



seven days after my arrest. Morning October 4, 1999.



607 Franklin Street, Cambridge, Massachusetts 02139-2923 Phone (617) 876-6416 Fax (617) 492-4925

January 25, 1994

City Councillor Michael Sullivan
Cambridge City Council Office
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Cambridge City Councillor:

I am sending you a packet of materials which describe my experience at the Cambridge Hospital on September 30, 1993. As you may know, I was arrested for hitting a constable with a couple of ounces of water in a paper cup. At the time, the constable was attempting to put a teenage friend of my son in four-point restraints. I had a trial on December 30, 1993. The judge found me not guilty, without even having to hear the defense witnesses -- that's how clear it was I had been right to physically defend my son's friend from being put in four-point restraints through the gesture of hitting the constable with the cup of water.

I have found this entire experience very traumatic, and I am not a person who gets thrown by much in life. The experience has also been enlightening, however, and I now hope that it can be put to good use. You can see from the enclosed self-portrait, taken four days later, that I was still dazed and had very noticeable black-and-blue marks on my upper arms.

I knew I was right in protecting the young man, and I was relieved to be vindicated by the judge. However, I do not want other people to have an experience like I had when they bring a friend or relative to Cambridge Hospital. I want Cambridge Hospital to change its restraint policy so that it is written in language that anyone who goes to the Psychiatric Emergency Room can understand it. The policy also needs to be enforced by appropriate action, when it is violated by the staff. I did not know what the policy was that day, and I had no way of knowing. Now that I have

studied the restraint policy, I do know, from my own experience, that the medical staff does not obey the current policy. Hospital staff members testified that the operative -- as opposed to the written -- policy is that if anyone on the medical team feels uncomfortable about a patient's safety or about his or her own safety because of the patient, the patient is put in four-point restraints. I think -- and I am sure you would agree with me -- that such a "comfort level" policy gives the staff, especially the more inexperienced staff, too much power in the decision making, and too much freedom to use the restraints on people who may not need to be restrained in that way. Besides, it makes the most high-strung member of the Staff the determinant for when a patient is to be restrained. Since physical restraint is to be used only when other, less restrictive alternatives are not adequate, it seems that the Hospital's practice is precisely the opposite of its policy.

I feel -- and obviously the Judge agreed -- that the Hospital was out of line when it wanted to put the young man in restraints just minutes after I (at the Staff's request) gave him a tranquilizer pill. The boy's mother was minutes away from arriving in a taxi outside the hospital. My husband, Harvey Silverglate, had just left the examining room to meet the mother. Perhaps the medical team was overly fearful of a tall black male from Roxbury? Perhaps the medical team thought they could move in on a 56 year old female while the man was momentarily outside?

I would also like the City Council to re-evaluate the arrest policy at Cambridge Hospital. I feel it was unnecessary for the constables to arrest me, and certainly that too much force was used when I was arrested. Constable O'Herron was very sadistic in the way he forcibly threw me face down on a table and generally handled me very roughly. He disregarded my pleas that I was 56 and somewhat out of shape, as he put me in tight handcuffs behind my back. I might add that the medical staff acted in a very unprofessional fashion during all of this. Do the doctors have authority over the constables? If not, they surely should. Couldn't they have told the constables to handle me more gently, instead of taking the position "you do what you have to do"? The medical staff members' behavior while I was being handcuffed made it clear they felt I was getting what I deserved (a considerable amount of tension had built up earlier between the psychiatric nurse and my husband and me, because of our insistence that the boy not be put into restraints). It's ironic that Dr. J. Wesley Boyd testified that he wanted to put the young man in restraints for my



January 25, 1994
Page 3

protection. Apparently, he considers a large black teenager from Roxbury, whom he has observed for only a few minutes, more dangerous than an angry, white in-your-face constable/security guard.

There are serious issues involved in this situation. I am not inclined to sue the city, but I will do so if the city is as unresponsive as it has been so far. I am interested in changing the way things happen at the Hospital. I would like the City Council to initiate a hearing into what went on in the Psychiatric Emergency Room on September 30th, into what the relevant policies are, into how often these policies are violated, and into what can be done to change the situation.

None of the staff members who were present showed any awareness of how frightening restraints are to a patient when he comes to the Psychiatric Emergency Room. No one seemed to realize that restraints are shocking and frightening to family members. Restraints were treated as if they were a mere housekeeping maneuver at Cambridge Hospital. These staff members appeared blinded by their overuse of restraints and had no sense of their impact on people who do not need them. (I would urge that the staff members, as part of their training, be put in four-point restraints for a period of time. If it doesn't hurt the patients, it can't hurt the staff.)

I would like to mention that only Elise Bronfman, a Fellowship student, gave me the feeling that she sensed how upset and heartbroken Harvey and I were that we had to bring our son's friend to the Psychiatric Emergency Room. She realized that however routine the procedures in the emergency room were to the staff, they were brand new and strange to us, not to mention to the patient. And I think she was the youngest (and a Ph.d., not a physician) member of the Team. Perhaps she hadn't been jaded yet.

I urge you to follow up.

Sincerely,



Elsa Dorfman

Enclosures



CLIENTS\DORFMANe\Council.let

Dear Michael,
Can you please help me
galvanize the City Council?
This is a matter that
concerns families who they
have a crisis. I can meet you at
in convenience.
Elsa

[updated through verdict]

Facts concerning the case of
Commonwealth of Massachusetts v. Elsa Dorfman

Trial Date: December 30, 1993, 9:00 a.m.
Middlesex County Courthouse
40 Thorndike Street
13th floor
East Cambridge, MA

On the afternoon of Wednesday, Sept. 29, 1993, Elsa Dorfman and her husband Harvey Silverglate received telephone calls indicating that a friend of their 17 year-old son Isaac was behaving erratically in school. Since the school was unable to locate the boy's mother at that moment, Elsa and Harvey were notified, as they have been close to the boy over the years, and the boy has been one of Isaac's closest friends of long-standing (since Kindergarten).

At school, Harvey met the boy's mother. They talked, and it was decided that the boy would accompany Harvey back to the Dorfman-Silverglate home, where he would stay overnight in order to try to "cool out". Harvey assured the mother that he and Elsa would consult a doctor and would see to it that the boy gets treated in the event the condition did not promptly clear up. Harvey took the boy home.

