

the public from the obvious danger of drugs and drug traffic. . . As this court noted in **Leary v. United States**. . . both the fact of legislation and the severity of the penalties provided in statutes such as the one in question clearly evidence 'the grave concern of Congress' in controlling the use of drugs. . . Moreover, the **harm of the particular drug in question is not relevant** in determining the degree of protection afforded by the free exercise clause to the defendant's actions."

However, as pointed out so clearly in the **O Centro** decisions under review, it is exactly the "**harm of the particular drug in question**" that is relevant to the determination of a compelling interest on the part of government, and the least restrictive means of having regulated that compelling interest under the RFRA.

f. In **Leary v. United States**, 383 F.2d 851, at page 860 court rules:

"Appellant's (Leary) reliance on **Sherbert v. Verner**. . . for authority that the constitutionally guaranteed right of free religious exercise imposes on the government the burden of showing a **compelling interest** in its abridgement, is **misplaced and inapposite on the facts**. . . We cannot reasonably equate deliberate violation of the federal marihuana laws with the refusal of an individual to work on her Sabbath Day and nevertheless claim compensation benefits. . . Congress has made it a crime to traffic in marihuana and **it was not incumbent upon the government to produce evidence** to controvert the testimony of witness's on the controversial question of whether use of the drug is relatively harmless."

The **Leary** court rules that **Sherbert** will not be applied to the trial of Leary's religious use of marijuana. Under RFRA **Sherbert** and **Yoder** must be applied to Leary's religious use of marijuana.

We know that Dr. Leary did not get the **Sherbert** test because the **Leary** court say's "Appellant's (Leary's) reliance on **Sherbert**. . . is misplaced and **inapposite** on the facts."

**Inapposite** is a word that means is **irrelevant and cannot be applied**. So, the **Leary** court tells us that **Sherbert** was not applied to Dr. Leary's case at trial.

We also know that **Sherbert** was not applied in **Leary** because the court say's "**it**