**FOR IMMEDIATE RELEASE – NOVEMBER 11, 2019**

**This media notice was held until confirmation of settlement funds being paid**

**FOR IMMEDIATE RELEASE**

**For more information**

Avi S. Adelman

214-923-3562

[Avi@PhotographerOnBoard.com](mailto:Avi@PhotographerOnBoard.com)

See end of article for links to referenced websites and contact information

**This press release (with links to relevant documents) is posted online –**[**http://dartphotographylawsuit.com/html/settlement.html**](http://dartphotographylawsuit.com/html/settlement.html)

Dallas Area Rapid Transit (DART) pays $345,000 to settle photojournalist’s “arrested for taking pictures” lawsuit

November 11, 2019 - The Dallas Area Rapid Transit (DART) Board of Directors voted on Wednesday, October 22, 2019, to settle a lawsuit filed by freelance photojournalist Avi S. Adelman following his arrest by DART Police Officer Stephanie Branch on February 9, 2016, while taking photographs of Dallas Fire/Rescue paramedics treating a K2 overdose victim at the Rosa Parks Plaza in the West End Transit Center.

The DART Board of Directors approved the settlement at their October 22nd meeting. The settlement requires a payment of $345,000 to Adelman in return for dismissing the lawsuit and all further claims against DART or Branch. The documents were signed by Adelman on November 5th, and a copy signed by DART Executive Director Gary C. Thomas was delivered to Adelman's attorney on November 11th. Payment is expected within the next week to ten days.

Anyone wishing to see the final settlement agreement document must file an Open Records Request with DART.

The DART Board of Directors would not agree to posting of DART’s Public Recording of Police Policy (issued less than 60 days after Adelman's arrest) on its website. Many transit agencies around the country post their photography in public policies on their websites, including: SEPTA (Philadelphia), NYC Metro, Los Angeles Metro, St. Louis Metro, New Orleans Regional Transportation Authority (RTA), Houston RTA, San Francisco’s BART system.

Adelman has been a freelance photographer since attending high school in Philadelphia, PA in the 1970s. Along with a degree in journalism, he holds an inactive Secret Service clearance (for photography, up to foreign heads of state), as well as an inactive security clearance from the Department of Defense (for his work at the Lockheed-Martin Tactical Air Systems 1998-1999).

Adelman is a member of the National Press Photographers Association (NPPA) and the Society of Professional Journalists. He has organized and supported educational programs on the “Right to Photograph and Record in Public” presented to nearly 400 law-enforcement officers in North Texas (2014) and South Texas (2015). DART did not send any officers to the 2014 training program.

The programs were developed and presented by NPPA’s General Counsel Mickey Osterreicher. Since last year, Adelman has been presenting an informational program based on The International Association of Chiefs of Police Public Recording of Police (PROP) program to Dallas-area law enforcement officers, most recently to officers in Dallas County Constable Precinct 5.

Adelman was arrested for criminal trespass (not having a transit pass), a Class C Misdemeanor, after he refused several (illegal) orders by DART Police Officer Stephanie Branch to stop taking photographs of Dallas Fire/Rescue paramedics treating a K2 overdose victim at the Rosa Parks Plaza in the West End Transit Center. Adelman was held in the Dallas County jail for 24 hours, until he was released on bail.

The charge was dismissed one week later, after DART Chief of Police James Spiller determined the arrest did not meet DART’s standards, and he ordered an internal affairs investigation. Six months later, the agency concluded Adelman had not broken any laws and Branch's actions were “not consistent with the agency's policies.”

The investigation determined Officer Branch misapplied HIPAA (Health Insurance Portability and Accountability) in order to prevent Adelman from photographing the treatment taking place on the sidewalk. It further determined Officer Branch had no probable cause to arrest Adelman for criminal trespass, falsely claimed the paramedics ordered her to remove Adelman, and presented 22 additional false or misleading statements to investigators. She was suspended for three days.

Adelman filed a federal civil rights action against DART as an agency and Branch individually, for violations of his First Amendment (photography in public), Fourth and Fourteenth Amendment (unreasonable search and seizure without probable cause, and illegal arrest and detention). The First Amendment claim was dismissed in summary judgment, as the ‘public right to record and photograph law enforcement’ was not settled law in the US Fifth Circuit until one year after Adelman's arrest. (Turner v Driver). The judge denied summary judgement on the remaining claims and set an October 2018 trial date.

Branch filed an appeal to the Fifth Circuit Court of Appeals before the trial was held. She claimed because she did not know DART had issued a policy allowing photography in public areas of the system because she was on medical leave when the policy was issued (June 2014), she was entitled to Qualified Immunity from any legal action. During the appeals court hearing, her attorney claimed Branch did not give false or misleading statements to investigators, but that they were simply ‘subjective statements.’

The appeals court rejected the claim for Qualified Immunity, ruling “no reasonable officer under these circumstances would conclude she had authority to eject a person complying with DART policies from public property—and then arrest that person for criminal trespass when he failed to depart.”