The situation seemed no better the following day, and consequently Elsa, Harvey, and the boy headed for The Cambridge Hospital. They went directly to the psychiatric emergency room, as advised by a child psychiatrist with whom they'd consulted on the phone. There was one other patient waiting in the waiting room. It was not busy. Dorfman &

Silverglate and the boy were taken into an examining room. The intake interview was conducted by a clinical psychologist. It was about 1:00 p.m. by this time. Dorfman and Silverglate tried to assist the psychologist in compiling a very complete story of the onset of the episode and a description of his behavior while he was with them, as well as some history and background. They described the situation as they knew it in the boy's family home in Roxbury as well as his situation at school.¹ They described their own and their son's relationships with the boy.²

About half-an-hour into the interview, with the psychologist coming into and going out of the room (but with Dorfman and Silverglate remaining throughout), the boy said

¹ Interestingly, after the psychologist heard from Dorfman & Silverglate how bright the boy is and how well he has done academically, she commented that they would try to get him into Children's Hospital, rather than some less highly-regarded facility, because "he is so promising."

² The relation of Dorfman-Silverglate to the boy is most like that of aunt-uncle to nephew. Dorfman and Silverglate went to great lengths to try to explain to the psychologist their 11-year relationship with the boy and his family -- a relationship that has continued since Kindergarten, as Isaac and the boy were classmates from Kindergarten through eighth grade. Dorfman and Silverglate felt that it was hard to explain to strangers that the boy was one of their son's best friends since kindergarten and that the boy had slept at their house for an average of two nights a week for about ten years. They felt that the fact that the boy is black and not from a financially well-off family, made it hard for the professionals at the Cambridge Hospital to understand the bond between Isaac and the boy, and between the boy and Dorfman & Silverglate. Dorfman and Silverglate feel that such a bond between people of different economic positions was not seen as odd in the environment of the Cambridge public school they both attended, but it can be seen as somewhat odd elsewhere, given some of the social realities that abound.

that he was thirsty. The psychologist brought the boy a paper cup of ginger ale. Thereafter Dorfman & Silverglate stepped out of the room for a few minutes so that the psychologist could speak with the boy alone; they then returned to the room. At some point before three o'clock, Dorfman, Silverglate, and the boy were hungry, and Silverglate went out for sandwiches at a restaurant across the street from the hospital. As Silverglate left the room to get the sandwiches, the boy started to follow him and left the examining room, and then tried to leave the waiting room and go into the corridor with Silverglate. The boy was stopped by a nurse on the hospital staff. The nurse was backed up by at least two uniformed security guards, who had been called earlier when the boy had tried the first time to leave. (On that first occasion, he was persuaded, by being spoken to by Dorfman and Silverglate and the others, to return voluntarily to the examining room.) Silverglate this time again persuaded the boy to return to the examining room. The boy was entirely non-threatening and non-physical. He had simply tried to leave the hospital on each occasion.

Silverglate returned with hamburgers, and Dorfman, Silverglate and the boy ate in the examining room. Shortly thereafter, the boy again tried to leave, and this time the nurse approached him, menacingly (and with a glare on her face) and very visibly holding up leather restraints in her hands. She told the boy that she was going to restrain him.

Silverglate protested, saying that there was no reason to restrain the boy, since it was easy enough for Dorfman & Silverglate to continue successfully to persuade him to stay in the examining room, and that restraints were "ridiculous" and "outrageous" (Silverglate's phrases) in this situation. At this point in time, the nurse, holding the leather restraints in her hand, did not explain the hospital's restraint policy to Dorfman or to Silverglate. She did not show them exactly what the restraints were (bracelets? belts?) She did tell Dorfman and Silverglate that if the boy were to go out into the corridor again, she would have to put the boy into restraints. She did not say who physically would put on the restraints, but at that point there were three or four uniformed security guards waiting at the entrance between the waiting room and the corridor.³

The boy paced the little examining room for a while and got bored. Although Dorfman and Silverglate had magazines with them and could browse while chatting, the boy was too restless to read.

At about 3:00 p.m., the psychologist was joined by her supervisor, a child psychiatrist. The child psychiatrist asked the boy some additional questions. Dorfman and Silverglate discussed with the child psychiatrist the problem

³ Dorfman had never been in a psychiatric emergency room, and she had never seen anyone put into restraints or anyone in restraints. She was appalled at the way it was handled.

that arose out of the fact that the boy didn't live in Cambridge and had no medical insurance, and hence he had no financial standing at the hospital. The child psychiatrist mentioned that the cost of the care the boy would need at the **Child Assessment Unit** at the hospital would be about \$1,000. per day. The child psychiatrist then left the room. As time wore on, Dorfman and Silverglate and the boy got restless because of the exceedingly long wait. Dorfman & Silverglate assumed that the the reason for the wait was that the boy wasn't a resident of Cambridge and he had no health insurance. They later confirmed that the psychologist was trying to find a place for him in his cachement area. Dorfman and Silverglate were told by the psychologist that the boy couldn't stay at Cambridge Hospital because he wasn't a resident of Cambridge and did not have insurance.⁴

During this entire period, Dorfman and Silverglate were repeatedly led to believe that it was not possible, because of rules about cachement areas, for the boy to stay at Cambridge Hospital. The psychologist was working with the nurse (the same one who'd held up the restraints) to find another hospital or facility to which to send the boy. Dorfman and Silverglate preferred that he stay at Cambridge

⁴ As befits the complexities of our health system, and as an example of why our system needs retooling, there actually were plenty of beds upstairs in the adolescent Child Assessment Unit (when the boy was finally admitted, only five of the 12 available beds were taken); it was apparently just a question of what government unit would assume payment for the treatment.

Hospital. At one point, Silverglate went out of the examining room to see the nurse in order to discuss the possibility of Dorfman's and Silverglate's paying \$2,000. or so in order to enable the boy to be promptly admitted to Cambridge Hospital and to stay for a couple of days while Dorfman and Silverglate tried to find some way to keep him there.

Beginning after 3:00 p.m., Dorfman began making phone calls to try to locate the boy's mother, who should have been just getting out of work.

