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# Escape from Prison; Defenses; Duress; Homosexual Attacks; People v. Harmon

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## CRIMINAL LAW

### *Escape from Prison • Defenses • Duress • Homosexual Attacks*

*People v. Harmon*, 53 Mich. App. 482, 220 N.W.2d 212

*The time has come when we can no longer close our eyes to the growing problem of institutional gang rapes in our prison system.<sup>1</sup>*

**I**N RECENT YEARS, the courts have begun to recognize the critical problem of homosexual attacks occurring in our prisons.<sup>2</sup> However, prior to the decision in *People v. Harmon*,<sup>3</sup> one who escaped from prison for fear of such homosexual attacks could not avail himself of the defense of duress or coercion, in order to have the question submitted to the jury.<sup>4</sup>

The defendant in *Harmon* was an 18-year-old male, who has been sentenced to imprisonment in the Ionia, Michigan, penal institution. Within a few days of his transfer to that prison's dormitory facilities,<sup>5</sup> the defendant was approached by seven or eight inmates who demanded that he have sex with them. When he refused, they beat and kicked him—refusing to stop until another inmate happened to enter the room.<sup>6</sup> It was after a second similar assault that the defendant effectuated his escape.<sup>7</sup>

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<sup>1</sup> *People v. Harmon*, 53 Mich. App. 482, 483, 220 N.W.2d 212, 213 (1974).

<sup>2</sup> *Holt v. Sarver*, 300 F. Supp. 825 (E.D. Ark. 1969), *supplemented by*, 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd*, 442 F.2d 304 (8th Cir. 1971); *People v. Richards*, 269 Cal. App. 2d 768, 75 Cal. Rptr. 597 (1969); *People v. Noble*, 18 Mich. App. 300, 170 N.W.2d 916 (1969); *State v. Green*, 470 S.W.2d 565 (Mo. 1971) (en banc); *see also* *Inmates of Cook County Jail v. Tierney*, No. 68 C. 504 (N.D. Ill. Aug. 22, 1968); *Turner, Establishing the Rule of Law in Prisons: A Manual for Prisoner's Rights Litigation*, 1 BLACK L.J. 99, 100-102 (1971).

<sup>3</sup> *People v. Harmon*, 53 Mich. App. 482, 220 N.W.2d 212 (1974). It should be noted that the prosecution in this case has been given leave to appeal to the Supreme Court of Michigan. *People v. Harmon*, *appeal docketed* No. 560-16 (Oct. 21, 1974).

<sup>4</sup> Mich. Comp. Laws Ann. § 750.193 (West 1967) (Michigan's escape statute).

<sup>5</sup> 53 Mich. App. at 485, 220 N.W.2d at 214. It appears that during the first two weeks in prison, the defendant had requested to be transferred to the segregation ward due to his fear of being "pressed for sex." This request was being denied, he remained at the main facility until transferred to the dormitory system in June of 1972.

<sup>6</sup> *Id.* Carl Sheppard, the inmate who entered the room during the defendant's initial beating, testified at the trial and corroborated the defendant's story concerning the assault and that it had ceased when Sheppard entered the room.

This corroboration proved very significant in the court's reversal of Harmon's conviction for escape, for it verified in court his claim of his reasonable fear of imminent or immediate harm. *Id.*

<sup>7</sup> This case came to the Michigan Court of Appeals on defendant's appeal from his conviction before the County Circuit Court, Ionia County, for escaping from prison. Mich. Comp. Laws, Ann. § 750.193 (West 1967). The defendant's main ground for the appeal was the trial judge's refusal to submit his defense of "duress" to the jury.

The court of appeals, in reversing the defendant's conviction for escape, renounced prior law pertaining to the defense of duress, in terms of fear of homosexual attacks, as a justification for prison escapes.<sup>8</sup>

The court's main ground for the reversal appeared to stem from a growing awareness of the problem of homosexual attacks in our prisons,<sup>9</sup> and the individual prisoner's apparent inability to cope with such attacks.<sup>10</sup>

As a result of this awareness, the court felt that when corroborated by independent evidence, alleged duress arising from a reasonable fear of immediate injury from homosexual assault would constitute a valid defense to the crime of escape.<sup>11</sup> In citing *People v. Merhige*,<sup>12</sup> the *Harmon* court agreed that in order to establish duress, the defendant must show that: "... the violation of the law for which he stands charged was necessitated by threatening conduct of another which resulted in defendant harboring a reasonable fear of imminent or immediate death or serious bodily harm."<sup>13</sup>

Given the specific and immediate threats and assaults on the defendant, and given the corroborating statements of another inmate,<sup>14</sup> the court reasoned that the facts were "more than sufficient to require" submission of the duress defense to the jury.<sup>15</sup>

The prosecution had argued that the case of *People v. Noble*<sup>16</sup> was controlling on this area of the law, and that therefore defendant Harmon's argument had no legal basis.

