

imposition of penalties for its use, possession, or distribution are irrational and arbitrary, thus violating the due process mandates of the fifth amendment.

Again, this case rests on a rational relationship test, not the compelling interest test set forth in RFRA, **Sherbert** and **Yoder**. This case is irrelevant under RFRA.

d. In **United States v. Rush**, 738 F.2d 497, 512-13 the court rules:

"In enacting substantial criminal penalties for possession with intent to distribute, Congress has weighed the evidence and reached a conclusion which it is not this court's task to review *de novo*. Every federal court that has considered the matter, so far as we are aware, has accepted the congressional determination that marijuana in fact poses a real threat to individual health and social welfare, and has upheld the criminal sanctions for possession and distribution of marijuana even where such sanctions infringe on the free exercise of religion. (citing **Leary v. United States**, 383 F.2d 851, 859-61). . . Finally, it has been recognized since **Leary** that accommodation of religious freedom is practically impossible with respect to the marijuana laws."

Under RFRA it is the courts obligation to review the particular use of a scheduled drug made by the church members *de novo*. The court rulings under review in **Gonzales** do review the particular use of DMT in Hoasca Tea by the church *de novo*.

Under RFRA, no court can merely accept a statement in a laws preamble indicating a congressional determination that a law is necessary. Congress has enacted RFRA in order to amend all federal laws to provide for the proof at trial that the enforcement of the law is necessary. That is why RFRA requires the **Sherbert** and **Yoder** fact tests at trial. Those tests require submitting evidence to prove a palpable threat to public health and safety sufficient to substantiate a compelling interest on the part of government to enforce the law.

e. In **United States v. Middleton**, 690 F.2d at page 825 court rules:

"Unlike the state interest advanced in **Yoder**, the interest advanced by the government in the case at bar is compelling and would be substantially harmed by a decision allowing members of the Ethiopian Zion Coptic Church to possess marijuana freely. Congress had strongly and clearly expressed its intent to protect