

CONFIDENTIAL FINAL INVESTIGATIVE REPORT¹

To: Title IX Coordinator Extraordinaire
From: Title IX Workshop Participants
Date: April 30, 2024
Re: Case No. 2024-0001 regarding Roxy Geller and Matthew Thomas

Procedural History and Allegations

On November 8, 2023, the University of Cincinnati received a Formal Complaint alleging that Matthew Thomas (“Thomas”) engaged in conduct towards Roxy Geller (“Geller”)² that, if true, could constitute a violation of the University’s Title IX Sexual Harassment (“the Policy”). On November 10, 2023, a Notice of Investigation was sent to both parties regarding the Formal Complaint. It alleged the following potential misconduct:

[O]n April 8, 2023, at around 11:00 p.m., [Thomas] sexually assaulted [Geller] in the basement recording studio at Nynuk Hall³ by engaging in penetrative vaginal sex without her consent. Additionally, from May 2, 2023 through May 20, 2023, [Thomas] contacted [Geller] on multiple occasions in person and via text message; such contacts were unwanted and resulted in [Geller] fearing for her personal safety.

If true, this could constitute Sexual Assault and/or Stalking pursuant to the Policy. Investigator Evelyn Gwennie was assigned to investigate this matter.⁴

Investigative Overview

The investigator interviewed the following individuals witnesses regarding the allegations in this case:⁵

- Roxy Geller, Complainant (November 13, 2023) – with advisor Phoebe Mitchell-Geller
- Matthew Thomas, Respondent (November 21, 2023) – with advisor Gerald Selleck
- Richard Paul, student – suggested by both parties (November 28, 2023)
- Jax Higgins, student – suggested by both parties (December 4, 2023)
- Adelaide Anderson, student – suggested by Thomas (December 7, 2023)
- Bowen Davis, faculty member – suggested by both parties (December 14, 2023)

¹ This Final Investigative Report is entirely fictional and was prepared as a training exercise for the University of Cincinnati for discussion. Any resemblance to any individuals or situations is entirely coincidental.

² Because both parties have raised claims in this case, they will be referred to by their last names as opposed to their roles.

³ Nynuk Hall does not actually exist on the University’s campus. Just go with it.

⁴ Both parties were given the opportunity to raise any concerns about potential bias or conflict of interest on the part of Evelyn Gwennie. Neither raised any concerns.

⁵ Normally, copies of all witness interviews and all evidence would be attached to this document. For efficiency reasons, all of the information you need for the hearing is in the body of this report.

The investigator also reached out to Amy Angel, Bob Biscuit, Candice Calloway, and David Dunning, all four of whom were identified by the parties as close friends and fellow percussion classmates. All four were non-responsive to multiple requests to participate in an interview.

Richard Paul also suggested that Andrew Summers might be an appropriate witness, as he was Thomas's roommate at the time of the incidents. However, Summers's name did not appear in any of the witness narratives regarding the reported situation, and Thomas indicated that he did not speak with Summers regarding Geller. Therefore, the investigator determined that Summers did not have relevant information and chose not to contact Summers.

In addition to conducting witnesses, the investigator gathered the following evidence, all of which is integrated into the body of the report except as noted:

- Text messages between the parties, received from Geller and confirmed as authentic by Thomas
- Text messages between Geller and Paul, received from Paul
- Eight-second recording from the recording studio on April 8, 2023, received from Geller
- Card swipe information for the recording studio on April 8-9, 2023, received from Campus Safety
- A drawing by Thomas of where items were located in the recording studio on April 8, 2023 (see Exhibit A, following this report)

The investigator requested security footage from the hallway outside the recording studio for the night of April 8-9, 2023, but Campus Safety indicated that the footage was on a two-week overwrite period and therefore no longer existed at the time that the Formal Complaint was filed.

Relevant Policy Language

The behavior is subject to the prohibitions found in the Policy at the time of the reported conduct. Relevant language is excerpted below.