The *Noble* case, which also involved an escape due to alleged fear of homosexual attacks, held that flight from prison for such fear was not a defense to a charge of escape. The underlying reason for this view was the *Noble* court's visualization of a "rash of escapes," all attempting to be justified by "tales of sexual assault."<sup>17</sup>

<sup>8</sup> See cases cited note 2 *supra*.

<sup>9</sup> See note, *The Problems of Modern Penology: Prison Life and Prisoners' Rights*, 53 I.A. L. REV. 671, 697-700 (1967). Estimates of the number of inmates who engage in homosexual activities range as high as 80%. *Id.* at 698.

<sup>10</sup> One of the main reasons for the prisoner's inability to cope with homosexual attacks is the fear of further reprisals from other prisoners if it should be discovered that the victim had reported such attacks to the prison authorities:

Administrative policy was not to investigate a complaint of physical abuse unless the assailant was identified. But if an inmate "snitched"—turned in somebody's name—his life wouldn't be worth a "plugged nickel"; he (the snitch) "was as good as dead right then." *State v. Green*, 470 S.W.2d 565, 569 (Mo. 1971) (Seiler, J., dissenting).

<sup>11</sup> Prior to the court's decision in the *Harmon* case, alleged duress due to fear of homosexual attack had not been recognized as a valid defense in a prosecution for escape. See *People v. Richards*, 269 Cal. App. 2d 768, 770, 773, 774, 75 Cal. Rptr. 597, 599, 602 (1969).

<sup>12</sup> 212 Mich. 601, 180 N.W. 418 (1920).

<sup>13</sup> 53 Mich. App. at 486, 220 N.W.2d at 214 (1974).

<sup>14</sup> See note 6 *supra*.

<sup>15</sup> 53 Mich. App. at 486, 220 N.W.2d at 214 (1974).

<sup>16</sup> *People v. Noble*, 18 Mich. App. 300, 170 N.W.2d 916 (1969).

<sup>17</sup> *Id.* at 303, 170 N.W. at 918.

The court in *Harmon* rejected the prosecution's arguments based on the *Noble* decision. The court reasoned that each such incident would be judged on its own facts when the time arose, under the scrutiny of the fact-finder. Hence, a mere claim of escape due to fear of homosexual attack would not automatically suffice to prevent a conviction.<sup>18</sup> In answer to the rash of escapes fear expressed in *Noble*,<sup>19</sup> the *Harmon* court observed that their decision might "well produce a result entirely opposite" to that fear.<sup>20</sup> Therefore, in declining to follow *Noble's* refusal to allow fear of homosexual attacks to be a valid defense for the charge of escape, the *Harmon* court reasoned that if escape was presently the only remedy available to prisoners in fear of homosexual attacks, then perhaps this condition would prompt the prisons to make the improvements necessary in order to better insure the personal safety of those inmates.<sup>21</sup>

As previously indicated, despite the fact that the problem of homosexual assaults in prisons has long been an area of concern among courts, prison officials and legal writers,<sup>22</sup> prior to *Harmon* this fear had not been viewed as a justifiable reason for escape from prison.<sup>23</sup> The reasons for this line of thinking have their roots in the "Hands-Off Doctrine" traditionally followed by the courts.<sup>24</sup> Generally, this doctrine stands for the proposition that: "... courts are without power to supervise prison administrations or to interfere with ordinary prison rules or regulations."<sup>25</sup>

Though opinions over recent years have demonstrated a gradual deviation from the past ardent support of the above doctrine,<sup>26</sup> especially in the area concerning recognition of prisoners' constitutional rights,<sup>27</sup> the courts have nevertheless been reluctant to depart from said doctrine when it meant accusing prison officials of promoting brutal conditions or

<sup>18</sup> 50 Mich. App. at 487, 220 N.W.2d at 215. The court also observed: "It is not our function in deciding this case to judge the veracity or claims of future prisoners who might maintain that their escape was necessitated by such indignities.