At about 4 o'clock the boy began to cry and to appear to feel awful. He wasn't hostile or aggressive. He said he was afraid. Dorfman and Silverglate assured him that they would help him in whatever way they could, and they further assured him that he wouldn't have to be put in the restraints. They told him that they would help him stay calm and safe until the doctors figured out what to do.

Intermittently, Dorfman placed phone calls to the home the boy's mother, and finally Dorfman succeeded in reaching her. It was about 4:30 p.m. The psychologist spoke with the mother, as did the boy. The mother decided to take take a taxi to the hospital, and Silverglate agreed to meet the arriving taxi in front of the hospital, pay taxi fare (since the mother did not have sufficient cash on hand), and escort the mother to where the boy was. Silverglate told the mother that he would meet the taxi outside the hospital building in

perhaps 30 or 40 minutes. The boy knew that his mother was coming. At some point between 4 and 5 o'clock, the boy slipped past Dorfman and Silverglate. He did not get past the waiting room, however. The nurse warned Dorfman and Silverglate that she would use the restraints if the boy were to leave the room again, even if he merely crossed the threshold because, she said, "it gets busy here" --meaning in the late afternoon and early evening. Silverglate reiterated his opposition to, and the lack of need for, restraints. Silverglate felt hostility coming from the nurse, in the way she was staring/glaring at him.

At this point, neither Dorfman nor Silverglate knew where the boy would be going for treatment. No one had responded to Silverglate's proposal that he and Dorfman pay for the boy to be in Cambridge Hospital for a couple of days while efforts were being made either to admit him there longer or to find another facility.

At 5:00 p.m. the psychologist introduced Dorfman, Silverglate, and the boy to the new emergency room psychiatrist, who was replacing her as the shift changed. The psychiatrist, with the approval of the psychologist, told Dorfman and Silverglate that they wanted to give the boy a tranquilizer to calm him down. They did not tell Dorfman and Silverglate what the medicine was. Dorfman and Silverglate agreed that it was fine to give the boy a tranquillizer, as they wanted to calm down his evident fear of the situation.

The psychologist indicated that her shift was over and that the psychiatrist was to be in charge.

Thus, at the 5 o'clock shift-change, everything seemed under control. The tranquilizer was shortly to be administered. At this point -- before the tranquilizer pill was administered to the boy -- Silverglate left the room in order to go meet the mother's taxi at the front of the hospital, since just about a half-hour had passed and the taxi was due to arrive.

Dorfman stayed in the examining room with her back to the door, facing the boy. The boy was upset that Silverglate was leaving the room. He, too, wanted to leave the hospital. The psychiatrist asked the boy to take the tranquilizer pill. At this point Dorfman and the boy were sitting side by side on the examining table. The boy didn't want to take the pill from the psychiatrist, whom he had just met. (It is not clear how well the boy knew the psychologist by this time, but she had a very unthreatening manner and had talked to him and to Dorfman & Silverglate since 1:00 p.m. on an intermittent basis.) Dorfman took the pill and a small paper cup of water from the psychiatrist and gave the pill and water to the boy, who took it without any fuss. The psychologist and the psychiatrist left the room, and Dorfman stood with her back to the door, facing the boy.

Dorfman was facing the boy in this small room, waiting for Silverglate to come in from the front of the building

with the mother. She suddenly saw four uniformed security guards (three men and a woman, resembling police officers) in the waiting room of the emergency area. Dorfman heard the nurse say the words "the man has left", and Dorfman also heard the word "restraints." Dorfman opened up the door of the examining room to find out what was going on, and she was suddenly faced by the four uniformed security guards, with the psychiatrist and the nurse to the rear.

Dorfman said that Silverglate and she had assured the boy that no restraints would be used on him. The psychiatrist replied to Dorfman that the boy had said that he didn't want to hurt anyone. The security guards began to push Dorfman backwards to get into the room. She still had the paper cup in her hand (she had been given the cup of water by the psychiatrist minutes before, when she had given the boy the tranquilizer pill to take, and the boy had left some water in the cup). Dorfman threw what water remained in the cup -- it was perhaps a couple of ounces at most, since it was a small paper cup and the boy had taken some of the water with the pill -- at the security guards.

Dorfman hit one of the guards with the water. At this point, Dorfman was forced by two of the four security guards into an adjacent examining room and was forcibly handcuffed with her hands behind her back. (The other two guards went to place the boy in restraints.) Dorfman told the guards that she wanted to call Silverglate, who was both her husband

and a criminal lawyer, who was in front of the hospital.

(Dorfman assumed that the guards knew from the psychiatrist that Silverglate was going to return with the boy's mother shortly.) The guards refused to get Silverglate or to wait until Silverglate got back to the emergency room area with the boy's mother. The guards immediately called the Cambridge Police Department and placed Dorfman under arrest. They told Dorfman she could call Silverglate, her lawyer, when she got to the station, but that she was not entitled to a lawyer until she got to the police station. She asked the guards how she could call Silverglate when Silverglate was at the front of the hospital waiting for the boy's mother. The guards did not answer that question, and they persisted in refusing to notify Silverglate of Dorfman's arrest. Dorfman was very angry and told the guards they would be sorry that they had done this to her. She did not see either the psychiatrist or the nurse at this point.

The security guards took Dorfman, who was by this time furious and very upset (she realized that the guards had probably placed the boy in restraints by that time), to a side entrance of the Hospital -- out of view of Silverglate. Though Dorfman was certainly not a threat to the security guards, neither one of them (there were two male guards with her, and she was still in handcuffs) would go tell Silverglate that she was under arrest. Dorfman complained about how tight the handcuffs were and how uncomfortable they

were behind her back. One of the guards switched the handcuffs from in back of her to in front of her.

While waiting for the paddy wagon, Dorfman spotted her son Isaac and a friend as they approached the hospital to visit the boy. She was able to catch Isaac's attention, and Isaac ran to get Harvey Silverglate from the front of the hospital. Silverglate came and saw that Dorfman was under arrest. He demanded that the guards release her; they refused and said she was under arrest. Dorfman told Silverglate that they had put the boy into restraints. Silverglate asked what they were going to do with Dorfman. The guards said that she would be taken to the Cambridge Police Station. Silverglate demanded the names of the two security guards with Dorfman; they identified themselves. Silverglate explained to Dorfman that his presence was necessary at the hospital in order to deal with the boy. Silverglate, who had his portable cellular phone with him, phoned his office and spoke with his partner Andrew Good and asked Good to come to the Hospital. Immediately thereafter Silverglate again phoned the office, this time to tell Good to meet Dorfman at the Police Station and bail her out, while Silverglate remained at the Hospital with the boy. It was about 5:45 p.m.

