br>(1970 Census<br>Figures) |
|-----------------|--|---------------------------------------|---|
| AGE             |  |                                       |   |
| Under 35        | 5%                                     | 10%                                   |   |
| 36-50           | 27                                     | 43                                    |   |
| 51-65           | 59                                     | 37                                    |   |
| Over 65         | 9                                      | 10                                    |   |
| INCOME          |  |                                       |   |
| Over \$10,000   | 86                                     | 96                                    | 53  |
| Under \$10,000  | 14                                     | 04                                    | 47  |
| EDUCATION       |  |                                       |   |
| No College      | 9                                      | 11                                    | 72  |
| Some College    | 23                                     | 34                                    | 13  |
| College Degree  | 18                                     | 32                                    | 15  |
| Graduate Degree | 50                                     | 23                                    | -   |
|                 |  |                                       |   |

connection between minority grand jury commissioners and the characteristics of minority grand jurors.<sup>27</sup>

Table 6 indicates three important tendencies. First, minority grand jury commissioners resemble grand jurors very much and resemble the county's adult population hardly at all. Second, more than 75 percent of minority grand jury commissioners have had previous grand jury experience; thus, much of the resemblence between grand jurors and

TABLE 6: A Comparison Between Minority Harris County Grand Jury Commissioners and the Harris County Adult Population in the Categories of Sex, Age, Income, and Education (N=34)

| MINORITY COMMISSIONERS     | GRAND JURORS | ADULT POPULATION |
|----------------------------|--------------|------------------|
| $\underline{Sex}$ (N=34)   |              |                  |
| Male                       | 78           | 49               |
| Female                     | 22           | 51               |
| <u>Age</u> (N=32)          |              |                  |
| 18-35 = 22%                | 10           |                  |
| 36-50 = 25%                | 43           |                  |
| 51-65 = 41%                | · 37         |                  |
| <b>&gt;</b> 65 = 12%       | 10           |                  |
| Income (N=33)              |              |                  |
| <b>&lt;</b> \$10,000 = 12% | 4            | 47               |
| >\$10,000 < 20,000 = 37%   | 41           | 38               |
| >\$20,000 = 51%            | 55           | 15               |
| Education (N=34)           |              |                  |
| No College = 18%           | 11           | 72 .             |
| Some College = 15%         | 34           | 13               |
| College Degree = 12%       | 32           | 15               |
| Graduate Degree = 55%      | 23           | ±)               |

Frequency of Acquaintance With Appointing Judge and Prior Service as a Grand Juror Among Minority Grand Jury Commissioners (N=34)

<u>Acquaintance With Appointing Judge</u> <u>38%</u> Knew Very Well <u>47%</u> Knew Casually <u>15%</u> Not Acquainted <u>Previous Service As Grand Juror</u> No = 24% Yes = 76% grand jury commissioners is because they are the same people. Third, 88 percent of the minority commissioners indicated that they were acquainted with the judge who appointed them, with 40 percent indicating that they knew the appointing judge "very well."

Two related pieces of data gathered from the questionnaire are not reflected in the Table. First, 33 percent of the minority respondents have served as a grand juror more than once. Second, 21 percent of minority commissioners have served more than once, and these tend to be those few commissioners without college education who are in occupations which put them in touch with appointing judges. For example, one black commissioner has served six times in the last five years. He is between 50 and 65 years of age and employed as the head waiter at an exclusive private club which draws its membership largely from the upper echelons of the legal community.

One Spanish surname owner of a chain of Mexican restaurants has served twice as a commissioner and twice as a grand juror in the last four years. Keeping it in the family, his appointments to the grand jury included his wife and his son.

The data presented in Table 6 discussed above is strong, though not conclusive, evidence that minority grand jury commissioners are drawn from an atypical segment of the minority population which has occasion to come into direct or indirect contact with state district court judges. The evidence also suggests that these commissioners appoint grand jurors from an equally atypical segment of the minority population. For example, while there is no direct link to indicate that minority commissioners select minority grand jurors, questionnaire responses from minority commissioners argue that minority grand commissioners, like their white counterparts, select acquaintances who tend to represent the same racial, economic, social and age strata as the commissioner. Response to the question--Did the judge give you any specific instructions as to the type of people you should select?--was typified by the answer of a young Black male professional: " . . . being a Black commissioner inferred strongly to pick several potential jurors of color or other minority extraction."<sup>28</sup> Another Black commissioner responded that he was told that the grand jury should represent a cross section of the people in Harris County but indicated that all his selections were Blacks with liberal political views.<sup>29</sup> Thus, the evidence suggests that the atypical grand jurors are the result of the atypical grand jury commissioners.

In sum, for now, one may conclude firmly that Harris County grand juries do <u>not</u> relfect a cross section of the community. Minority grand juries resemble white grand jurors in every respect save color. Women, Youth, and Low Income individuals of all races are excluded. One may conclude less firmly that this exclusion is directly linked to the grand jury commissioners, but, given the data available, the most persuasive explanation for the unrepresentative nature of minority grand jurors would appear to be the commissioner system that produces them.

Population Category Heterogeneity (PCH) on Harris County Grand Juries, 1969-1975

Population Category Heterogeneity is not central to the research question studied in this chapter. Its description is, however, an important prerequisite for the description of the relationship between grand jury composition and grand jury outputs in the following chapter. The examination of PCH begins with a description of the grand jury

heterogeneity for each population category for the universe to be followed by a comparison between years and between judges.

The focus shifts from the class characteristics of the individual grand juror to the heterogeneity of the group of grand jurors. Since comparable figures are not available for the population and since the question of jury heterogeneity has not reached the courts, no attempt will be made to compare grand jury heterogeneity with population heterogeneity. For the same reasons, tests of substantive and statisitcal significance are not applicable. Therefore, grand jury heterogeneity will receive neither the breadth nor the depth of attention allocated grand juror class representation.

As indicated in Table 7, fairly substantial variance exists within each population category. Clearly, some Harris County grand juries are more heterogeneous than others. Table 8 examines the question of whether this variance can be explained by between-year differences.

| TABLE 7: | Populatio<br>Harris Co | on Category<br>ounty Grand | Heterogenei<br>Juries 1969 | ty Scores Fo<br>-1975 (N=78) | or the Universe<br>) | of |
|----------|------------------------|----------------------------|----------------------------|------------------------------|----------------------|----|
|          | RACE                   | SEX                        | AGE*                       | INCOME                       |                      |    |
| x        | 20                     | 37                         | 125                        | 28                           |                      |    |
| x        | 4.3                    | 5.6                        | 53                         | 5.4                          |                      |    |
| Minimum  | 12                     | 24                         | 36                         | 15                           |                      |    |
| Maximum  | 30                     | 48                         | 274                        | 36                           |                      |    |

\*Age heterogeneity is computed only for years 1972-1975 due to the frequency of missing data on jurors seated prior to 1972.

Predictably, Table 8 reveals substantial between-year variance for race heterogeneity, the substantial increase in 1974 and again in 1975

TABLE 8: Between-Year Comparison of Mean Population Category Hetero-<br/>geneity Scores for 1969-1975 Harris County Grand Juries

|      |      | RACE | SEX | AGE | INCOME |
|------|------|------|-----|-----|--------|
| 1969 | (6)  | 20   | 37  | *   | 29     |
| 1970 | (16) | 19   | 34  | *   | 28     |
| 1971 | (15) | 19   | 37  | ¥   | 30     |
| 1972 | (12) | 21   | 36  | 121 | 29     |
| 1973 | (12) | 19   | 39  | 129 | 26     |
| 1974 | (12) | 24   | 42  | 116 | 28     |
| 1975 | (6)  | 26   | 37  | 135 | 28     |

\*Age heterogeneity is computed only for years 1972-1975 due to the frequency of missing data on jurors seated prior to 1972.

reflecting a similar increase in the class representation of minorities during the same years. For sex and age heterogeneity, the 1975 figures are virtually identical to the universe mean, although a gradual increase in age heterogeneity is revealed. Finally, the yearly increase in low income class representation is not reflected in the virtually identical between-year figures for income heterogeneity.

Table 9 confirms a situation hinted at in Table 8: Race and Sex heterogeneity as here operationalized closely mirror minority and sex class representation.

The same three judges (McMaster, Price, Jefferson) whose grand juries contained a high proportion of minorities and females also score highest on sex and race heterogeneity. All grand juries in the universe contain at least four whites and at least six men; thus, increases in heterogeneity are equal to increases in minority or female representation.<sup>30</sup>

|           | RACE                | SEX                 | INCOME              | AGE*                 |
|-----------|---------------------|---------------------|---------------------|----------------------|
| Odom      | 19                  | 39                  | 25                  |                      |
| Love      | 18                  | 40                  | 26                  | 98                   |
| Ebdug     | 19                  | 35                  | 29                  | 36 (one case)        |
| Нооеу     | 21                  | 36                  | 29                  | 126                  |
| L. Dug    | 22                  | 37                  | 30                  | 162                  |
| Guarino   | 22                  | 34                  | 30                  | 98                   |
| Moore     | 22                  | 39                  | 28                  | 121                  |
| Walker    | 16                  | 35                  | 29                  | 185                  |
| Hatten    | 21                  | 39                  | 29                  | 133                  |
| Walton    | 21                  | 36                  | 27                  | 127                  |
| McMaster  | 25                  | 40                  | 29                  | 78                   |
| Bates     | 17                  | 36                  | 19                  | 101                  |
| Davis     | 15                  | 36                  | 29                  | 185                  |
| Price     | 26                  | 44                  | 29                  | 115                  |
| Jefferson | , 29                | 44                  | 26                  | 129                  |
|           | $\overline{X} = 20$ | $\overline{X} = 37$ | $\overline{X} = 28$ | $\overline{X} = 125$ |

TABLE 9: Between-Judge Comparison of Mean Population Category Heterogeneity Scores for 1969-1975 Harris County Grand Juries

\*Age Heterogeneity is computed only for years 1972-1975 due to frequency of missing data on jurors who served prior to 1972.

On the other hand, age and income heterogeneity scores do not parallel Youth or Low Income scores. A comparison of Table 7, 8, and 9 shows that the substantial within-category variance indicated in Table 7 for age and income is not systematically accounted for by either differences between years or between judges. Thus, age heterogeneity and income heterogeneity are variables which bring substantial variance and a dimension not tapped by the representation of Youth and Low Income individuals to the study of the effect of grand jury composition on grand jury outputs which follows.

# Summary and Conclusions

The hypothesis tested in this chapter was supported:

H<sub>1</sub>: There will be a statistically significant disparity between the representation of cognizable classes on Harris County grand juries and the percentage of cognizable classes in the eligible population.

For each cognizable class, there was a statistically significant disparity between representation in the population and representation on Harris County grand juries. Additionally, it was discovered that High Income individuals were overrepresented to a statistically significant degree.

