



## 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

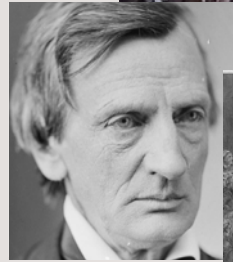


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And you may ask yourself,  
“Well, how did I get here?”

## BACKGROUND

*From the English Chancery  
to the Fifth Circuit IOPs*



"By no means," continued Franklin, in his slow, stolid, solemn voice. "It is not the law, printing and publishing of a paper that will make it a fact; the words themselves must be chosen, that is, taken, understood, and written, and they must be true." (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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