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NEWS BACKGROUNDER

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FLAWED JURY DATA MASKS TRENDS

On March 22, 2002, a company called Jury Verdict Research (JVR) released a new study that, according to its news release, supposedly shows that “jury awards in medical malpractice cases jumped 43% in one year – from \$700,000 in 1999 to \$1 million in 2000.” JVR’s “median verdict” data are extremely poor measures of the civil justice system because these data are skewed toward the high-end – they do not include defense verdicts (“0” verdicts), verdicts in non-jury trials, verdict reductions by remittitur or verdicts overturned on appeal. They are not adjusted for inflation. And they have no relation to what insurance companies actually pay out to claimants – an average of \$30,000 per claim. *See*, <http://centerjd.org/press/release/011114.htm>.

JVR has even admitted that there are holes in its statistics. As reported in the June 24, 2002 edition of the *Wall Street Journal*, “Jury Verdict Research says its 2,951-case malpractice database has large gaps. It collects award information unsystematically, and it can’t say how many cases it misses. It says it can’t calculate the percentage change in the median for childbirth-negligence cases. More important, the database excludes trial victories by doctors and hospitals – verdicts that are worth zero dollars. That’s a lot to ignore. Doctors and hospitals win about 62% of the time, Jury Verdict Research says.” Christopher Oster and Rachel Zimmerman, “Insurers’ Missteps Helped Provoke Malpractice ‘Crisis’; Lawsuits Alone Didn’t Cause Premiums to Skyrocket; Earlier Price War a Factor,” *Wall Street Journal*, June 24, 2002.

1. According to JVR’s own data, the median of 62% of jury verdicts, in which the injured patient gets no money at all, is “0”. But JVR does not factor this statistic into its overall median figures.
2. If the rise in its “median verdict” figures accurately shows trends, then those trends should be reflected in settlement amounts. However, JVR also says that settlement medians are down 16%.
3. JVR collects its data unscientifically - from “court clerks, independent contractors, plaintiff and defense attorneys, law clerks, legal reporters and media sources” according to recent JVR publications and confirmed by JVR. Therefore, its “median verdict” data are inevitably skewed towards high-end verdicts that are self-reported, highlighted in the media or spread through word of mouth.

4. Sometimes JVR generates statistics even though its data sample is insufficient for a given year. For example, it is likely that its median medical malpractice figures for the past two years – \$1,000,000 and \$700,000 respectively – have been rounded off, raising questions about the accuracy of these figures and the definitive “43% rise” statistic.
5. There are distinct trends in the other direction, as was documented in 2000 in a *Dallas Morning News* cover story by Mark Curriden, “Panels Rarely Give Big Awards or Buy Novel Defenses,” showing sharply dropping verdicts.
6. Severe restrictions on the ability of many injured plaintiffs to bring lawsuits in many states (“tort reform”) are without question now keeping many legitimate cases from being filed even though malpractice kills thousands of people each year. This phenomenon is reflected in statistics from the National Center for State Courts, whose latest report shows that tort suit filings have dropped 18 percent since 1996. *Examining the Work of State Courts, 1999-2000*, National Center for State Courts (2001). There is no evidence, however, that the number of people injured each year is dropping, with up to 98,000 patients dying each year due to medical errors in hospitals

It should be noted that in 2001, the Center for Justice & Democracy attempted to obtain a copy of JVR’s report, *Current Award Trends in Personal Injury Cases, 2000*. Gary Bagin, JVR’s Director of Communications, would not send CJ&D a copy, for which it would have paid, stating that the company’s CEO had made this decision. CJ&D then attempted to purchase a copy of the report from JVR’s customer service representatives. This request was refused. Instead, CJ&D was referred to a supervisor whose voice mail indicated she was out of town and did not call back.

Mr. Bagin told CJ&D that JVR did not agree with CJ&D’s critiques of JVR data. Specifically, Mr. Bagin said, they did not like CJ&D’s characterization of their data collection methods as “unscientific,” stating that most of their data come from “stringers” who are hired to go to courthouses and collect data, and that this is supplemented by media reports and other sources. When the year 2000 report was issued, CJ&D called JVR to confirm the statement reported in item #3 above. They did. As the *Associated Press* reported in a January 31, 2001 article about the year 2000 JVR data, “The study includes all figures from plaintiff awards that LRP could collect from every state but is not a comprehensive database of every award nationwide.”

For years, JVR data has been used by the business community to support the view that juries are “out of control.” For example, in trying to push for caps on damages in New York State in 1999, the Business Council of New York State repeatedly cited one JVR statistic from its 1998 report: *i.e.*, between 1990 and 1996, one out of every four awards reported in New York State exceeded \$1 million. This, of course, is absurd, evidencing JVR’s high-end collection methods.

As far back as 1986, the company’s chairman criticized how its data were being used. Hearings Before the Subcommittee on Economic Stabilization (1986) p. 346-347. Mr. Bagin denies that his company perpetuates this use.

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The Center for Justice & Democracy is a non-profit, non-partisan public interest organization that works to educate the public about the importance of the civil justice system, and fights to protect the right to trial by jury and an independent judiciary for all Americans.