

# Myths about marriage annulments in the Catholic Church

Reverend Langes J. Silva, JCD, STL  
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## Part I

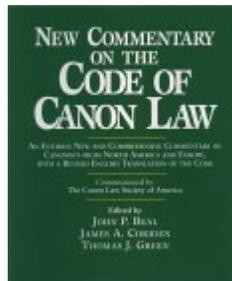
The exercise of functions in the Roman Catholic Church is divided in three branches: executive, legislative and judicial. The judicial function in every diocese is exercised by the Diocesan Bishop and his legitimate delegate, the Judicial Vicar in the office of the Diocesan Tribunal. The Judicial Vicar, a truly expert in Canon Law, assisted by a number of Judges, Defenders of the Bond, a Promoter of Justice, Notaries and Canonical Advocates, exercises the judicial function by conducting all canonical trials and procedures. The Roman Catholic Church has taken significant steps, especially after the Second Vatican Council and the review of the Code of Canon Law, to ensure fair, yet efficient, procedures, to those wishing to exercise their rights under canon law; for example, when seeking an ecclesiastical annulment, when all hopes of restoring common life have been exhausted or when, indeed, there was a judicial factor affecting the validity of the celebration of marriage.

This presentation “***Myths about declarations of invalidity of marriage (Annulments) in the Catholic Church***” is organized as a series of twelve parts reflecting on fifteen common myths or misunderstandings about the annulment process. I do argue that the current system is a wonderful tool, judicially and pastorally speaking, for people to wish to restore their status in the Church, in order to help those who feel it has failed them and see no benefit for them. I will discuss separately issues such as, Why non-Catholics need an annulment? How costly is the annulment process? How the annulment process affects the legitimacy of children? What are the time frames to obtain a declaration of invalidity? Are annulments automatically granted? Can you grant a declaration of invalidity of my former marriage without contacting my ex-spouse? Is the idea of an annulment a pure legalism in the Church? Is a divorced person automatically excommunicated in the Catholic Church? Let us begin with one very common myth, the notion that an annulment is just divorce by another name.

### **MYTH NUMBER ONE:**

#### **IS AN ANNULMENT JUST A “CATHOLIC DIVORCE”?**

It is required that a person who applies for an ecclesiastical annulment is in possession of a final divorce decree. However, the truth is that civil divorce and a church annulment are two vastly different things. A divorce is concerned with the legal realities of marriage only; an annulment is concerned with the religious and spiritual element—the sacrament of marriage and the spiritual bond created by it. A divorce granted in a civil Court of Law focuses on the end of a marriage and the cessation of its civil effects; an annulment looks at the beginning, the very moment the couple said “I do” and how the act of consent expressed by the parties was affected by different circumstances or impediments in the part of one or both spouses. A divorce looks at marriage in civil law; an annulment looks at marriage from the perspective of the Gospel and of Church doctrine. It is a myth that an annulment is “Divorce, Catholic style.”



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## Part II

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### **MYTH NUMBER TWO:**

#### **ANNULMENTS ARE TOO EXPENSIVE**

Some people are afraid the process of a declaration of invalidity of marriage (annulment) costs thousands of dollars. That is simply not true. In fact no one is ever turned away from applying for an annulment because of his or her inability to pay a fee. It is true that there is a court costs associated with the processing of an annulment. The cost is not a donation to the Church; rather, it is a fee for services rendered. The moneys support the operation of the tribunal, i.e., salaries, office supplies and building expenses. Most tribunals in the United States and Canada are able to operate because the dioceses subsidize its operation and not because tribunals are able to make any profit from fees collected from the Petitioners.

