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

The presentation will address these questions, necessarily quite scantily:
1. How is the nature and purpose of evidence like that of cordwood?
2. How are evidential facts and cordwood prepared and stacked similarly?
3. How are they used similarly?
4. How does all this defend against any bias or incompetence defeating your case?
5. How does it expose the faults in evidence by the other side?

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

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

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

How is the nature and purpose of evidence like that of cordwood?
And how are they prepared and stacked similarly? Cordwood was prepared, cut and stored to exact specifications for precise methods of heating and cooking. Evidence must be gathered, formatted and arranged with a view to use at trial in a given order to fulfill the evidential requirements for one’s burden of proof. The whys and wherefores of this chore belong to the directives the expert witness needs from the attorney/client. The chore of going out to the forest, selecting the woods to be cut, and the preparation for “burning” it at trial to put the heat to the opponent’s feet is the expert’s chore, while the attorney/client finishes it all off by sweeping up and disposing of the ashes with an effective final argument.

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

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

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

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

If we are busy making a systematic and thorough stack of all relevant facts, we have no time for things like either cognitive bias or
stupefied bias. With a properly composed and rationally related set of
technical standards, we can double-check and verify every item in our
gallery of evidence. We are so given to doing the correct things that we
have no time to concentrate on all the mistakes researchers find so
remunerative for employment, publications and conference
presentations.

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

By giving us precise definitions to tell us precisely what to aim for;
By itemizing technical requirements for every aspect of our work
so we do a thorough job of it; and
By providing correct scientific criteria for everything we must
accomplish or discover so we know for sure we did it.

848 words.