October 28, 2015

Hon. Kathy Sheehan
Mayor of Albany
Albany City Hall
24 Eagle Street, Room 102
Albany, New York 12207

Re: Investigation into the Death of Donald Ivy

Dear Mayor Sheehan:

Following the tragic death of Donald “Dontay” Ivy on April 2nd of this year, I promised the family, the public, and the police that I would conduct a full, fair, independent, and impartial investigation into the death. I also promised that the investigation would be as transparent as legally possible, so that all citizens could have faith in whatever it uncovered. Finally, I explained that we would submit the matter to the Grand Jury, so that members of the Albany County community would have the final say on whether or not charges would be filed.

The Grand Jury has now spoken. Now the healing process can begin. Some will no doubt be disappointed that the Grand Jury did not return an indictment. For others, their decision will raise more questions than answers. Some of these questions will never be answered. But the public has a right to know the answer to every question that can reasonably be answered. This letter lays out what we have learned during the course of our investigation into what happened on April 2nd. We have endeavored to, as near as possible, tell the true and accurate story of Donald Ivy.

I hope that this letter will prove useful to you as the City continues to review and update its policies based on the events of that night.

Sources of Information

In conducting our investigation, we made extraordinary efforts to acquire every shred of available evidence. The evidence fell into several classes.
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**Non-Police Witness Interviews**

In the hours after Mr. Ivy’s death, members of the Albany Police Department canvassed the area in the immediate vicinity of the incident, on Second Street directly across from the school. They turned up no witnesses.

The District Attorney’s Office expanded the canvass area from a small portion of Second Street to a much larger area of both Second Street and Lark Street. Investigators from the Office conducted a door-to-door canvass in that area. We also posted and handed out fliers throughout an even larger five block area, requesting that anyone with information about the death contact the District Attorney’s Office, and we conducted an opportunity canvass in that same area. A map of the APD canvass area, the expanded canvass area, and the opportunity canvass area is attached to this letter as Attachment 1.

Based on video from the night in question, we also became aware that an unidentified individual was in the vicinity during the police’s initial encounter with Mr. Ivy and shortly before the pursuit leading to Mr. Ivy’s death. The District Attorney’s Office sought to locate that individual to ascertain if he saw anything. We released video and a description of the man, who was clad in a red jacket, and set up a phone number so that anyone with information could call.

Ultimately, we interviewed approximately seventy-five individuals in search of witnesses. Unfortunately, these efforts did not yield any results; we were unable to identify any non-police eye witnesses to the events surrounding the death, and despite our best efforts, we were unable to locate the man in the red jacket.

**Police Witness Interviews**

A number of police officers were at the scene on the night in question. Each of the officers were interviewed regarding their actions that night. Thirteen officers were interviewed in all.

The District Attorney’s Office considered interviews with Officer Joshua Sears, Officer Charles Skinkle, Officer Michael Mahany, Officer Ryan Kennedy, Officer Adam Zeilman, Officer Mathew Haker, Officer Rory Dolan, Officer Bruce Fleming, Officer John Bellard, Officer Justin Nowak, Officer Tyler Coleman, Officer Joli Zhaka, and Sergeant Daniel Johnsen.
Interviews with the Ivy Family

During the course of the investigation, the District Attorney’s Office has kept in contact with members of Donald Ivy’s family, meeting with various members on six occasions. Their forthrightness and willingness to speak with us was a tremendous help in our investigation by helping to explain some of Mr. Ivy’s movements and actions on the night in question. Among other things, the family revealed that Mr. Ivy suffered from mental illness for a significant portion of his adult life. At the time of the incident, he was taking anti-schizophrenia medicine.

In-Car Police Videos

We reviewed the in-car videos from two APD squad cars: units 214 and 204. Several other units were involved in the incident, but did not record video. Although unit 214, driven by Officer Michael Haker, recorded video, it was parked far from any of the action and did not capture any useful information. Unit 204, driven by Officer Joli Zhaka, provided the only probative view.

Officers Sears and Skinkle, the officers who initially approached Mr. Ivy, drove unit 212. Although that car is capable of recording video, and although it was facing the location where the initial encounter took place, the Officers did not engage the vehicle’s camera because APD policy does not require the camera to be engaged for a street encounter.

Unit 206 was driven by Officer Mahany. Although his vehicle was equipped with a dashboard mounted video camera, it was missing an MDT, or Mobile Data Terminal, the component of the video system that stores recorded video. Essentially, the video camera in unit 206 was a digital camera without the ability to record.