Sexual Assault⁶

Sexual assault is defined as:

- Sex Offenses, Forcible: Any sexual act directed against another person, without the consent of the complainant, including instances in which the complainant is incapable of giving consent because of incapacitation.
 - Forcible Rape: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the complainant.
- ***

⁶ This is taken from the University's current policy, as are the other definitions.

Consent

An affirmative agreement through clear actions or words to engage in intimate and/or sexual activity. Individuals giving the consent must act freely, voluntarily, and with understanding of their actions. Consent can be withdrawn at any time. A person cannot give consent if the person is mentally or physically incapacitated such that the person cannot understand the fact, nature or extent of the sexual situation. Similarly, a person cannot give consent if force (expressed or implied) duress, intimidation, threats or deception are used on the person. Silence or the absence of resistance does not necessarily imply consent. Consent to some sexual acts does not imply consent to other acts, nor does prior consent to sexual activities imply ongoing future consent with that person or consent to that same sexual activity with another person. Consent does not exist when one knew or should have known of the other's incapacitation. A factor in determining consent is whether an individual has taken advantage of a position of influence or authority. Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the University to determine whether this Policy has been violated.

Stalking

Engaging in a course of conduct, on the basis of sex, directed at a specific person, that (i) would cause a reasonable person to fear for the person's safety, or (ii) the safety of others; or (iii) suffer substantial emotional distress. For purposes of this definition, course of conduct means two or more acts, including, but not limited to, acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Reasonable person means a reasonable person under similar circumstances and with similar identities to the complainant. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Summary of Evidence Gathered⁷

Background Information

The parties agree that they are both seniors scheduled to graduate in May 2025. Both parties are majoring in music performance in the area of percussion.⁸

The parties agree that they began dating in August 2022 and that they broke up on May 1, 2023. Both parties further agree that they have had no contact with each other since May 31, 2023.

Sexual Assault Allegations – April 8, 2023

⁷ Because this is a training exercise, these summaries are not nearly as thorough as we would typically like to see. We wanted to make sure you had plenty of room to identify outstanding issues for the hearing and ask questions!

⁸ Your actual percussion studio at the University of Cincinnati is probably very small and does not actually contain either of these students. Please don't let this case ruin your excellent impressions of your music students in general!

Geller's Statement

Geller stated that on the night of April 8, 2023, she was preparing to audition for orchestral positions the following year for after graduation. Geller stated that orchestral positions are very competitive, and practicing for auditions begins even prior to beginning the degree program. Geller stated that on this particular occasion, she was practicing a timpani excerpt from Beethoven's Ninth Symphony. Geller was practicing in the recording studio so that she could record her attempts and listen later to improve her musicality.

Geller stated that because the excerpts required her to move four timpani from the first floor storage closet, down the elevator and into the recording studio, she had booked a period of six hours in the recording studio, from 6:00 p.m. to midnight. This would allow her time to move her equipment, while still providing several hours of practice time.

Geller stated that she was standing at the timpani at around 10:45 p.m. when she finished the excerpt, looked up, and saw Thomas standing in the studio room with her, by the door. Geller thought this was unusual because she had been recording, and when the recorder is on, a red light goes on in the hallway to let passersby know not to enter the studio. Geller turned off the recording before she asked Thomas why he was there.

Geller stated that Thomas told her that he had been out with friends for dinner to celebrate his birthday, which was on April 9, 2023. Geller recalled that Thomas was asking her to come out with them to a bar to drink and celebrate some more. Geller told Thomas that she had planned to celebrate his birthday with him the following night, on his actual birthday, with dinner for just the two of them. Geller told the investigator she was frustrated with the conversation, because Thomas had known that this was the plan, and that Geller was not typically able to find longer recording slots available that would allow her to move her equipment into and out of the studio.

Geller stated that Thomas came further into the room and stood across from Geller, just on the other side of the timpani. Geller stated that Thomas told her that if she didn't come out, he would be incredibly disappointed. Geller stated that Thomas told her he was expecting her to "be a good girlfriend," and that the "practicing could wait." Geller stated that Thomas offered to help her take the timpani upstairs so she could leave with him.

