

"I appreciate the D.C. Court of Appeals considering my case. The decision is interesting from a legal point of view because the court found the fee award statute ambiguous yet decided to support a fee award. To quote the court, 'The text is ambiguous but favors permitting a fee award.' It appears the court decided to set a precedent, ensuring that future voluntary dismissals before a ruling in similar-type cases would be subject to the risk of a fee award. That is their right, but it would have been better if the law were clear from the beginning because the ambiguity itself, which the court acknowledges, resulted in a lot of unnecessary time and expense by all parties."

"With regard to the court's opinion with respect to my original defamation claim, "To even form an opinion on whether Jacobson is correct would require so deep an understanding of the relevant science that these debates lie squarely within the realm of scientific debate," I disagree. As the court acknowledges, one of the issues in front of it was whether the numbers in a table in the 2015 PNAS paper my students, coauthor, and I wrote, are average or maximum values. Another issues was whether modeling errors occurred. As four experts in the field attested, whether a table has average or maximum values and whether a modeling error occurs has zero to do with "scientific debate." These are questions of fact. With this decision, the court is basically saying that a scientist can falsify or publish with reckless disregard for the truth false definitions or data or even lie in a scientific article with the purpose of harming or defaming another individual or group of individuals, but such actions do not fall under D.C. defamation law because the statement is published in a scientific paper rather than in a newspaper or other public forum. The court may have decided this, but I and I am sure others believe this is a serious error."

"For example, on June 26, 2022, the California Labor Commissioner ordered Stanford University to pay my attorney's fees up until that time in the D.C. case, stating that my filing the lawsuit was necessary for my job because "...the Clack paper, to the extreme, tarnished Plaintiff's reputation..." and filing the lawsuit was necessary "...to remedy the damage caused by Clack stating false-facts in his paper." Stanford has appealed that decision. Nevertheless, there are now two diametrically opposed decisions. One that protects scientists; the other that marginalizes scientists and invites falsification or reckless publication of false facts and data and the defamation that results from that."

There is a trial in May to hear Stanford's appeal of the Labor Commission order for them to pay my past attorney's fees and to hear whether Stanford will need to pay the DC fee awards. After Stanford was ordered to pay my attorney's by the Labor Commission, Stanford filed an appeal with the Superior Court requesting summary judgment but lost that request:

<https://web.stanford.edu/group/efmh/jacobson/Articles/I/CombiningRenew/23-04-04-OrderDenyingSumJudgment.pdf>

Now there will be a trial to hear that appeal.

In this case, I am evaluating whether to appeal the DC decision to the full DC Appellate court.