was not incumbent on 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." We can see that "**it was not incumbent**" is a phrase meaning the government **was not obligated to do it**.

The **Leary** court ruled that the government is not obligated to produce evidence to "controvert the testimony" on whether or not marijuana is harmless. Under RFRA, the government is obligated to produce evidence that marijuana is harmful to public health and safety, in which particular ways the use of marijuana causes harm, and how no other means other then complete prohibition, will stop the harm the government has proven to be caused by the particular religious use of marijuana made by the defendants.

Since none of the cases cited in **O Centro** are adjudicated in keeping with **Sherbert** and **Yoder**, citation of **Brown, Rush, Greene, Fogarty, Middleton, or Leary** in the **O Centro** cases for the proposition that **Sherbert** and **Yoder** were applied is **Plain Error**.

g. In addition, a district court in the Ninth Circuit has cited both **Leary** and the unpublished decision in **Brown**, in direct contradiction to the **Bauer** decision cited above, for the proposition that RFRA does not require the proofs as in **Sherbert** and **Yoder** to a marijuana case. See **Lepp v Gonzales**, Case Number C-05-0566 VRW (Appendix C, on page 19).

This Court is now faced with the problem of the unpublished Eighth Circuit decision in **Brown** being cited for authority by a court in the Ninth Circuit where the **Brown** decision directly contradicts the published Ninth Circuit decision in **Bauer**.

In addition, this Court is now faced with the **Leary** decision being cited for