Geller stated that she told Thomas she was uninterested in going and had a few more things to finish up. Geller stated that she asked Thomas to wait, but he said his friends were in the lobby upstairs and he couldn't wait. Geller stated that she didn't want to walk over to a bar by herself after midnight, so she said she would not go. At this point, Geller recalled that she left her timpani stool and went over to the gray percussion cabinet where mallets and other percussion equipment is kept. The cabinet is about waist height, has two cabinet doors, and the top is thickly padded so as to dampen any instruments that are placed on it. According to Geller, when she moved towards the cabinet, Thomas then switched from asking Geller to go to the bar and instead suggested that they should have sex in the recording studio.

Geller stated she was not interested in having sex in the recording studio. Geller recalled that Thomas then noted that he could bend Geller over the top of the percussion cabinet and “do [her] so quick that no one would even know.” Geller stated that she said no, but Thomas began to push her towards the cabinet. Geller stated that Thomas then pulled her leggings down and entered her from behind. Geller stated that when Thomas penetrated her against her will, she “gave up” and said, “Fine then, make it quick.” Geller stated that she felt frozen during the sexual encounter and “trapped inside her own body.” Geller stated that she did not move or make a sound during the encounter. Geller stated that Thomas finished in under a minute, withdrew, and left her to pull up her own pants. Geller stated that Thomas then left the room whistling “Ode to Joy.”

Geller stated that after this occurred, she decided to stop practicing for the night. She put her equipment away, took her CD recording, and went home. Geller stated that she showered for about a half hour and felt “incredibly bothered” by the entire incident. Geller stated that she did not listen to the CD because she had emotional difficulty revisiting the evening.

Thomas’s Statement

Thomas stated that on the evening of April 8, 2023, he went to dinner with Jax Higgins and Adelaide Anderson, who are both fellow music majors. The purpose of the dinner was to celebrate Thomas’s birthday, which was the following day. Thomas stated that they went to The Spot at around 7:30 p.m. to listen to a band that his friend Bob Biscuit plays in. Thomas stated that he had one beer during the set, which lasted until 9:30 p.m. When the set was over, Biscuit packed up his drum set and joined them at the table for a round of beers. Thomas stated that he left the Spot with Higgins, Anderson, and Biscuit at around 10:30 p.m. when Biscuit drove them back to the music school so he could drop off a cymbal he had borrowed from the storage closet.

Thomas stated that he knew Geller was in the recording studio until midnight. Thomas stated that he left Biscuit, Higgins, and Anderson in the lobby of the music building, and went downstairs to the basement. Thomas stated that he heard the timpani going and he entered the studio. Thomas stated that he stood in the doorway between the outer part of the studio and the inner part, where Geller was playing. Thomas recalled that Geller had not closed the door between the two parts of the studio.

Thomas stated that Geller looked up and saw him there as she was playing. When she was finished, she turned off the recording. Thomas stated that they talked for a few minutes about whether Geller would be interested in coming to a bar. Thomas recalled that Geller was not interested and expressed sadness that she felt she was being a “bad girlfriend.” Thomas stated that he could not recall who brought up the notion of “pre-birthday sex,” but he stated that they agree that it was something she could do to feel better about herself and still have time to practice. Thomas stated that he and Geller joked several times about turning on the recording before they had sex, but that they did not do that.

Thomas stated that Geller walked over to the grey percussion cabinet that was standing against the wall, then pulled a music stand over to block any view from the outer studio or the hallway. Thomas stated that Geller then leaned over the percussion cabinet onto one arm and tugged at the waistband of her leggings with her other hand. Thomas stated that he pulled her

leggings down, penetrated her from behind, and finished quickly so that they would not get caught. Thomas stated that Geller moaned when he entered her and seemed to be enjoying the intercourse.