<sup>19</sup> See text accompanying note 17 *supra*.

<sup>20</sup> 53 Mich. App. at 487, 220 N.W.2d at 215 (1974).

<sup>21</sup> *Id.*

<sup>22</sup> See note 9 *supra*.

<sup>23</sup> See Annot., 70 A.L.R.2d 1452 (Supp. 1974).

<sup>24</sup> See generally Comment, *Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts*, 72 YALE L.J. 506 (1963).

<sup>25</sup> *Id.* at 506. See also *People v. Merhige*, 212 Mich. 601, 180 N.W. 418 (1920), for various interpretations the courts have given to the "Hands-Off Doctrine." For a personal view in reference to the "Hands-Off Doctrine," see SHAW, *THE CRIME OF IMPRISONMENT* 14 (1946) wherein Shaw states:

Judges spend their lives consigning their fellow creatures to prison; and when some whisper reaches them that prisons are horribly cruel and destructive places, and that no creature fit to live should be sent there, they only remark calmly that prisons are not meant to be comfortable; which is no doubt the consideration that reconciled Pontius Pilate to the practice of crucifixion.

<sup>26</sup> See Comment, *Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts*, 72 YALE L.J. 506 (1963).

<sup>27</sup> *Id.* at 507. See generally Comment: *Constitutional Rights of Prisoners; The Developing Law*, 110 U. PA. L. REV. 985 (1962).

permitting them to exist unabated in their prisons.<sup>28</sup> The reason for the prolonged reluctance stemmed from an earlier view of the courts that prisoners were virtual slaves of the state, and essentially had no rights to assert.<sup>29</sup> However, over the years this rigid view slowly gave way, as seen in *Sewell v. Pegelow*:<sup>30</sup> "... it has never been held that upon entering a prison one is entirely bereft of all his civil rights and forfeits every protection of the law."<sup>31</sup>

One of the areas which first received recognition was that of improper imprisonment. The remedy invoked by the courts in such a case was the writ of habeas corpus.<sup>32</sup> However, this basic recognition soon broadened to include an acknowledgment of prisoners' rights to live in habitable conditions, to have freedom of religion, and to be free from cruel and inhuman punishment.<sup>33</sup> This latter reason became the focal point in cases dealing with the brutality of prison life. However, brutality and general complaints of bad food, "guard brutality" and the like were, for the most part, unacceptable as justifications for escape. This was the view taken by the court in *State v. Palmer*.<sup>34</sup> The court's reasoning centered around three public policy arguments, those being that prison escapes are: (1) extremely disruptive of prison routine; (2) frequently accompanied by serious injury to guards, police and the public, and (3) if the remedy of prisoner "self-help" were to be allowed on the prisoner's own evaluation of "intolerable conditions," the rash of probable escapes would greatly increase.<sup>35</sup>

However, in rejecting general complaints of intolerable conditions, it is significant to note that the *Palmer* court did seem to indicate that a justification might be found upon a showing of a "grave and immediate

<sup>28</sup> See *Bethea v. Crouse*, 417 F.2d 504, 505-06 (10th Cir. 1969):

We have consistently adhered to the so-called "hands-off" policy in matters of prison administration according to which we have said that the basic responsibility for the control and management of penal institutions, including the discipline, treatment and care of those confined, lies with the responsible administrative agency and is not subject to judicial review unless exercised in a manner as to constitute clear abuse or caprice upon the part of prison officials.

<sup>29</sup> See *Ruffin v. Commonwealth*, 62 Va. (21 Gratt.) 790, 796 (1871): "He [the convicted felon] has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is, for the time being, the slave of the state."

<sup>30</sup> 291 F.2d 196 (4th Cir. 1961).

<sup>31</sup> *Id.* at 198. See also *Bethea v. Crouse*, 417 F.2d 504, 506 (10th Cir. 1969); See generally *Dowd v. United States ex rel Cook*, 340 U.S. 206 (1951); Comment, *Constitutional Rights of Prisoners; The Developing Law*, 110 U. PA. L. REV. 985 (1962).