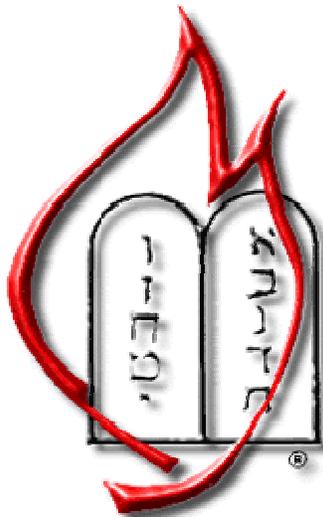
The truth is that no Tribunal anywhere in the world asks for “thousands of dollars,” although the fee requested for an annulment process does vary from one Tribunal to another. In the Diocese of Salt Lake City, the requested fees are indeed minimal, depending on the type of case, and they are only a simple expression of the Petitioner’s desire to cooperate with the ministry of law in the diocesan level; the fee the Petitioner pays is not even a third of the Tribunal’s actual cost for a case. It is a myth that the process costs thousands of dollars, and in fact no one is ever turned away from a Tribunal because of their inability to pay a fee.

The annulment *process* cannot lawfully be denied to someone simply because he or she cannot afford it. In the Diocese of Salt Lake City, any petitioner is free to discuss his or her financial situation confidentially with his/her advocate at the beginning of the process and the advocate makes the proper consultation with the Judicial Vicar. Payments may be in installments. Financial accommodation is

available commensurate with a person's financial circumstances, as disclosed and documented. *Pro-Bono* cases are always considered.

In Church Law everyone is treated fairly. A person is not given preferential treatment for being rich and famous or penalized for lacking wealth and fame. In fact, church law prohibits any court official from taking part in a case in which there is a family relationship, close friendship, animosity, or desire to profit or avoid loss.

Annulments are never for sale. No one is treated more or less fairly based on *who* they are or *what* they can afford to pay, for payment secures only the *process*, not a favored or scheduled outcome. Myths about annulments "bought" or expedited for exorbitant fees deserve to be retired, if only because they may discourage those most in need of the process.



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## Part III

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### **MYTH NUMBER THREE:**

#### **ONLY CATHOLICS NEED TO GO THROUGH THE PROCESS OF ANNULMENT**

The truth of the matter is that every marriage is considered a promise for life, a promise until death. It makes no difference whether that promise was made in a Catholic ceremony or not. No one, no matter what their religious affiliation or membership, is considered free to contract another marriage if they were married previously. Every prior marriage must be investigated and annulled before a person can enter a new marriage. It is a myth that no annulment is required if a person wasn't married in a Catholic ceremony.

What really makes a difference is the type of canonical procedure needed to dissolve a marriage or to declare a marriage invalid. In many cases people do not need to go through the formal process of annulment and, instead, if they fulfilled the requirements established by the law, they can qualify of other type of administrative procedure (less complicated and brief in nature) such as a decree of lack of form, a Pauline Privilege of the Faith or a declaration of invalidity due to a prior bond or any other canonical impediment.

The issue at hand is very simple, if a person has a previous marriage, there is an issue to be resolved. Pastors, parish administrators, canonical advocates and RCIA directors are called to check this type of situations in order to avoid invalid celebration of marriages and to ensure that someone is legitimately received into the Church.

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### **MYTH NUMBER FOURTH:**

#### **IS A DIVORCED PERSON AUTOMATICALLY EXCOMMUNICATED FROM THE CATHOLIC CHURCH?**

False. Divorce is a function of the civil law and secular courts. It is a myth that a divorced Catholic is “excommunicated,” and not able to receive the sacraments within the Church. This is because the Church still considers you married—even if you are no longer living with your spouse.

The truth is that divorce itself does not affect or alter a person’s status in the Catholic Church. Divorce is a function of the civil law and secular courts. Although it has been a widespread misconception for many years, it is a myth that a divorced Catholic is “excommunicated,” this is, not able to receive the sacraments within the Church.

Divorce does not affect the canonical status of a person in the Church; which really change the situation of divorced Catholics is their decision to initiate conjugal life with another person by simple cohabitation or by entering into marriage outside the Church (by civil law or by the regulations of another Church). In this particular scenario, Catholics are called to request the proper petitions for declaration of invalidity of prior marriages in order to regularize their situation in the Church; they are never excluded from the Catholic community but they are unable to receive the sacraments of the Church until their situation is regularized. The Catholic Church embraces and prays for the divorced and remarried Catholics that one day they should be able to fully participate in the spiritual life of the Church. Many practicing Catholics are divorced and they have decided to live a single life style dedicated to their works, their families and their church and charitable activities; they are a joyful part of the Catholic community.