Thomas stated that after he was finished, Geller pulled her pants up and they both “sort of giggled.” Then Thomas apologized for having to leave immediately to go back upstairs. Thomas stated he kissed Geller and then they agreed that they would see each other the following night for dinner. Thomas stated that when he left, Geller appeared to be setting up her timpani to continue working.

Card Swipes

The recording studio in question is secured with a card swipe system. All music majors have access to the recording studio. The investigator pulled the card swipes for the relevant time period on April 8, 2023 and found the following individuals had swiped their cards:

- 6:01 p.m. – Geller
- 6:04 p.m. – Geller
- 6:10 p.m. – Geller
- 6:14 p.m. – Geller
- 6:22 p.m. – Geller
- 7:15 p.m. – Geller
- 8:36 p.m. – Geller
- 9:48 p.m. – Geller
- 10:35 p.m. – Thomas
- 10:53 p.m. – Richard Paul
- 11:15 p.m. – Geller
- 11:18 p.m. – Geller
- 11:24 p.m. – Geller
- 11:28 p.m. – Geller
- 11:36 p.m. -- Geller

Richard Paul’s Statement

Richard Paul is a fellow music student and a rising senior in the vocal music program. He is also the singer in Bob Biscuit’s band. Paul stated that he is closer to Geller than Thomas, and indicated that he does not like Thomas. Paul stated that his distaste for Thomas predated these allegations, and that he found Thomas to be arrogant.

Paul stated that on the night of April 8, 2023, he finished playing at the Spot around 9:30 and then went back to the music building to drop off his bag. Paul stated that he sat in the lobby until about 10:30 talking with friends, then went to go find another friend in a practice room in the basement. Paul stated that he did not see Jax, Adelaide, or Bob in the lobby while he was there. Paul stated that his friend was not in any of the basement practice rooms.

Paul stated that as he was searching, he noticed that someone was in the recording studio. Paul stated that he assumed it could be Geller, as Geller often took the late slot on Saturday night

to practice. Paul stated that the green light was on in the hallway, which indicates that no one is recording. Paul stated that there is a small window on the studio door so he could see the studio was in use, but he “didn’t really check to see what was going inside before [he] went in.”

Paul stated that when he got into the outer studio, the door between the two parts of the studio was closed. Richard stated that there is a large picture window between the two parts of the studio, and it was immediately apparent that Geller and Thomas were having sex. Paul stated that he could tell because what occurs in the inner studio is broadcast to the outer studio, and they were making “sex noises.” Paul said that he watched for a moment in shock, then decided that he would hit the record button “to be funny.” He stated that he recorded “a few seconds” of their sex noises, then turned the recording off and left. Paul stated that he thought Geller would hear it when she went to review the recording and that it would make her laugh. Paul stated that when he stopped the recording, it looked like Thomas was about to finish, so Paul left quickly.

Paul stated that he left through the lobby, said “hi” briefly to Higgins, Anderson, and Biscuit, and then went back to his apartment off campus. Richard stated that he texted Geller around midnight:



Higgins and Anderson

Both Higgins and Anderson confirmed that they were at dinner with Thomas at the Spot and that they arrived at the music building sometime around 10:30 p.m. They stated that they assisted Biscuit in putting a cymbal back into storage, got bottles of water out of the machine, and sat in the lobby waiting while Thomas went to see Geller in the basement. Higgins and Anderson confirmed that they talked briefly with Paul, and then Thomas arrived shortly thereafter, at which point Higgins, Anderson, Thomas, and Biscuit went to a bar called “Onward Ho.” Higgins and Anderson stated that Thomas left the bar at about 1:30 a.m. to go home, and they took an Uber in the opposite direction to a house they shared off campus. Biscuit stayed at the bar.

When asked by the investigator, neither Higgins nor Anderson recalled anything unusual about Thomas that evening. Higgins did recall Biscuit asking Thomas whether he “got some” in the basement because he had been gone so long, but Thomas did not respond. Anderson did not recall any such exchange.