However, in spite of the statistical significance of the disparities, only the disparity for Women seems to be of a magnitude likely to be interpreted by the courts as unconstitutional exclusion. Not only are the minority exclusion figures well within the courts' current permissible level, major improvement in minority representation has occurred over the last three years.

Thus, Harris County grand juries come relatively close to meeting
all the courts' indicators of a community cross section. The county could increase the representation of females on grand juries and, by failing to exclude any clearly recognizable class, meet the Supreme Court standard for a cross section of the community.<sup>31</sup> Yet, closer examination revealed that Harris County grand jurors do not represent a cross section of the community. Grand jurors of all races represent the upper social strata, and the addition of females from the same strata would not ameliorate the condition.

One must conclude that the courts' standards of a community cross section are inadequate if the goal is a grand jury which truly reflects the diversity of background and experience in the community. Harris County grand juries exemplify the possibility that grand juries can meet the courts' cross section standards without actually representing a community cross section.

Finally, there is substantial evidence to suggest that the nonrepresentative nature of Harris County grand juries is a function of the discretion exercised by supervising judges and the grand jury commissioners. Both minority and white commissioners tend to represent the highest socioeconomic strata and commissioners of all races tend to appoint grand jurors from these same strata. One might characterize minority grand jurors and grand jury commissioners as representing a cross section of those segments of the minority community likely to be directly or indirectly acquainted with judges.

Thus, one may conclude that Harris County grand juries do not reflect a cross section of the community, and one may question whether the Texas commissioner system, based on the discretion of elite judges

and grand jury commissioners. is capable of producing representative grand juries. The evidence presented here suggests that it is not. One may further question whether the Supreme Court indicators of a community cross section accurately measure the extent to which this standard is met. The evidence presented here suggest that they do not.

#### FOOTNOTES

<sup>1</sup>Statutes regulating grand juror selection in Texas are found in Tex. Code Crim. Proc. Ann. atct. 19 and 20 (Supp. 1974).

 $^{/2}$  Note that the grand juror need not actually be a registered voter.

 $^{3}$ Carp, <u>The Harris County Grand Jury</u>, p. 93. Telephone interviews with five grand jury commissioners by this writer during April 1974 also revealed that each of them were either directly or indirectly acquainted with the judge who had appointed them. Three of the five were former grand jurors.

The primary limit on grand jury commissioner discretion is the voluntary nature of grand jury service. Citizens contacted by commissioners may accept or reject grand jury service for any reason, including convenience.

See also discussion of commissioner questionnaire responses in Chapter One.

∕4<sub>Tbid</sub>.

<sup>5</sup>See Smith v Texas, supra; <u>Peters v Kiff</u>, supra; <u>Brooks v Beto</u>, supra.

-<sup>7</sup>See H<u>ernandez v Texas</u>, supra, for a similar case involving Mexican-Americans.

After the final draft of this thesis was typed, as Fifth Circuit Ruling in <u>Partida v Casteneda</u>, Dec. 11, 1975 came to this writer's attention. In <u>Partida</u>, the court ruled that Spanish surname was synonomous with persons of Mexican descent in Hidalgo County, Texas and that a 39 percent disparity constituted exclusion of Mexican-Americans in that county.

<sup>o</sup>See <u>Ballard v U.S</u>., supra, <u>Taylor v Louisiana</u>, supra; <u>Alexander v</u> Louisiana, supra.

<sup>9</sup>For Youth, see <u>Butera v U.S.</u>, supra; for Low Income, see <u>Thiel v</u> U.S., supra and Labat v Bennett, supra.

<sup>10</sup>cf, <u>Smith</u>, supra; <u>Peters</u>, supra.

<sup>/12</sup>Establishing the eligible population is difficult. The population is not limited to registered voters, but to those not disqualified from voting. Since the proportion of the population which meets these eligibility requirements is not available by race, sex, age, or income, adult population is used. However, it may be noted that had registered voters been used as the parent population, both Blacks and Spanish surname individuals would be <u>over</u>-represented and the exclusion of youth would be much reduced.

<sup>13</sup>In <u>Thiel</u>, supra, the Supreme Court forbid the exclusion of wage earners from federal juries; however, the Court was acting in its supervisory capacity and the applicability of this ruling to state courts is questionable. In <u>Labat</u>, supra, the Fifth Circuit (en banc) forbid exclusion of daily wage earners; however, in this case the court noted that the economic class consisted almost entirely of Blacks.

/l<sup>4</sup>It might be argued that this is done implicitly in the case of dichotomous classes. For example, the exclusion of women might be viewed as the over-inclusion of men.

/<sup>15</sup><u>U.S. v Butera</u>, supra.

<sup>16</sup>Most recently in <u>Taylor v Louisiana</u>, supra (1975). See also, <u>Ballard</u>, supra; <u>Alexander v Louisiana</u>, supra, in which the Court heard arguments concerning exclusion of both Women and Blacks but ruled on the question of racial exclusion without ruling on the exclusion of Women. Also indicative of this trend is a case concerning exclusion of Women from Nacadoches County, Texas grand juries which was argued in Tyler, Texas, Federal District Court on March 15, 1976. Decision pending. In the Tyler case the Texas Asst. Attorney General acknowledged Females as a cognizable class.

<sup>17</sup>For example, the number of Blacks in Harris County increased 42.5 percent between 1960-1970. See <u>County and City Data Book-1972</u>, (U.S. Dept. of Commerce, Bureau of Census), 450.

Concerning minority income, see O. G. Simmons, <u>Anglo Americans and</u> <u>Mexican Americans in South Texas</u> (New York: Arno Press, 1974); also J. Anderson, R. Murray, and E. Farley, <u>Texas Politics: An Introduction</u> (New York: Harper and Row, 1974), 27-44.

<sup>18</sup>Interview with Lionel Castillo, April 14, 1975.

<sup>19</sup>Information concerning this case is based on personal observation, as I observed the two-day hearing and assisted in the preparation of the defense brief. Prof. Carp appeared as an expert witness. All five defendants were reindicted. Charges were ultimately dropped against the three Mexican-Americans. The two Anglos were convicted of a reduced misdemeanor charge and given probated sentences. <sup>20</sup>Clearly, the decision of a state district judge has had an impact in the district's criminal justice process. Whether this impact is reflected in grand jury outputs will be discussed in a later chapter.

<sup>21</sup>See <u>Blalock</u>, Chap. 6.

<sup>22</sup>The lack of statistical significance is due to the small and uneven N and the large differences among the 12 other judges.

<sup>23</sup>Again, the failure of the 13 percent difference to achieve statistical significance is due to the large within sample variation in TZA representation. It should be noted that the simultaneous increase in minority and lowest income individuals does not necessarily reflect an increase in low income minorities. Evidence is presented in the following chapter indicating that the two increases may be unrelared.

<sup>24</sup>t<sub>d</sub> = 3.81 w/13df

<sup>25</sup>Minority female income figures are not available, but the County's low median minority income might suggest that exclusion of minority females also represents exclusion of low income females.

<sup>26</sup>The number of Spanish surname respondents was too small for detailed analysis, but the general trends are consistent with the data for Blacks.

27Questionnaires were mailed to all living commissioners (N=257), with a 50% response rate. The data analysis is not complete at the time of this writing.

28 Tbid.

29 Ibid.

<sup>30</sup>This raises serious problems in differentiating between sex or race Population Category Heterogeneity and female or minority Cognizable Class Representation as indicators of grand jury composition and as predictors of grand jury outputs. These problems will be discussed in the following chapter when both are used to explain variance in grand jury outputs.

<sup>31</sup>Indeed, it has been brought to this writer's attention that of the 36 grand jurors (12 x 3) seated February, 1976, 17 were female.

#### Chapter Four

## GRAND JURY OUTPUTS

Chapter Four presents an examination of Harris County grand jury outputs. Such an examination will furnish the data required to test hypothesized changes in grand jury outputs over time and the hypothesized relationship between grand jury composition and these outputs. There are no published studies of the relationship between grand jury composition and grand jury outputs. This is, therefore, an exploratory study and emphasis is on determining if such a relationship exists rather than on detailing its components. Furthermore output data is not available for grand juries seated prior to May, 1972. Thus, the outputs under examination are limited to the universe of grand juries seated from May, 1972 through May, 1975. This universe consists of 39 grand juries. Clearly, an N of this size cannot produce generalizable answers to the question of the relationship between grand jury composition and grand jury outputs; nor does it permit extensive tests for the interaction between the various measures of composition. A small number of cases is consistent, however, with the goals of this chapter:

- 1. A description of Harris County grand jury outputs.
- 2. A description of general associations between composition and output measures for this set of grand juries, with limited attention to differences in explanatory power between independent composition variables.

These goals will be undertaken in four steps:

1. The chapter begins with a review of the formal rules regulating grand jury decision-making procedures in Harris County, followed by a review of Prof. Carp's exploratory findings concerning informal procedural tendencies of Harris County grand juries.

- 2. The outputs for 1972-1975 harris County grand juries are described for the universe and compared between judges, between years, and between months.
- 3. The statistical relationship between general relative grand jury outputs and jury composition is reported. The strongest statistical relationships developed in step three are tested for applicability to outputs involving only specific categories of crime.
- 4. Hypotheses relating to the questions examined in this chapter are presented in summary form, with conclusions drawn as to their validity.

### Formal and Informal Procedures

A set of three grand juries is appointed every three months in Harris County. Each grand jury meets two days per week for the threemonth period. Two meet Monday/Wednesday, with the third convening Tuesday/Thursday.