<sup>32</sup> See Comment, *Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts*, 72 YALE L.J. 506, 509 (1963).

<sup>33</sup> *Holt v. Sarver*, 300 F. Supp. 825 (E.D. Ark. 1969), supplemented by 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd*, 442 F.2d 304 (8th Cir. 1971); see U.S. CONST. amend. VIII: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." (Emphasis added.)

<sup>34</sup> 45 Del. 308, 310, 72 A.2d 442, 443 (1950).

<sup>35</sup> 45 Del. at 310, 72 A.2d at 444.

threat to life or health."<sup>36</sup> While this phrase has become a test for justification of escape, it has also indirectly been the basis for the rejection of the defense that fear of homosexual assault is such a justification. The reason being, frankly, that homosexual attacks were not viewed by the court or the public as such a "grave and immediate threat to life or health as to constitute a valid defense of duress."<sup>37</sup>

Nevertheless, over the past decade the courts have begun a deeper examination of the problem of homosexuality in our prisons. For example, the federal case of *Holt v. Sarver*,<sup>38</sup> cited by the *Harmon* court, recognized that the subjection of prisoners to such attacks constituted a violation of their eighth amendment right of freedom from "cruel and inhuman punishment."<sup>39</sup> In ordering the prison officials to take steps to alleviate the problem, the court in *Holt v. Sarver* noted that: "Prisoners are frequently attacked and raped in the dormitories and injuries and deaths have resulted . . . [and that] no adequate means exist to protect the prisoners from assaults."<sup>40</sup> Therefore the court agreed with the finding of the district court that when new funds do become available, first priority is to be given to the "safety of the inmates of the barracks."<sup>41</sup>

As a result, though *Holt v. Sarver* did not deal with the question of homosexuality being a justification for escape,<sup>42</sup> it did recognize it as a severe problem to which a solution is of the utmost priority. Therefore, it is somewhat surprising that when the courts did address themselves to the issue of fear of homosexual attacks as being a justification for escape, they refused to further the *Holt v. Sarver* type reasoning. For instance, in the 1969 case of *People v. Richards*,<sup>43</sup> the California courts based their affirmance of the defendant's conviction for escape on the grounds that a showing of duress and/or coercion was lacking:<sup>44</sup>

In order for duress or fear produced by threats or menace to be a valid legal excuse for doing anything, which otherwise would be criminal, the act must have been done under such threats or menaces as show that the life of the person threatened or menaced was in danger, or that there was reasonable cause to believe and actual

<sup>36</sup> 45 Del. at 310, 72 A.2d at 443.

<sup>37</sup> See text accompanying note 49 *infra*.

<sup>38</sup> 300 F. Supp. 825 (E.D. Ark. 1969), supplemented by 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd*, 442 F.2d 304 (8th Cir. 1971). This case involved an action by prison inmates for a declaratory judgment that acts, policies and practices in Arkansas prisons violated their constitutional rights. One of the major complaints dealt with the problem of homosexual attacks in their prison.

<sup>39</sup> 442 F.2d 304 (8th Cir. 1971).

<sup>40</sup> *Id.* at 308.

<sup>41</sup> 300 F. Supp. at 834.

<sup>42</sup> See note 38 *supra*.

<sup>43</sup> 269 Cal. App. 2d 768, 75 Cal. Rptr. 597 (1969).

<sup>44</sup> *Id.* at 773-74, 75 Cal. Rptr. at 602.

belief that there was such danger... the danger must be... of present and immediate violence.<sup>45</sup>

The *Richards* court, relying heavily on the case of *People v. Whipple*,<sup>46</sup> seemed to place a fear of "destruction of general discipline" in the prison as paramount to prisoner fear of violence from third persons.<sup>47</sup> All in all, the court rejected Richards' contention of his "necessity" to escape. Given the situation of his case, and that he wasn't being pursued by his tormentors at the time he effectuated his escape, they reasoned that he should have resorted to the traditional remedies of relief "through established administrative channels, or, that failing, through the courts."<sup>48</sup> The court in *Richards* did not feel duress was applicable where only homosexual attack was feared, stating: "The submission to sodomy, abhorrent as it may be, falls short of loss of life."<sup>49</sup>

