

Since the **O Centro** court ruled that the **Sherbert** and **Yoder** tests must be applied in a religious use of Schedule I drugs case, since the **O Centro** court cited the religious use of marijuana cases reported below as if those marijuana cases used the **Sherbert** and **Yoder** tests where they did not use those tests, it is apparent that the **O Centro** decisions are contradictory within themselves. This Court should make a factual examination of the **O Centro** use of those cases to determine whether or not those cases are in fact contradictory to the **O Centro** rulings; whether they are relevant under RFRA.

8. **O Centro** is not the only federal report that mandates the **Sherbert** and **Yoder** tests be applied to the drug laws. The court in **United States v. Bauer**, 75 F.3d 1366 (9th Cir. 1996)(**Bauer** hereafter) rules that the **Sherbert** and **Yoder** tests must be applied to a religious use of marijuana case. **Bauer** is the first published case that recognizes the **Plain Error** of the **Leary** case and overturns it. **Bauer** finds that RFRA requires the **Sherbert** and **Yoder** tests to be applied to all federal laws. **Bauer** reports how **Leary** is invalid under RFRA because **Leary** specifically exempts the federal drug laws from the **Sherbert** test.

On page 1373 and 1375 the **Bauer** court notes how **Leary** is invalid.

"Relying on several earlier appellate cases, the district court held, however, 'that the government has an overriding interest in regulating marijuana'. The district court quoted **Leary**. . ."

On page 1375 -

"The district court treated the **existence of the marijuana laws as dispositive** of the question whether the government had chosen the least restrictive means of preventing the sale and distribution of marijuana. . .The district court relied on a drug case decided before the enactment of RFRA (**Leary**). . .We do not exclude the possibility that the government may show that the least restrictive means of preventing the sale and distribution of marijuana is universal enforcement of the marijuana laws. "**Under RFRA, however**, the government had the obligation, "first to show that the application of these laws to the defendants was in