A grand jury work day begins with an assistant district attorney presenting the day's cases and answering questions raised by the grand jurors. Then, the assistant district attorney leaves the room and the grand jury begins its deliberations.<sup>1</sup>

Professor Carp's exploratory study based on his experience and questionnaire data<sup>2</sup> revealed several additional facts about the deliberation process. First, there is not much deliberation. Prof. Carp's grand jury deliberated an average of approximately seven minutes per case while the 1969-1972 average deliberation time was estimated at five minutes per case, a pace which resulted in a 58-case-per working day average in 1971.<sup>3</sup>

Second, while there is not much deliberation, Prof. Carp's study revealed that most respondents (84 percent) felt that their grand jury became more efficient (able to decide cases faster) as the term progressed, and indications were that this was the result of a gradual reduction in the amount of discussion per case.<sup>4</sup>

Finally, certain types of cases received more attention than did others,with Drug Crimes, Crimes of Passion (Murder, Rape, etc.) and Victimless Sex Crimes accounting for the largest proportion of grand jury discussion.<sup>5</sup> Robbery and Theft and Driving While Intoxicated were the subject of very little discussion by most grand juries during this period.<sup>6</sup>

## Grand Jury Outputs

Attention is now turned to the product of the procedures and decisionmaking tendencies discussed above. Table 10 presents the mean number of decisions per grand jury, the mean number of no bills per grand jury and the mean no bill percentage  $\left(\frac{\text{no bills}}{\text{Total decisions}}\right)$  per grand jury. Table 11 breaks the same information down by year.

|                                   | 19                                   | 15.              |                  |        |                              |                      |     |                                    |                     |
|-----------------------------------|--------------------------------------|------------------|------------------|--------|------------------------------|----------------------|-----|------------------------------------|---------------------|
|                                   | Ca<br><u>Pe</u>                      | ses De<br>r Gran | cided<br>d Jury  |        | No Bills<br><u>Per Gra</u> r | s Returne<br>1d Jury | a 1 | Percent N<br>Returned<br>Grand Jur | o Bills<br>Per<br>Y |
| AL                                | =                                    | 1492             |                  |        | 11                           | 72                   |     | .115                               |                     |
| σ                                 | =                                    | 284              |                  |        | 10                           | 09                   |     | .05                                |                     |
| Minimum                           | =                                    | 875              |                  |        | e                            | 63                   |     | .05                                |                     |
| Maximum                           | =                                    | 2007             |                  |        | 52                           | 27                   |     | .27                                |                     |
| Where $\mathcal{U} = \mathcal{O}$ | uni <sup>.</sup><br>uni <sup>.</sup> | verse<br>verse   | mean<br>standard | deviat | ion                          | . •                  |     |                                    |                     |

| TABLE 10 | : Mea | n Grand | Jury | Outputs | for | Harris | County | Grand | Juries, | 1972- |
|----------|-------|---------|------|---------|-----|--------|--------|-------|---------|-------|
|          | 197   | 5.      |      |         |     |        |        |       |         |       |

|                 |         | <u>1972</u> | <u>1973</u>                  | <u>1974</u> | <u>1975</u> |
|-----------------|---------|-------------|------------------------------|-------------|-------------|
| Decisions Retur | ned X   | = 1458      | *1724                        | 1333        | 1398        |
| Per Grand Jury  | S       | 198         | 254                          | 227         | 305         |
|                 | Maximum | 1760        | 2007                         | 1698        | 1732        |
|                 | Minimum | 1223        | 1228                         | 875         | 953         |
| ·               |         | * = 3.<br>p | 16 N/11af<br><b>&lt;.</b> 05 |             |             |
| No Bills Return | ed X    | = 164       | 254                          | 127         | 111         |
| Per Grand Jury  | S       | 40          | 161                          | 40          | 35          |
|                 | Maximum | 219         | 527                          | 191         | 165         |
|                 | Minimum | 115         | 109                          | .63         | 67          |
| No Bill         | x       | = .11       | .14                          | .09         | .08         |
| rercentage      | S       | .02         | .08                          | .02         | .03         |
|                 | Maximum | .14         | .27                          | .14         | .13         |
|                 | Minimum | 07          | 08                           | 06          | 05          |

Comparison of 1972-1975 Harris County Grand Jury Outputs by

Where  $\overline{X}$  = sample mean

TABLE 11:

Year

s = sample standard deviation

Two points of particular interest are raised by this data. First, Harris County grand juries return a relatively high percentage of no bills compared to grand juries in other urban areas.<sup>7</sup> For example, Los Angeles County grand juries return an average of only five percent

|               | Mean<br>Pe | n Cases De<br>er Grand J | cided<br>ury |      | Mean No Bills Returned<br>Per Grand Jury |          |     |                  | Mean Percent No Bills<br>Per Grand Jury |          |      |     |
|---------------|------------|--------------------------|--------------|------|--|----------|-----|------------------|---|----------|------|-----|
|               | X          | 8                        | Max          | Min  | x  | <u>s</u> | Max | Min              | <u>x</u>                                | <u>s</u> | Max  | Min |
| Love (3)      | 1500       | 428.6                    | 1989         | 1187 | 255                                      | 213.0    | 501 | 129              | .16                                     | .08      | .25  | .10 |
| EB Duggan (1) | 1582       | x                        | x            | x    | 218                                      | x        | x   | x                | .14                                     | x        | x    | x   |
| Нооеу (3)     | 1719       | 503.9                    | 2395         | 1175 | 266                                      | 279.7    | 677 | 062              | .12                                     | .087     | .22  | •06 |
| L. Duggan (3) | 1786       | 529.4                    | 2147         | 1178 | 304                                      | 212.7    | 548 | 158              | .12                                     | .019     | .14  | .10 |
| Guarino (3)   | 1402       | 493.9                    | 1884         | 897  | 142                                      | 69.3     | 183 | 62               | .12                                     | .098     | .23  | .05 |
| Moore (3)     | 1463       | 151.5                    | 1637         | 1360 | 128                                      | 11.4     | 136 | 115              | .09                                     | .010     | .10  | .08 |
| Walker (3)    | 1743       | 271.3                    | 2006         | 1464 | 275                                      | 233.1    | 544 | 127              | .15                                     | .10      | .27  | .09 |
| Hatten (4)    | 1334       | 143.3                    | 1545         | 1236 | 143                                      | 24.1     | 165 | <sup>.</sup> 112 | .09                                     | .016     | .11  | .07 |
| Walton (4)    | 1548       | 298.7                    | 1873         | 1229 | 166                                      | 25.8     | 197 | 141              | .10                                     | .012     | .11  | •09 |
| Mc/Master (3) | 1344       | 75.8                     | 1430         | 1286 | 111                                      | 27.1     | 142 | 92               | .10                                     | .031     | .13  | .07 |
| Bates (2)     | 1392       | 204.4                    | 1536         | 1247 | 109                                      | 46.7     | 142 | 76               | .08                                     | .026     | .06  | .10 |
| Davis (2)     | 1443       | 226.3                    | 1603         | 1283 | 193                                      | 37.5     | 219 | 166              | .11                                     | .029     | .13  | .09 |
| Price (2)     | 1529       | 142.8                    | 1630         | 1428 | 102                                      | .71      | 102 | 101              | .10                                     | .055     | .14  | .06 |
| Jefferson (2) | 1255       | 490.0                    | 1601         | 908  | 161                                      | 26.2     | 179 | 142              | .27                                     | .070     | • 32 | .22 |

# TABLE 12: A Comparison Between Judges of the Mean Outputs of its Grand Juries 1972-1975 (N=39)

no bills.<sup>8</sup> Full explanation of this difference is beyond the scope of the goals and data of this thesis, but future studies might profitably seek to explain between-venire differences in all categories of grand jury outputs.<sup>9</sup>

More important to this study is the second point. The range (min - max) and variance for each output category is quite large, and Table 11 indicates that the differences are not systematically explained by differences between years. The variance within each year is large enough to make between-year differences statistically insignificant. Only the mean number of cases decided for the most exceptional year, 1973, is significantly different from the universe mean for any of the three categories.

While the large variance is not accounted for by differences between years, the possibility remains that the variance might be accounted for by differences between judges; however, Table 12 indicates that this is not the case.

Again, the within judge variance and range are so great as to make differences between judges statistically insignificant.

In sum, grand juries vary substantially as to number of decisions returned, number of no bills returned and percentage of no bills. This variance is not accounted for by differences between samples defined by year seated or by samples defined by presiding judges.

#### Outputs-Differences Between Months

Professor Carp's experience and the perception of his respondents was that their grand juries decided cases more rapidly as the grand jury

term progressed.

In addition to focusing on the universe of the county's grand juries and on a given year or judge's grand juries, the available data facilitates comparison of grand jury outputs between months of the grand jury term and the testing of Hypothesis Two:

There will be statistically significant increases between months in the mean number of cases decided by Harris County grand juries.

H1: 
$$\overline{X}_1 < \overline{X}_2 < \overline{X}_3$$
  
Ho:  $\overline{X}_1 = \overline{X}_2 = \overline{X}_3$ 

Table 13 details differences between months and confirms Hypothesis Two.

| TABLE 13:                          | Between-Month<br>1972-1975     | Comparison of Har           | ris County Gra   | and Jury Outputs           |
|------------------------------------|--------------------------------|-----------------------------|--|----------------------------|
|                                    |                                | <u>lst/Mo</u>               | 2nd/Mo   | <u>3rd/Mo</u>              |
| Total<br>Decisions                 | X<br>s<br>Max<br>Min           | 435<br>140.8<br>821<br>215  | 480<br>142.4<br>828<br>114                             | 593<br>167.8<br>999<br>238 |
|                                    |                                | F = 11.36;                  | $df = \frac{1}{2}  p \checkmark .0$                    |                            |
| <u>No Bills</u>                    | X<br>s<br>Max<br>Min           | 47<br>25.9<br>138<br>11     | 62<br>44.7<br>228<br>15                                | 76<br>84.6<br>468<br>12    |
|                                    |                                | F = 2.50; d                 | $   \lim_{n \to \infty} \frac{2}{114}  p < .05 $       | , one tail                 |
| No Bill<br>Percentage              | X<br>s<br>Max<br>Min           | .11<br>.044<br>.263<br>.034 | .13<br>.07<br>.373<br>.047                             | .11<br>.08<br>.368<br>.023 |
| Where $\overline{X} = \frac{1}{3}$ | sample mean<br>sample standard | F = 1.06; d                 | $   \lim_{n \to \infty} \frac{2}{114}  \text{not si} $ | . <b>g.</b>                |

The information presented in Table 13 is best understood as a comparison of three samples of 39 from a population of 117 months (3 x 39). The statistically significant F score is based on simple analysis of variance and indicates that the steady increase between months in the number of cases returned represents a much larger variance between months than within each month. It is interesting to note that the second month for the November term each year is December, which always has a low number of cases due to the Christmas holidays; otherwise, the difference between month one and month two would be larger.

The increased efficiency does not alter the grand jury's propensity to return no bills. The increase in total no bills is no larger than would be predicted from the increase in total cases as indicated by the equal mean no bill percentages for months one and three. However, while no systematic change in no bill percentage is indicated for each month, there is a steady increase in the variance in no bills returned and no bill percentage as indicated by the steady increase in the standard deviations for each month. Thus, there tends to be more variety in no bill propensity among the grand juries during the third month than there was among the same set of grand juries during the first month. Why? The small group interaction literature reviewed in Chapter One indicates that most decision-making groups become more cohesive over time and that this increased cohesiveness is reflected in more efficient decision-making.<sup>10</sup> This tendency is more pronounced in homogeneous groups than in heterogeneous ones. If homogeneity is related to cohesiveness and cohesiveness is related to efficiency, perhaps it

is the less heterogeneous Harris County grand juries which increased cohesiveness and, therefore, account for increased efficiency over time.<sup>12</sup> A detailed answer to this question is beyond the scope of this thesis, but some possible explanations and suggestions for further inquiry are discussed in this chapter's conclusion.