Dorfman was booked at the Cambridge police station. Her lawyer Good came in about twenty minutes.

* * *

Meanwhile, when the paddy wagon came and took Dorfman away,⁵ Silverglate returned to the examining room in the psychiatric emergency room. Silverglate spotted the boy lying on the examining table, in four-point leather restraints, with a single nurse staying with him. Silverglate demanded that the psychiatrist come out of the glass-enclosed room where he was, next to the examining room where the boy was. Silverglate demanded to know what had happened to occasion the restraints and the arrest of Dorfman. The psychiatrist said that the boy was "dangerous" and had to be restrained. Silverglate asked what the boy had done to be considered dangerous. The psychiatrist said that the boy at one point held both his arms to his side, clenched both fists, and said "I don't want to hurt anybody." Silverglate told Dr. Boyd that, even if that happened, it hardly indicates violence or danger, and that Dorfman and Silverglate had managed to keep the boy reasonably calm and in the hospital all afternoon, without incident, until the psychiatrist came on duty. The psychiatrist told Silverglate that the boy "should have been in restraints an hour ago."

⁵ Dorfman was placed in the paddy wagon by a Cambridge Police officer. Dorfman told the officer that she felt nauseous and felt that she was going to throw up. He placed her in the paddy wagon nonetheless, handcuffed, and said that if she threw up "we'll just have to clean it up." Dorfman was placed in the paddy wagon, although, at 56 years-of-age and considerably overweight, she could hardly get onto the high step of the wagon with her hands still in handcuffs. one of the constable/security guards rode in the paddy wagon with the officer to the police station, with Dorfman locked in the back of the paddy wagon.

The psychiatrist then said that Dorfman threw a cup of water at the security guards, and she was arrested. Silverglate told the psychiatrist that it was all an outrage.

Silverglate then asked the psychiatrist for his name. The psychiatrist spelled his name for Silverglate while Silverglate wrote it down on a pad. The psychiatrist then pronounced with great care his degrees: "M. D.", he said, "and Ph.D." "Be sure to get both degrees," he told Silverglate in an arrogant manner. Silverglate assured him that he had written down both degrees. Silverglate told him that he was an incompetent doctor, a "psychiatric fascist."

Silverglate again left the emergency room in order to meet the boy's mother in front of the hospital. Just as Silverglate arrived at the hospital entrance, the mother's taxi pulled up and she got out. Silverglate paid the driver, told the mother that Dorfman had been arrested and the boy was in four-point restraints, and the two of them went immediately and quickly toward the emergency room. As they were in the hospital corridor not far from the emergency room, they ran into the psychiatrist in the hallway.

Silverglate introduced the mother and the psychiatrist to each other. Silverglate explained to the mother that the psychiatrist was the one who caused all the trouble, who had the boy placed into restraints unnecessarily and got Dorfman arrested. The psychiatrist protested that the restraints were necessary. Silverglate told the psychiatrist, in front

of the mother, that the restraints were not only unnecessary, but they were unlawful, since the boy was neither violent, nor dangerous to himself or others. The psychiatrist said that the boy had been trying to leave the hospital.

Silverglate replied that Dorfman and he had managed to keep him there all afternoon without restraints. The mother told the psychiatrist that she was inclined to take her son out of Cambridge Hospital and take him elsewhere, because of how they had treated Dorfman and the boy. The psychiatrist told the mother that she could not take her son out, "because I'm committing him." Silverglate told the psychiatrist that he had no grounds on which to commit the boy. The psychiatrist said that he disagreed.

At this point, the mother and Silverglate left the psychiatrist and continued toward the psychiatric emergency room. The mother saw her son and exchanged a few words. The boy was lying quietly in the restraints, trying gently to remove them. The mother and Silverglate asked the staff if they could speak privately, and they spoke in the room just to the left of the examining room where the boy lay in restraints in the examining room with a nurse at his side. (The administrators, other nurses, the nurse and the psychiatrist were in the glass-enclosed room just to the left of the boy's examining room.) Silverglate explained the situation to the mother and advised her of various options available to her and her son.

At this point the psychiatrist entered the room and told Silverglate that he had just conferred with his supervisor, and that the supervisor had given the psychiatrist permission to order Silverglate to leave the hospital "within five minutes." Silverglate asked who the supervisor was, and the psychiatrist told Silverglate that he "runs" the psychiatric emergency ward. Silverglate then told the mother that he had no choice but to leave, since it would not be useful to anybody to have both Dorfman and Silverglate under arrest, and Silverglate left the hospital, taking Isaac and Isaac's friend with him.

Silverglate then went to the Cambridge Police Station with Isaac and his friend, where Silverglate met Andrew Good, who told Silverglate that the bail commissioner had just arrived and that Dorfman would be released shortly.

* * * * *

Dorfman was in fact shortly released, and the five of them -- Dorfman, Silverglate, attorney Good, Isaac, and Isaac's friend -- left the stationhouse together, with several police officers waving at Dorfman and saying "Good-bye, Elsa."

After Dorfman & Silverglate returned home, they received -- around 11:00 p.m. -- a phone call from the child psychiatrist (who had briefly interviewed the boy during the afternoon). The child psychiatrist explained that the boy had been admitted to the Child Assessment Unit at Cambridge

Hospital, despite his lack of insurance coverage and his being a Boston resident, and that he would receive the best of care, with the child psychiatrist personally supervising the case. The child psychiatrist expressed his chagrin at Dorfman's arrest, and he said that he would write up a report and would ask for an internal investigation into the incident, and that there would be an opportunity for Dorfman and Silverglate to have input. He said that he hoped that the Hospital would not press charges against Dorfman. Silverglate told the child psychiatrist that the hospital had already done a lot of damage and had Dorfman arrested, and they might as well press forward with the charges, since Silverglate was convinced that Dorfman had acted lawfully and would be vindicated. Dorfman and Silverglate thanked the child psychiatrist for phoning, for having admitted the boy to the Hospital's Child Assessment Unit, and for personally undertaking the task of supervising the boy's treatment.