Unit 207, containing Officers Ryan Kennedy and Adam Zeilman, was also equipped with a video camera, but it was also missing the MDT storage device that would have allowed it to record.

Unit 209, operated by Officers Bruce Fleming and Rory Dolan, contained a fully functional video camera, but it was not activated when they arrived on scene.

Unit 101, containing Officers Coleman and Nowak, drove past the scene at one point. Although it had a fully functional video camera, it did not record video because its emergency lights were not engaged.

Unit 172, driven by Sergeant Dan Johnsen, arrived at the area late. He parked his unit near Officer Haker’s unit 204. Although it had a fully functional video camera, it did not record video because the video was not manually engaged.
During our investigation, we learned that video is not always recorded as a matter of course during encounters with citizens by the APD. We learned that when an officer engages his patrol unit’s emergency lights a unit equipped with working video recording equipment automatically begins to record from a point thirty seconds in time before the lights were engaged. We also learned that even when lights are not engaged, officers have the ability to turn on the recording capabilities of their video cameras with the flip of a switch. However in many situations, including the one underlying this investigation, they are not required to do so by APD policy.

**Video Obtained from Other Sources**

The District Attorney’s Office was also able to obtain video from non-APD sources. We recovered video from four locations with a total of eight camera views. Most of these videos were unhelpful, but several depicted portions of Mr. Ivy’s encounter with police. Two camera views from 50 Lark Street, a school, facing east and west on Second Street were particularly helpful. Another camera view at the corner of Clinton Avenue and Lark Street was also helpful.

**Audio Recordings from APD Dispatch and AFD Dispatch**

We obtained audio recordings from the night in question from both APD and AFD, as well as the associated call tickets. Since the call tickets are time stamped, they were helpful in developing a time line of events.

**Digital Data Recovered from the Taser**

The Taser used during the incident, a TASER model X26, is equipped with the ability to record certain meta data related to its use. That data was recovered from the device the next day, and we were able to view it.

**APD Use of Force Policies and Training**

We obtained and reviewed APD’s use of force guidelines for when and how to use a Taser, as well as when and how to use a baton.

**Interviews with Experts Regarding Taser Usage**

In order to better understand how a Taser works, we consulted with experts. We also spoke to the official responsible for training APD officers on the use of a Taser.

**Property Recovered from Mr. Ivy**

Two ATM receipts were recovered at the scene from Mr. Ivy. These were helpful in piecing together his movements on the night in question.
Laboratory Testing

The APD submitted one of the prongs recovered from the scene for DNA testing. We reviewed the laboratory report generated as a result. Unfortunately, the DNA recovered from the prong proved insufficient for comparison purposes.

Due to a reallocation of manpower at the State Police Laboratory related to the escape of two inmates from the Clinton Correctional Facility, the result of the testing was not received by our office until July of this year.

Photographs of the Scene

Photographs of the scene were taken by APD in the immediate aftermath of the incident. Those photographs covered the spot of the initial encounter, locations along the route of the chase, and the place where Mr. Ivy was taken into custody and suffered a cardiac arrest.

Medical Evidence

We reviewed the EMS pre-hospital care report relating to Mr. Ivy, as well as a seventeen-page autopsy report authored by Medical Examiner Dr. Michael Sikirica.

We also consulted with Dr. Gary Vilke, a Professor of Clinical Emergency Medicine at the University of California at San Diego. Dr. Vilke is a recognized expert in the field of tactical medicine—the field of medicine that studies the effects of Tasers, restraints, neck holds and pepper spray. He has studied out-of-hospital cardiac arrests and traumatic injuries, and has published over 180 articles and 50 book chapters on various topics. Most specific to the case at hand, he has studied deaths of subjects in police custody, and has published on the physiological effects of Tasers after exercise.

He is on the editorial board of four major medical journals and reviews for fifteen other journals. In addition to his academic work, Dr. Vilke is also the Director for Custody Services at UCSD, responsible for the care of inmates at all seven San Diego Sheriff’s jails. Dr. Vilke is also a board certified medical examiner.

