



The Peregrine Corporation
Specialists in Defense Dynamics

October 13, 2002

David Christine, Esq.
Monroe County District Attorney's Office
Monroe County Courthouse
7th & Monroe Streets
Stroudsburg, Pennsylvania 18360

Re: Commonwealth of Pennsylvania v. Mark A. Say

Dear Mr. Christine:

The following will constitute my report in the above-referenced matter.

I was first contacted by your office in August of 2001, at which time I agreed to work on the case. Thereafter, I received from your office and reviewed various documents, including police reports, witness statements, autopsy report, police laboratory reports and gunshot residue tests. On October 28, 2001, I met with Detective Harry Lewis at the Pocono Mountain Regional Police Department, where I looked at photographs taken by the Pennsylvania State Police, and examined various items of physical evidence, including the subject revolver, bullet fragments, ammunition and other ballistic evidence. I also test-fired the revolver that day at a nearby range.

The subject revolver is a 5-shot Taurus .357 Magnum double-action model, serial number RA43486, having fixed sights, a shrouded ejector rod, black rubber Taurus grips, and an integral safety lock on the hammer. Trigger pull as measured with weights is between 3.25 and 3.50 pounds single action, and approximately 13.5 pounds double action. The design of this revolver incorporates a transfer bar safety system, which was functioning as designed. Accordingly, under the circumstances involved in this case, this revolver will fire only if it is loaded and the trigger is pulled and held rearward with the amount of force described above.

The police reports indicate that this revolver was found at the shooting scene with two fired cartridge cases in the cylinder, namely the one directly under the hammer (most recently fired) and the one in the chamber in position to have been under the hammer next prior to that. The other three chambers contained live .38 Special Winchester brand cartridges which, together with the fired cases, are of the same apparent type (Winchester "white box" 150 gr. round nosed lead, product number Q4196) as a box of ammunition recovered at the residence. This ammunition can be fired in the subject revolver, and is consistent with the bullet fragments

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recovered from the victim's skull and from the room where the shooting occurred.

Mark Say explained the extra fired case in the revolver's cylinder (that is, the case other than the one which presumably produced the fatal wound to the victim's head) by saying that he always kept a fired case under the loaded revolver's hammer for safety. This practice makes no sense, especially when claimed to be done by a presumably knowledgeable gun owner such as Say, who I understand had been a firearms dealer. Unlike the single-action revolvers of the 1800's, double-action revolvers such as this one, from the early 1900's onward, have been able to be safely carried fully loaded with a live round under the hammer, are designed and intended to be carried or kept fully loaded in that way, and are commonly understood by shooters to be safe to load and carry that way. I do not know any user of a double-action revolver who keeps it with a fired case under the hammer for safety, as Say says was his practice.

Firing the revolver for accuracy, from a hand-held standing position I was able to put three shots in a small cloverleaf group with the holes roughly touching one another in the head of a police silhouette target at about 5 yards distance. This is an accurate revolver.

When a revolver such as this is fired, in addition to the bullet which exits the muzzle, the revolver forcefully spews a considerable quantity of gunshot residue from both the muzzle and the cylinder gap. These products of the firing process generally include sparks and flame, smoke, soot, burned, burning and sometimes unburned particles of gunpowder, primer residue, particles of lead and other bullet material, and bullet lubricant if used. If part of a person's body or clothing is within about two feet of the muzzle or a few inches of the cylinder gap of the revolver when it is fired, the result is the depositing of these gunshot materials on the body or clothing in a manner which can be seen and/or determined by various types of scientific testing. In addition to the depositing of gunshot residues on the victim's body and/or clothing, a bullet wound produced with the gun's muzzle in contact or near-contact with, or proximity to, the body (as would be expected in a suicide) will typically result in particles of burned, unburned, or burning gunpowder being imbedded in the victim's skin, in a pattern of tiny marks called powder stippling or powder tattooing. In a close-range shot, there may also be powder burns caused by the flame or sparks emitted from the gun's muzzle upon firing.

I fired the subject revolver using the Winchester ammunition at a cardboard target and some white cotton (T-shirt-type) fabric to capture and demonstrate the muzzle discharge patterns. This ammunition deposits considerable visible discharge on the target at distances of 1", 6" and 12" from the muzzle. The lack of any significant amount of gunshot residue on the victim is inconsistent with a self-inflicted shot to her head, as is the lack of powder stippling or tattooing around the entrance wound.