* * *

Update:

On the afternoon of Thursday, December 30, 1993, Associate Justice Jonathan Brant entered a required verdict of Not Guilty. This verdict was returned after the close of the Commonwealth's evidence, but without the Defendant's having to present its evidence. The judge ruled that under the evidence adduced in the government's own case, there was sufficient evidence to support the defense that Dorfman acted

in defense of the boy, and that the Commonwealth presented no evidence in rebuttal. Judge Brant noted that it was reasonable for the Defendant to have been very surprised by the sudden effort to restrain the boy, in light of the fact that a tranquilizer/anti-anxiety drug had been administered just ten minutes earlier.

#

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A matter of restraint

By Gary S. Kadet
TAB Correspondent

CAMBRIDGE — Last September, when Elsa Dorfman, a locally known large-scale Polaroid artist, was looking after a teenage family friend at Cambridge Hospital, she hardly expected to be cuffed, booked and arraigned on an assault charge. But that's just what happened. She was found not guilty at a bench trial just two days before New Year's.

Dorfman, 56, had gotten into a scuffle with two city constables at Cambridge Hospital when she interceded on behalf of the friend — a minor — who had been waiting for four hours in the emergency psychiatric unit and was about to be restrained.

Dorfman stood in the way of the complainants, Constables Michael O'Herron and Luis Callazo, preventing them from securing the boy to a bed. Dorfman stepped between the constables, words were exchanged, and she splashed a cup of water on one of them. They, in turn, arrested her.

According to the testimony of both Dorfman and the constables, she was taken from the room, pushed face-down onto an examination table with both wrists handcuffed behind her back. She was later booked on an assault charge at Cambridge police headquarters and held until bailed out by her husband, attorney Harvey

Silverglate, whose partner, Andrew Good, represented her at the arraignment.

Good opted for a bench trial and Dorfman signed a waiver to that effect. When the trial came around, Good's motion for a directed finding of "not guilty" was allowed by Judge Jonathan Brant.

"We didn't need to present our case,"

said Good, "because the

prosecution did not meet the minimum requirement. The defense was that — and the evidence showed that — Elsa acted to

defend another person. The position was that she was within the law doing that."

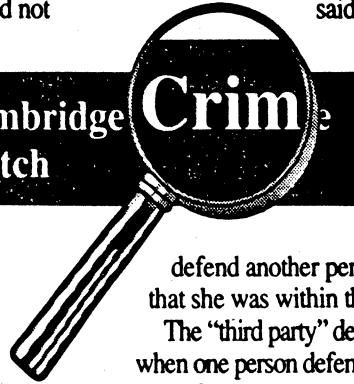
The "third party" defense comes into play when one person defends another from an unlawful act. "It was our contention that what the constables were trying to do to the patient was unlawful. He wasn't violent enough to be restrained."

Assistant District Attorney Peter Koutoujian, speaking for the prosecution, believes otherwise. "I feel that we did meet the minimum standard. The commonwealth didn't prove that it was not unreasonable for Ms. Dorfman to use a minimal amount of force in that situation. The decision to restrain the patient was the doctor's [Dr. John Wesley Boyd]. He felt that there was a valid reason for restraining the boy... The constables were following hospital guidelines. In fact, it was also done for Dorfman and Silverglate's safety as well, as they were nearby."

One matter that did not come out during the trial was that the constables' direct supervisor, police Sgt. Joseph Frawley, had been involved in a similar incident in 1991, where a woman found herself "physically threatened" by Frawley and another officer to the extent that an internal affairs investigation was opened. Internal affairs found that "the complaint could not be sustained." Frawley declined comment on the matter.

Now that Dorfman has been acquitted, Silverglate and Good intend to take further action to prevent any similar incidents in the future. Good did not rule out a lawsuit as a means of achieving this. □

**Cambridge
Watch**



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The Cambridge Tab 1/18/94 p. 10

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**VIEWPOINT
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John Ancier

MEAN STREETS

Wet and wild

Photographer Elsa Dorfman faces down the prosecution

by Mark Jurkowitz

In the end, the Case of the Killer Cup just didn't cut it. The Commonwealth of Massachusetts — in its infinite wisdom — depicted that disposable cup, half-filled with water, as a weapon of mayhem and destruction in the hands of one Elsa Dorfman. The judge looked at the 57-year-old woman before him. He contemplated the cup. And he sentenced everyone to go home.

This will not be the most unbiased of court reports. Dorfman and her husband, attorney and *Phoenix* contributor Harvey Silverglate, are friends of this reporter.

Dorfman, a renowned portrait photographer, is a quintessential earth mother, benevolent, warm, and utterly without affectation — although she sheepishly fessed up to sporting a stylish new Diego 'do for her big day in court. Yet there she was, up on charges of assault and battery on a police officer, to wit: emptying some water from that aforesaid cup onto the person of one Cambridge Hospital "constable."

Her supporters, who gathered on the 13th floor of the Middlesex County Courthouse in East Cambridge on December 30, hardly represented your garden-variety

peanut gallery, either. Filmmaker Errol Morris, painters Ralph Hamilton and Michael Mazur, poet Gail Mazur, and poet/music critic/*Phoenix* contributor Lloyd Schwartz were among the glitterati who showed up to watch as the wheels of justice tried to leave tread marks on the backside of their friend and colleague.

"Could Elsa really go to jail?" they wondered incredulously as they pondered the most unlikely con since Mary Richards, on *The Mary Tyler Moore Show*, did time in the hoosegow for refusing to disclose a source.

The greatly abridged but undisputed facts of the case are these:

On September 30, Dorfman and Silverglate escorted a young African-American friend of their family's to the psychiatric emergency room of Cambridge Hospital because he'd been behaving erratically. During a long stay in the examining room, the young man tried several times to leave, but was persuaded to return. At one point, Dorfman was able to give the teenager a tranquilizer pill. Not long after that, security personnel — at the direction of psychiatric resident John Wesley Boyd — attempted to bind the patient's arms and legs in a four-point restraint. Dorfman, who strenuously objected to such an extreme measure, responded by tossing at constable John



CUP CHECK: O'Herron (left) shows the court where a cup of water hurled by Dorfman — as a fellow officer put it — "crushed in his face."