The Grand Jury

Some information was collected via the subpoena power of the Grand Jury. Because of the strict policy of Grand Jury secrecy, we cannot reveal information that was acquired through the Grand Jury. This letter contains no information acquired in that way, nor does it contain any information derived from it.
How a Taser Works

During the course of our investigation, we learned how the TASER model X26 operates. Whenever it is activated, a flashlight on the front of the device turns on, and a laser sight is emitted, which targets the subject. When the device is first fired, two electrical probes are released and fly toward the target. Plastic doors cover the probes until the trigger is pulled, but when the probes are released the doors are blown off. Each probe is attached to a wire, which carries an electrical charge.

If both probes connect to the subject, the electrical current released by the Taser causes the subject’s muscles to contract, and the subject is temporarily incapacitated. A subject affected in this manner cannot walk or run. If one of the probes does not attach to the subject, the circuit is not completed, and the subject does not receive a shock from the device.

If the probes do not release, the probe cartridge can be removed and the device can be fired without the cartridge. When used this way, an electrical charge runs between two fixed poles on the front of the device. When those poles are placed in direct contact with a subject’s body, the charge causes the subject localized pain. This method, known as a “drive stun”, does not affect the body in the same way and does not immobilize the subject. APD Officers are trained that the drive stun is a pain compliance method, used to ensure a subject’s cooperation.

In either probe mode or drive stun mode, each time the trigger of the Taser is pulled it fires for five seconds, unless the electrical charge is canceled early by flipping a paddle on the side of the handle. After each trigger pull, police are trained to pause and re-assess the situation to determine if a subject is continuing to resist. At the time the incident took place, officers were trained to administer continuous shocks with the Taser until a subject became compliant with commands.

The TASER model X26 contains a computer chip that logs data about when the device is used. Specifically it logs the date and time of each trigger pull, the duration of each electrical charge, the temperature of the device at each trigger pull, and the percentage of battery left.

Generally speaking, experts agree that use of the Taser is safe when deployed properly. Unless the electrical current from the two probes crosses the area of the heart, risk of injury or death from Taser use is quite low. Officers are therefore trained to aim for the lower part of a subject’s body when deploying the Taser. Because the drive stun method results only in a localized electrical shock, the risk of injury or death for that method is considered to be even lower. On the use of force continuum, use of the Taser is considered more safe than use of a baton, since an errant baton hit could easier cause broken bones or other injuries.
The Events of April 1st and 2nd, 2015

A Late Night Walk

The story begins on April 1st, 2015. From interviews with Mr. Ivy’s family, we learned that Mr. Ivy was receiving disability benefits. On the first of each month, his monthly benefit was deposited into his Direct Express benefit card account. That card is similar to a debit card, in that it allows for direct withdrawals from ATMs via the use of a PIN. On April 1, Mr. Ivy was expecting that his benefits would be deposited into his card account, but for some reason the money was delayed. Mr. Ivy made several attempts to access the cash throughout the day on April 1, but each time he was unable to do so.

Late in the evening of April 1st, Mr. Ivy set out from his home at 131 Second Street, where he lived with his sister. At approximately 10:55PM, Mr. Ivy attempted to use the ATM at 277 Clinton Avenue, a small grocery store and deli at the corner of Clinton Avenue and Lark Street. He attempted to withdraw $150 in cash, but was refused for insufficient funds. Just after midnight, at approximately 12:10AM on April 2nd, Mr. Ivy attempted to use the ATM located at 191 Lark Street, a convenience store. This time he attempted to withdraw $20, but was refused for an invalid PIN. Receipts from both ATMs were recovered from Mr. Ivy’s body.

At approximately 12:31AM, a video surveillance camera located at Clinton Avenue and Lark Street captured the figure of a man crossing north over Clinton Avenue and continuing northward on Lark Street. He appeared to be wearing white high-top sneakers, light colored jeans, a hooded sweatshirt, and a large, dark, puffy jacket. That appears to match what Mr. Ivy was wearing that night. Although the quality of the video is not very good, the District Attorney’s Office believes that the figure was that of Donald Ivy.

A Street Encounter

While Mr. Ivy was making his trip to the ATM and back, Albany Police Officer Joshua Sears and his partner, Officer Charles Skinkle began a tour of duty at midnight. Soon after their shift began, they approached an individual sitting on the steps of a property in the South End. The officers approached the individual in an attempt to learn if he was trespassing. Upon learning that the individual’s girlfriend resided at that address, the officers got back into their vehicle and left the area.