Recording

Geller provided the investigator with a copy of the recording that was made on April 8, 2023. While the majority of the CD involves timpani, there are eight seconds at the end of the recording that sound like two individuals – one with a higher voice and one with a deeper voice – making moaning noises. The recording is available in the evidence file.⁹

Stalking Allegations

Both parties agree that they broke up on May 1, 2023 due to an argument. Both parties further agree that the argument was not related to the allegations in this case. The parties further agree that they had the following contact between May 1 and May 20, 2023:

Date/Time	Contact
May 2, 2:32 p.m.	Thomas texts, “I’m in practice room 2 if you want to talk”
May 3, 4:50 p.m.	Thomas texts, “I grabbed an extra coffee for you if you want one. Room 4”
May 4, 8:32 p.m.	Thomas texts, “Are you in commencement band? Don’t want to make things awkward”
May 5, 6:22 p.m.	Geller calls Thomas for eight minutes of conversation.
May 8, 10:24 a.m.	Thomas texts, “Since we’re still friends, wanna come with us to breakfast? Whole gang is going”
May 11, 11:45 p.m.	Thomas texts, “I’m getting mixed messages from you. If we are still friends, why won’t you return my messages? Do you want me to stop contacting you entirely?” Geller responds, “I don’t want to talk to you right now”

⁹ No, it’s not. You’re going to have to use your imagination on this one.

	Thomas responds, "That's not what you said the other night. I'm confused. What changed?"
May 12, 8:42 p.m.	Thomas texts, "I know you're in 3. If you want to chat, come up to the lobby. No one is around right now."
May 14, 12:04 p.m.	Geller texts, "You don't have to keep bringing me coffee you know." Thomas texts, "I know, and you don't have to keep taking it. I just don't want to lose you" Geller responds, "Maybe I'm better lost" Thomas responds, "Don't be that way"
May 19, 6:00 p.m.	Both parties attend the only commencement band rehearsal.
May 20, 2:00 p.m.	Both parties perform at commencement.
May 20, 4:22 p.m.	Thomas texts, "Come out with us to celebrate being done for the year! I can drive you home later. I am the DD." Geller texts, "I don't want to be around you right now. Just leave me alone." Thomas responds, "But you were fine today?" Geller texts, "I can't be in a car with a rapist. I can't be that close to you anymore." Thomas responds, "What?!? Who told you I was a rapist?" Geller texts, "I was there. I know." Thomas responds, "That wasn't rape and you know it. You wanted it just as much as I did." Geller texts, "I'm blocking you now."

Phone Conversation

Geller stated that during the phone conversation, she told Thomas that they were "over" and he should "never call again." Geller stated that Thomas was upset and she spent some time trying to calm him down before telling him, "Your emotions are no longer my problem. I have things to do" and hanging up.

Thomas stated that during the phone conversation, he and Geller talked about ways to move on in a way that they would still be able to be in the same space for the final year of school without making things awkward. Thomas stated they agreed they would still be friends but "distant," and that it was OK to "still go out as a group." Thomas stated that Geller told him she still was

“processing the relationship and the breakup,” so Thomas told her that he was “always just a practice room away” if she felt like talking more. Thomas stated that he told her that he wasn’t sure he’d always be able to talk, because he had some “big emotions” as well, and Geller told him that he would probably have to “deal with [his] own emotions because [she] can’t handle them anymore.”

Paul stated that he was with Geller during the last part of the conversation and that she was “visibly upset” when she hung up. Paul stated that Geller put her head on his shoulder and “cried for an hour” afterwards.

Commencement Band

Geller stated that during commencement band, she was appointed as the section leader, which meant that she assigned all of the parts. Geller stated that she used her typical rotation to ensure that she, Thomas, and Higgins all got to play different parts for each song. Geller stated that commencement music is “easy and boring” and this kept things a little more “lively.”