O'Herron the water that was left in the cup she'd used to give the teen his medication. For her efforts, she was arrested, handcuffed, and carted off to the police station.

It was up to prosecutor David Zipps — on loan to the Middlesex district attorney's office from Goodwin, Procter & Hoar — to prove that Dorfman was a menace to society. Although hampered by Doc Holliday-like coughing fits during the day-long trial, he gamely encouraged his witnesses to paint a verbal picture of the havoc wreaked by Dorfman's assault.

O'Herron, a squat, powerfully built 23-year-old Northeastern University criminal-justice major, recalled that "she took a styrofoam cup of water in her left hand and struck me in my right ear. Water went everywhere." Fellow constable Luis Collazo, who probably tips the scales at about 250, insisted that the "cup crushed in his face." Dr. Boyd, an officious but earnest-looking young man with a blond ponytail, ventured, "She sort of shoved a cup of water into officer O'Herron's face. It looked like she might have grazed him with her hand."

When the prosecution finished detailing that carnage, defense attorney and Silverglate partner Andrew Good asked Judge Jonathan Brant to throw the case out.

"I grant you, if Ms. Dorfman had grabbed a high-powered water hose and blasted, it might make it" as assault and battery, Good argued. But a small cup

half-filled with water?

It was then that Zipps dug all the way back to his high-school physics textbook for his Hail Mary pass. "Force is mass and acceleration," he desperately reminded Brant as the crowd tittered.

Brant, an eminently sensible man who in his pre-judge days served on the board of the Civil Liberties Union of Massachusetts, pondered the testimony most favorable to the state — that the cup had registered a crushing blow. He acknowledged that Dorfman's action "certainly is not the most polite behavior." And maybe he glanced at the clock — it was about 4 p.m. — and realized this travesty was about to drag into another day. He acquitted Dorfman on the spot.

"I felt it was my duty to throw the water," the exonerated ex-defendant declared as she and her friends celebrated. "To protect someone, you have to go the mat for them. . . . I'm going to work to change the hospital's restraint policy."

But the premature verdict also triggered a sense of anti-climax among the defense team, which never had to present its case. On the post-verdict ride down in the elevator, Dorfman offered a revelation that would have hit the courtroom like a bombshell had she testified. The water in question was ejected not from a styrofoam cup as O'Herron alleged, but from a Dixie cup.

Seems like the government can't even get its deadly weapons straight. □

Woman not guilty of assault with cup of water

BY AMY MILLER
Chronicle Staff

A Franklin Street photographer charged with assault after she threw a cup of water at a hospital security guard was acquitted last week in Cambridge District Court.

Elsa Dorfman, 56, was arrested for assault and battery Sept. 30 when she tried to keep Cambridge Hospital staff from putting restraints on a teen-age boy, a longtime close family friend who she brought in for psychiatric observation.

After an all-day trial at Cambridge District Court last Thursday, Judge Jonathan Brant found Dorfman not guilty. Four hospital workers testified before the judge made the ruling on a motion filed by defense attorney Andrew Good. Brant agreed that even if the facts were exactly as described by Assistant District Attorney David Zips and hospital employees, she had not used unreasonable force and had acted in a manner appropriate to the situation.

Dorfman and her husband Harvey Silverglate, a defense attorney, were taking care of a young Roxbury male who goes to school in Cambridge the afternoon of the incident. According to a written summary of the case, Dorfman and Silverglate had argued throughout the hours of waiting at the hospital that the young man did not need restraints and was not a danger to himself or others.

When Silverglate left the room to wait for the youth's mother outside, Dorfman said she heard a constable say "the man is gone," before four officers came into the room, two to handle Dorfman and two to put four-point leather restraints on the young man.

After Dorfman threw the water at security officer John O'Herron, the constable put her in handcuffs and called police to book her at the police department.

Silverglate, who is in practice with attorney Good, remained at the hospital until he was ordered to leave by a psychiatrist. He then went to find Dorfman at the police station just as she was being let out on bail.

Although the judge found Dorfman justified in protecting her family friend, hospital officials defended the decision to restrain the man.

Dr. John Wesley Boyd, a staff psychiatrist, told the court the decision was fueled by the young man's statement at one point that "I don't want to have to hurt anyone." Psychiatric nurse Deborah Mindich also testified, adding to a picture of a youth who tried to leave the room at least six times.

"We'd rather be cautious than have a tragic outcome," said Dr. Douglas Hughes, director of psychiatric emergency services. "Even more than harming someone else,

we don't want him to harm himself. He's a young man and we want to take every chance to get him into treatment."

But Dorfman notes the three of them had been waiting hours and the young man had made no moves that could be seen as threatening. She suggested that his being a black teenage male from Roxbury led officials to take more precautions.

"They were afraid of a tall adolescent male from Roxbury no matter how much we told them [he wasn't dangerous]," said Dorfman. The young man has been a friend of Silverglate's and Dorfman's son for 10 years, sleeping at their house an average of twice a week, she said.

In addition, said Dorfman, a well-known photographer, the incident brought up the question of open admittance at Cambridge Hospital. Dorfman and Silverglate said they were made to wait many hours, exacerbating tension and boredom, because the patient had no insurance and was not from Cambridge.

"Dorfman and Silverglate were told by the psychologist that the boy couldn't stay at Cambridge Hospital because he wasn't a resident of Cambridge and did not have insurance," according to a summary of the facts of the case written by the couple.

Hospital officials denied that his lack of insurance would prevent admittance. In fact, they said that if he had insurance, as most minors do, he more likely would have been sent to an institution that accepted the insurance.

"Most children are put on some form of insurance; this was by far and away the exception," said Dr. Hughes. "And depending on the insurance policies there are certain hospitals you can call or not call."

If the patient was without any insurance, he would more likely stay in Cambridge Hospital, said Hughes. The fact that he was not from Cambridge would not have made a difference, he said.

The four-hour wait was not exorbitant, suggested Hughes. Some of the time was used to assess the situation, to double check insurance status, and to get information.