A few minutes later, they drove to Arbor Hill. On the way, they passed others walking on the street, but it was not until they began driving North on Lark Street that something caught their attention.
According to the officers, as they drove up the street, Officer Sears noticed Mr. Ivy. His attention was drawn to Mr. Ivy because he was wearing a “puffer” coat. This struck Officer Sears as odd because, in his opinion, it “wasn’t that cold out yet.” We know from historical weather data that it was approximately 26 degrees in Albany at the time. Officer Sears also observed that Mr. Ivy was “walking heavily on his left arm.” Moreover, Mr. Ivy appeared to be bunching up his left hand into his sleeve. In his interview, Sears expressed his thinking that if Mr. Ivy were cold, he would put his hands in his pockets or would put both hands into his sleeves. To Sears, it appeared that Mr. Ivy was trying to hide something in his sleeve. Officers are trained to observe the gait of subjects because certain visual cues, such as favoring one side, are associated with carrying concealed handguns. Officer Sears indicated that he had previously recovered illegal handguns from individuals walking in this area.

Officer Skinkle, an officer with less than a year on the job, identified the same reason for the approach, but was unable to articulate his suspicion with as much detail. He explained that his attention was drawn to Mr. Ivy because he “was walking suspicious. [sic] Um, he had... the way he was walking didn’t seem right. Um, and also his jacket sleeve was pulled way past his hand.”

Sears explained that both he and Mr. Ivy were traveling northbound, and that he was driving “pretty slow” when he made the observations. Sears continued to observe Mr. Ivy, to see what he would do. At this point, Sears was under the impression that Mr. Ivy might have had a weapon, or possibly drugs. He made eye contact with Mr. Ivy while approaching the intersection of 1st Street and Lark. Since both the car and Mr. Ivy were traveling north, the car would have needed to slow considerably and come up abreast with Mr. Ivy at this point in order for the pair to make eye contact.

Sears pulled past Mr. Ivy and through the intersection of Lark and Second Street, making a U-turn in front of the school. The patrol car re-crossed the intersection, now traveling southbound, and slowed down as Mr. Ivy was approaching the intersection of Second Street. Sears and Skinkle observed him for some time longer as he walked toward the intersection before finally stopping the car and getting out near the intersection of Lark and Second Street.

At 12:34AM, Officer Sears called that he had stopped the car and was “speaking to one.” One of the video cameras at the school, which faced west on Second Street, captured unit 212 as it came to a stop at the corner; the video picks the car up at approximately 12:35AM. Unfortunately, it does not offer a clear view of what occurred next, since the camera’s view of the area where Mr. Ivy interacted with the police is blocked by a garage.

Although Unit 212, the patrol car that Officers Sears and Skinkle were using that night, was equipped with working video recording equipment, that video was not engaged. Officer Sears
indicated that he did not engage his camera because APD policy does not require him to do so for a street encounter.

They first approached Mr. Ivy on the street in front of 63 Lark Street. According to Sears, the officers initially kept their distance, wary of a weapon, and politely asked for Mr. Ivy to hold up a moment. He explained his thinking as follows: “I don’t wanna jump out and just, you know, start harassing people and go from here to here too quickly.” Sears asked to see Mr. Ivy’s hands for a moment. Mr. Ivy complied. As he got out of his car, Sears noticed what appeared to be a tied-off plastic baggy of the sort used to package drugs on the ground, about ten to twelve feet away from Mr. Ivy, near where he had been walking.

Sears asked Mr. Ivy what his name was, and began conducting his standard interview. Sears asked Mr. Ivy where he was coming from and going to. Mr. Ivy answered that he had just come from the ATM, and Sears asked how much money he had taken out. Mr. Ivy responded that he had not taken any money out, a fact that struck Sears as odd. According to Officer Skinkle, Mr. Ivy told the police that he was changing his PIN at the ATM. Sears asked if Mr. Ivy had ever been arrested, on parole, or on probation. Mr. Ivy responded that he had not.

It was at this point that Officer Mahany arrived as back-up. Mahany approached from the south, facing northbound as he parked his car, unit 206, facing the front of unit 212. Officer Mahany’s vehicle was directly facing the ongoing street encounter. Although his vehicle was equipped with a dashboard mounted video camera, it was missing an MDT, or Mobile Data Terminal, the component to the video system that stores recorded video.

At approximately 12:36AM, Officer Sears conducted a computerized search for Mr. Ivy’s name to make sure he had no outstanding warrants, standard procedure for APD. At this point, Sears discovered that Mr. Ivy had been arrested in the past, had been the subject of prior warrants, and had previously been on probation.