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### **MYTH NUMBER FIFTH:**

#### **AN ANNULMENT PROCESS MAKE CHILDREN ILLEGITIMATE**

This is probably one of the most common questions regarding the annulment - process, and a source of misunderstandings among clergy, religious and laity. Many parents are often confused and misinformed about the legitimacy of their children in church law should an annulment be granted. This should not be a concern at all. Let us keep in mind that, at the time of the child’s birth, the parents were legally presumed to be husband and wife. So at the moment of the child's birth legitimacy was established. An annulment DOES NOT retroactively affect a child's legitimacy. They remain legitimate in church law. This teaching is found in canon 1137 of our current *Code of Canon Law*.

Moreover, the truth of the matter is that an ecclesiastical annulment is concerned and judges the validity of the marriage and not of the children born of the marriage. An annulment has no effect at all on the legitimacy of children, or other arrangements regarding children, such as custody or support. These are all concerns of the civil law, and an ecclesiastical annulment has absolutely no effects under civil law. It is a myth that granting an annulment makes the children illegitimate.

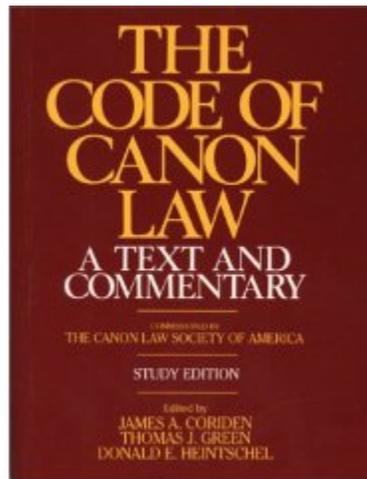
### **MYTH NUMBER SIXTH:**

#### **THE ANNULMENT PROCESS IS PURE LEGALISM IN THE CATHOLIC CHURCH**

The truth is that an annulment is “packaged” in a legal environment, since that is the best way to protect the rights and interests of everyone involved, but it is far

more than a “legalistic process.” People who have gone through an annulment process have found peace and insight into themselves and their marriages and they have been able to remarry according to the laws of the Roman Catholic Church establishing new, stable and healthy families.

It is a myth that the only concern of the Church in an annulment is legalism, but through the Tribunal process the Church invites you to find healing, forgiveness, and new joy. It is important to remember that ecclesiastical annulments are not automatically granted and that, indeed, a serious, efficient and systematic procedure is applied in the process of every application. However, applicants and their advocates who have done a conscious and a responsible preparation of their application find the process much easier than they were expecting, and at the end they all find a tremendous sense of healing and peace.



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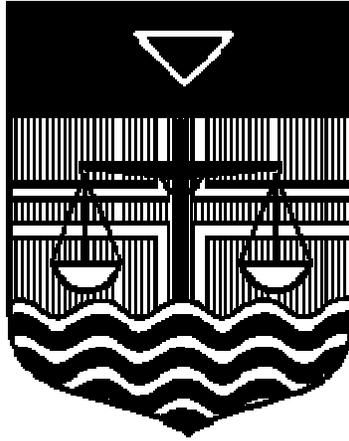
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### **MYTH NUMBER SEVENTH:**

#### **DECLARATIONS OF INVALIDITY (ANNULMENTS) ARE AUTOMATICALLY GRANTED**

The truth is that Tribunals do give negative decisions. The burden of proving a case rests on the Petitioner, that is to say, the person who applies for a declaration of invalidity (annulment) is responsible for presenting all the necessary proofs (witnesses, documents, declarations, etc) to support his/her plea. The Catholic Church presumes that every marriage is a valid union, and there must be sufficient grounds for declaring otherwise. The Tribunal will help the Petitioner, through his/her canonical advocate, to understand what is needed to develop a case, but if there is not enough proof, the Tribunal will request further information and proofs and, in some cases, give a negative decision. It is a myth that everyone who applies gets an annulment.