Before turning to step three, one other aspect of grand jury outputs needs to be discussed. A substantial portion of the variance in the number of decisions returned is also attributable to differences between terms. Not infrequently, all of the grand juries for one term will handle substantially more cases than those meeting during the previous and/or following term.

| TABLE 14:                 | Comparison | of Mean Grand | Jury Outputs | Between Terms |  |
|---------------------------|------------|---------------|--------------|---------------|--|
|                           | January    | May           | August       | November      |  |
| Mean Decisi               | ions 4769  | 4038          | 4940         | 4188          |  |
| Mean No Bil               | Lls 499    | 403           | 717          | 475           |  |
| Mean No Bil<br>Percentage | .10        | .10           | .14          | .11           |  |

These differences are a function of variation in crime rates and other, more idiosyncratic phenomena. For example, much of 1973's abnormally high output rate may be traced to its August term. In combination, the three August, 1973 grand juries returned 5912 decisions which included 1230 no bills. This is the largest number of decisions for any term in our universe and more than two times as many no bills as returned by juries meeting during any other term.<sup>13</sup>

Differences between terms, (see Chapter Two) create differences

in the potential number of cases a grand jury can hear, since a grand jury can hear only those cases which circumstance dictates. Therefore, in addition to controlling for meeting days, this study will control for differences between terms by focusing on relative outputs rather than on the unstable raw outputs. (See Chap. 2.)

The detailed operationalization of each measure of composition and of each relative output measure is presented in Chapter Two (p. 28). Therefore, only a brief review of definitions and abbreviations for the relative measure of decision proficiency and the two relative measures of no bill propensity is presented here.

- 1. <u>Relative Decisions</u> (RELDEC) the percentage of a term's decisions which are returned by the jury x 100. If grand jury "A" returned 1200 decisions, grand jury "B" returned 1500 decisions, and grand jury "C" returned 1,000, grand jury "A" would be assigned a RELDEC score of 1200 = .32 x 100=32. 1000+1200+1500
- 2. <u>Relative No Bills</u> (RELNB) the percentage of the term's no bills returned by a grand jury.

Since RELNB is at least partially a function of RELDEC, a second measure of relative no bill propensity which controls for RELDEC will also be utilized.<sup>14</sup>

3. <u>Relative No Bill Percentage</u> - (RELNBP) - a grand jury's proportion of the no bill percentage for its terms grand juries. For example, if in the RELDEC example, "A" had returned 15% no bills, "B" had returned 12% no bills, and "C" 8% no bills, RELNBP for "A" would be computed <u>15</u> = .49 x 100 = 49. <u>15+12+8</u>

## Association Between Grand Jury Outputs and Grand Jury Composition

The stage is now set to answer the third and, heuristically, most interesting question posed by this research. Can variance in the racial, sex, economic and age composition of Harris County grand juries explain variance in the relative number of decisions and no bills returned by those grand juries?

The methods of measurement are presented in detail in Chapter Two, but will be outlined briefly here for the sake of review. Each of the three measures of grand jury outputs will be focused on separately as a dependent variable and compared with each of the four measures of grand jury composition. The following statistics will be reported for the association between each composition measure and each of the three dependent variables:<sup>15</sup>

- 1. r The simple, Pearsons correlation coefficient between each independent variable component of the composition measure under investigation and the dependent variable. In the relationship between RELDEC and CCR, the simple linear relationship of, for example, Blacks on the grand jury and the grand jury's RELDEC would be reported along with the simple relationship with RELDEC of each of the other independent variable components within the CCR measure.
- 2. RELr<sup>2</sup> The amount of variance in the dependent variable accounted for by each independent variable within the composition measure while controlling for the influence of the other independent variables within the measure.
- 3. R The multiple correlation coefficient between the dependent variable and the combination of independent variables making up each composition measure.
- 4. R<sup>2</sup> The total variance in the dependent variable explained by the combined variance in the set of independent variables making up the composition measure.

The first composition measure to be examined is Absolute Cognizable Class Representation (CCR). The relationship between CCR and each dependent variable is presented in Table 15.

In general, Table 15 indicates that as CCR for all classes except Women increases, Relative Decisions, Relative No Bills, and Relative No

TABLE 15: Contribution of Variance in Absolute Cognizable Class Representation to Variance in Relative Decisions (<u>RELDEC</u>), Relative No Bills (<u>RELNB</u>), and Relative No Bill Percentage (<u>RELNBP</u>).

| Class              | <u>RELDEC</u> <u>R</u> |                       | RE | RELNB  |                  | RELNBP   |                     |
|--------------------|------------------------|-----------------------|----|--------|------------------|----------|---------------------|
|                    | r                      | Relr <sup>2</sup>     |    | r      | 2<br><u>Relr</u> | <u>r</u> | Relr <sup>2</sup>   |
| Blacks             | 18                     | .06                   |    | 12     | .03              | .05      | .004                |
| Spanish<br>Surname | 29                     | .08                   |    | 30     | .15              | 10       | .02                 |
| Female             | .01                    | .003                  |    | .23    | .008             | .17      | .004                |
| Youth              | 07                     | .01                   |    | 15     | .03              | 12       | .03                 |
| Low Income         | 04                     | .002                  |    | 46     | .22              | 44       | .20                 |
| High Income        | 09                     | .04                   |    | 28     | .08              | 25       | .07                 |
|                    | R = .45                | 5 R <sup>2</sup> =.20 |    | R =.73 | $R^2 = .53$      | . R =.58 | R <sup>2</sup> =.33 |

Bill Percentages decrease. With the exception of Women, the relationships are in the hypothesized direction for relative decisions, although the combined relationship is rather weak, explaining only 20 percent of the variance. Of the variance explained, 70 percent (14/20) is accounted for by the two racial categories.

Compared to the association between RELDEC and CCR, the associations for both measures of no bill propensity are (a) much stronger, and (b) not consistently in the predicted direction. RELNB decreases as cognizable class representation for all classes but women increases. Furthermore, major differences occur in the relative explanatory power of the independent variables. The two economic classes (High Income, Low Income), who in combination explained less than five percent of the variance in RELDEC combine to explain fully 30 percent of the variance in RELNB. Low Income individual representation alone explains 22 percent of the total variance, accounting for 42 percent  $\binom{22}{53}$  of the variance explained. This shift in the relative explanatory power of economic variables suggests to this writer that RELNB is at least as much a measure of no bill propensity as of decision-making proficiency and that the representation of lowest income class and, to a lesser degree, the highest income class, on a grand jury is associated with a low no bill propensity.

This relationship between income and no bill propensity receives strong support when one examines the relationship between the controlled measure of no bill propensity--RELNBP--and cognizable class representation. Economic class variance combines to explain 27 percent of the variance, which is 82 percent of the variance explained.

Attention shifts now to Relative Cognizable Class Representation (RELCCR), presented in Table 16.

With the exception of income measures, the same pattern of relationships hold for Relative CCR as were found for absolute CCR. There tends to be a negative relationship between the relative representation of cognizable classes on a grand jury and both that grand jury's efficiency in returning decisions and its propensity to return no bills; although relative, like absolute, representation of Women is weakly associated with a relatively large number of decisions and a high no bill propensity.

However, High Income individuals display interesting differences between their absolute representation and relative representation.

TABLE 16: Contribution of Variance in Relative Cognizable Class Representation to Explanation of Variance in Relative Decisions (<u>RELDEC</u>), Relative No Bills (<u>RELNB</u>), and Relative No Bill Percentage (<u>RELNBP</u>).

| Cognizable<br><u>Class</u> | REL  | DEC               | REL      | NB                  | RELN  | RELNBP            |  |  |
|----------------------------|------|-------------------|----------|---------------------|-------|-------------------|--|--|
|                            | r    | Relr <sup>2</sup> | r        | Relr <sup>2</sup>   | r     | Relr <sup>2</sup> |  |  |
| Blacks                     | 04   | .01               | 17       | .03                 | *     | **                |  |  |
| Spanish<br>Surname         | 16   | .03               | 42       | .19                 | 28    | .09               |  |  |
| Female                     | .01  | xx                | • 32     | .07                 | .31   | .07               |  |  |
| Youth                      | 04   | .001              | 29       | .03                 | 21    | .01               |  |  |
| Low Income                 | 30   | .09               | 49       | .24                 | 46    | .21               |  |  |
| High Income                | 24   | .03               | 40       | .03                 | *     | **                |  |  |
| Mul R                      | =.40 | $R^{2=.16}$       | MulR=.77 | R <sup>2</sup> =.59 | R=.62 | R=.38             |  |  |

\*No measurable relationship

\*\*Less than .005 variance explained

Absolute High Income representation was an important predictor of variance in grand jury no-bill propensity. Relative High Income representation, however, explains only three percent of the variance in RELNB and less than one half of one percent of the variance in RELNBP.<sup>16</sup>

Tables 17 and 18 shift attention from cognizable class representation to Population Category Heterogeneity (PCH).

With the exception of income, the most striking thing about the association between each dependent variable and absolute PCH presented in Table 17 is the similarity between heterogeneity measures and the representation measures reported above. For example, when rounding errors are taken into account, Race heterogeneity explains exactly the same percentage of the variance of each dependent variable as was explained by the combined class representation of Spanish surname individuals and Blacks (see Table 15). Likewise, sex heterogeneity explains the same amount of variance for each dependent variable as did the representation of Women. Recalling the discovery in Chapter Three that race heterogeneity and sex heterogeneity as here operationalized are almost entirely a function of the number of minorities and number of women on a grand jury, this similarity is predictable.

Less predictable are the similarities between age PCH and Youth. Yet, this is understandable. For while the amounts of variance explained are quite similar, the relationship is quite weak in both cases, shifting from slightly negative for the class measure to slightly positive for the population category measure. Thus, what appears to be a similarity is actually an indication that neither age measure is significantly associated with relative grand jury outputs.

