is likewise a test that an organization exempt under section 501(c)(3) must not be engaged in lobbying activities or political activities.

Mr. CORMAN. The principal test, if not the sole test, goes to how they spend their funds?

Mr. COHEN. That is right. But how they raise them is also considered.

Mr. CORMAN. As I understand the 1023 and the 990, if one is setting up a legitimate foundation that is going to spend its funds for legitimate purposes specified in the code, the only consequence of a failure to file the forms is that he will have to rebut the presumption that he was not valid; is that correct?

Mr. COHEN. That is correct.

There is a penalty for willful failure to file returns. This is a criminal sanction for willful failure to file a return.

Mr. CORMAN. What is the criminal sanction?

We are assuming for the moment that he is complying with the law in every respect except that he has not filed a return. What is the penalty for not filing a return?

Mr. COHEN. The return is different from the application. There is no sanction for failure to file the application but there is a sanction for willful failure to file a return required by law; that is a criminal offense. The penalty specified is imprisonment for not more than 1 year or a fine not exceeding $10,000. It is a criminal sanction, and it is therefore rarely, if ever, resorted to.

Mr. CORMAN. Is there a statutory requirement to file a 990?

Mr. COHEN. Yes, sir.

Mr. PATMAN. Or by regulation?

Mr. COHEN. There is a statutory requirement to file the 990.

Mr. PATMAN. How about the application?

Mr. COHEN. The application is required by regulation, but it is authorized under the code. The form 990-A is required to be filed by the code.

Mr. PATMAN. Excuse me, Mr. Corman.

Mr. CORMAN. This is an annual return?

Mr. COHEN. An annual return.

Mr. CORMAN. They cannot go longer than a year legally without some contact with IRS?

Mr. COHEN. That is right. As I indicated, even these, where the advertisement said you do not have to file, the organizations that we have seen so far have filed.

When you get to the end of the year and you know there is a criminal sanction for failure to file, you may well be persuaded to file a return.

Mr. CORMAN. Have there been advertisements concerning this?

Mr. COHEN. In some of the material that I have seen that has been discussed before the committee there was a suggestion that returns do not have to be filed.

Mr. CORMAN. Is it the 990 or the 1023?

Mr. COHEN. I think they tried to give the impression that neither was required.

Mr. CORMAN. Might there be some efficacy in making the filing of the 1023 a condition precedent to the exemption?