In a footnote, the panel rejected Branch's claim she didn't know any better. “Branch's mistake was not reasonable,” the court said. “She didn't misinterpret an unclear policy or law; she simply failed to learn about DART's updated policy. And ‘an officer can gain no Fourth Amendment advantage through a sloppy study of the laws [s]he is duty-bound to enforce.’”

**Advocating for the right to photograph and record in public**

“I was arrested – and spent a day in jail - on a bogus ‘throw-down’ charge of criminal trespass for one reason only: To stop me from taking photographs of paramedics treating a patient in public view on public property, which is a lawful activity and not a HIPAA violation. The subjective personal opinions of LEO personnel should never be allowed to interfere with lawful and protected First Amendment activities.

"I will work with, and support, First Amendment advocacy groups to make sure arrests like this never happen again, and to defend the photographer vigorously when it does happen.

“I am donating $2,500 to the National Press Photographers Association’s legal advocacy efforts, including the ‘unlawful assault on visual journalists and cases that affect the ability to record events and issues of public interest.’ NPPA’s General Counsel, Mickey Osterreicher, coordinated an amicus curiae (friend of the court) brief submitted by nine major media organizations in support of my case in federal court.

“I strongly urge photojournalists- students, educators, self-employed or working for media organizations and institutions - to join NPPA today.

“I am donating $2,500 to the Freedom of Information Foundation of Texas (based in Austin) to support their efforts to protect freedom of speech and the press in Texas.”

“Photographers of all levels – from iPhone amateurs to geared-out photojournalists - should understand their rights when it comes to photographing police and fire personnel performing their jobs in public. But the burden should be on law enforcement agencies to train their officers on our right to photograph and record their activities in a public area."

**Regarding PROP Policies in Dallas County, Texas**

Less than 60 days after Adelman’s arrest, the DART Police Department updated its General Orders with a Public Recording of Police (PROP) policy, modeled after The International Association of Chiefs of Police PROP program. The Dallas County Sheriff’s Office adopted a similar policy in August 2019.

“DART refuses to post their photography in public policy on their website, unlike dozens of transit agencies around the country,” said Adelman, “Their police officers will continue to intimidate and arrest anyone taking photographs on DART property, which is really public property.” Adelman believes another photographer will be arrested by DART Police in 2020.

The largest law enforcement agency in the county, the Dallas Police Department, implemented a very weak policy in 2014. Dallas Chief of Police U. Renee Hall told Adelman in March 2018 she would be willing to meet to discuss implementing PROP in the department, but she has ignored all attempts to hold a meeting.

Following the resolution of this case, Adelman was notified by the department that a policy based on either PROP or a draft policy issued in 2014 (and then rejected due to pressure from a police officers association) is under review, with implementation expected in the next few months.

“Ninety percent of the officers I encounter at police scenes just ignore the camera or cellphones. Five percent are asking, ‘Can you Photoshop my gut to a better size?’ The last five percent are just pure -------, and sadly, I keep running into those guys.” Adelman said.

* 30 -

**Contact points**

Avi S. Adelman

214-923-3562

Avi@PhotographerOnBoard.com

Tyler J. Bexley, Attorney for Avi S. Adelman

Reese Marketos LLP

tyler.bexley@rm-firm.com

(214) 382-9805 Office

Mickey H. Osterreicher

General Counsel, National Press Photographers Association

[lawyer@nppa.org](mailto:lawyer@nppa.org)

716-983-7800

**Websites**

Avi S. Adelman – [www.PhotographerOnBoard.com](http://www.PhotographerOnBoard.com)

Adelman’s photography portfolio, showcasing police/fire photography – [www.PhotographerOnBoard.com/photo](http://www.PhotographerOnBoard.com/photo)

Adelman’s DART Lawsuit Website – [www.DARTPhotographyLawsuit.com](http://www.DARTPhotographyLawsuit.com)

The Right to Photograph and Record – [www.TheRightToPhotographInPublic.com](http://www.TheRightToPhotographInPublic.com)

PROP Policies from LEO, Transit Agencies, Educational Institutions, etc around the country - <http://therighttophotographinpublic.com/html/reference.html>

The International Association of Chiefs of Police PROP Public Recording of Police program, including templates, video training, policy white paper- <https://www.theiacp.org/prop>

DallasPoliceWatch.com – a website developed by Adelman to show Active Incidents being managed by the Dallas Police Department in ‘real time,’ using the City of Dallas’ Open Source SOCRATA database – [www.DallasPoliceWatch.com](http://www.DallasPoliceWatch.com)

**Media**

Photographs of DART West End Transit center medical treatment scene prior to arrest - <https://www.flickr.com/photos/aviadelman/albums/72157669543358127>

(creative commons, free to download and use)

Audio from Officer Branch’s Body Microphone during the detention and arrest process

Note that Branch’s first words to Adelman heard on the tape are

“Sir, stop (taking pictures)”

<https://www.youtube.com/watch?v=43wu3PwyOwQ>