Late on Sept. 30, the young man was admitted to Cambridge Hospital, and remained there for the necessary treatment, said Dorfman.

Clarification

Noelle Serpa, the subject of a profile in the Dec. 30 Chronicle notes that she is the administrative aide, not the administrator, of St. Anthony's Church, and that a Jan. 12 meeting to discuss the possibility of an East Cambridge youth center will be hosted by the church, but organized by the city.

The Cambridge
Chronicle

Page 5

Firefig

'Suspi Me

BY AMY MILLER
Chronicle Staff

A three-alarm fire on Cambridge Street Tuesday night caused some \$100,000 in damage.

Some 57 firefighters fought the fire for 90 minutes before the flames under control. The fire destroyed two buildings at the Sixth Street. The two structures that burned on Cambridge St. housed House Seafood, the Cambridge Street Cleaners and four nearby storekeeper buildings of some of his on fire and quickly rushed street.

"I just wanted to make sure the kids were out. One of the things I was trying to find something [a way] to see if I could do anything," said Koko Mouradian.

Wendy Watson®

Woman acquitted of assault on officer

By Paul Langner
GLOBE STAFF

CAMBRIDGE - Widely known portrait photographer Elsa Dorfman was acquitted yesterday of assault and battery on a police officer for slapping a hospital security guard in the ear with a cup of water.

East Cambridge District Court Judge Jonathan Brant, ruled that Dorfman used a small amount of force while defending a teen-age friend of her son's whom she had taken to Cambridge City Hospital for psychiatric treatment.

"The defense raised an issue not rebutted by the commonwealth," said Brant, noting that the defense's claim that Dorfman used a little force to defend someone is justified according to previous court decisions.

The charge against Dorfman

arose from an incident last Sept. 30 when she and her husband, Boston criminal lawyer Harvey Silverglate, took their son's friend to the hospital. The boy's school had called to say the youth was acting strangely and that the school was unable to locate his mother, a friend of Silverglate and Dorfman.

While at the hospital, evidence introduced by Assistant District Attorney David Zipps showed, the youth became increasingly agitated while staff members conducted tests and Dorfman and Silverglate tried to negotiate his admission.

The staff decided to put restraints on the boy, Dr. John Wesley Boyd, a staff psychiatrist, testified, when they became convinced that the youth "might hurt himself or someone else." Hospital security officer John O'Herron, whom Dorfman was accused of assaulting, said Dorf-

man opposed restraining the boy.

Witnesses testified that the youth was held in an examining room for four hours and tried to leave at least six times, once shoving a physician in his attempt to get out. At that point Boyd and Deborah Mindich, a psychiatric nurse, testified, they decided to put four-point restraints on him.

Silverglate had left the examining room when the staff, assisted by hospital security personnel, put the youth in restraints, Dorfman tried to block the door but O'Herron pushed it open. Dorfman then struck O'Herron with a water-filled Styrofoam cup.

O'Herron testified that he arrested and handcuffed Dorfman.

Boyd testified that among the things that made him decide to restrain the boy was when he said "I don't want to have to hurt anyone."

Roxbury slay case goes to jury today

By Patricia Nealon
GLOBE STAFF

A Suffolk Superior Court jury will begin deliberations today in the trial of Willie Dunn, 18, charged with murder in the April 1991 deaths of Charles Copney, 11, and Corey Grant, 15, in Roxbury.

Following final arguments today and instructions by Superior Court Judge Robert Mulligan, the panel will start deliberations.

Dunn is one of three teen-agers charged with the murders of Copney and Grant on April 20, 1991.

Damien Bynoe, who was 15 at the time, fired the shots that killed Copney and Grant. He pleaded guilty in Juvenile Court in 1991 and was remanded to the Department of Youth Services. Tarahn Harris, who was also 15 at the time, will be tried as an adult. Dunn is charged under the joint-venture theory, which holds all participants in a murder responsible no matter who committed it.

Yesterday, witness Angelo Murphy said he and others, including Grant, fled the steps of a Highland Avenue apartment when Dunn, Bynoe and Harris came up the street. Murphy said a companion, had recognized Dunn, who, according to earlier testimony, had been involved in a fight with members of a gang headquartered on Highland Avenue.

Murphy, who ran into a basement doorway as shots rang out, said he did not see who fired the gun.

Manslaughter is charge in officer's death

By Patricia Nealon
GLOBE STAFF

A Suffolk County grand jury yesterday indicted a South End woman on the lesser charge of manslaughter in the shooting death of Boston Police Officer Charles L. Israel apparently believing her claim that the shooting was accidental.

Gail Depradine, 35, who had been charged with first-degree murder in Boston Municipal Court immediately

cated that the prosecution was satisfied with the indictment handed up by the grand jury.

A first-degree murder charge - which Depradine was originally facing in district court - requires premeditation and carries a life sentence without parole. A manslaughter charge does not indicate premeditation and carries a maximum penalty of 20 years in prison.

A grand jury indictment moves a case from District Court, where de-

was an accident. "I think the matter should not be in the criminal courts at all," Burnham said yesterday.

During Depradine's arraignment in the BMC, municipal court, Assistant District Attorney James Coffey said Depradine had told police the shooting was an accident.

Israel, 39, who Burnham said had been Depradine's lover for some time, died from one gunshot wound to the chest.

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Woman to be tried in clash at hospital

By Paul Langner
GLOBE STAFF

CAMBRIDGE - Well-known portrait photographer Elsa Dorfman is scheduled to go on trial tomorrow on a charge of assault and battery on a police officer that arose from a confrontation with Cambridge Hospital security guards Sept. 29.

Dorfman, known for her life-size photographs of people, had taken a troubled teen-ager to the hospital for treatment.

According to the complaint in East Cambridge District Court, Dorfman attacked John O'Herron, a constable at the hospital, when he tried to restrain the 17-year-old Roxbury youth.

Dorfman allegedly struck O'Herron on the ear and threw a cup of water on him.

When two security guards tried to enter the examining room, Dorfman allegedly shouted at them, "You will restrain him over my dead body. My husband is a criminal attorney. I will not allow you to restrain him." She tried to hold the door against them, the complaint says.