Declarations of invalidity of marriage (annulments) are validly granted by the competent tribunals of the Catholic Church establish in every local church (dioceses). Pastors or independent canon lawyers are not allowed because they have the judicial capacity or competence to grant ecclesiastical annulments; if this ever happened, a truly case of misrepresentation is in place, and therefore they should be reported to the diocesan bishop or the judicial vicar of the competent diocese.



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#### **MYTH NUMBER EIGHT:**

#### **AN ANNULMENT CANNOT BE GRANTED IF THERE WERE CHILDREN BORN IN THE MARRIAGE**

The initial principle is that any divorced person has the right to request an investigation looking into the possibility of a declaration of invalidity (annulment). The length of the marriage or the presence of children does not prohibit an annulment request, but those are certainly factors that are seriously considered by the Judges and other tribunal officers. Again, if a church annulment is granted, it has NO effects on the legitimacy of your children in church law.

The judicial doctrine of the Catholic Church considers that when someone enter marriage they are doing it with the right intention of honoring the good of the sacrament of marriage described by Saint Agustin as *bonum fidei* (the good of fidelity), *bonum prolis* (the good of children) and *bonum sacramenti* (the good of permanence). If anyone enters marriage excluding any of these gifts they entered marriage invalidly and therefore a diocesan tribunal should be able to

process a declaration of invalidity based on the canonical grounds of an "Intention exclusion" that can be total (excluding the three goods) or partial (excluding one or two of them).

The truth is that the Catholic Church considers an openness to children to be a natural and essential part of sacramental marriage, but whether any children were actually born or not has no bearing on the possibility of an annulment unless there was an explicit intention against having them expressed by either one of the parties or by both parties. However, if children were born, it is important that both parents live up to their natural and legal obligations to their children. It is a myth, however, that a marriage can not be declared invalid (annulled) if there were children born from that particular marriage.



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## Part VIII

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### **MYTH NUMBER NINETH:**

#### **AN ANNULMENT CAN BE GRANTED WITHOUT MY EX-SPOUSE KNOWING ABOUT IT**

A basic principle of procedural law in Canon Law establishes that “the notification to the Respondent is an essential element of the judicial process”; in addition, that both parties enjoy the same canonical rights in an annulment process. The truth of the matter is that both spouses have equal rights in an annulment proceeding, but that does not mean that the Respondent—the ex-spouse of the person who starts the annulment process—has to agree to an annulment. The truth is that the Tribunal judges can grant an annulment even if the ex-spouse is adamantly opposed to the idea of an annulment. What is really important is that the right of both parties be protected according to the rule of law.

It is a myth that both spouses have to agree to a Catholic annulment. Tribunal judges can grant an annulment even if the ex-spouse is against the idea of an annulment. However, the Tribunal will refrain to grant a decision of invalidity regarding a particular marriage if the other party is not aware that the petition has been submitted to an ecclesiastical tribunal. In extreme cases involving domestic violence, court orders of protection, incompetence to undergo legal process, or of inaccessibility because of imprisonment or some other impairment, the law provides for the appointment of guardians and proxies. The tribunal is under the most serious obligation to hear the concerns of the Petitioner and then proceed to ensure that the rights of the Respondent are protected by declaring him/her absent from the case and appointing a procurator/advocate in his/her behalf.

Depending on the canonical grounds proposed in the case, each party, however, will be advised and encouraged to examine how both parties have taken responsibility for the marriage and its inalienable rights and duties. None of the

parties is isolated in the trial process of an invalidity of a marriage and, in fact, they are given every possible venue to express their arguments based on the true facts of their marital relationship.

In the same way that marriage without two parties is self-contradictory, so, too, is an annulment process without the other party. Canon law requires tribunals to make every reasonable effort to secure the participation of the other party or the entire process is invalid! First of all, an annulment is a search for the truth. Thus the testimony of the parties (Petitioner and Respondent) logically tends to give a more complete picture. Second, the two parties have equal rights as in marriage, no less than in the annulment process to be informed and listened to.