Thomas agreed that Geller assigned parts, noting that for “Pomp and Circumstance,” Geller assigned herself the snare drum and Thomas the bass drum. Thomas noted that the two instruments are within inches of each other. In contrast, Thomas noted that Higgins played cymbals and could roam freely around the entire section if she wished—and she did.

Higgins stated that she asked Geller if she could play cymbals during “Pomp and Circumstance,” and Geller told her that she had already assigned her that part. Higgins stated that she knew Geller and Thomas had broken up and thought it might be “weird,” but reported that both parties were very professional throughout both the rehearsal and the performance.

Davies reported that he noticed nothing unusual during commencement band except that, during “Pomp and Circumstance,” all three percussionists began to “goof off” while playing. Davies stated that this is typical for this song, as the percussion part is particularly repetitive. Davies did not feel the behavior was inappropriate enough to correct it during the performance or address it afterwards. Davies provided an audio recording of the concert, but it does not contain any discernable information about either of the parties.¹⁰

Coffee

Both parties agree that Thomas brought Geller coffee from the music lounge on several occasions during this time period.

Geller stated that Thomas would show up outside the practice room door with two coffees, knock, hand one to her, and then walk away. Geller stated she felt like she had to accept, but that she did not drink the coffee. Geller said she would throw away the coffee later when Thomas went home. Geller said the idea of drinking anything Thomas got for her made her “physically ill.”

¹⁰ If the parties wish to review it, they may view it here: <https://www.youtube.com/watch?v=AdQj55J9Vh8>.

Thomas stated that he had always brought coffee back for Geller when they were both practicing, and that this predated their relationship. He stated that Geller always seemed appreciative for the coffee. Thomas stated that Geller never told him to stop bringing coffee, and that on one occasion, Geller came to his practice room when he told her he had extra coffee.

Geller denies going to Thomas's practice room for coffee at any time during the month of May, explaining that she was "terrified of him."

Impact

Geller stated that Thomas knew her practice schedule, as it was taped to the door of each practice room. Geller stated that Thomas always seemed to be in the hallway outside the practice rooms, or in the room next door. Geller stated that she began using a music stand to block the window in her practice room so she would not see Thomas pass by. Geller stated that after the Notice of Allegations came out, she arranged with her studio professor to practice in the professor's office instead of the practice rooms so she could avoid seeing Thomas. Geller stated that as the month of May wore on, Geller began to get so frightened of seeing Thomas that she would be physically ill before she left to go to classes each day.

Thomas stated that he did not observe any marked change in Geller's behavior towards him after the breakup until the point where she accused him of rape. Before that, Thomas explained that Geller was fairly easy going and did not seem to be worried about his presence.

Anderson stated that after the break up, Geller often asked if Anderson had seen Thomas. Anderson stated that the question was not asked in a way that revealed whether Geller wanted to see or avoid Thomas. Anderson stated that like all music majors, Thomas was usually around during the days. Anderson stated she did not observe Thomas intentionally seeking out Geller.

