

1 An elderly trial attorney was asked what accounted for his success. He
2 replied: “Whatever the other side is doing, I pile on the facts as if I am
3 stacking cordwood.”

4 The presentation will address these questions, necessarily quite scantily:

5 1. How is the nature and purpose of evidence like that of cordwood?

6 2. How are evidential facts and cordwood prepared and stacked
7 similarly?

8 3. How are they used similarly?

9 4. How does all this defend against any bias or incompetence defeating
10 your case?

11 5. How does it expose the faults in evidence by the other side?

12 We first turn to Oxford Latin Dictionary, 1982. “Evidence” is from
13 Latin, the prefix “ex” before the verb “uidere” to give us “euidere,
14 euidere” and the family of cognate words, including “euidencia” the
15 direct ancestor of our word “evidence.”

16 The prefix “ex,” reduced to “e,” means “out of,” or simply “from.”
17 The root word “uidere” is “to see.” The definitions for “uidere” on
18 historical principles, covering almost 7 full columns, begin with these
19 words: “to perceive with the eyes, to see.” The “E” of “euidere” added
20 emphasis to the assurance that our eyes can give us regarding physical
21 reality. Eventually, the Latin speakers used “uidere,” “to see,” to mean
22 assured perception by any of the five external senses, and “euidencia”
23 was physical proof from any of the five physical senses.

24 Our first contention is that assured perception of relevant physical
25 data is the main thing to keep us from going wrong in establishing proof
26 of a physical fact. Our second contention is that to disagree with the
27 reliability of proper data derived from sense perceptions makes it
28 impossible to prove one’s own opinions. If someone wants to prove
29 sense perceptions are inherently unreliable, one must inherently rely on
30 one’s own sense perceptions. Thus one’s own stack of evidential facts
31 would be a bit messy.

32 How is the nature and purpose of evidence like that of cordwood?

33 And how are they prepared and stacked similarly? Cordwood was
34 prepared, cut and stored to exact specifications for precise methods of
35 heating and cooking. Evidence must be gathered, formatted and arranged
36 with a view to use at trial in a given order to fulfill the evidential
37 requirements for one's burden of proof. The whys and wherefores of this
38 chore belong to the directives the expert witness needs from the
39 attorney/client. The chore of going out to the forest, selecting the woods
40 to be cut, and the preparation for "burning" it at trial to put the heat to
41 the opponent's feet is the expert's chore, while the attorney/client
42 finishes it all off by sweeping up and disposing of the ashes with an
43 effective final argument.

44 And that is a sufficient summary discussion of how cordwood and
45 evidence are similar and used similarly

46 Now, how does all this defend against any bias or incompetence
47 defeating your case? The focus will be on bias or incompetence in one's
48 own case, since mistakes in the opponents' case only enhances your
49 own, provided their bungling is intelligently recognized and tactically
50 exploited. The heart of our expert evidence is pursuit of our burden of
51 proof: We stack our facts no matter what the other side is doing. Their
52 opposing effort is to set sucker bait for us so we think they have
53 redefined the factual issue of the case.

54 Suppose we first set out to prove our nasty cousin Wilbur signed
55 Auntie Paphnutia's name to her alleged will, but they insist how much
56 Auntie hated everyone's most loved Sweet Cousin Lalia. They bring it
57 up every chance they get. Let them! We keep stacking the verifiable
58 physical facts that satisfy our burden of proof. We stay focused!

59 By making our primary occupation the neat stack of the pertinent
60 evidential facts so well prepared ahead of time, we pursue victory rather
61 than cower before the fear of failure. This also prevents our letting an
62 opponent put a ring in our nose and lead us away from prevailing with
63 the relevant, verifiable physical facts.

64 If we are busy making a systematic and thorough stack of all
65 relevant facts, we have no time for things like either cognitive bias or

66 stupefied bias. With a properly composed and rationally related set of
67 technical standards, we can double-check and verify every item in our
68 gallery of evidence. We are so given to doing the correct things that we
69 have no time to concentrate on all the mistakes researchers find so
70 remunerative for employment, publications and conference
71 presentations.

72 For his part, I am sure the elderly attorney would have a properly
73 equipped and mastered set of tools to put his well stacked facts to best
74 usage. Principally in his tool chest would be a set of proper standards of
75 performance that would do much to guide us:

76 By giving us precise definitions to tell us precisely what to aim for;

77 By itemizing technical requirements for every aspect of our work
78 so we do a thorough job of it; and

79 By providing correct scientific criteria for everything we must
80 accomplish or discover so we know for sure we did it.

848 words.