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The above facts and opinions are held and expressed to a reasonable degree of professional certainty.

Very truly yours,

Emanuel Kapelsohn
President

1 - refused to talk to me - / when manner -

1 - know Dr. Mullahis removed suture prior

to death - (blood cloth) - did he remove
talk to him - ask if he did remove blood cloth
re-stitched -

2/1/01

2 - you are a forensic pathologist

3 - what is a forensic pathologist?
when complete manner of death

4 - did you perform a forensic autopsy
Review hospital records -

5 - what is a forensic autopsy -

DEBRIDEMENT -

6 - hair shaved around wound -

you removed clotted blood - (around wound)

7. samples only taken from wound area -
(bagged - good practice)

8. bleeding profusely -

Hair can be a filter? ?
What do you mean?

- 9 - hair only taken from wound area -
- 10 - hair may act as a filter -
- 11 - Walling 5'4" $\frac{1}{2}$
- 12 - arrived at morgue w/ paper bags -
(preserve trace evidence) - no
- 13 - hair coated with blood. 4 to 5" 486 -
- 14 - direction of bullet right to left front to
back and upward - consistent w/ self
inflicted gunshot wound -
- 15 - find that significant -

16. one bullet not two —
17. bullet fractured & created a 2nd wound
18. knew this case involved the use of a weapon —
19. knew that yet you did not take any steps to recover primers from her hands or check her hands for primers —.
20. Agree it is good forensic practice to examine hands for presence of trace evidence — powder grain etc — P 349 —

21. Want to read you a statement and ask if you agree - "after receipt of the body, ..."

p 349 Di Maio - X rays should be taken the next step is to recover any primer residue from the hands -

22. Familiar with Vincent Di Maio -

23. " " Gunshot Wounds -

recognize this book as authoritative -

Agree

24. significant number of self-inflicted gunshot wounds are of intermediate range - p 355-6

25. range too great there would not be any powder tattooing or stripping. would there -

26. ^{agree} individuals who shoot themselves with handguns
the most common sites are head 81%, chest 17%
& abdomen 2% p 357 Di Maio
(1)

27. Agree - when individuals shoot themselves they
do not necessarily hold the weapon the same
way they would if they were firing the weapon
at a target, Commonly, they will hold a
handgun with the fingers wrapped around
the back of the butt, using the thumb
to depress to depress the trigger firing the
weapon. Di Maio p 358 - (1)

agree

28. In the case of a revolver, soot may be deposited on the palm from cylinder gap.
Di Maio p 358 - (2)

agree

29. With 2" barrel guns, the soot is in the midpalm.
p 358 Di Maio (3)

30. 2" barrel gun in this case, correct -

31. yet hands bagged to preserve evidence

32. but hands not tested -

33. not good forensic practice was it dr.

34. then you disagree with Dr. Di Maio -

42959

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Special Skills:

Ballistics Expert, Firearms Examination, Microscopy, Toolmarks, Shooting Reconstruction's, Laser Trajectory, Gunshot Patterns, Evaluation of Police Documents and Trial Preparations. Have years of training, by both the New York City Police and Corrections Departments, in the use of revolvers, semi-auto pistol and shotgun. I have been rated as an Expert in both the .38cal revolver and .9mm cal pistol.

Work Experience:

9/89 - 9/98 **Ballistics Squad-** Firearms Examination and Microscopic Analysis

10/87 - 9/89 **Warrant Division-** Fugitive Felon Apprehensions and Warrant Investigations

6/82 - 10/87 **63rd Precinct-** Patrol Duties and Warrant Enforcement

9/78 - 1/82 **NYC Correction Department-** Correction Officer

Honors & Awards

- 3/83 VFW Post # 1060 "Cop of the Year 1982"
- 6/83 63rd Pct. "Cop of the Month"
- 6/96 Chief of Detective's Achievement Award
- 4/98 DEA "Detective of the Month"