Income, on the other hand presents both similarities and substantial differences between CCR and PCH indicators. The variance in both indicators of No bill propensity--RELNB, RELNBP--explained by Income Heterogeneity is almost exactly equal to explained variance in each dependent variable explained by the combined number of high and low income individuals on a grand jury. For example, Income Heterogeneity accounts for 31 percent of the variance in RELNB; in combination Low Income (.22) and High Income (.08) explained 30 percent of the variance in the same dependent variable. The direction of the relationship, however, is completely reversed. The representation of both Low and High Income

TABLE 17: Contribution of Variance in Population Category Heterogeneity to Explanation of Variance in Relative Decisions (<u>RELDEC</u>), Relative No Bills (<u>RELNB</u>), and Relative No Bill Percentage (RELNBP)

| Category | RELDEC              |                                   | REI                 | LNB                                | RELNBP              |                                   |
|----------|---------------------|-----------------------------------|---------------------|------------------------------------|---------------------|-----------------------------------|
|          | r                   | <u>Relr<sup>2</sup></u>           | r                   | Relr <sup>2</sup>                  | r                   | Relr <sup>2</sup>                 |
| Race     | 37                  | .14                               | 27                  | .19                                | .03                 | .02                               |
| Sex      | .008                | xx                                | .23                 | .01                                | .17                 | .01                               |
| Age      | .005                | .02                               | .05                 | .03                                | .04                 | .02                               |
| Income   | <u>.15</u><br>R=.48 | <u>.07</u><br>R <sup>2</sup> =.23 | <u>.56</u><br>R=.74 | . <u>31</u><br>R <sup>2</sup> =.54 | <u>.50</u><br>R=.54 | <u>.25</u><br>R <sup>2</sup> =.30 |

TABLE 18: Contribution of Variance in Relative Population Category Heterogeneity to Explanation of Variance in Relative Decisions (<u>RELDEC</u>), Relative No Bills (<u>RELNB</u>), and Relative No Bill Percentage (<u>RELNBP</u>)

| Category | RELDEC       |                                   | REI                          | <u>LNB</u>                 | RELNBP              |                                   |
|----------|--------------|-----------------------------------|------------------------------|----------------------------|---------------------|-----------------------------------|
|          | r            | Relr <sup>2</sup>                 | r                            | Relr <sup>2</sup>          | r                   | Relr <sup>2</sup>                 |
| Race     | 31           | .09                               | 24                           | .05                        | .07                 | .003                              |
| Sex      | 01           | xx                                | • 32                         | .08                        | .29                 | .09                               |
| Age      | 02           | .01                               | .005                         | xx                         | *                   | **                                |
| Income   | .20<br>R=.36 | <u>.03</u><br>R <sup>2</sup> =.13 | <u>.38</u><br>R <b>=.</b> 52 | .14<br>R <sup>2</sup> =.27 | <u>.21</u><br>R=.49 | <u>.03</u><br>R <sup>2</sup> =.24 |

\*No measurable relationship \*\*Less than .005 variance explained

. .

grand jurors was related to a low no bill propensity, while Income Heterogeneity is associated just as strongly with a high no bill propensity. This situation is possible only if the three middle income categories--TZB, TZC, TZD--are all three associated with a high no bill propensity and/or if the variety of incomes present (Income Heterogeneity) measures a dimension beyond the additive representation of specific income classes. Table 19 supports both possibilities.

| TABLE | 19: The F<br>Grand | Relationshi<br>I Juries an | p Between Rep<br>d Two Measure | resentat<br>s of No       | tion of Income<br>Bill Propensit | Classes On<br>y |
|-------|--------------------|----------------------------|--------------------------------|---------------------------|----------------------------------|-----------------|
|       | REL                | NB                         | RELN                           | BP                        |                                  |                 |
|       | <u>r</u>           | <u>r</u> 2                 | <u>r</u>                       | $\frac{r^2}{r}$           |                                  |                 |
| TZE   | 48                 | .24                        | 46                             | .21                       |                                  |                 |
| TZD   | .45                | .17                        | •33                            | .05                       |                                  |                 |
| TZC   | .46                | .06                        | .41                            | .09                       |                                  |                 |
| TZB   | .15                | .02                        | .08                            | .02                       |                                  |                 |
| TZA   | 16<br>R=.70        | xx<br>R <sup>2</sup> =.49  | 23<br>R=.61                    | .01<br>R <sup>2</sup> =38 |                                  | · ·             |
|       |                    |                            |                                |                           |                                  |                 |

Relative to other income classes, Low Income remains a strong predictor of a low no bill propensity, with high income a very weak predictor of a low no bill propensity under controls for other income classes. All three middle classes are positively associated with both measures of no bill propensity. Thus, the strong association between income heterogeneity and a high no bill propensity is partially due to the ability of positive no bill propensities of the middle class to overcome the negative propensity of the lowest economic class. The persuasive-

ness of this additive explanation is enhanced when one recalls that Trade zones D and E are combined in Income heterogeneity, diluting the impact of Trade zone E representation.

However, a closer look at Table 19 indicates that this additive explanation is incomplete. More than one half of the variance explained by economic class representation is accounted for by Low Income representation. If a simple additive explanation were valid, the shift from a negative relationship to a positive relationship would, therefore, have been less dramatic. Thus, the variety of economic class representation on a grand jury has an impact beyond the additive effect of specific economic classes.

The basic relationship between Absolute Race and Income Heterogeneity is extended to Relative Heterogeneity, as indicated in Table 18, although Relative PCH is a slightly weaker predictor over all than was absolute PCH.

Neither absolute nor relative sex heterogeneity is associated with a grand jury's proficiency in returning decisions. However, absolute and relative sex heterogeneity, like absolute and relative female class representation, are both positively associated with both measures of no bill propensity.

In sum, neither CCR nor PCH explained much of the variance in decision proficiency, but both absolute and relative CCR explain gratifying amounts of the variance in both measures of no bill propensity. Racial PCH and CCR indicators tend to be strongest in explaining total decisions, while income categories are the best predictors of no bill

propensity. Age is a weak and inconsistent predictor, whether measured as heterogeneity or Youth representation. Female representation and sex heterogeneity on a grand jury are consistently weak predictors of decision-making proficiency. However, representation of females and sex heterogeneity are both relatively strong and consistent predictors of a high no bill propensity.

The strongest explanatory composition measures for each relative output measure were as follows:

RELDEC = Absolute PCH (20 percent of variance explained). RELNB = Absolute CCR (59 percent of variance explained). RELNBP = Relative CCR (38 percent of variance explained).

## Application of Grand Jury Composition Measures to Explanation of Variance in Grand Jury Outputs for Specific Categories of Crime

The final section of this chapter addresses the question of whether the associations reported above to explain the variance in each general relative output measure also explain variance in relative outputs for specific categories of cases. For each crime category, each of the output variables--RELDEC, RELNB, RELNBP--will be tested for its association with the composition measure which explained the greatest amount of variance in that output measure over all crime categories as established in section two above. For example, for possession of marijuana, the following relationships will be tested: 1. RELDEC (Marijuana) with Absolute PCH; 2. RELNB (Marijuana) with Absolute CCR; 3. RELNBP (Marijuana) with Relative CCR. For each relationship, the multiple correlation coefficient and the amount of total variance explained will be reported. Major differences between the explanatory power of a compo-

sition measure for total outputs and the explanatory power of that measure for crime specific outputs will be evident in Table 20. Any notable shifts in the relative power of independent variables within a particular composition measure will be noted and discussed in the text.

As noted in Chapter Two (p.26), reliable output data was gathered for eight categories of crime. For two of these eight, -- Sale of Marijuana and Sale of Narcotics--the indictment rate was so high (98 percent) that no variance in no bill propensity existed to be explained. Thus, variance in RELDEC, RELNB, and RELNBP will be measured for the following crimes:

- Possession of marijuana 1.
- Possession of narcotics 2.
- 3. Rape, attempted rape
- 4. Murder, attempted murder
- 5. Assault
- 6. Crimes against property.

As noted in section one of this chapter, Professor Carp found that Harris County grand juries expend more time and discussion on drug crimes, crimes of passion (murder, rape) and victimless sex crimes than on other categories, such as crime against property (burglarly, theft). Fortunately, reliable data is available to examine the relationship between drug crimes or crimes of passion outputs and grand jury composition. Unfortunately, data for victimless sex crimes is of doubtful reliability (see Chapter 2, p. 25). This disappointment is mitigated, however, by the fact that victimless sex crimes account for only about three percent of the cases decided during this period.

A detailed study of the relationship between discussion time, decision-making proficiency, and no bill propensity is beyond the scope of this thesis; however, passing attention will be devoted to the intuitively pleasing idea that composition measures might explain more variance in those crimes which generate discussion than for those which do not.

The relationship between each group of crime specific dependent variables and the appropriate composition measure is presented in Table 20. (A more detailed presentation which includes the relative explanatory value of each independent variable is found in Appendix B.)

In interpreting Table 20, attention will focus first on RELDEC for each case catogory. The most compelling message is the great difference between case categories in the amount of variance explained. Also, the differences are not in any consistent direction. For example, the largest amount of explained variance is for Property Crimes and Narcotics, while the smallest is for another drug crime--marijuana possession.<sup>17</sup> Variance in the least discussed crime category is explained, while variance in one of the most discussed is not. One may, therefore, conclude that for this set of grand juries, the general explanation of relative decision variance by Absolute PCH is not applicable to specific crime categories. One may also suggest that PCH is as weak or weaker in explaining specific RELDEC for those crimes which generate discussion as for those which do not.

While it is not reflected in the table, Race remains the strongest single predictor for each crime category except Assault. In fact, Race Heterogeneity explains 30 percent of the variance in RELDEC for property related crimes.

|                           | RELD  | EC                  | REL   | NB                  | RELNBP |                     |
|---------------------------|-------|---------------------|-------|---------------------|--------|---------------------|
| For All Crimes            | R=.48 | R <sup>2</sup> =.23 | R=.77 | R <sup>2</sup> =.59 | R=.58  | R <sup>2</sup> =.33 |
| Possession Marijuana      | .12   | .01                 | .61   | • 38                | •57    | .22                 |
| Possession Narcotic       | .32   | .10                 | .60   | . 36                | .48    | .25                 |
| Rape, Att. Rape           | .28   | .08                 | .62   | • 38                | .51    | .27                 |
| Murder, Att. Murder       | .47   | .22                 | .43   | .18                 | .58    | •33                 |
| Assault                   | .31   | .10                 | .24   | .06                 | .36    | .17                 |
| Crime Against<br>Property | .66   | .43                 | .54   | .29                 | .40    | .19                 |
|                           |       |                     |       |                     |        |                     |

| TABLE 20: | Comparing t | the Association | Between Crim  | e-Specific | Grand Jury |
|-----------|-------------|-----------------|---------------|------------|------------|
|           | Outputs and | l Selected Meas | ures of Grand | Jury Compo | osition    |

Another interesting relationship not reflected in the table is the positive association between relative Rape decisions and Sex Heterogeneity. As the Sex Heterogeneity of a grand jury increases, so does the percentage of its term's Rape decisions which it decides.

Several of the trends for crime specific RELDEC are reversed for both measures of crime-specific no bill propensity. As was true for the general case, more variance is explained for most crime-specific measures of no bill propensity than was explained for crime-specific decision-making proficiency. Looking first at RELNB for each crime category confirms that the explained variance is generally larger than RELDEC for the same categories, with less fluctuation between categories. The largest variance explained is for those crimes which tend to generate the most discussion. Thus, one may conclude that Absolute CCR is applicable to explanation of RELNB variance for specific crimes and that it is most applicable to those categories which tend to produce the most discussion.

Two interesting facts are not reflected in the table. First, the strongest predictor of general RELNB, Low Income representation, differs greatly in its case-specific predictive power. For one category, Assault, Low Income representation explains less than one percent of the variance in the dependent variable.

