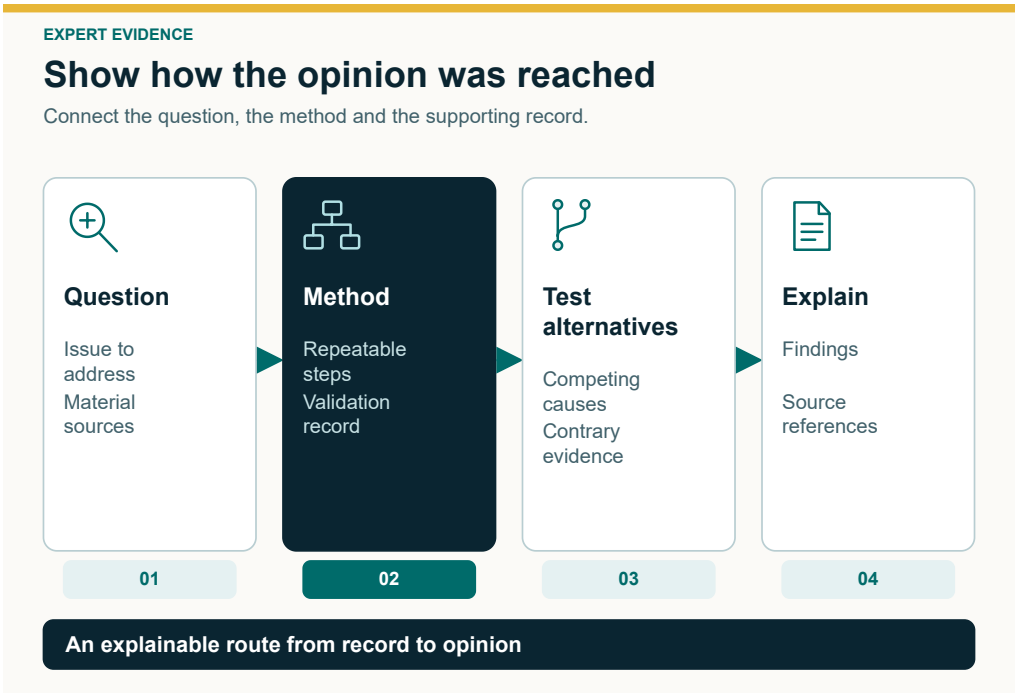
Building Digital Expert Evidence That Survives Frye and Daubert

New York applies Frye in state court and federal courts apply Rule 702, but the examiner's job is the same under both: preserve the source, use an explainable method, test the alternatives and state the limits. This note shows how that work is documented so counsel can defend it. Frye/Daubert challenge readiness starts on day one, not the week before the hearing.

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New York state courts generally address novel scientific evidence through Frye, while federal courts apply Rule 702 and Daubert case law. A digital forensics expert is responsible for the quality of the technical foundation placed in counsel's hands.



The opinion follows a technical question through a documented method and tested alternative explanations.

Document the Technical Basis for an Expert Opinion

A methodology goes well beyond the tool name. The work should identify the proposition, the source material, the acquisition method, the artifacts relied on, the validation performed, and the inferential step from observation to opinion. If the opinion depends on a timestamp, deleted record, device association, identity event, location estimate, or classifier output, the examiner should be able to explain what produced that record and what else could produce it.

That preparation is useful long before a motion. It helps counsel decide whether the evidence supports an affirmative opinion, a narrower statement, a rebuttal point, or no opinion at all.

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Document Methods, Assumptions and Limits Early

Retain forensic images, native exports, hash records, tool versions, settings, query terms, scripts, error logs, notes, and representative output. Corroborate important findings through another artifact or method when practical. Record unsuccessful tests and contrary evidence. A clean workpaper trail that can be replayed is what persuades.

The examiner defines the disputed technical fact before selecting tools, preserves the highest quality source and documents custody, records settings, versions, filters, errors and exclusions, tests ordinary and competing explanations, and keeps observation, inference, supplied fact and legal assumption visibly separate.

Keep Technical and Legal Roles Separate

The expert can explain reliability, reproducibility, validation, error sources, field practice, and the basis of an opinion. Counsel addresses admissibility law, burden, relevance, and the requested relief. A coordinated record allows each professional to stay within that role.

Primary Sources and Technical References

- U.S. Courts, Federal Rules of Evidence, including Rule 702 https://www.uscourts.gov/forms-rules/current-rules-practice-procedure/federal-rules-evidence
- New York Courts, Guide to New York Evidence 7.01: Opinion of Expert Witness https://nycourts.gov/JUDGES/evidence/7-OPINION/7.01_OPINION_OF_EXPERT_WITNESS.pdf

Get a Free Consultation

The first call is a free consultation with a senior examiner. We review the matter, the evidence and the deadline, and outline the collection and analysis it needs. Requests are handled in confidence.

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