Sometimes, the other party has, for a number of possible reasons, become (or made himself or herself) unavailable. Maybe he or she just refuses to cooperate. In that case, options to procure participation are limited. Occasionally, the whereabouts of the respondent are truly undiscoverable, though countless efforts. At any rate, the case does not die if all reasonable efforts to engage the respondent have failed.



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### **MYTH NUMBER TENTH:**

#### **THE PROCEDURE OF AN ANNULMENT TAKE TOO LONG**

The truth is that every annulment case is different, and some processes are longer than others, but few cases ever take more than 18 months from start to finish. Decades ago, it did take several years, but today the longest process is usually finished in a period of 9 to 18 months. Some types of cases can be finished in a month or even less. It is a myth that the typical marriage annulment takes three years or more to complete. Our diocesan tribunal in Salt Lake City is currently process formal petitions for declaration of invalidity (annulment) in 6 to 8 months from the time of acceptance of the petition.

Once accepted, a case should be completed within a year, according to the law. Six months more can be anticipated for the required review or for an appeal. The law does not say it *has* to take that long; but neither can it guarantee that it will not. Nor is there any *entitlement* to an annulment: the *process*, yes, but not a pre-determined result. The best advice is always planning ahead. The decision to begin an annulment process is one of the most momentous steps in a person's life.

Keep in mind that after every affirmative court decision, another stage, comparable to a "second opinion" or evaluation, takes place in an appellate court. This is one reason diocesan law prohibits even "penciling in" a church wedding date on a parish calendar until the entire process is over, that is, when the petitioner has the final annulment decree in hand from the first instance tribunal and confirmation from the Court of appeal. No amount of money or attempts at string pulling can assure the exact outcome of any operation or the speed of the recovery. No more than the preparation, operation and recuperation stages of surgery, can annulment procedures be bought, sold or hurried.

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### **MYTH NUMBER ELEVENTH:**

#### **A DECLARATION OF INVALIDITY (ANNULMENT) MEANS THAT THE MARRIAGE NEVER TOOK PLACE**

The truth is that an annulment can not erase history, and does not try to. An annulment in the Catholic Church deals only with the sacrament of marriage, and not the legal, historical, emotional truth of marriage. An annulment states that for some legal reasons recognized by Church Law through the Code of Canon Law the sacrament or the necessary elements for its validity (for those marriages between non-Catholics) was never present in the marriage, and not that the marriage never took place. It is a myth that an annulment means that the marriage never happened.

### **MYTH NUMBER TWELVETH:**

#### **ANNULMENTS ARE GRANTED TO ONE PARTY, AND NOT TO THE OTHER**

This myth deals with the exercise of basic rights of a party in a marriage trial and the effect of a decision in the life of a couple. If a declaration of invalidity (an annulment) is a determination about the marriage, then obviously it must affect both parties. The notation of an annulment will be made in each of their baptismal registers and in the marriage register. It will not erase anything already there but it will add that an annulment was granted. A declaration of invalidity (annulment) means that *neither* party is considered any longer to be bound to the marriage they undertook to enter. But this is not the last word.

It is important to remember that a declaration of invalidity of marriage (annulment) does not dispense from the fulfillment of moral and civil obligations contracted by a previous marriage, for example, responsibilities regarding a prior

spouse or children. Not only is this a matter of basic fairness, but it is a way in which the Church exercises pastoral care for the security of a future marriage and justice to the former spouse and the children.



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## Part XI

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### **MYTH NUMBER THIRTEENTH:**

#### **ANNULMENTS ARE HARD ON PEOPLE**

##### **1. Annulments are just for young people**

Here, we are making a reference to parties that entered marriage at a young age, and who have experienced shorter unions; later, in the process of maturation, they are confronting the wrenching discovery that they married without a valid foundation due to an unexpected pregnancy, an imminent deployment or a particular emotional situation of both or one of the spouses. Couples who have married at a more mature age and, probably, under apparently normal circumstances, are not representative of this scenario. Even at the risk of understandable criticism, tribunals may not categorically refuse more mature petitioners who have not faced this discovery earlier, denying them due process by reason of age, social status, number of children or time spent cohabiting. When pursuing lawful process, however, such petitioners, no less than the entire Church community, bear a responsibility to avert any scandal such "counterintuitive" situations might engender. Therefore, no matter what is your situation, you never have a “right” to receive an annulment, but the Church protects your right to request the proper investigation.

