

Schools Need More-Sensible System Than Zero Tolerance

By Michael A. S. Newman

In 621 B.C., the Athenian lawmaker Draco promulgated a legal code under which all crimes, large and small, were punishable by death. By these ordinances, the person convicted for the theft of a cabbage received the same terminal sentence as the murderer.

When asked why he gave the death penalty for all crimes, Draco responded crisply that even small crimes deserve death and that he could devise no higher punishment for the great crimes. It is from Draco that we derive the word "Draconian," an adjective describing a law that is rigidly severe or unduly cruel.

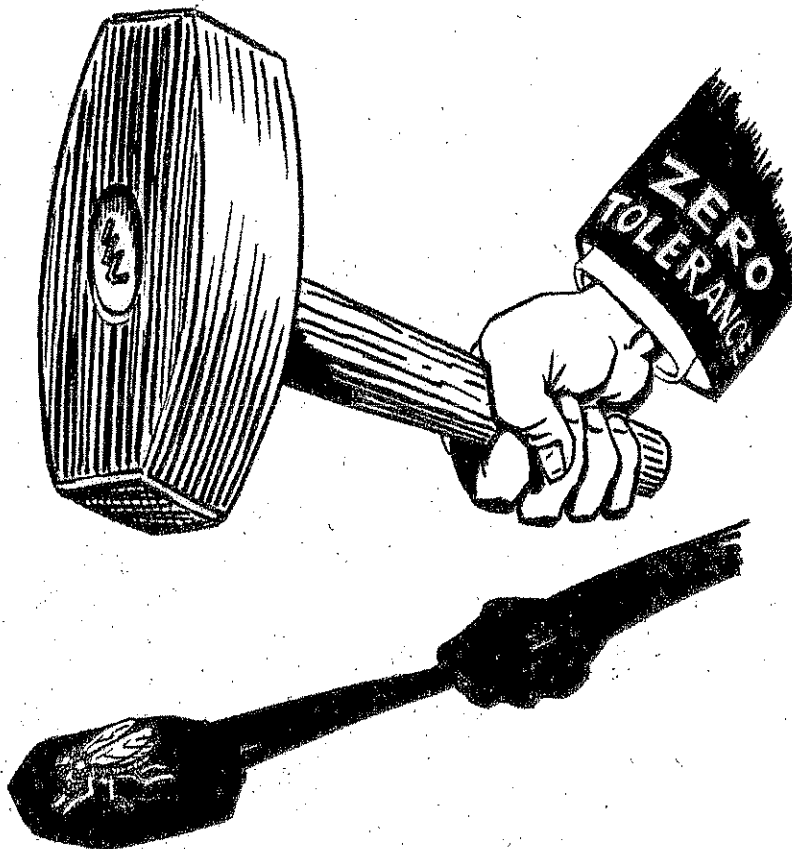
To the modern mind, Draco's explanation that all crimes "deserve" death seems deeply unfair. We naturally expect punishment to reflect the severity of the infraction. The Eighth Amendment to the Constitution, which prohibits cruel and unusual punishment, is a testament to this country's early commitment to just punishment that does not go too far.

Indeed, the ancients themselves pretty quickly realized that Draco's extreme and rigid laws were unworkable. Within a generation after their promulgation, the lawgiver Solon had replaced Draco's laws with statutes better matching punishments to crimes. But the Draconian spirit lives on in a manner relevant to today; Draco may be recorded history's first exponent of a "zero tolerance" policy.

Zero tolerance, as the term is applied in schools today, is the policy mandating that school administrators handle various infractions by students — drug possession, weapons possession, or "threatening behavior" — with predetermined and uniform severity, often ending in arrest, suspension or expulsion (and sometimes all three).

To some extent, we can thank the U.S. Congress for this trend, at least with respect to the possession of weapons. In 1994, Congress passed a law providing that any school that accepted federal money must expel any student who brings a gun to school. In the wake of such highly publicized tragedies as the Columbine massacre in Littleton, Colo., in 1999, the zero-tolerance crusade has gained still more momentum.

But the zero-tolerance movement in fact goes back as far as the 1980s, when schools first began to implement such policies.



A hallmark of zero tolerance is the minimal exercise of discretion among school administrators and the willingness to see infractions in the most mundane of situations. Extenuating circumstances arising in individual situations are stubbornly ignored. As a result, zero-tolerance policies often are applied without any common sense, and they result in manifest unfairness. Examples abound across the country.

In Texas, a 16-year-old National Merit Scholar was arrested and then expelled when a kitchen knife was discovered in the bed of his pick-up truck. The boy had been helping move his ailing grandmother to a nursing home, and the kitchen knife had slipped out of one of her boxes when he took it to Goodwill.

