ACCESS TO THE SUPREME COURT

Have you ever heard someone declare, "Why, I'll take my case all the way to the Supreme Court!"? If you have, you, like the speaker, probably realized that the threat was more an expression of the person's commitment to the righteousness of his/her side than it was a statement of likely fact. Very few cases go all the way to the Supreme Court. There are a great many reasons for this. Some are imposed by the Constitution, some by the Court itself, still others by the emotional and economic realities of *litigation*. There are millions of *criminal* and *civil* cases begun in the state and federal courts each year. Of these, the United States Supreme Court hears oral arguments in fewer than 100 cases most years. Each year the justices write formal opinions in approximately 75 to 100 cases. How does the Court decide which cases to hear and decide?

Article III of the Constitution not only creates the Supreme Court but it also describes the kinds of cases the Court can hear. The Supreme Court has very little *original jurisdiction*. That means very few cases are heard first by the Supreme Court. In fact, the Court has exercised its original jurisdiction only around 200 times in its whole history. The vast majority of the Court's work, then, is *appellate*. So the first limit on access to the Supreme Court is that one or more state or lower federal courts ordinarily must try a case before the Supreme Court will consider it. The United States Congress may also limit access to the Supreme Court by limiting the kinds of cases that the Court may hear on appeal. An important power of Congress is to define the type of case that may be appealed to the Supreme Court.

Another limitation is found in *Article III*. The Supreme Court, like other federal courts, will only hear "cases" and "controversies." These are technical terms that refer to real disputes in which the legal interests of two or more persons are in collision. Because of this rule, President George Washington was denied access to the Supreme Court when he asked the justices to give him advice on a foreign policy problem. Ever since then the Supreme Court has been unwilling to offer its advice or answer hypothetical, academic, or abstract questions in formal advisory decisions. Similarly, the Court will not decide a case that is *moot*. A moot case is one that involves a pretended controversy or one where the Court's judgment would have no practical effect upon the existing controversy. A classic example of a moot question is, "Which came first--the chicken or the egg?"

Access is limited for many people because they lack "standing to sue." This phrase refers to the long-established rule that one must a have a direct, personal interest in a case before he/she can sue. One may not sue simply to protect the legal rights of the public at large. Rather, to have standing, one must show that he/she has suffered some direct injury or that the exercise of his/her personal rights is at issue. With rare exceptions, the Court will not hear cases where a citizen claims standing to sue as a taxpayer unhappy with the way his/her taxes have been spent.

Timing is very important in determining whether the Supreme Court will hear a case. Before one may go to the federal courts for relief, all administrative hearings must have been concluded. The Supreme Court will only hear a case if it is "ripe" for a decision. That means that if another body can decide the question, that body must have had the opportunity to settle the issue. Another aspect of the ripeness limitation is that there can be no access to the federal courts until the threat of harmful governmental action is immediate. The Supreme Court will not hear a case that involves a fear of adverse governmental action against someone in the future.

Another rule developed by the Supreme Court that limits the cases it will hear is the rule against deciding "political questions." The Court has described a political question as one whose settlement is the constitutional duty of one of the other branches of government or that the problem was in a field where one of the other branches had greater knowledge or that the issue was not one that the courts could handle. One difficulty with the political question limitation is that the Supreme Court has not been consistent in its designation of some issues as political. Also there is often a thin line between the legal and political aspects in the kinds of important issues heard by the Supreme Court.

Since 1925, the Supreme Court has had the authority to largely determine which cases it will hear. An informal rule of the Court dates from that time. It is the "rule of four" and means that four justices must want to hear a case before it will be reviewed. Although there are some cases that automatically are sent to the Supreme Court by law, most cases are required to pass the rule of four.

When the justices are deciding whether to hear a case, other informal but long-observed rules operate. Cases which involve matters which are purely local in nature, affect only a few people, or fail to raise any serious question of federal or constitutional law are usually dismissed.

The final limits to access to the Supreme Court involve economic and emotional considerations. Even though the Supreme Court has lowered many of the economic barriers to litigation and there are private groups that sponsor and help pay for litigation, the cost of taking one's case all the way to the Supreme Court remains high. Additionally, there are intangible emotional considerations that often make a litigant end the pursuit of his/her case even when the outcome is not to his/her liking and there are grounds for appeal. Pursing a case on appeal takes time and effort as well as money. Many litigants decide that whatever might be gained is not worth the effort of continuing the litigation. Other litigants find that they are sufficiently satisfied with the ruling of a lower court and so their appeal is dropped in favor of a verdict that establishes an acceptable compromise solution to the conflict. Still other litigants discover that there are not legitimate legal grounds on which they might appeal.

"I'll take this case all the way to the Supreme Court!" Yes, it is possible. However, if the case is decided by the highest court in the United States, it will be the exception. The Supreme Court hears only a very few cases when measured against all the cases begun each year; but the cases it does decide are the toughest and its decisions resolve, if but for a time, the most important legal questions before the nation.