*Richards* was not alone in its refusal to recognize fear of homosexual attack as duress. In 1971, the Missouri Supreme Court in *State v. Green*<sup>50</sup> followed *Richards* when it sustained the conviction for escape of a 19-year-old defendant. The similarity of *Green's* fact pattern to that of *Harmon* accentuates the abrupt about-face the latter court took.<sup>51</sup> However, Judge Seiler's dissent in the *Green* case offered a persuasive rejoinder to the majority's conclusion that the duress and necessity defenses were not available to defendant Green, since the threat of death was not shown to be immediate. In a descriptive account of the defendant's experiences, Judge Seiler attempted to show the immediacy of the threat to the defendant, a threat which was in no way abated by the

<sup>45</sup> *Id.* citing *People v. Sanders*, 82 Cal. App. 778, 785, 256 P. 251, 254 (1927). In *Richards*, the court held there was no showing of duress despite defendant's testimony and further corroboration of same by fellow inmate Joel Blume. The latter testified to the fact that Richards had been threatened with death because he had "snitched" to authorities about his having been forced to submit to homosexual attacks: "I [Blume] was told that I had best stay away from him because there was a couple of knives waiting to be stuck in him and if I was around him at the time I would be stuck also." 269 Cal. App. 2d at 771, n.4, 75 Cal. Rptr. at 600 n.4.

<sup>46</sup> 100 Cal. App. 261, 263-64, 279 P. 1008, 1009 (1929): "...neither the unsanitary condition of the jail... fear of violence from third persons... nor unmerited punishment at the hands of the custodian... will present a situation which in law may be accepted as an excuse for violation of the [escape] statute."

<sup>47</sup> 269 Cal. App. 768, 777-78, 75 Cal. Rptr. 597, 604 (1969).

<sup>48</sup> *Id.*

<sup>49</sup> 269 Cal. App. at 774, 75 Cal. Rptr. at 602; see also note 45 *supra*.

<sup>50</sup> 470 S.W.2d 565 (Mo. 1971) (en banc).

<sup>51</sup> *Id.* at 569-70 (Seiler, J., dissenting):

... during the night, two inmates, one white, one black, picked the lock of defendant's cell door. At knife-point, defendant was homosexually ravaged by both inmates. Two weeks later, three inmates, black and white, invaded defendant's cell, knocked him unconscious as he tried to flee, and raped him. ... [a few months later], defendant returned to his cell during the lunch break. Four or five black inmates gathered around his cell. ... They told him they would return that evening to make him a "punk" [a person who plays a female role in homosexual incidents] for the remainder of his time in prison. These inmates threatened to "beat his head in" or kill the defendant if he would not submit.

responses of prison officials to Green's requests for protection.<sup>52</sup> The dissent in concluding made note of an apparent inconsistency in the majority's holding:

... if the defendant here had been prosecuted for sodomy as a result of the first assault, it would seem clear that a defense of coercion would be available. In this case defendant sought to avoid committing the coerced act by resorting to escape. Because he was a prisoner, this action was a crime. The act of escape was just as much coerced as the prior act of sodomy. It is consistent with the principle underlying the defense to allow it to be asserted here.<sup>53</sup>

#### CONCLUSION: IMPACT AND CRITICISM

As can be deduced from the preceding text, the *Harmon* decision stands alone in its recognition of fear of homosexual attacks being a valid defense of duress in prosecutions for escape from prison. What now remains is whether courts in other jurisdictions will choose to follow the *Harmon* lead. It is this author's opinion that most courts will do so. The problem of homosexuality in prison has become overwhelmingly apparent to the courts in the past few years. Through legal writers and public opinion, this problem has been repeatedly laid before the tribunals and legislatures in an effort to invoke some sort of positive response and solution to the problem.<sup>54</sup> However, until the *Harmon* court took the first step, no other court had been willing to depart from the established law on the subject, that no matter how severe, such exposure to homosexual abuse was not viewed as a valid justification for the crime of escape from prison.<sup>55</sup> Because of this, even though the courts may have personally felt otherwise, they would not re-write the law to permit such fear to qualify as a justification.