##### **2. Annulments make it too easy for young people**

An annulment cannot be granted on the basis of entering marriage at an early age nor an annulment grant a dispensation to a person to cease obligations from a previous union. Whoever still thinks, after reading thus far, that there is anything "easy" or casual about the annulment process, should talk to anyone who has experienced one. Though it marks the end of one process, a decree of nullity is not necessarily a green light to marry again. Apart from matters already

mentioned, such as the possibility of an appeal, a *Vetitum* (prohibition), and other permissions or dispensations before re-marriage, dioceses and parishes have specific prerequisites, not only for a party seeking re-marriage, but also the *intended* spouse. Anyone mistaking an annulment for an escape hatch from responsibilities arising from a previous marriage or the lessons to be learned from it -- may find this news sobering.

### **3. Annulments make it too hard for young people**

Someone may say annulments make it too hard for young people to "get on with their lives." Others see a double standard in not applying the same strict scrutiny of the annulment process to a prospective marriage, especially a *second* one. The truth of the matter is, the same guiding principle obtains before and after marriage: to uphold the natural freedom to marry. This freedom, however, is not absolute and the burden of proof logically differs in each situation. Freedom to marry is presumed, unless there is an impediment, such as an existing marriage would obviously be; in that case, it is the existing marriage which is presumed valid and the parties who must prove it is not.

A married person, in good conscience, maintaining he or she should be held free of that prior marital bond, must understand that it is he or she who acquired the so-called impediment of ligamen (prior bond) in a public ceremony (typically), by exchanging vows "most sacred and most serious." He or she, therefore, bears the burden of proving freedom from it. It is eminently reasonable that canonical procedures, with equally sacred and serious judicial ceremony, should require examination not only of the consciences of the parties, but also of the other participants, including witnesses required to testify under oath, and judges bound to decide with moral certitude.

A person who never presumed to take such vows, in equally good conscience, is not obliged to prove he or she is free to marry. The process of "pre-marital investigation" does seek to protect engaged couples from whatever might compromise their choice or freedom, but not by putting their relationship on trial. Before or after marriage, where canonical processes are properly followed, the freedom and rights of all parties are given the respect they are due.



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## Part XII

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### **MYTH NUMBER FOURTEENTH:**

#### **DECLARATIONS OF INVALIDITY AND PASTORAL CONCERN**

The Church cares a great deal for persons who have suffered the pain of divorce. As such tribunal personnel treat petitioners, respondents and witnesses with great care and sensitivity. Though the annulment process is primarily a legal one, efforts are made by many tribunals to extend emotional and spiritual comfort to the parties. The tribunal also cares about your children, especially in regard to the present welfare of minor children.

### **MYTH NUMBER FIFTEENTH:**

#### **DECLARATIONS OF INVALIDITY AND TRIBUNALS STRUCTURE**

The legal system in the Catholic Church and most of our initial legislation in the Catholic Church was inspired from the Roman Law and for a series of European models of law. However, the truth is that the Tribunal is a Court of Law for the Church (with judges, canon lawyers, court officers and a series of court experts), but it is very different from a civil courtroom. Depending on the type of case, the spouses may have Advocates, and there will be 1 to 3 judges, but most of the work is done in writing, and there is never an emotional courtroom scene as in television dramas. If a person appears in person to offer testimony, it is usually done in a private interview, and never with “cross-examination!” The canonical procedure of annulment is not intended to be oral and most of the evidence is presented in writing and through the proper representation of a canonical advocate under the most grave commitment of confidentiality. It is a myth that the Tribunal is like a TV courtroom.

This concludes our series on “Myths about declarations of invalidity of marriage (Annulments) in the Catholic Church.” The entire series is available on our diocesan website, [dioslc.org/ministries/diocesantribunal/articles](http://dioslc.org/ministries/diocesantribunal/articles)

