



REHEARING & EN BANC IN THE FIFTH CIRCUIT

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EVEN THE GODS ARE SOMETIMES FOOLED

Até – the Greek goddess of mischief of ruin.

“[S]he walks the air above men’s heads and leads them astray.” – Homer, *Illiad*

“*Even the gods are sometimes visited by Até.*” Apollonius Rhodius, *Argonautica*

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WHY SHOULD I COMPLAIN?

The gods may throw a dice
Their minds as cold as ice
And someone way down here
Loses some[thing] dear
The winner takes it all
The loser has to fall
It's simple and it's plain
Why should I complain?
- Abba, *The Winner Takes It All*

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TOPICS

- Background
- Statistics
- Isolated error –
Panel Rehearing
- Far-reaching error –
En Banc

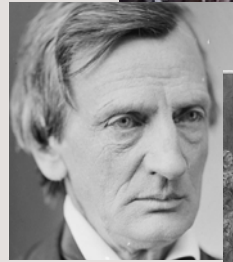


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And you may ask yourself,
“Well, how did I get here?”

BACKGROUND

*From the English Chancery
to the Fifth Circuit IOPs*



“By no means,” continued Franklin, in his slow, steady, solemn voice. “It is not the law, printing and publishing of a paper that will make it a fact; the words themselves must be false, that is false, mendacious, and untrue, and they must be so plain.” [Page 108]

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EARLY ORIGINS



“Rehearing” comes the Court of Chancery in England – until the Chancellor affixed his seal to a decision, case could be reheard by his counselors ad infinitum.



Early U.S. common law courts could reconsider any decision until the court’s term expired.

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