Coursework

- 3/83 NYC Police Department NYC, NY
Auto Crime Investigation Course

- 3/95 Glock Firearms Mahopac, NY
Weapons Armorer Course
- 9/96 FBI Academy, Quantico, Va
Crime Scene Reconstruction of Shooting Incidents
- 3/97 Heckler & Koch, Toms River, NJ
Weapons Armorer Course
- 11/97 NYC Police Department, NYC, NY
Criminal Investigation Course
- 8/97 Mossberg Firearms, NYC, NY
Weapons Armorer Course
- 1/98 NYC Police Department, NYC, NY
Evidence Collection Team Training Course

Professional Affiliations

- Association of Firearms and Toolmark Examiners (AFTE)
- International Association of Identification (IAI) (NYSIAI)
- International Association of Wound Ballistics (IAWB)
- Association of Crime Scene Reconstruction (ACSR)
- NYS Association of Criminal Defense Lawyers (NYSACDL)

Certifications

- Private Investigations
- Firearm Operability Examiner
- Microscopic Examiner

Education

- 9/71 - 6/73 York College, Queens, NY
Geology / Oceanography Major
No Degree

Experience

Twenty years of Law Enforcement Training and Experience in both the NYC Police and Corrections Departments. Assignments included Patrol, Warrant Enforcement and assignment to the Police Laboratory.

My duties have allowed me to experience many facets of police work including: Firearms and Microscopic examination of Toolmarks, Shooting Scene Reconstruction and Laser Trajectory Analysis, Gunshot Pattern and Trigger-pull Tests, Latent Fingerprint and Firearm Serial Number Restorations.

I have had occasion to testify as an Expert Witness over 500 times in Federal, State, Criminal and Family Courts. My testimony's have been given in Capital Murder, Murder, Assault, Police involved shootings and cases where Suicide / Homicide were factors.

I have tested, for operability, 8000+ firearms. These include revolvers, semi and fully automatic pistols and rifles, shotguns and homemade devices. My testimony has covered many types of cases; Police involved shootings, accidental discharges, weapon function and multiple weapon cases.

I have also been assigned 4000+ microscopic cases and performed in excess of 10,000 microscopic examinations. These cases have given me the opportunity to examine many types of Ballistic evidence. These include bullets and fragments of bullets, discharged shell cases, live cartridges and shotgun evidence. My work entailed, caliber designation, weight and general rifling characteristics of bullets and microscopic examination of evidence to determine if submitted items were fired from the same weapon or not.

I have also had the opportunity to train and lecture Detectives, Police Officers, District Attorneys, Federal Prosecutors, Defense Attorneys, Medical Examiners, Foreign Military and Police Departments, Authors and Journalists. I have also performed as a training officer for newly assigned members of the Ballistics Squad in the fields of firearm operability, microscopic examination and courtroom testimony.

During my assignment to the Police Laboratory, the Ballistics Squad has attained accreditation by the Association of Crime Laboratory Directors (ASCLAD)

Kapelsohn

1. grad of Yale BA - 1974
2. law degree - Harvard JD - 1977
3. ~~practice areas~~ with: Blank, Rome, Comisky &
~~active practice of law~~ - Mc Couley -
4. practiced with them from - Did you review
prop. records -
5. areas of practice:
 - Civil litigation
 - Products liability
 - Contract litigation
 - Construction litigation
 - commercial litigation
 - personal injury
 - alternative dispute resolution

- Ever work patrol officer fire arms consultant
6A Ever worked in the ballistics squad -
6. Have you ever worked as a police man -
 7. Need ^{subjects} areas he has testified about -
 8. You are an expert on about everything.

9. received various documents - in report you

mention police reports
witness statements
autopsy report
police laboratory reports
gunshot residue tests

Anything else -

82-83 caliber -
what length barrel -

type ammo -

you make these
pictures -

10. No hospital records -

no ambulance records -

how transported

11. Many things determine if these ^{how much} ~~will be~~ GRS

as a subject - length of barrel

angle of gun to target

distance of gun to target

type of powder -

intermediate objects HAIR -

filter

GRS - substantially absent at 12 in or more -

shot directly at targets you used -

When you aware of the angle of the bullet

in this case - right to left
front to back
upward -

Upward trajectory & angle would affect the amount of GSR deposited would it not -

Distance from target would as well -

Lack of GSR on victim inconsistent with self-inflicted wound - Also lack of powder or stippling - ~~Would not~~ Blood

from wound could work way GSR -
tweels pined against wound could as well
work from helicopter rotor could remove
GSR as well

compress at hospital to stop bleeding could
also remove GSR -

hair ~~acts~~ acts as a filter ~~doesn't it~~ doesn't it

That could prevent stepping or tattooing
defect - the type of powder in shell
is also important -

did you determine the type of powder in
the bullets -

if flake would not penetrate the hair -

also good practice to test hands of deceased
for CSR _

In hand the CSR would be found in
the mid palm.



