547-548 (classification of marijuana is rationally based and is a matter for legislative, not judicial, prerogative). . . see also **Greene,** 892 F.2d at 455-56; **United States v. Rush**, 738 F.2d 497, 512-13 (1st Cir. 1984). . .; **United States v. Middleton**, 690 F.2d 820, 822-24 (11th Cir. 1982). . ."

As we see from the plain meaning of the words of the decision in **Brown**, there was no consideration of any facts about marijuana in the **Brown** trial or appeal.

The appellate decision states clearly that "Thus, the district court concluded, **as a matter of law**, that RFRA was not available to Brown as a defense. The court granted the government's motion in limine, and **barred admission at trial of all evidence** covered in the government's motion".

Since the trial court made its decision "as a matter of law", and not as a matter of evidence in the record, we know that the trial court did not consider any evidence about marijuana or peyote. This is not the **Sherbert** and **Yoder** test.

As we look at the other cases cited where **O Centro** mentions **Brown**, we see that none of those courts consider any evidence as to any threat to public health and safety caused by that religious use of marijuana claim.

b. In **United States v. Fogarty**, 692 F.2d at page 547 the court rules:

"Because there is no fundamental constitutional right to import, sell, or posses marijuana, the legislative classifications complained of here must be upheld unless it bears no rational relationship to a legitimate government purpose."

The **Fogarty** court uses the "rational relationship test". RFRA imposes the compelling interest test on government. Therefore, **Fogarty** is irrelevant to a determination of a case under RFRA.

c. In **United States v. Greene**, 892 F.2d 453, at page 455:

"Defendant contends that the indictment should be dismissed because the classification of marijuana as a Schedule I controlled substance . . . and the