According to all three Officers, the encounter with Mr. Ivy and the questions asked were polite and non-accusatory. Moreover, Mr. Ivy was cooperative at this point. Sears told investigators that before he ran him through the system for warrants he told Mr. Ivy “I appreciate your cooperation. I’ll get you on your way in a second.” Officer Skinkle said that before Sears walked to his patrol car, he told Mr. Ivy “I appreciate your cooperation.”

While Officer Sears was running Mr. Ivy’s name, unit 207, containing Officers Ryan Kennedy and Adam Zeilman arrived at 63 Lark Street. They observed Officers Skinkle and Mahany having a conversation with Mr. Ivy. They noticed nothing out of the ordinary. After receiving a thumbs up from Officers Mahany and Skinkle, Officers Kennedy and Zeilman continued on their way without ever exiting their patrol vehicle.
As Officers Sears was running Mr. Ivy’s name, Officer Skinkle noticed that Mr. Ivy was looking out of the corners of his eye without moving his head, and was tapping his right pocket. Officer Mahany said that Mr. Ivy seemed nervous, and was making odd movements with his eyes.

Returning from his cruiser, Sears again asked Mr. Ivy if he had ever been arrested. Again, Mr. Ivy said he had not. Sears told Mr. Ivy he knew that was not true, and asked why he was not being honest with him. According to Officer Mahany, even after being confronted about his arrest record, Mr. Ivy claimed several times that he had never been arrested. Sears then returned to the ATM topic, asking why he had gone to the ATM but not withdrawn any cash. He did not receive a response from Mr. Ivy.

The Pat-Down Search

Based on everything he had observed, Sears told investigators that he now began to suspect that Mr. Ivy was not hiding a weapon, but was instead hiding drugs; this would explain why he did not have any money from the ATM, although he had just visited it. Working under this theory, Sears walked over and looked at the baggie on the ground with his flashlight, discovering that it was empty. A clear tie-off plastic baggie was later recovered from the scene in the vicinity the officers described; it was empty.

According to Sears, by the time he had returned, Mr. Ivy had again tucked his left arm into his sleeve. This was not observed by the other officers. Sears then asked Mr. Ivy if he could conduct a pat-down search, and he assented. Mr. Ivy seemed nervous but cooperative. Sears instructed him to put his hands behind his head and interlock his fingers.

According to the three officers at the scene, it was when Sears began to conduct the pat-down that Mr. Ivy’s behavior changed. When Mr. Ivy was touched, he would pull down his hands. From interviews with members of the Ivy family, we are led to believe that, as part of his mental illness, Mr. Ivy did not like to be touched.

Each time Mr. Ivy dropped his hands, Sears would stop the pat down, and Sears or Mahany would instruct him to keep his hands behind his head. Mahany says that this occurred two or three times during the search.

Sears recalls asking Mr. Ivy to follow his instructions, and telling him “I believe you got something up your sleeve, because you can’t follow my instructions.” Sears then decided to detain Mr. Ivy for the duration of the search. “Just for your safety and mine,” he recalled telling Mr. Ivy, “I’m just gonna detain you for a sec.” “You’re making me a bit nervous,” Officer Mahany remembered Sears telling Mr. Ivy, “You’re not under arrest. We’re just gonna detain you right now for our safety.”
According to the officers, as they tried to handcuff him, Mr. Ivy started to resist. Mr. Ivy, who stood 5'8" tall and weighed 274lbs, was able to stay on his feet even with Officer Sears attempted to bring him to the ground from behind and Officers Skinkle and Mahany on either side of him trying to sweep his feet and drop him to the ground. In order to subdue Mr. Ivy, Officer Sears told the other officers to stand off, because he was going to use his Taser. According to Officer Sears, Mr. Ivy then took off his coat.

Investigators recovered evidence of the initial firing of the Taser just a few feet north of where the initial encounter began. Specifically, they recovered one of the green probe covers ejected when a Taser is first deployed on the ground near the back end of unit 212, the patrol car driven by Officers Sears and Skinkle. The internal log from the Taser records the first trigger pull as occurring at 12:40AM. The charge from the first trigger pull lasted only four seconds, meaning that Officer Sears flipped the paddle to turn the charge off early. He indicated that he did so because he believed the Taser may have been malfunctioning.

According to the police, it was at that point that Mr. Ivy began to run. The police pursued him.