OFFICE OF THE DISTRICT ATTORNEY

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF MONROE

COURTHOUSE

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FROM: E. KAPELSOHN

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Short Biography:

Emanuel Kapelsohn, President of The Peregrine Corporation, is an internationally recognized firearms training consultant. Since 1980, he has instructed over 13,000 police and security officers, federal agents, military personnel and civilians throughout the United States and abroad.

Holding a degree with honors from Yale University and a law degree from Harvard, Mr. Kapelsohn is a practicing trial attorney in addition to his firearms consulting.

He is a vice president and director of the International Association of Law Enforcement Firearms Instructors, member of the Police Marksman Association National Advisory Board, and charter member and staff instructor of the American Society of Law Enforcement Trainers. He is certified as a law enforcement instructor in handgun, shotgun, patrol rifle, countersniper rifle, submachine gun, defensive tactics, handgun retention, baton, pepper spray, less lethal impact munitions, Taser, FATS, psycho-motor skill design, use of force, and as an executive protection specialist. He has for many years been a regular featured presenter at regional, national and international instructor conferences.

Mr. Kapelsohn has consulted, developed training programs and materials, and certified instructors and armorers for several leading firearms manufacturers. He has authored over 90 published articles on firearms and training, is Associate Editor of "Standards & Practices Reference Guide for Law Enforcement Firearms Instructors," and principal author of "Firearms Training Standards for Law Enforcement Personnel."

Mr. Kapelsohn's activities also include litigation consulting and expert testimony in cases involving firearms and use of force. He has testified in state and federal courts throughout the country, and by invitation before both houses of Congress. Mr. Kapelsohn has worked in both civil and criminal cases and has been retained by attorneys for plaintiffs, the prosecution and defense. Subjects on which he has testified include gun accidents, firearms safety, gun handling procedures, gun storage, firearms design, operability, trajectories, velocities, ballistics, ricochets, ejection patterns, proximity testing, gunshot evidence, bullet wounds, recreation of shooting scenes, bullet penetration, shooting range safety, hunting accidents, holsters and other shooting products, self defense, knives and other weapons, involuntary muscular contraction and accidental discharge, police and security firearms training, tactics and procedures, etc.

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Emanuel Kapelsohn, (Associate) born Newark, New Jersey, April 23, 1952; admitted to bar, 1978, New York; 1994, Pennsylvania. **Education:** Yale College (B.A., cum laude, 1974); Harvard University (J.D., 1977). Principal Author: Firearms Training Standards for Law Enforcement Personnel (IALEFI, 1994). Associate Editor, Standards and Practices Reference Guide for Law Enforcement Firearms Instructors (IALEFI, 1995). **Member:** The Association of Trial Lawyers of America; American Inns of Court; American Society for Industrial Security; American Society of Law Enforcement Trainers; Pennsylvania Trial Lawyers Association; International Association of Law Enforcement Firearms Instructors (Vice President and Director). (Resident, Allentown Office). **Practice Areas:** Civil Litigation; Products Liability; Contract Litigation; Construction Litigation; Commercial Litigation; Personal Injury; Alternative Dispute Resolution. Send an Email.

Timothy D. Katsiff, (Associate) born Philadelphia, Pennsylvania, December 30, 1968; admitted to bar, 1995, Pennsylvania. **Education:** University of Chicago (B.A., 1991); Cornell University (J.D., 1994). Articles Editor, Cornell Journal of Law and Public Policy. **Practice Areas:** Complex Commercial Litigation; Intellectual Property Litigation; Partnership Law; Unfair Trade; Employment Litigation. Send an Email.

