

TODD S. AAGAARD
Villanova University School of Law
299 N. Spring Mill Road
Villanova, PA 19085
610-519-3001
aagaard@law.villanova.edu

EXPERIENCE

Villanova University School of Law **Villanova, PA**
Assistant Professor *2008-present*
Teach classes in environmental and property law. Research interests focus on environmental law and administrative law.

U.S. Department of Justice, Environment & Natural Resources Division **Washington, DC**
Attorney, Appellate Section *1999-2007*
Law Clerk, Policy, Legislation, & Special Litigation Section *Summer 1997*
Briefed and argued civil and criminal cases in federal courts of appeals in the areas of environmental law, natural resources law, Indian law, and administrative law. Drafted merits briefs and certiorari opposition briefs in several Supreme Court matters.

Chambers of Judge Guido Calabresi,
United States Court of Appeals for the Second Circuit **New Haven, CT**
Law Clerk *1998-1999*

EDUCATION

University of Michigan School of Natural Resources and the Environment, M.S., Natural Resources and Environment, 1998

Thesis: *EPA's Regulation of Occupational Health Risks Under TSCA*

University of Michigan Law School, J.D., magna cum laude, 1997

Honors: Order of the Coif
Henry M. Bates Memorial Scholarship Award

Activities: *Michigan Law Review*
Editor-in-Chief (1997-98)
Associate Editor (1996-97)
Michigan Journal of Race & Law
Executive Editor (1996-97)
Associate Editor (1995-96)

Pomona College, B.A., Economics and Government/Public Policy Analysis (double concentration), 1992

Honors: Vieg Prize in Government
Pomona Scholar, 1990-1992

Activities: Teaching Intern, Fall 1991

Thesis: *Costly Information and Social Change*

ADDITIONAL EXPERIENCE

Abt Associates Inc.

Research Assistant

Conducted economic and risk-based environmental policy analyses under contract to Environmental Protection Agency and World Bank.

Bethesda, MD

1992-1994

PUBLICATIONS

Factual Premises of Statutory Interpretation in Agency Review Cases, 77 GEO. WASH. L. REV. (forthcoming 2009)

This Article examines factual premises of statutory interpretation in agency review cases, and proposes an approach that would better integrate the treatment of such factual premises into the overall structure of administrative law. Courts frequently encounter questions of statutory interpretation that depend on underlying factual background, context, and implications. When they do so, courts generally assume that they retain the authority to decide the factual premises and thereby to answer questions of statutory interpretation that depend on factual premises. This is problematic from a functional standpoint, because courts often lack the information or expertise necessary to assess these underlying facts and thereby to understand the implications of their interpretive options. The article proposes a new approach to premise facts in agency review cases. In particular, it argues that, under existing principles of administrative law, agencies—and not courts—have primary authority to address premise facts. This means, among other things, that agencies are not bound by prior judicial precedent interpreting statutes based on factual premises, and that agencies have the authority to reconsider such premise facts, and the statutory interpretation based on those facts, in subsequent proceedings. This reconsideration process would allow agencies to bring their superior information-gathering and -analyzing capacity to bear on premise facts, thereby improving statutory interpretation.

A Fresh Look at the Responsible Relation Doctrine, 96 J. CRIM. L. & CRIMINOLOGY 1245 (2006)

This Article suggests a rethinking of the responsible relation doctrine, which holds business officials, managers, or supervisors criminally liable for failing to prevent or correct violations that occur within their areas of responsibility and control. The conventional public welfare justification for the doctrine is that it provides added and important deterrence of legal violations that threaten human health and safety. The Article suggests instead that the doctrine is better understood and defended as properly following from traditional criminal law prohibitions on acts of omission, and specifically from the principle that individuals may be criminally liable when their failure to fulfill their employment responsibilities results in a harm that is punishable as a crime. Examined through this lens, the responsible relation doctrine justifiably can be applied much more broadly than it has been to date, in a variety of contexts in which a defendant's employer gives him the responsibility to prevent violations of the law. The Article concludes by discussing some insights into the operation of the responsible relation doctrine that are highlighted by identifying the doctrine as a species of criminal omission, such as that the responsible relation doctrine is not a form of imputed, derivative, or vicarious liability.

Note, *Identifying and Valuing the Injury In Lost Chance Cases*, 96 MICH. L. REV. 1335 (1998)

This Note argues that courts commonly fail to identify precisely the injury in lost chance cases and accordingly have failed to measure damages in a way that accurately compensates the plaintiff's injuries. Lost chance cases are medical malpractice cases in which the injured victim has a preexisting medical condition from which she is unlikely to recover, but the defendant's negligence has reduced further the victim's likelihood of recovering. A majority of courts that

allow recovery in lost chance cases have adopted a proportional valuation method that values the plaintiff's damages by multiplying the percentage reduction in the chance of recovery by the total value of the losses the plaintiff suffered. The Note shows that the proportional valuation method improperly commingles the losses suffered by the plaintiff as a result of the lost chance and the losses suffered due to the preexisting condition. The Note advocates an alternative method of damages determination that clearly differentiates between the two categories of loss and gives the jury discretion to assess damages for the lost chance injury based on its evaluation of all the relevant evidence. This Note concludes that the loss of chance doctrine can achieve legitimacy as a valid extension--rather than an ill-fitting alteration--of traditional principles of tort law only by defining in precise terms the losses that constitute the tort injury in lost chance cases and by allowing juries the discretion to assess the value of those losses without undue constraints.