The dilemma which faced the courts surfaced in the case of *People v. Whipple*,<sup>56</sup> where the court frankly stated its problem:

It is with very great reluctance that we admit that, under practically all of the authorities, the foregoing opinion states the established law ... the function of the court is to declare the law as it is, and we are

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<sup>52</sup> The dissent noted that following each of the alleged assaults the defendant had feigned injury in order to contact the prison authorities. However, when he requested protection from the Assistant Superintendent of Treatment at the hospital, he was simply told to defend himself. After the second assault the defendant reported to the Disciplinary Board about the assaults, at which time the Assistant Superintendent of Custody told the defendant to either "defend himself, submit, or go over the wall." 470 S.W.2d at 570. See also *State v. Green*, 470 S.W.2d 565, 569, n.1 (Mo. 1971) (Seiler, J., dissenting), regarding the investigation of sexual assaults in the Philadelphia prison system.

<sup>53</sup> 470 S.W.2d at 571.

<sup>54</sup> See, e.g., Karabian, *California's Prison System: We Must Bring It into the Twentieth Century*, 1 BLACK L.J. 145, 150 n.15 (1971).

<sup>55</sup> See Annot., 70 A.L.R.2d 1452 (Supp. 1974).

<sup>56</sup> 100 Cal. App. 261, 279 P. 1008 (1929).

not authorized to usurp the place of the legislature, which has the power to make laws, and the duty to make just law.<sup>57</sup>

However, now that there exists precedent allowing the defense of duress to be asserted and submitted to the jury, other courts will have the opportunity to do so. Whether they do or not remains to be seen. But given present court attitudes on the subject of homosexuality, coupled with public recognition of the problem, this author feels it is more than likely that other jurisdictions will also begin to recognize the defense of duress in cases where the duress asserted is readily apparent.

It is the further belief of this author that such a viewpoint is a long time coming. Further, it may, as suggested in *Harmon*,<sup>58</sup> spark prison officials into working toward viable safeguards against homosexual problems. Though money is often the main obstacle,<sup>59</sup> a non-monetary step toward a solution lies in prison officials' empathy with the prisoner's dilemma, and offerance of a better response to the complaining prisoner than "defend yourself, submit, or go over the wall."<sup>60</sup>

Though many courts may still feel the *Harmon* solution will open the door to a "rash of escapes"<sup>61</sup> and a resulting "disruption of the general prison discipline,"<sup>62</sup> the basic fact remains that prisoners are not slaves and deserve to be accorded their basic constitutional rights.<sup>63</sup> For, if we are ever to begin the actual "rehabilitation" of prisoners, we must find an alternative to our program of perpetual prisoner debasement—a program which only results in priming whatever criminal instinct the prisoner may harbor within. We must begin by putting a stop to the policy of playing "fast and loose with [their] basic constitutional rights in the interest of administrative efficiency,"<sup>64</sup> and begin to realize that perhaps by recognizing prisoners' rights, and thus building their self-respect, we are also laying the foundation for their eventual rehabilitation and return to society—a result which, for the most part, is nonexistent today.<sup>65</sup>

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<sup>57</sup> *Id.* at 265-66, 279 P. at 1010; see also notes 24 and 25, *supra*, regarding the "Hands-Off Doctrine."

<sup>58</sup> 53 Mich. App. at 487-88, 220 N.W.2d at 215.

<sup>59</sup> See text accompanying note 41 *supra*.

<sup>60</sup> See note 52 *supra*, and accompanying text.

<sup>61</sup> See note 17 *supra*, and accompanying text.

<sup>62</sup> See note 47 *supra*.

<sup>63</sup> See note 31, *supra*, and accompanying text; see also *Bethea v. Crouse*, 417 F.2d 504, 506 (10th Cir. 1969).

<sup>64</sup> *United States ex rel Marcial v. Fay*, 247 F.2d 662, 669 (2d Cir. 1957), *cert. denied*, 355 U.S. 915 (1952).

<sup>65</sup> See DEPARTMENT OF CORRECTIONS, DIVISION OF RESEARCH: A STATISTICAL DESCRIPTION OF RECIDIVISTS. REPORT 11, 70 (Huntsville, Tex., 1972) (this report noted that 33.8% of the total prison population in the Texas Department of Corrections were recidivists). See also P. HERSEY & K. BLANCHARD, MANAGEMENT OF ORGANIZATIONAL BEHAVIOR: UTILIZING HUMAN RESOURCES 40-42 (1969), for a discussion of the "Theory X" theory of personnel management, and its demise due to being an improper means of motivating workers.