The Chase

A few seconds after the trigger pull, still at approximately 12:40AM, the westward facing camera on the school at 50 Lark Street captures the beginning of the chase.

During the chase, Officers Sears, Mahany, and Skinkle can be seen pursuing Mr. Ivy east down Second Street. As they did so, Officer Mahany called out for more units over his radio, a call which several units heard. Flashes of light can be seen on the video emanating from Officer Sear's hand. It is not clear whether these flashes due to the flashlight on the front of the Taser, from an electrical discharge when the trigger was pulled, or from some combination of the two. Officer Skinkle can be seen falling down and getting back up. Mr. Ivy’s coat appears to be half way off, dangling from one arm. According to the officers, as they continued to chase Mr. Ivy they gave him verbal commands to drop to the ground.

Officer Sears continued to pull the trigger of the Taser, still in probe mode, during the chase, with no effect. It is not entirely clear how many times Officer Sears engaged the Taser during the chase, but it does appear that Mr. Ivy was not affected by the electrical charge. If he had been, his muscles would have contracted violently, and he would have been rendered unable to run. It appears that one or both of the probes may not have made a good connection with Mr. Ivy. Officer Mahany indicated that he saw one of the probes connected to Mr. Ivy’s right buttocks area, but did not observe the other probe connected to his body.
Both probes were later recovered from the scene. One probe, with a portion of the wire still attached, was recovered on the ground in the middle of Second Street, where Mr. Ivy was running. The other probe, the one without a wire attached, was recovered on the sidewalk of Second Street, near where Mr. Ivy would be apprehended. According to the EMTs, when Mr. Ivy was being placed in the ambulance he had one probe and a portion of the wire still attached to him.

According to Officer Sears, during the chase he transferred the Taser from his right hand to his left hand, so that if Mr. Ivy pulled a weapon he would be able to quickly draw his service pistol. Officer Sears also explained that, rather than run directly behind Mr. Ivy, he staggered himself to one side. Officer Sears was trained that this is the proper way to pursue an armed suspect, because if the suspect wheeled around and fired blindly, he would be likely to fire directly behind himself. The video is too grainy to determine if Officer Sears moved the Taser from one hand to the other, but the video confirms his staggered running pattern.

At the end of the chase, Mr. Ivy can be seen turning around. Officer Mahany describes that Mr. Ivy turned around and squared up to face them. All three officers can be seen tackling Mr. Ivy before the scuffle moves out of the frame of the video camera. The chase took less than a minute, and covered approximately 330-350 feet of distance, or about 110 to 116 yards.

**Mr. Ivy is Subdued**

At this point, the officers describe that even though Mr. Ivy was on the ground, he continued to resist their attempts to handcuff him. At this point, Officer Mahany struck him two or three times on the rear of his right thigh with his baton. Moments after they go to the ground, APD patrol unit 207 is picked up by the school camera racing to the scene. The patrol car, containing Officers Ryan Kennedy and Adam Zeilman, was equipped with a video camera but, like unit 206, was missing the MDT storage device that would have allowed it to record. Unit 207 parked a few feet away from where Officers Sears, Skinkle, and Mahany were struggling with Mr. Ivy, and Officers Kennedy and Zeilman joined the fray. According to several officers, even as they struggled to handcuff Mr. Ivy, he was protecting his left hand by holding it under his body.

According to Officer Sears, he pulled the trigger of the Taser in probe mode at least one more time while Mr. Ivy was on the ground, again without effect. He removed the probe cartridge from the Taser, and drive stunned Mr. Ivy twice. On the second drive stun, Mr. Ivy yelled “OK, OK” and placed his hands behind his back. Mr. Ivy was then handcuffed.

At just about this time another patrol unit, unit 204, arrived on scene. The unit was driven by Officer Joli Zhaka. This vehicle was equipped with a working video recording device, and we reviewed the video recovered from it. The scuffle with Mr. Ivy is briefly visible in the frame as
the vehicle arrives, but by the time unit 204 parks the camera's view of Mr. Ivy is obscured by unit 207.

We know from the Taser log that the time from the first Taser pull until the last charge completed was one minute and nineteen seconds. The trigger of the Taser was pulled a total of seven times, although it is clear that Mr. Ivy was not effectively tasered all seven times. During the autopsy later undertaken by Dr. Sikirić, two markings consistent with drive stunning were found, one on Mr. Ivy’s thigh and one on his lower back. One of those markings showed clear evidence of electrical changes to the skin at the microscopic level. The other marking showed possible changes, but was not conclusive. No other markings on Mr. Ivy's body showed any evidence of electrical shock.