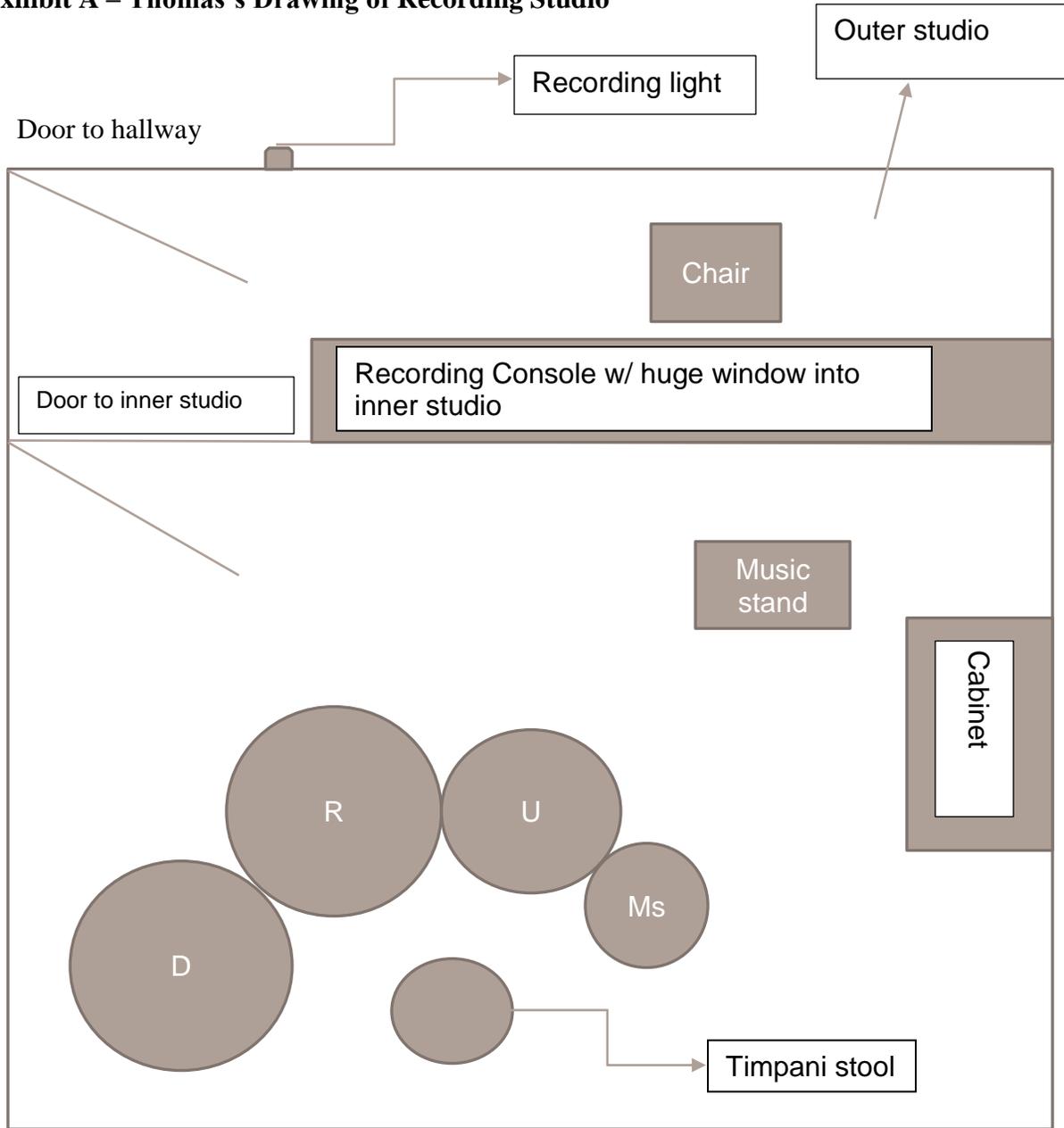
Higgins stated that after the break up, she only saw Thomas and Geller interact once outside Thomas's practice room in the hallway. They were both holding coffee, and the conversation was not interesting so Higgins did not listen.

Paul stated that after the break up, Geller came to him and told him about the "horrible rape" she had experienced on April 8th. That is when Paul "confessed" that he had recorded part of the incident. Paul stated that he told Geller he felt "terrible" that he was there and did nothing. Paul stated that Geller told him that there was "no way [he] could have known." Paul stated that Geller often talked with him late at night to process her relationship with Thomas. Paul stated that Geller told him she "feared" Thomas and that if she got too close to him it was like "it was happening all over again." Paul stated he started walking her to her classes and doing homework outside her practice room, and then the percussion professor's studio, to help her feel safer.

Conclusion

The conduct was alleged to have occurred on campus, between two students, in violation of the Policy. As this investigation is concluded, the matter is referred to hearing according to the Policy.

Exhibit A – Thomas’s Drawing of Recording Studio



Both doors have very narrow slit windows.