Michael D. Keffer, (Associate) born Spring Lake Heights, New Jersey, July 8, 1976; admitted to bar, 2001, Pennsylvania; 2002, New Jersey. **Education:** Villanova University (B.A., magna cum laude, 1998); University of Pennsylvania Law School (J.D., cum laude, 2001). **Practice Areas:** Labor and Employment Law. Send an Email.

William W. Keffer, (Associate) born Philadelphia, Pennsylvania, September 21, 1966; admitted to bar, 1994, Pennsylvania; 1995, New Jersey and U.S. District Court, Eastern District of Pennsylvania. **Education:** Denison University (B.A., 1988); Widener University (J.D., 1994). Staff Articles Advisor, Delaware Journal of Corporate Law. **Practice Areas:** Real Estate; Business Law. Send an Email.

William F. Kerr, (Associate) born Norristown, Pennsylvania, January 20, 1958; admitted to bar, 1991, Pennsylvania. **Education:** Delaware Valley College (B.S., 1979); Rutgers University (M.C.R.P., 1982); Temple University (J.D., 1991). **Practice Areas:** Land Use; Zoning Law; Real Estate Tax Assessment; Real Estate Valuation; Property Tax Abatement; Property Tax Appeals; Real Estate Taxation; Eminent Domain. Send an Email.

Ann E. Kim, (Associate) born Seoul, Korea, February 24, 1966; admitted to bar, 1992, New York; 1993, New Jersey and Pennsylvania. **Education:** Drexel University (B.S., summa cum laude, 1988); Temple University (J.D., cum laude, 1991). **Practice Areas:** Commercial Litigation; Appellate Litigation; Banking Litigation; Insurance Litigation; Breach of Contract Law. Send an Email.

Jonathan M. Korn, (Associate) born Philadelphia, Pennsylvania, September 6, 1967; admitted to bar, 1992, New Jersey; 1993, New York; 1995, U.S. District Court, Southern and Eastern Districts of New York; U.S. Court of Appeals, Third Circuit; U.S. District Court, District of New Jersey; 2002, Pennsylvania and U.S. District Court, Eastern District of Pennsylvania. **Education:** Duke University (B.A., cum laude, 1989); University of Pennsylvania (J.D., 1992). Trustee, New Jersey State Bar Association. Trustee and Board of Trustees, Camden County Council on Alcoholism and Drug Abuse, Inc. **Member:** Camden County, New Jersey State (Past Chair, Young Lawyers Division, 2000-2001; Member, Task Force on Diversity) and American Bar Associations. (Resident, Cherry Hill, New Jersey Office). **Practice Areas:** Complex Commercial Litigation; Banking Litigation; Employment Litigation; Drug and Medical Device Defense; Trade Secrets. Send an Email.

Elisa Cohen Laccianca, (Associate) born Philadelphia, Pennsylvania, January 7, 1973;

Pocono Mountain Regional Police Department
Supplemental Report
Incident # 55285-00

On 10/28/2001 at approximately 1000 hrs, Det/Sgt. Jeff Bowman and I met with Emanuel Kapelsohn, who is a ballistic expert retained by the District Attorney's Office. He came to our headquarters to evaluate and examine the firearm, ammunition and projectiles. We went to our outdoor range, where Kapelsohn test fired the firearm at various distances. Kapelsohn will generate a report, which will be forwarded to this detective.

Det. Harry W. Lewis

**OFFICE OF THE DISTRICT ATTORNEY****COMMONWEALTH OF PENNSYLVANIA
COUNTY OF MONROE****COURTHOUSE****STROUDSBURG, PENNSYLVANIA 18360-2117****MARK P. PAZUHANICH
DISTRICT ATTORNEY****TEL: (570) 420-3470
FAX: (570) 420-3482****TELEFAX COVER PAGE**TO: *Joseph Sklarosky*TELEFAX NUMBER: *570-283-5096*FROM: *Janet Gable*

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October 13, 2002

David Christine, Esq.
Monroe County District Attorney's Office
Monroe County Courthouse
7th & Monroe Streets
Stroudsburg, Pennsylvania 18360

Re: Commonwealth of Pennsylvania v. Mark A. Say

Dear Mr. Christine:

The following will constitute my report in the above-referenced matter.