"One in Custody"

Seconds after unit 204 arrives, at 12:42AM, Officer Sears' upper body pops into the frame of unit 204's video, and he can be seen radioing dispatch with the message “We have one in custody,” adding that a Taser had been deployed.

Officer Michael Haker arrived at Mr. Ivy's location at approximately this time. He parked his car, patrol unit 214, on Lark Street at the intersection with Second Street, near where the original street encounter took place. He then ran down Second Street to where Mr. Ivy was being taken in custody. Because unit 214 was parked so far away from the scene and was facing in the wrong direction, the video obtained from it was not in any way helpful.

At about the same time Officers Justin Nowak and Tyler Coleman, driving unit 101, arrived in response to Officer Mahany’s call during the chase. They briefly made contact with Officer Sears on Second Street, who told them that the situation was under control. Officer Nowak drove the unit up Second Street, past where Mr. Ivy was still on the ground handcuffed. Officer Nowak described Mr. Ivy as kicking his feet and screaming curse words. Officer Coleman described the same thing, though he could not make out the words that Mr. Ivy was using.

As unit 101 was driving away, unit 209, operated by Officers Rory Dolan and Bruce Fleming arrived on scene. Although their unit contained a working camera, and although their patrol car directly faced Mr. Ivy and the other officers, they did not engage the camera.

They observed that although Mr. Ivy was handcuffed and on his stomach, he was still struggling with the officers already on scene, kicking his feet disruptively. Officer Fleming told the investigators that it appeared that Mr. Ivy was trying to arch his back, as if he was attempting to stand up. One of the officers asked Officer Dolan if he had shackles. Officer Dolan retrieved the shackles from unit 209.
Officer Sears, accompanied by Officers Dolan, Fleming, Zhaka then began a search of Second Street where the chase had occurred, looking for a weapon or drugs that the police assumed Mr. Ivy had thrown.

Meanwhile, the remaining officers attempted to shackle Mr. Ivy's feet. According to multiple officers, Mr. Ivy continued to kick his feet. According to Officer Michael Haker, Mr. Ivy's flailing feet nearly hit one of his fellow officers in the head. Officer Haker took out his collapsible baton, and hit Mr. Ivy once on the back of the knee. Police are trained to hit in the soft tissue, like the back of the knees, to minimize the risk that they will injure a subject. Officer Haker is visible on unit 204’s video as he raises the baton and swings it down once. He can then be seen collapsing the baton. According to the officers on scene, they were then able to get control of Mr. Ivy’s legs and shackle them. From the video, it appears that Mr. Ivy’s legs were shackled at approximately 12:43AM. One of the officers stood on the shackle chain to make sure Mr. Ivy could not kick his legs anymore. According to Officers Mahany and Skinkle, once this happened Mr. Ivy finally stopped fighting entirely.

Once Mr. Ivy was shackled, Officer Ryan Kennedy walked off to join Officers Sears, Dolan, and Fleming on their grid search of Second Street.

Shortly after he was shackled and appeared to calm down, one of the officers suggested that Mr. Ivy be rolled over so he was not on his stomach. It was then that the officers noticed that something was wrong. On the video, the officers can be seen motioning for Officers Sears to come back.

Officer Zeilman observed that Mr. Ivy appeared unresponsive. He checked for a pulse, but did not find one. Officer Haker checked as well; he did not find one either. Officer Zeilman took out his flashlight and checked Mr. Ivy's pupils; they were fixed and dilated. It was at about this point that Officer Mahany first called for EMS. The call went out over the police radio at 12:46AM and twenty seconds, just under three minutes after Mr. Ivy was first shackled.

They removed his handcuffs and flipped him over. Less than a minute later, Sergeant Dan Johnsen arrived at the scene. He was informed that Mr. Ivy was not breathing, and ordered the shackles removed. Officer Dolan removed them. Sergeant Johnsen placed a second call to EMS, asking that they step up their response. Sergeant Johnsen's call to dispatch occurred at approximately 12:47AM.

Officer Zeilman, a trained EMT, began CPR, performing the chest compressions. When he became tired, Officer Fleming, trained in CPR, took over the compressions. They were assisted by Officer Skinkle, who is also trained in CPR. Officer Kennedy, who had been searching for a weapon, returned and assisted by maintaining an airway and checking for pulse. Before
becoming a police officer, Kennedy had been an EMT for three years. Officer Haker also aided them in CPR; he had also worked as an EMT for several years prior to become a police officer.