The guards forced the door open, restrained the teen-ager, handcuffed Dorfman and took her to the Cambridge police station for booking, the complaint states.

When Harvey Silverglate, Dorfman's husband, came upon his handcuffed wife being led away, he threatened to sue the entire hospital, the complaint says. He had been outside meeting the teen-ager's mother, it says.

Silverglate and Dorfman took the teen-ager to the Cambridge Hospital after the youth's school called them to say he was behaving erratically, according to a memo faxed to the Globe by Andrew Good, Silverglate's law partner.

The Boston Globe 12/28/93
p. 24

The school was unable to locate the boy's mother, who was at work, so Silverglate and Dorfman, who have known the youth since kindergarten, went to the school.

They took him to the hospital and were trying to get him admitted, but the boy kept wanting to leave. Good's memo says.

A nurse said he might have to be restrained, but the couple said that was not necessary, according to the memo.

The memo says that the psychiatrist who had examined the boy felt he should have been restrained "an hour ago."

Handcuffed, booked

Artist charged with assault at hospital

By Gary S. Kades
TAB Correspondent

CAMBRIDGE — A 56-year-old Franklin Street woman was handcuffed and charged with assault by constables in an incident at Cambridge Hospital Sept. 30.

Elsa Dorfman, a noted large-scale Polaroid photo artist, contends constables used unnecessary force to restrain her when she allegedly attempted to intervene on behalf of a teenager, a friend of her son, who she had brought to the hospital's psychiatric ward.

Hospital officials, however, say all proper procedures were followed. Dorfman acknowledged she had thrown a paper cup half filled with water at constables when they attempted to restrain the teenager, who is black. But she contends the youth did not need to be restrained.

She said constables responded by forcing her onto an examination table, handcuffing her arms behind her back and holding her in a hallway.

Dorfman was taken to Cambridge police headquarters, where she was booked and held on an assault and battery charge.

She was arraigned on Oct. 1 in Middlesex District Court and released on her own recognizance. A pretrial conference was scheduled for Oct. 15. Two of the constables on duty at the time of the alleged assault were named as complainants: John O'Herron and Michael DiAmbrosio. Both were unavailable for comment.

Jury trial sought

Dorfman's attorney, Andrew Good, of the law firm of Silverglate & Good, has filed a motion for a jury trial.

According to Dorfman, on Sept. 30, she received a call from school that a teenage friend of her son was "having a nervous breakdown." In an interview with the TAB, she said she and her husband, attorney and Boston Phoenix contributor Harvey Silverglate, have been helping their son's friend "since kindergarten." She was advised to take the youth to the Cambridge Hospital Psychiatric Unit.

"We had this very collegial experience in emergency psych from 1 to 5 p.m.," said Dorfman. "A couple of times he [the teenager] left the room — but not in an aggressive screw-you-I'm-going-to-leave kind of way. And they said that if he left the room, they were going to restrain him."

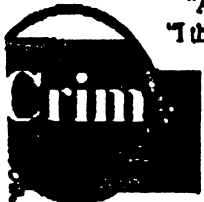
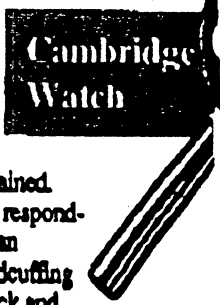
According to Dorfman, it was easy to be restless in the examining room for several hours without food or water or even the distraction of a television.

Dorfman claimed that the teenager was sitting quietly in the room and, although nervous, was not making a scene or exhibiting any threatening behavior.

"I could see the four constables, three men, one woman, out of the corner of my eye," said Dorfman. "Finally, the boy's mother was arriving, but didn't have enough money to pay the taxi — so Harvey

went out to meet her. This was after they gave him the tranquilizer. I heard someone say, 'The man has gone.' I'm standing at the door, guarding the door. I opened up the door to say, 'Are you putting him in restraints? No restraints — we gave him our word.' And I looked at the new psychiatrist with the constables — a guy in a pony tail — and he says to me, 'We have to. We heard him say something.' He had only been there from 5 o'clock. I said, 'Wait a few minutes — Harvey will be back with the boy's mother.' They were not interested in waiting.

"At that point," she said, "I threw a half a paper cup of water at the cop. But to throw me — a 56-year-old, overweight woman — on an examining table and handcuff my hands behind my back is off-the-wall."



CEO declines to discuss

Cambridge City Hospital CEO John O'Brien declined to discuss the incident in depth. He said, "We have evaluated this incident and feel that the staff of the hospital handled it in a completely appropriate and professional manner."

Hospital Police Liaison Sgt. Joseph Frawley, who has authority over the constables would say only, "A constable was struck, and she [Dorfman] was arrested for assault and battery on a constable."

Constables are not directly affiliated with the Cambridge Police Department, but are instead appointed by the city manager. In restraining patients, constables take their orders from doctors.

"Two of them [the constables] went to restrain the boy," Dorfman said, and in an adjacent room, two of them pinned me down and handcuffed me. I remember saying: 'Look, I'm 56 and I'm not very flexible!' Because it's very hard to be handcuffed from the back.

"I asked them to get my husband — who was somewhere in the building. They said, 'You aren't entitled to a lawyer. You can call your lawyer from the station house.' I said, 'How can I call him from the station when he's floating around the hospital?'"

Dorfman's son, who was approaching the hospital from Dana Street, saw his mother being loaded into the paddy wagon by Cambridge Police and alerted his father.

According to Dorfman, the officers who answered the call from the constables treated her courteously. "The police were wonderful to me," she said.

Dorfman said the incident may not have occurred if her relationship to the teenage boy had been made clearer to constables. The teenager is black and Dorfman is white.

"We are not going to get into defending ourselves," said O'Brien. "People can make all the accusations that they want, but it's a police matter at this time that's going to be handled through the appropriate channels." □

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To: Harvey & Andy
From: Dorfman
Co.:
Dept.:
Phone: 76-6410
Fax: 492-4925
Fax #: 451-6971

Consent Communication #10 S-21

Communication received from Elsa Dorfman regarding the treatment she received at the Cambridge Hospital on September 30, 1993.

In City Council January 31, 1994

1/31/94 Referred to
the Health &
Hospitals Committee
2/1/94 Copy sent to
Health & Hosp Comm (d)