**A note on uphold and strike down**

**Nearly al the cases covered in this course can be viewed from this dichotomy with regard to outcome. And then compared to each other and then induce or deduce some of the larger issues and context in which to place the cases.**

**What was the government policy in play. Every case is about some aspect of a government policy made by a state or federal legislative body or coming from a state or federal executive. Administrative agencies can come from either. Often with regard to administrative bodies the question is what the legislature's policy was supposed to be with regard to that body.**

**At times the legislature and executive are both making policies that conflict. In those cases we have to see what the Court is focusing on, the act of the executive that allegedly conflicts with the legislature did or the intent of the legislative policy.**

**That is when two branches are fighting as they do in some cases, for instance an appointments issue. We need to decide which point of view we will use to determine whether a policy was upheld or struck down. The same goes for situations where state and federal law conflict, .e.g. Gibbons and some of issues in McCollouch where you have allegedly conflicting state and federal statutes.**

 **On the exam if the point of view is relevant,e.g. state or federal, executive or legislative, to the Van Geel comparison I will note that. Otherwise, use the most obvious point of view.**

**(I will note that in the next course on Civil Liberties this issue of point of view is always pretty simple since the cases area almost always about individuals claiming a state or federal policy takes away their rights)**

**As to policies, the constitution is not a policy in sense I am using it here unless you want to say it is a super policy. Then the framers always are making the policy in contention unless we are looking at the meaning of a state or federal statute. Using the Constitution this way is not as productive in my opinion though it can be. Again, this is my point of view. The uphold/strike down section will not be based on the Constitution being a super policy.**

**One area, where what the policy is, is a bit sticky. This is when the Court is using its powers to decide or not decide a case. In this case the policy is that the Court has a policy of requiring a case or controversy to have certain characteristics if it is to decide that case. Issues such as political questions, standing, ripeness and mootness are the policies the Court has created to make sure it is following its Constitutional mandate. We have seen this in Luther v. Border, Baker v. Carr and will see it in Flast v Cohen, among others.**

**Bring your questions about this van geel dichotomy to class Monda, the 20th to help you be crystal clear for hour exam 2.**

**In class Monday, I will note excerpts from a letter I just received from a former who had her case comment published in a law review. She specifically mentions the uphold strike down dichotomy as helping her in law school.**