The police began to move their patrol units to prepare for the arrival of the ambulance. When unit 204 is moved, Mr. Ivy and the officers around him briefly come into view before being obscured once again by unit 207. The video very clearly shows the officers surrounding Mr. Ivy, and one of the officers is performing chest compressions.

The fire department arrived at approximately 12:50AM. Officers continued CPR while the fire department set up their equipment. Despite the best efforts of the officers and the fire department EMTs, Mr. Ivy was pronounced dead at the hospital at 1:39AM.

The Autopsy and Medical Report

An autopsy of Mr. Ivy's body was completed in the afternoon of April 2nd, 2015 by Dr. Michael Sikirica, a forensic pathologist.

Dr. Sikirica found no evidence of internal trauma to Mr. Ivy's organs. He did find some evidence of minor external injuries, but concluded that none of the injuries contributed to Mr. Ivy's death. In addition to the evidence of two drive stun tasings, Dr. Sikirica found a bruise along the back of Mr. Ivy's left thigh, consistent with being hit with a baton.

According to Dr. Sikirica's report, the cause of death was "Cardiac arrhythmia with cardiorespiratory arrest occurring during struggle and altercation with significant underlying cardiomegaly [enlarged heart] and atherosclerotic cardiovascular disease." In other words, Mr. Ivy suffered from an underlying condition that made him particularly susceptible to a heart attack brought on by the stress of the incident with the police.

In Dr. Sikirica's opinion, the tasings of Mr. Ivy by Officer Sears was not the cause of his death, although it was one contributing factor to the overall stress of the event.

We also consulted with Dr. Gary Vilke, a Professor of Clinical Emergency Medicine at the University of California at San Diego. Dr. Vilke is also a board certified medical examiner and an expert on the effects of Tasers on the body. In his opinion, Mr. Ivy's death was caused by his over 100 yard sprint, which would have greatly elevated the stress level of his body to the point where the additional tasings and use of a baton would have had little or no effect on his overall stress level. He also gave his opinion that death is not a reasonably foreseeable result of tasing.
Conclusion

The Grand Jury has now spoken. Although it ultimately declined to return an indictment, the tragedy of Donald Ivy should result in a thorough review of the APD’s policies and training in several areas.

Among other areas, I recommend that the policies relating to the use of force for both Tasers and batons be reviewed and revisited. In addition, although the Officers who first encountered Mr. Ivy had received training in spotting and responding to mentally ill individuals, they did not perceive that Mr. Ivy suffered from mental illness. That training should be reviewed, and the department should consider other avenues to ensure that Officers have access to the information they need to perform their duties.

One area of particular concern for your review is the APD’s video recording capabilities. Two of the patrol cars that responded to the incident involving Mr. Ivy on April 2nd were not equipped with fully-functional video recording devices. At least one of those vehicles was in a position to record major portions of the events leading up to Mr. Ivy’s death. Moreover, several other patrol cars were equipped with working video cameras, but those cameras were simply not engaged. Recordings from those patrol cars would have been probative. Ultimately, our investigation was hampered by the lack of videos from patrol cars that were well positioned to record the events in question.

Although we believe that our investigation was successful in piecing together the important events of April 2nd, we recognize that questions will remain. If each of the patrol cars involved had captured video of the incident, most of those questions would be answered. Moreover, the public would have more faith in the process and in the outcome.

Cameras do not lie. They are not susceptible to bias, favoritism, or forgetfulness. They provide clear evidence that can convict the guilty and exonerate the innocent. I hope that you and the Common Council will take this opportunity to carefully review the functionality of APD’s video camera technology, as well as the policies regarding when that technology is used. That policy review should include when and how cameras are used, the implementation of Body Worn Cameras, and investment in the maintenance and continual upgrading of recording technologies.

Justice is blind. But as leaders, we cannot be blind to problems in our criminal justice system. In this case, the Grand Jury’s decision is only the beginning of many thoughtful discussions I hope to have with you and leaders of our community. Peace for the Ivy family will be achieved only when we have taken all of the steps necessary to ensure that a tragedy like this does not happen again.
I will soon contact you to discuss how we can work together to move forward.

Very truly yours,

[Signature]

P. David Soares  
Albany County District Attorney

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