In another Texas city, a 16-year-old high-school baseball player was suspended when an eight-inch souvenir baseball bat was found in the passenger area of his car; police said it constituted an "illegal club."

In New York, a 17-year-old high-school student was arrested, faces up to a year in prison, and likely will be expelled after forgetting to remove a Civil War-era musket from his car after taking part in a Civil War re-enactment. The musket was discovered with a Union soldier's costume and a bayonet.

An 8-year-old boy in New Jersey played cops and robbers at school, using an L-shaped piece of paper as a make-believe gun. His school turned him over to police for "threatening to kill other students." The "threat" consisted of saying "pow pow pow" during the cops-and-robbers game.

A boy in the state of Washington was suspended for possession of a "firearm replica." The replica? A tiny gun that came with his GI Joe toy.

A third-grader in Virginia was suspended for a week and threatened with a year of disciplinary classes when his mother packed a butter-knife in his lunch so he could spread peanut butter and jelly on

bread.

In Louisiana, a 9-year-old boy was suspended for drawing a picture of a soldier holding a knife, and a second-grader who brought his grandfather's pocket watch to school for show-and-tell was suspended and sent to an alternative school for a month. The watch-chain had a 1-inch pocketknife attached to it.

A high-school student in Florida was suspended for 10 days and threatened with expulsion for possession of a pair of nail clippers.

And in Pennsylvania, a 5-year-old was suspended from school after arriving at the school Halloween party dressed as a fireman; the costume had come with a plastic axe.

In light of the above instances (there are many, many more such stories), it is difficult to avoid the conclusion that our school administrators and policy-makers are becoming unwitting parodies of Draco and in some ways surpassing him.

Draco's laws, at least, punished actual wrongdoing, albeit excessively. Zero-tolerance policy, by contrast, has in many instances devolved into the art of seeing violations where no rational person would see them and of punishing them mercilessly. Stories of zero-tolerance implementation read like Rorschach test results for the insane.

The advocates of the zero-tolerance policy claim that the purpose of such extraordinarily rigid and hard-line rules is to protect children. However, protecting children involves not merely securing their bodies from harm but also educating their minds and keeping them in the educational system, where possible.

What do our children learn from the above incidents? That their school administrators are incapable of using, or are unwilling to use, even the smallest modicum of independent judgment or common sense to determine which students really present a danger?

But the safety of our children is more important than anything else, advocates of zero tolerance may argue, and zero-tolerance policies make them safer. Assume, for the sake of argument, that such policies do in fact make children safer (more on that later); that does not end the analysis. The utility of safety measures drops off sharply when we sacrifice a wide range of other benefits (like learning) in order to reduce a perceived danger from the "very unlikely" to the "very, very unlikely."

At some point, the quest for safety has to give way to other policy considerations. For example, if society considered physical safety to be of higher importance than any other value, our Legislature could create a law lowering the speed limit to 10 miles per hour on all freeways. But while this probably would save many lives, it would come at the cost of enormous traffic congestion, inconvenience, economic loss and the burden of punishing non-compliance.

Clearly, personal safety is not the only important public-policy factor legislatures must consider. Citizens also must be able to live their lives; therefore, the law must achieve compromise between competing policy considerations. This is where common sense comes in. School administrators apparently have decided that the easier path is to avoid both compromise and common sense.

Moreover, it is not at all clear that zero-tolerance policies do make children safer. A study conducted in 2003, for example, determined that one of the unintended results of zero-tolerance policies has been to create a growing class of dropouts and delinquents. In some school districts, once a child has been expelled from school, other schools are not required to take him or her in, and often they will not.

And evidence shows that long suspension sometimes turns into permanent absence. For example, a female high-school student in Oklahoma was suspended for a year for bringing a gun onto school property in her car. She brought the gun to protect herself from an ex-boyfriend who was stalking her, and she had reported the stalking repeatedly to the school authorities, who had done nothing.

After her year in suspension, the girl did not return to school but apparently became a dropout. Clearly, zero tolerance has offered that girl no protection. And to those prematurely excluded from their education because of the accidental or negligent possession of pocketknives, kitchen utensils, and nail clippers, zero tolerance offers not protection but persecution.

For this reason, several organizations, including the American Bar Association, have voted to recommend ending zero-tolerance in schools. It is time that our schools abandon this unfair, irrational and reprehensible policy.

Unless zero tolerance is abandoned and replaced by a more sensible system based on judgment and discretion, we can expect soon to reach the point at which the possession of a sharpened pencil, an extra-fine roller-ball pen or a geometry compass — all potentially dangerous implements — will be punishable by suspension or expulsion from our schools.

At such a time, students will be safe from discipline only if they take their notes with crayons — just so long as they don't doodle a picture of a soldier holding a gun in the margins.

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