I. **Voir dire research**
   A. Psychological research has identified two styles of deliberation:
      1. verdict driven: Verdict-driven juries take an early vote and then structure the discussion around available verdict options, seeking to identify the option that is most acceptable to jurors.
      2. evidence driven (Lieberman & Krauss,2009): Evidence driven juries spend time evaluating the evidence and attempting to discern the "truth" from conflicting facts. They tend not to take frequent tallies and sometimes rely on a final vote merely to formalize their evaluation of the evidence.
   B. Juries are not good at using the jury instructions to make decisions
   C. Juries primarily focus on facts
   D. Confirmation bias: Like any other people, jurors remember evidence/facts that support the outcome they want to see and forget evidence that conflicts ("These initial preferences can come from general legal attitudes, preexisting cognitive schemas about the law, pretrial publicity, opening statements, or early trial evidence")
      1. Confirmation bias is strongest concerning issues that are emotionally charged, and beliefs that we think form the basis of our own self-identity. Politics is the prime example. Conservatives listen to news outlets that support their views; Liberals do the same. We purge our Facebook pages of people whose opinions are different than ours. Intelligence, station in life, age, race, gender – none of it matters.
      2. Research has also demonstrated that people with high confidence levels are less susceptible to confirmation bias because they are open to and actively seek out contradictory information when forming arguments. Their self-identity is less tied in to the preservation of their beliefs.
      3. The closer their experiences match the central case issue of a case, the stronger their convictions about the issue. Searching for the behavior or experiences that reveal the core belief of each juror is critical. This epicenter, so to speak, will influence convictions in the deliberation room. Events and cognitive processing shape their attitudes. Attitudes shift, but events and experiences are unchangeable.Jurors will view the case based on their experiences. They sometimes add "facts" that do not exist in the case.
   E. 90% of cases, the majority's initial verdict at the beginning of deliberations becomes the ultimate unanimous verdict
      1. One study found that minority jurors apparently acquiesce to the majority position only when they become convinced, through careful deliberation, of the wisdom of the majority
      2. However, in criminal cases, a "leniency effect" occurs where juries are more likely than individual jurors to favor the defendant (MacCoun & Kerr, 1988)

II. The case for deselection as a voir dire technique
   A. Old school wisdom: voir dire should be to identify bias, educate jurors, get jurors to commit to being fair. Here's the problem. People know what they are supposed to say. Bias will be unknown or remain hidden when you focus on those other components.
   B. Juries take facts in the case and construct narratives - if there are gaps they use this narrative to fill them in.
   C. Juries take unintentional shortcuts by relating information in the case to experiences they've had - this is what leads to conflicts in the jury rooms
   D. You are not going to change hearts and minds. People are who they are. The best thing you can do for your client is figure out who the most dangerous people are and get them off your jury.

III. How to do it
   A. Research shows participation declines as voir dire goes on because:
      1. voir dire tends to seek minority responses
      2. jurors' natural tendencies to not want to speak in groups.
   B. So...TIP: Try asking a question that gets the majority of ppl to raise their hand and then follow up with the ppl who don't
   C. Set the tone with your words and actions
      1. Praise people for being honest
      2. Create an environment that is comfortable and nonjudgmental
      3. Shaming, arguing, judging are the fastest ways to shut down your jury
   D. We already covered that there are two main filters for information so your questions should fit into one of these categories:
      1. Experiences that are closely linked to your facts (more objective)
      2. Attitudes/Beliefs (more subjective, many people want to be perceived as reasonable, fitting in, unbiased)
   E. ALWAYS START WITH YOUR THEORY OF THE CASE.
      1. What are the facts/narrative your jury must accept for you to win?
      2. Create a profile of the worst juror. Focus on attitudes/beliefs/experiences NOT demographics
      3. Create questions that will draw out those attitudes/beliefs/experiences
      4. Easy place to start, follow up with individuals about stuff they already said about experiences/beliefs. Ex. their own occupation, spouse occupation, ppl w/ kids - kid crimes, groups they belong to, ppl close to them in law enforcement
   F. Form of the question: funnel - start very very broad and then hone in.
      1. Who agrees
      2. Has anyone ever experienced
      3. Who might find it difficult to…
      4. Who thinks they might give more weight to…

      5. TIP: use the language that will draw out the people with that bias who agree (this can be SUPER painful - ex. 'Illegal aliens' v. undocumented, "thugs")

G. Follow up:
    1. Why
    2. What were you thinking when I asked that question
    3. Do you agree with juror so-and-so
    4. I saw you nod your head
    5. What's your opinion
    6. How strongly do you believe that

H. Your mission: identify the enemies. When you find a clear ally spend as little time with them as possible. Don't put a target on their back. Similarly, when you've identified a clear enemy don't spend a lot of time with them (unless it's a good springboard to identifying other potentially biased people)

I. Strikes for cause
    1. We are different than the court and DA. We are trying to bring out bias, not rehabilitate people. Rehabilitation is NOT our job. People are always likely to underplay bias and overstate an ability to be fair. We should always stick with "would it be difficult for you to put that aside…" VALIDATE BIAS, be understanding.
    2. Mirror the words they say, narrate
    3. It sounds like you believe this very strongly
    4. On a scale of 1-5 how strongly would you say you believe this
    5. You've had this belief for a long time
    6. I see your body language changed when we started talking about this
    7. You can understand that we need jurors who will be able to listen to all of the evidence and give my client the benefit of the doubt. Do you think it might be hard to give my client the benefit of the doubt knowing _____?
    8. Do you think another type of case might be better for you to be a juror on?
    9. You're not always going to get it. Use your instinct. When people are going to equivocate "no I can be fair" sometimes you can push them to hesitate in that but sometimes you've got to let it go and make the mental note to use a preemptory

IV.   Special issues (court-led voir dire, time limits, morality, race)
V.   Practice

<u>Source List</u>

Statute:
WISCONSIN STAT. § 805.08

Cases:
Miles v. United States, 103 U.S. 304, 309-311 (1880)
Aldridge v. United States, 283 U.S. 308 (1931)

Practice Guide:
TED M. WARSHAFSKY & FRANK T. CRIVELLO II, WISCONSIN PRACTICE SERIES,
TRIAL HANDBOOK FOR WISCONSIN LAWYERS § 6.09, at 156–57 (3d ed.2010).

Websites:
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http://www.nlrg.com/blogs/jury-research/mastering-group-voir-dire-tip-7-contrasting-important-viewpoints-within-the-same-question-0

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