Second, representation of Women explained only seven percent of the general variance in RELNB. However, for two crime categories--Marijuana and Rape--female representation explains the greatest amount of variance in RELNB. The number of women on a grand jury is positively associated with the relative number of marijuana no bills (r=.45), explaining 20 percent of the variance in marijuana relative no bills. This is consistent with attitudinal surveys which show that women have a more tolerant attitude toward drugs than do men,<sup>18</sup> and with the tendency noted in section two of this chapter for representation of women to be moder-ately associated with a general high no bill propensity.

This general female propensity even applies to rape cases. Contrary to an intuitive expectation that grand juries with high female representation would tend to score low on relative rape no bills, female representation is positively associated (r=.40) with relative number of rape no bills. The question of whether this is an artifact of the positive association between sex heterogeneity and relative rape decisions is included in the discussion of crime-specific RELNBP below.

The relationship between each crime-specific RELNBP and Relative

CCR displays even less fluctuation between crime categories in variance explained than did the relationship between crime-specific RELNB and Absolute CCR. In general, the most variance continues to be explained for those crimes which have generated the most grand jury discussion in the past. Thus, one may conclude that Relative CCR is applicable to explanation of RELNB variance for specific crime categories and that it is most applicable to those categories which tend to produce the most discussion.

As with crime-specific RELNB, the relative role of Low Income individuals and Women is interesting but not reflected in Table 20. Again, the influence of Low Income individuals is most uneven. For example, Low Income representation explains less than one percent of the RELNBP variance for crimes against property.

Female representation again explains the greatest amount of variance in RELNBP for marijuana possession and for rape. Predictably, the female representation on a grand jury is positively associated with a high relative percentage of marijuana no bills (r=.38). Less predictably, the relative number of women on a grand jury is also positively associated with a high relative no bill percentage for rape cases.

#### Summary and Conclusions

Substantial variance occurs between Harris County grand juries in the number of cases, the number of no bills, and the percentage of no bills which they return. This variance in outputs is not explained by differences between judges or differences between years.

### Increased Proficiency Over Time

In addition to reporting differences among grand juries, the data reported here indicate support for the tentative conclusion of Prof. Carp

reflected in Hypothesis 2: There will be a statistically significant increase between months in the mean number of cases returned by Harris County grand juries.

The increase in mean number of decisions from 435 (month one) to 480 (month two) to 593 (month three) is statistically significant (p <.001) and clearly confirms the tentative findings of Prof. Carp and the impressions of his respondents.

Explanation of this increase may only be inferred, since no clear causal link has been established. Professor Carp noted that less time was devoted to a case when similar cases had been decided earlier. This is a persuasive explanation of the increase between month one and month two. It is less persuasive as an explanation of the increase between month two and month three. One would not expect efficiency to continue to increase at the same rate once grand jurors had become familiar with various types of cases. Yet, a review of grand jury records indicates that most categories of crimes are heard several times by a grand jury during its first month of deliberation.

The fact that the increase continues over time may infer support for the group dynamics model which argues that efficiency is related to cohesion and cohesion develops over time, especially in homogeneous groups.

The relative explanatory value of increased efficiency and/or cohesion may be tested by a more refined treatment of data available. This possibility is discussed in the concluding chapter under suggestions for further research.

#### Association Between Composition and Outputs

The exploration of the relationship between grand jury composition

and grand jury outputs produced mixed results. In general, outputs and composition were associated, but neither strength nor direction of association were consistently as predicted.

The hypothesized relationships between each measure of grand jury composition and grand jury outputs cannot be tested in the formal sense. Due to the small N (39) and the exploratory nature of the topic, no tests of statistical significance were appropriate. However, the validity of each hypothesized relationship will be "tested" in the sense of determining whether a measurable association exists and whether the relationship is in the hypothesized direction. Relationships which are weak and inconsistent will be treated as unresolved. The first hypothesized association was between relative decisions and population category heterogeneity:

<sup>H</sup>3 - Variance in absolute and relative grand jury Population Category Heterogeneity will explain variance in grand jury Relative Decisions.

Evidence presented in Tables 17 and 18 leads to an unenthusiastic acceptance of  $H_3$ . To wit, the hypothesized relationship exists but is not very strong. Absolute heterogeneity explains 23 percent of the variance in the relative number of decisions returned and relative heterogeneity explains only 13 percent.

Moreover, when population categories are examined individually, only race is associated with decision-making in the hypothesized negative direction. Sex and Age heterogeneity are inconsistently and weakly related with decision-making proficiency, while Income heterogeneity is positively correlated with grand jury decision outputs. Thus, while some association was demonstrated between the heterogeneity within population categories on grand juries and grand jury decision-making proficiency, the substantial variation between grand juries in the number of decisions returned remains largely unexplained. Furthermore, only racial heterogeneity (which is a duplicate of minority representation) is associated with decision-making proficiency in the hypothesized negative direction.

The second hypothesized association is that between no bill propensity and cognizable class representation:

- H4: Variance in grand jury absolute and relative cognizable class representation will explain variance in grand jury Relative No Bill (RELNB) outputs.
- H5: Variance in grand jury absolute and relative Cognizable Class Representation (CCR) will explain variance in grand jury Relative No Bill Percentage (RELNBP).

The data indicate a strong association between both measures of cognizable class representation and both measures of no bill propensity.

H4: Absolute CCR-R=.73;  $R^2$ =.53 H5: Absolute CCR-R=.58;  $R^2$ =.33 Relative CCR-R=.77;  $R^2$ =.59 Relative CCR-R=.62;  $R^2$ =.38

The strength of these relationships leads to an acceptance of H4 and H5 and the conclusion that there is indeed an association between the combined representation of minorities, females, young people, and those with low incomes on Harris County grand juries and the number of no bills returned by these grand juries. However, again an inspection of the relationship between no bills returned and each specific independent indicator reveals several surprises. First, most specific associations are not in the hypothesized, positive directions. Female representation is associated with relative no bill production in the hypothesized positive direction, and the relationship for Youth is inconsistent and weak. But minority and Low Income representation are negatively associated with the relative number of no bills returned.

Income is clearly the strongest predictor of no bill propensity. Low Income individuals were the cognizable class most closely associated with no bill propensity, with low income representation associated with a low no bill propensity. The heterogeneity of incomes represented on a grand jury was also strongly associated with no bill propensity; however, income heterogeneity was positively associated with no bill propensity. Thus, heterogeneity of income and representation of the poor have strong but opposite effects on the tendency of grand juries to return no bills.

Race is a weaker predictor, but representation of both minorities is associated with low no bill propensity. The relationship for Blacks is weak, while for Mexican-Americans it is relatively strong. The weak relationship between Black representation and no bill propensity and the negative direction of this relationship for both minority groups are surprising. Likewise, both the magnitude and the direction of the association between income composition and no bill propensity come as a surprise. Broeder's study of Black petit jurors<sup>19</sup> and opinion surveys of minority Americans<sup>20</sup> would both predict that minorities would be more "underdog oriented" and more likely to attribute crime to societal, rather than individual, causes. The negative relationship for Low Income representation is not consistent with Reed's findings that low income petit jurors are more likely to have voted for acquital.<sup>21</sup>

The most plausible explanation for the negative minority relationship lies in the non-representative nature of the minority grand jurors.

They represent an elite element of the minority community. (See Chapter Three, above). Plausible explanations for the effect of income are more elusive. As indicated in Table 21, the effect of income is further complicated by the relationship between relative number of no bills returned and the other income categories.

TABLE 21: Bar Graph of the Relationship Between Relative No Bill Outputs and Representation of Each Income Category on Harris County Grand Juries



Where:

- $\overline{Y}$  = Mean Relative No Bills Returned
- r = Correlation Between Income Representation and No Bill
  Propensity

Only representation of the lowest and highest income categories are associated with grand juries returning relatively few no bills.<sup>22</sup> Representation of the next lowest category (lower middle) is the strongest predictor that a grand jury will return a relatively high number of no bills.

Two explanations for this relationship seem plausible to this writer. First, perhaps the minority jurors are the lowest income jurors. Maybe the correlation coefficients for Low Income are similar to those for minorities because the same group is being analyzed twice. Since the number of Black grand jurors is known, but the identity of each Black grand juror is not, the possibility of overlap cannot be checked directly. However, the correlation coefficients of Trade zone E representation with Black and Spanish surname representation are .13 and .03, respectively. This would argue that the two categories do not overlap. This argument is bolstered by computing an indicator of the combined number of whites and Lowest Income individuals on each grand jury. This interaction measure displays a strong negative correlation with grand jury no bill propensity. In other words, grand juries with high representation of whites and high TZE representation tend to return a very small number of no bills. It will also be remembered that minority questionnaire respondents tended to report incomes well above the county's mean. Thus, the evidence is persuasive that the strong negative relationship between no bill propensity and Low Income representation is not a function of overlap between Low Income representation and minority representation.

The second plausible explanation has roots in a less direct and

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more theoretical perspective. The understanding of the association between Low Income representation and no bill propensity may lie in a series of studies which differentiate relevant opinion configurations between economic groups. Such studies have found that Lower Income individuals tend to be less committed to civil liberties and less tolerant of politically and socially deviant behavior than are the socio-economic elites who are generally overrepresented on grand and petit juries.<sup>23</sup>

Of particular interest to a study of low income representation on a body which authoritatively allocates values in close cooperation with official authority figures is the hypothesized connection between low income status and the theoretical construct known as authoritarianism.<sup>24</sup> Behavioral manifestations of authoritarianism include hostility toward out groups, submission to authority, aggression and punitive posture toward those of lower status, and admiration of the use of force in settling disputes.<sup>25</sup>

Several writers have linked the authoritarian personality with lower socio-economic status and working class occupations. Seymour Lipset is the father of "working-class authoritarianism" as a personality type.<sup>26</sup> His writings point to a greater frequency of authoritarianism among the working class, especially the lower strata of the working class, and attribute it in large part to low education, little reading, and economic insecurity. In sum, there is evidence, albeit not conclusive, of a connection between working class or low income status and authoritarianism on the one hand and between authoritarianism and anti-civil libertarian behavior and attitudes on the other. Thus, one would be
very unlikely to intentionally select a grand jury of authoritarians if one were interested in producing a relatively high output of no bills.

However, at least three factors raise doubts as to the accuracy of working class authoritarianism as a valid explanation for the negative relationship between Low Income representation and grand jury no bill production. First, several recent studies have criticized Lipset, characterizing "working class authoritarianism" as a somewhat simplistic concept.<sup>28</sup>

Second, the working class authoritarianism explanation is confounded by the effect of Trade Zone D representation. Lipset does not define "working class" carefully and I would not presume to argue that my crude indicator of income clearly differentiates the "working class." Third, the findings here are not that Low Income individuals behave a certain way, but that grand juries with low income representation perform a certain way. Even if one were willing to infer individual behavior, one would be limited by the ecological fallacy of attributing the tendencies of a group to individual representatives of that group.<sup>29</sup> In sum, neither explanation of the effect of income composition is very satisfactory. The association between the participation of cognizable classes on Harris County grand juries and the tendency of those grand juries to return no bills has been established but not explained.

