

Now as to the question of flexibility, I venture to suggest—and I know our Chairman would disagree with this point of view; in fact I think he has already stated so—but if the grounds are changed and extended, I believe there will be a substantial increase in the number of petitions presented. I think it is inevitable that of the people who cannot bring themselves within the existing grounds of adultery alone but have been waiting for an opportunity to dissolve their marriages if desertion and insanity are included and perhaps some other grounds, there will certainly at first be a number who will immediately take advantage of the extended grounds and instead of having 800 a year we will find that we will have 1,500. At the present time the Senate can barely cope with the 800 a year. With Mr. Justice Cameron hearing contested cases one day a week, and myself hearing the uncontested cases four days a week, we can just about keep abreast. If the number were doubled, you would need to double the number of Commissioners, the number of court clerks, the number of verbatim reporters and the number of staff generally. The paper work would become so colossal that I am afraid we would reach a bottleneck again. There would be a danger of that in any event.

There would, moreover, be historical precedent for referring cases to the Exchequer Court. In Great Britain it is the Exchequer Court which is the Court of Admiralty, Probate and Divorce. Here probate is a provincial matter, but the Exchequer Court has jurisdiction in admiralty and it could quite properly have jurisdiction in divorce. The arguments that Exchequer Court judges should not sully their hands with divorce are not valid. In England it is the higher courts which handle divorce. I frequently have cited decisions by Lord Denning who is Master of the Rolls, and decisions from the House of Lords. If it is not beneath them to deal with divorce it is not beneath any court to deal with it in a legal and proper manner.

Now as regards the possibility of extending the grounds for divorce with which this committee is perhaps primarily concerned, I shall not have too much to say because you will be hearing much about that from other witnesses. I want to say that if the objective or one of the objectives is to cut down on the amount of perjury being committed, I don't think a change would have that result. One often hears it said that most of the divorce evidence is fabricated. It would be adopting an ostrich-like attitude to say that no case ever approved by the Senate was approved on perjured evidence, but I would venture to suggest from my own experience that there is a great deal less than many people think.

I had occasion a few months ago to make a study for Senator Roebuck of the last 200 cases I happened to hear. In 134 cases there was a common law relationship and in another 33 the adultery had taken place on several occasions either in the respondent's home or in the co-respondent's home and there was every indication that it could not have been fabricated. Only 28 of these took place in hotels or motels with the husband being the respondent and only five took place in hotels or motels with the wife being the respondent. That is only 15 per cent which depended on hotel or motel evidence, and of that number a great many would undoubtedly be genuine. It is certainly not inconceivable that the man who goes out on the town and picks up a woman in a night club or some place like that would go to a hotel or a motel. The mere fact that the adultery took place in a hotel or a motel should not make us believe that it is not genuine. So we come down to the situation where 5 or 10 per cent of the total could be fabricated. Of course if it is found in a case that there is fabricated evidence, it is dismissed, and a prosecution taken.

Now I don't think that by extending the grounds to cruelty and desertion and so on, the what I might call immoral element will be gone and that nobody will commit perjury to get a divorce. Frankly I don't think you will get rid