I was first contacted by your office in August of 2001, at which time I agreed to work on the case. Thereafter, I received from your office and reviewed various documents, including police reports, witness statements, autopsy report, police laboratory reports and gunshot residue tests. On October 28, 2001, I met with Detective Harry Lewis at the Pocono Mountain Regional Police Department, where I looked at photographs taken by the Pennsylvania State Police, and examined various items of physical evidence, including the subject revolver, bullet fragments, ammunition and other ballistic evidence. I also test-fired the revolver that day at a nearby range.

The subject revolver is a 5-shot Taurus .357 Magnum double-action model, serial number RA43486, having fixed sights, a shrouded ejector rod, black rubber Taurus grips, and an integral safety lock on the hammer. Trigger pull as measured with weights is between 3.25 and 3.50 pounds single action, and approximately 13.5 pounds double action. The design of this revolver incorporates a transfer bar safety system, which was functioning as designed. Accordingly, under the circumstances involved in this case, this revolver will fire only if it is loaded and the trigger is pulled and held rearward with the amount of force described above.

The police reports indicate that this revolver was found at the shooting scene with two fired cartridge cases in the cylinder, namely the one directly under the hammer (most recently fired) and the one in the chamber in position to have been under the hammer next prior to that. The other three chambers contained live .38 Special Winchester brand cartridges which, together with the fired cases, are of the same apparent type (Winchester "white box" 150 gr. round nosed lead, product number Q4196) as a box of ammunition recovered at the residence. This ammunition can be fired in the subject revolver, and is consistent with the bullet fragments

David Christine, Esq.
October 13, 2002
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recovered from the victim's skull and from the room where the shooting occurred.

Mark Say explained the extra fired case in the revolver's cylinder (that is, the case other than the one which presumably produced the fatal wound to the victim's head) by saying that he always kept a fired case under the loaded revolver's hammer for safety. This practice makes no sense, especially when claimed to be done by a presumably-knowledgeable gun owner such as Say, who I understand had been a firearms dealer. Unlike the single-action revolvers of the 1800's, double-action revolvers such as this one, from the early 1900's onward, have been able to be safely carried fully loaded with a live round under the hammer, are designed and intended to be carried or kept fully loaded in that way, and are commonly understood by shooters to be safe to load and carry that way. I do not know any user of a double-action revolver who keeps it with a fired case under the hammer for safety, as Say says was his practice.

Firing the revolver for accuracy, from a hand-held standing position I was able to put three shots in a small cloverleaf group with the holes roughly touching one another in the head of a police silhouette target at about 5 yards distance. This is an accurate revolver.

When a revolver such as this is fired, in addition to the bullet which exits the muzzle, the revolver forcefully spews a considerable quantity of gunshot residue from both the muzzle and the cylinder gap. These products of the firing process generally include sparks and flame, smoke, soot, burned, burning and sometimes-unburned particles of gunpowder, primer residue, particles of lead and other bullet material, and bullet lubricant if used. If part of a person's body or clothing is within about two feet of the muzzle or a few inches of the cylinder gap of the revolver when it is fired, the result is the depositing of these gunshot materials on the body or clothing in a manner which can be seen and/or determined by various types of scientific testing. In addition to the depositing of gunshot residues on the victim's body and/or clothing, a bullet wound produced with the gun's muzzle in contact or near-contact with, or proximity to, the body (as would be expected in a suicide) will typically result in particles of burned, unburned, or burning gunpowder being imbedded in the victim's skin, in a pattern of tiny marks called powder stippling or powder tattooing. In a close-range shot, there may also be powder burns caused by the flame or sparks emitted from the gun's muzzle upon firing.

I fired the subject revolver using the Winchester ammunition at a cardboard target and some white cotton (T-shirt-type) fabric to capture and demonstrate the muzzle discharge patterns. This ammunition deposits considerable visible discharge on the target at distances of 1", 6" and 12" from the muzzle. The lack of any significant amount of gunshot residue on the victim is inconsistent with a self-inflicted shot to her head, as is the lack of powder stippling or tattooing around the entrance wound.

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The above facts and opinions are held and expressed to a reasonable degree of professional certainty.

Very truly yours,

Emanuel Kapelsohn
President