#### FOOTNOTES

<sup>1</sup>This information is based on interviews with R. Lemon, grand jury bailiff, Harris County Criminal District Court Building, Oct. 11, 1975, and on a series of open-ended telephone interviews with former grand jurors during Fall, 1975. See also, Carp, "The Harris County Grand Jury," 101.

<sup>2</sup>Carp, "The Harris County Grand Jury," 100-105.

<sup>3</sup>Ibid, 101-103.

<sup>4</sup>Tbid.

<sup>5</sup>Ibid, 104-105.

<sup>6</sup>Ibid. An exception of Prof. Carp's grand jury was a gentleman who was stopped for Driving While Intoxicated during his second month of grand jury service, after which he initiated debate in DWI cases.

<sup>7</sup>D.M. McIntyre, "Prosecutors and Early Disposition of Felony Cases," American Bar Association Journal, 56 (1970).

<sup>8</sup> Tbid. Unfortunately, no data is available to compare the no bill propensity of Harris County grand juries with grand juries in other Texas counties.

 $^{9}$ Possible explanations would include but not be limited to:

- 1. Harris County cases are not as well documented and presented as are cases elsewhere.
  - 2. Formal procedures and standards for indictment are different.
  - 3. Harris County grand jurors are more lenient than are grand jurors in other venires.
- 4. Harris County prosecutors file more charges than they intend to prosecute.

<sup>10</sup>See the work of Lewin; Bales; Cartwright; Hoffman; All are discussed in Chapter One.

ll Ibid, see especially Lewin.

<sup>12</sup>This is a major research question in itself and is outside the scope of this thesis. However, data is available to test the relationship between grand jury composition and degree of change.

<sup>13</sup>Interviews with grand jurors who served during this time indicate that this term's abnormalities resulted from a change in the classification of small amounts of marijuana from a felony to a misdemeanor which made many grand jurors unwilling to return felony indictments on arrests which occurred before the change. Interview with T. Meltzer, at First Unitarian Church, April, 1974. Interview with G. Cones, Blodgett Fire Station, April, 1974.

<sup>14</sup> It was anticipated that <u>RELNB</u> would be partially a function of RELDEC (See Chapter One). However, the relationship between the two is relatively weak, with RELDEC explaining only seven percent of the variance in RELNB.  $r=.27; r^2=.07.$ 

<sup>15</sup>See Nie, <u>et al.</u>, <u>op. cit</u>.

<sup>16</sup>The high negative linear regression between TZA and RELNB (-.40)almost disappears under controls for the other income categories. Thus, the absence of variance explained by TZA.

17 This may be due to the extreme fluctuations between terms and between years in number of marijuana cases presented.

<sup>18</sup>See George F. Gallup, <u>The Gallup Poll: Public Opinion, 1935-1971</u> (New York: Random House, 1972).

<sup>19</sup>Dale Broeder, <u>op</u>. <u>cit</u>. See Chapter One.

<sup>20</sup>Gallup, <u>op</u>. <u>cit</u>.

<sup>21</sup>J. Reed, <u>op</u>. <u>cit</u>. See Chapter One.

<sup>22</sup>See Hurwitz (Note - Chap. 1) for a discussion of similarities between high and low income jurors.

<sup>23</sup>See H. McClosky, "Conservatism and Personality," <u>American Political</u> Science Review, Jan. 1958, p. 27. This tendency is reviewed in T. Dye and H. Zeigler, The Irony of Democracy, 3rd Ed. (Belmont, Calif .: Duxbury Press, 1975).

<sup>24</sup> The seminal work in this area, see T. Adorno, <u>et al</u>. <u>The Author-</u> itarian Personality (New York: Harpers, 1950), Although the concept of authoritarianism was originated by Erich Fromm, Escape from Freedom (New York: Holt, 1941) and W. Reich, The Mass Psychology of Fascism (New York: Orgone Press, 1941). For an excellent review of the Authoritarian Personality and related work see F. Greenstein, The Study of Personality and Politics (Chicago: Markham Publishing, 1969). Serious theoretical and methodological criticisms have been leveled at the study of authoritarianism. See R. Christie, <u>et al</u>. (eds.) <u>Studies in the</u> <u>Scope and Method of "The Authoritarian Personality"</u> (Glencoe, Ill.: Free Press, 1954).

<sup>25</sup>Ibid.

26 Seymour M. Lipset, <u>Political Man</u> (New York: Doubleday and Co., 1960) Chap. 4.

<sup>27</sup>Ibid. See also Lipset, "Democracy and Working Class Authoritarianism," <u>American Sociological Review</u>, 24, 1959, p. 481.

<sup>28</sup>See R. Wright, "Working Class Authoritarianism and the War in Vietnam," Social Problems, 20, Fall, 1972, p. 133-48.

<sup>29</sup>Donald Campbell and J. C. Stanley, <u>Experimental and Quasi</u> Experimental Designs For Research (Chicago: Rand McNally & Co., 1966).

#### Chapter Five

### CONCLUSIONS AND SUGGESTIONS FOR FUTURE RESEARCH

It will be recalled from the introduction to Chapter One that the general purpose of this thesis was to generate understanding of the nature and effect of public participation in an important aspect of the criminal justice process. Understanding was sought via the study of the nature and effect of public participation on the universe of state grand juries convened in Harris County, Texas from 1969-1975. It was further stated that to the extent that this purpose was achieved, two related goals would be met:

- 1. We, as political scientists would possess a better understanding of the nature and effect of public participation on this component of the criminal justice subsystem and be able to share this understanding with other social scientists and with decision-makers in the judiciary and the legislature.
- 2. The somewhat specific and modest research reported here would generate new questions and models applicable to more extensive study of juries and other, functionally analogous decisionmaking groups in the future.

In this concluding chapter the degree to which each goal has been reached will be assessed by reviewing conclusions applicable to the first goal and suggestions for further research relating to the second.

<u>Conclusions Concerning Public Participation and Grand Jury Outputs</u> The Nature of Participation on Grand Juries in Harris County

Over the seven-year period (1969-1975) the representation of minorities, females, young people and the poor was smaller than the representation of these classes in the population. As of 1975, the poor, young people, and females remained excluded; however, minority representation had increased and by 1975 minorities were not excluded from Harris County grand juries. In fact, the percentage of Spanish surname individuals on grand juries in 1974 and 1975 exceeded the Spanish surname proportion of the eligible population as estimated by the 1970 census. Moreover, these minority grand jurors closely resemble their white counterparts in age, sex, income, and education.

Of particular interest in light of grand juror representation patterns was a profile of Harris County grand jury commissioners. Based on the findings of this thesis, one may conclude that, except for race, grand jury commissioners resemble the judges who appoint them--i.e., they tend to be middle age males of relatively high socioeconomic status. Grand jurors, in turn, tend to resemble the commissioners who appoint them. The resemblance to commissioners was especially apparent among minority grand jurors, partially because most minority conclude that the patterns of participation on Harris County grand juries are largely the result of the commissioner system which produced the grand juries.

Patterns of exclusion/inclusion raised the question: Do Harris County grand juries meet the courts' constitutional standards that the universe of grand jurors in a given community approximate a cross section of that community? Conclusions concerning this question are necessarily complex. The U.S. Supreme Court has relied on the representation of minorities and/or women to indicate whether a cross section of the community has been obtained. The exclusion of either class in a given jurisdiction is an indication that grand juries in that

jurisdiction do not represent a community cross section. By these standards, the 54 percent exclusion of women from Harris County grand juries indicates that Harris County grand juries probably do not meet the courts' standards.

Such a standard implies that by increasing the participation of Women, Harris County grand juries would become representative of the community. Yet the fact that female grand jurors, like their male counterparts, tend to be drawn disproportionately from the older and higher income segments of the population suggests strongly that the addition of women under the current system would in no way guarantee a representative jury pool. In all probability, the age and income brackets participating on Harris County grand juries would continue to reflect a cross section of community elites rather than a cross section of the community. Thus, we reach the ironic conclusion that by increasing the representation of women, the Harris County grand juries would meet the courts' community cross section standards but <u>would not</u> reflect a cross section of the community.

These conclusions concerning the nature of participation on Harris County grand juries suggest at least two relevant strategies for decision-makers. First, those jurists who wish to guarantee the selection of truly representative grand juries should modify their standard for identifying such grand juries. Second, legislators who wish to guarantee representative grand juries should consider replacing the current commissioner system with some system based on unbiased random selection. This research produced no evidence of bad faith on the part of grand jury commissioners. It does suggest, however, that the

discretion inherent in the system prohibits even well intentioned commissioners from selecting representative grand jurors,

# Grand Jury Outputs

Data introduced in Chapter Four lead to two firm conclusions concerning grand jury outputs in Harris County. First, the large variation among grand juries in the number of cases decided, the number of cases decided, the number of no bills returned, and the percentage of no bills returned is not explained by differences over time or among supervising judges. Second, we are able to conclude firmly that the decision-making proficiency of Harris County grand juries increased substantially over time. The mean number of decisions returned for all grand juries increased from 435 for month one to 593 for month three. The no bill average increased from 47 to 76. We may conclude less firmly that variation among grand juries in percentage of no bills returned also increases over time. While the mean no bill percentage was the same (11 percent) for months one and three, the variance among grand juries in no bill percentage doubled from month one (s=4) to month three (s=8).

The direction of change confirms earlier conclusions reached by Prof. Carp and small group analysts. However, the magnitude of change remains largely unexplained, and no persuasive conclusions concerning this magnitude were generated by this research. The heuristic implications of change over time are discussed below under suggestions for further research.

This finding carries no clear implications for those evaluating participatory institutions in the judicial process. However, it does suggest the possibility that grand juries which sat for extended periods

of time might become increasingly efficient but decreasingly effective as a check on an overzealous or unprepared prosecutor. Those who suggest increasing grand jury terms or the use of professional jurors might consider the likely effect on the traditional juror function.

# Relationship Between Composition and Outputs

No firm conclusion was reached concerning the effect of grand jury composition on the number of decisions returned. However, we may conclude with some confidence that the combination of demographic characteristics represented on a grand jury is related to the propensity of the grand jury to return no bills. The racial, age, sex, and income heterogeneity represented on the grand jury and the representation of minorities, women, poor, and young people on the grand jury each explain approximately half of the variance among grand juries in no bill outputs.

