The Independent Review Committee has reviewed the University Police Department investigation report relating to the “[a]llegation that officers used excessive force while arresting a suspect in the campus center” of the University. The Campus Center incident resulting in the Involved Individual’s arrest occurred November 5, 2019. The Involved Individual has not filed a complaint alleging that UPD officers used excessive force while arresting him. An advisory to the University community circulated by the UPD on November 9 indicates that the Involved Individual’s whereabouts were then unknown and he “was last known to be on campus on the evening of Wednesday, November 6, 2019 and was leaving campus.” The UPD investigation into the alleged use of excessive force was prompted by an “anonymous” complainant. It was initiated following the distribution of a video posted on social media, “Home me now. 9 cops for 1 black teen? Make it make sense” (see “Complainant Statement” on the UPD Report of Internal Level 2 Investigation). The UPD report identified November 11, 2019 as the date of the complaint, the investigation was assigned that same day, and it was completed November 18. The report “exonerated” the officers who allegedly used excessive force in arresting the Involved Individual, a designation which under UPD regulations means that “the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate any University at Albany Police Department policies, procedures, or training.” The report was reviewed and approved by Assistant Chief of Police Aran Mull on November 19 and was accepted by Chief J. Frank Wiley on November 20.

The IRC agrees with the disposition of the complaint and, specifically, that the report of the investigation supports the finding that the involved officers did not violate UPD policies, procedures, or training by using excessive force to arrest the Involved Individual.

The UPD has adopted a written Use of Force policy (General order No. 1.3.0). The policy appears to be fully consistent with New York Division of Criminal Justice Services Standards and United States Supreme Court decisions regarding the use of force by the police in carrying out their official responsibilities. The policy describes a use of force continuum and authorizes a level of force that is “proportional to and necessary to overcome the level of resistance or aggression offered by the subject.” As described by the U.S. Supreme Court in *Graham v. Connor*, 490 U.S. 386, 396 (1989):

> Determining whether the force used to effect a particular seizure [such as an arrest] is “reasonable” under the Fourth Amendment requires a careful balancing of “the nature and quality of the intrusion on the individual's Fourth Amendment interests” against the countervailing governmental interests at stake. Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. Because “[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition

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or mechanical application,” however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. See Tennessee v. Garner, 471 U.S. 1, 8–9 (1985) (the question is “whether the totality of the circumstances justifie[s] a particular sort of ... seizure”).

The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. . . . The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

As in other Fourth Amendment contexts, however, the “reasonableness” inquiry in an excessive force case is an objective one: the question is whether the officers' actions are “objectively reasonable” in light of the facts and circumstances confronting them . . . (citations omitted).

The UPD investigation of the complaint included a review of multiple police body camera recordings of the events leading up to and including the Involved Individual’s arrest and removal from the Campus Center. The investigation further included a review of additional video recordings captured by surveillance cameras in the Campus Center. The investigation included interviews of three UPD officers on the scene—two who were involved in the initial physical confrontation with the Involved Individual and who effected his arrest, and one who was not directly involved in the arrest. Two officers on the scene who later assisted in the physical confrontation, and two officers on the scene who were not involved in the confrontation were not interviewed. The report states that “No non-officer witnesses identified in order to interview,” and that “[the Involved Individual] did not respond to request for interview.” (The members of the IRC note that in light of the extensive video-recorded footage of the incident, the utility of interviewing additional witnesses was not likely to be great.)

The report describes that UPD officers responded to a call from an employee at the Campus Center about two individuals who were acting in a rude and aggressive manner during the night of November 5. The employee identified the Involved Individual as one of the individuals of concern. Thereafter, UPD officers attempted unsuccessfully over several minutes to get the Involved Individual to identify himself. The Involved Individual eventually provided a name, “Ronald Barry,” and a date of birth, which the UPD determined to be false. The report indicates that repeated attempts were made by the UPD to persuade the Involved Individual to provide his true identity, including advising the Involved Individual that providing a false name “could result in a criminal charge and that [the officer] did not want to arrest anyone.” The report indicates that after the Involved Individual said he would not answer additional questions, the decision was made to arrest him for false impersonation and for menacing the Campus Center employee. The report continues that the Involved Individual then backed away from the officers, and the officers were unable to handcuff him. At that point, one officer grabbed one of the Involved Individual’s arms and another officer grabbed the Involved Individual’s other arm, according to the report. When the Involved Individual continued to try to back away, the report indicates,
other officers assisted “in controlling and handcuffing him. . . . [N]o strikes, no impact weapons, and no chemical agents were used, only soft-hand control techniques . . . .” The involved officers reported that the Involved Individual was not injured and that he did not complain of injury. The report explains that other officers on the scene were not directly involved in the arrest and were occupied with other individuals who were present in the Campus Center. The Involved Individual was transported to the UPD station for processing following his arrest and he was released on appearance tickets.

With these factual conclusions detailed, the investigative report evaluates compliance by the officers with governing policies. It concludes:

The use of force in this incident has been determined to be justified and within the guidelines of training, New York State Law, and departmental policy. The force used was reasonable given the resistance displayed by [the Involved Individual]. Officers used what is commonly referred to as soft-hands techniques to gain control of [the Involved Individual]. There were no strikes used, no impact weapons, no chemical agents, nor electronic control devices used to gain control. The officers held his arms and legs to gain control in order to place handcuffs on him. From the beginning of the physical encounter to its end is approximately one minute. During this time at least one of [the Involved Individual’s] friends can be heard on body camera telling him to stop fighting back. As soon as the handcuffs are in place the second team of officers step back and the first two officers help [the Involved Individual] stand up. Again [the Involved Individual] was not injured, did not complain of injury, and has not made a complaint of excessive use of force in this incident. The video also states “9 Cops . . .” however, there were only seven (7) officers on the scene, and only four (4) had any part in the actual arrest of [the Involved Individual].

The IRC is of the opinion that the UPD investigation of the complaint, and in particular its reliance on the extensive camera-recorded video footage of the incident, the description of the incident provided by interviewed witnesses, and the call for assistance initiated by the Campus Center employee, has been conducted appropriately and that the investigation report supports a thoroughly justifiable conclusion that the involved officers did not violate policies, procedures, or their training by using excessive force in their actions relating to the Involved Individual’s arrest.