Based on the Harris County data, one may further conclude that income representation on a grand jury is the single strongest predictor of that grand jury's tendency to return no bills. Income heterogeneity predicts a high no bill output, while substantial representation of the county's lowest income category predicts a low no bill output. Minority representation is also associated with low no bill outputs; however, conclusions concerning this relationship are clouded by the non-representative nature of minority grand jurors in Harris County.

The moderate but consistent relationship between female representation and no bill rates lead to the conclusion that representation of women on grand juries is associated with a high no bill rate in Harris County. Age, whether measured as age heterogeneity or representation of those under 35 is a weak and inconsistent predictor of grand jury no bill rates in Harris County.

Given these conclusions, to what extent have our first goal and, therefore, our purpose been achieved? To some extent increased understanding of the effect of public participation in the criminal justice subsystem on the administration of justice has been generated. A somewhat syllogistic relationship has been established between the system which produces local grand juries and the outputs of those grand juries. First, the effect of public participation (no bill propensity, for example) is partially dependent on which segments of the public participate. Second, which segments of the public participate may be partially a function of the system by which they are selected. Therefore, the method by which public participants in the criminal justice process are selected ultimately tends to determine the effect of public participation on that process. Those who would alter either the nature or the effect of public participation in this aspect of the judicial process would do well to begin by altering the way participants are selected.

As is true of any exploratory study focusing on one case, this study has produced more questions and ideas for future research than it has produced answers. Ultimately, the extent to which our purpose is achieved will depend on the extent to which the modest results reported here are replicated, expanded and generalized. Thus, the concluding section of this thesis contains proposals for additional research in this area.

# Suggestions For Future Research

It is not an exaggeration to say that this research has produced more questions than answers. This is especially true of the exploration into associations between composition and outputs, but is also true of the descriptions of grand jury representation and procedural changes over time. This thesis concludes, therefore, with suggestions for future research into each of the three topical areas.

#### Future Research into the Nature of Public Participation

At least two strategies are indicated for future studies of the nature public participation on grand juries. First, the combined use of aggregate and survey data applied here by referencing Professor Carp's data enhances the reliability of findings. This combined data source may be applied in other Texas venires by those interested in evaluating and/or reforming the grand jury commissioner system in other Texas counties. Such a data source may also be applied in other states using different selection systems to compare and contrast representation under Texas' selection system with representation under other grand jury selection systems.

Careful evaluation and monitoring may serve those interested in short term reform well. However, reformers who wish to produce juries that truly represent a cross section of the community should study at least two additional questions implied by this research. First, how should one measure a community cross section? We have criticized the courts' methods of measuring disparities as inaccurate. Now new criteria should be developed for determining whether juries represent a community cross section.

Second, even though the Texas commissioner system of selecting grand jurors has been declared constitutional, is it capable of producing representative grand juries? The evidence in Harris County argues that it is not. Replication is needed to determine if this argument may be applied statewide. Meanwhile, this thesis is one more piece of evidence that those interested in truly reforming representation on Texas grand juries should begin by reforming the system of grand juror selection.

### Future Analysis of Grand Jury Procedure

The finding that grand juries become more efficient over time supports previous findings, but the magnitude of the change over time calls for further research into it. The research into output change over time reported here can be improved upon in at least two ways:

- 1. Develop more sophisticated measures of change to determine whether change tends to be continuous or discrete.
- 2. Utilize the more sophisticated measure to study the relationship between composition and the rate or direction of the grand jury's change in efficiency. Such a study could determine among other things, whether decision proficiency increased

more rapidly in heterogeneous or in homogeneous groupings. Both improvements should be applied to grand juries in other venires and to other political focused gatherings, as well as to Harris County grand juries.

# Search for Increased Understanding of Grand Jury Outputs

The relationship found be ween grand jury composition and outputs in general and between cognizable class representation and no bill propensity in particular suggests several areas for future research. The model introduced here needs to be both refined and replicated. Both refinement and replication can best be accomplished by expanding the study to include a larger number of cases and juries from different venires. Other Texas counties, other states, and federal grand juries are obvious sources for replication. Another potential unit of analysis is the civil petit jury. Aggregate data is available concerning civil jury composition in Harris County, and the monetary awards of civil juries represent an interval level dependent variable consistent with the model and data analysis applied in this thesis.

Refinement of the model developed in this thesis should include more sophisticated and precise measures of independent variables; for example, the number of black females on a grand jury may be an important independent variable not measured by this research. Probably most important is the development of a better economic or income measure. Residence should be supplemented with occupation and/or education. A more sensitive income heterogeneity measure must be developed which doesn't combine Trade Zones E and D.

Refinement of this model should also include a more sophisticated application of linear regression techniques in data analysis. The expansion into other venires recommended above will create a number of cases large enough to facilitate tests for statistical significance and the possibility of inference to the general population of grand juries. A larger N will also facilitate tests for interaction among independent variables. Several questions raised by this thesis call for such a test. For example, is there an interaction effect between

race and income? Tentative examination of this question indicates that there is such an effect. For example, a variable computed by combining the number of whites and the number of TZE residents on a grand jury is negatively correlated with RELNB (R=-.49). This indicates that grand juries who combine a high representation of whites and a high representation of Low Income individuals produce relatively few no bills. The study of such interaction effects should be an integral part of future applications of the basic model outlined in this research.

In addition to refinement of linear regression techniques, other techniques should be applied. For example, discriminant function analysis and new techniques for analysis of categorical data allow the researcher to develop explanatory models for the relationship between a set of independent variables and a single, categorial dependent variable. Future research into jury outputs can use such techniques to focus on the petit jury decision. Such analysis would also permit the researcher to study each grand jury decision as the unit of analysis rather than being confined to interval level aggregate outputs.

# Non Composition Variables

Through refining the composition model and application of categorical measurement techniques, understanding the relationship between jury composition and jury outputs can be extended well beyond its present state. However, it is clear that a substantial part of variance in grand jury outputs is not explained by variance in composition. In the future, research should seek to explain outputs from a combination of composition and non-composition independent variables.

For example, the model should be expanded to account for district

attorney discretion in assigning cases. Given the amount of discretion which the prosecution has in assigning cases to grand juries, one might argue that the number of cases decided by a grand jury is a function of the District Attorney's discretion. Interviews conducted by this writer with former grand jurors indicate that such discretion may be based on a grand jury's performance during the early stages of its term. If a grand jury demonstrates a hesitancy or slowness in returning indictments, either in all cases or in certain categories of cases, that grand jury begins to see fewer total cases or fewer of the certain type of case for which it is slow to return indictments.<sup>2</sup> Ideally, one would also account for differences between the prosecutors who present cases to the grand jury. Presumably, some are more skilled than others and would induce a grand jury to produce more decisions in less time than would a less skilled prosecutor.

Finally, the exploratory findings of this research indicate that the type of cases handled by a grand jury should be included in attempts to explain its aggregate outputs or its decision in a single case. The number of controversial cases heard by a grand jury may be an important predictor of its decision-making proficiency and/or no bill propensity. It is particularly important to account for those crime categories which tend to generate discussion. For example, rape cases tend to generate discussion and grand juries tend to return a higher percentage of no bills in rape cases. Thus, one may expect the number of rape decisions returned by a grand jury to affect the total number of decisions returned and the percentage of no bills returned. In addition to including conventional crime categories, cases might be categorized based on typologies

developed by criminologists. For example, Daniel Glaser has developed a typology with five categories of crime, ranging from predatory crimes against others to victimless illegal performances.<sup>3</sup> In addition to being included in predictive models, such categories could be tested as dependent variables in models of crime-specific grand jury performance.

The introduction of new variables and new measurement techniques will facilitate the introduction of new hypotheses and models for testing. For example, one might hypothesize that the decision to return a true bill (or guilty verdict) in a given case is a function of the composition of the jury, the experience of the prosecuting attorney, and the nature of the charge. Such hypotheses should be tested and linear models of the relationship between variance in outputs and such a combination of independent indicators should be developed. In the more distant future, such models should be applied to non-judicial small groups of policy-makers. These applications would help shift attention from the behavior of individuals in the small group to the policy outputs of small groups. Such a shift might contribute to the beginnings of policy oriented small group analysis and small group theory.

The topic of this research has been Harris County grand juries and most suggested future research has been aimed at juries. However, grand juries are small groups of political decision-makers. Attempts to understand the outputs of small focused gatherings contribute in the long run to the general understanding of the political system and the place of small groups within it. Hopefully, this research and future research will offer a meaningful contribution to this understanding.

In light of the unanswered questions revealed, to what extent have we achieved the general purpose of this thesis? To wit, to what extent has this thesis generated understanding of the nature and effect of public participation in the legal system by its examination of the nature and effect of public participation on Harris County grand juries? It must be admitted that the contribution has been modest. But it is hoped that the foundation has been established for larger contributions in the future.

#### FOOTNOTES

<sup>1</sup>A recent survey by the Texas Judicial Council revealed that petit juries which included minorities were less likely to return the death sentence in capital cases than were all white juries. Houston Post, 3, March, 1976.

<sup>2</sup>See discussion of grand juror questionnaires and interviews (Chapter Two) and local court proceedings (Chapter Three).

<sup>3</sup>Daniel Glaser, <u>Adult Crime and Social Policy</u> (Englewood Cliffs, N.J., Prentice-Hall, 1972).

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# APPENDIX A

In Texas, felony charges are submitted to a grand jury which returns either a no bill or a true bill. The grand jury is composed of twelve (12) laymen who are appointed by grand jury commissioners for a specified term. The grand jury commissioners are appointed by a state district judge. A new set of commissioners and grand jurors is appointed for each grand jury term. Both judges and commissioners are afforded almost total discretion in making their appointments. Unlike petit jury duty, grand jury service is voluntary with prospective grand jurors under no obligation to serve.

In Harris County, Texas, grand juries serve three-month terms, with three new grand juries seated each three months. Each of the three grand juries seated during a given term meets two days per week.

Nine votes are required to return a true bill, and any grand juror may question the prosecutor or initiate discussion among his colleagues.

# APPENDIX B

Explained Variance In Case Specific RELDEC, RELNB, and RELNBP

|                        | RELDEC |                | RELNB |                | RELNBP |                |
|------------------------|--------|----------------|-------|----------------|--------|----------------|
|                        | R      | r <sup>2</sup> | R     | R <sup>2</sup> | R      | r <sup>2</sup> |
| Possession Marijuana   | .12    | .01            | .61   | .38            | •57    | .22            |
| Possession Narcotics   | • 32   | .10            | .60   | .36            | .48    | .15            |
| Rape                   | .28    | .08            | .62   | .38            | .51    | .17            |
| Murder                 | .47    | .22            | .43   | .18            | .58    | .23            |
| Assault                | • 31   | .10            | .24   | .06            | • 36   | .07            |
| Crime Against Property | .66    | .43            | • 54  | .18            | .40    | .09            |