The Court Archive:
School Vaccinations and Smallpox

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Smallpox was a disease that infected humans since at least ancient Egyptian times. The Chinese began inoculating against it about 1,000 years ago. In the 1790s, Edward Jenner revolutionized mass vaccination for smallpox using an injection of a milder cowpox virus, which then provided immunity from the more deadly smallpox virus. In fact, the word "vaccine" originates from the Latin word for cow. In the nineteenth century, despite rising vaccination rates, the airborne smallpox virus continued to cause outbreaks in the United States and in Illinois.

Massachusetts was the first state in the 1850s to require smallpox vaccinations prior to attending school. Other states followed suit, but in the late nineteenth-century, an anti-vaccination movement led many states to repeal those mandates. While Illinois did not have a law on the books requiring vaccinations, the state board of health issued a general order in 1894 that all children should be vaccinated before being admitted to school.

The first legal test of this order came with *Potts v. Breen*, 167 Ill. 67 (1897) in which a school district in Lawrence County did not allow the Breen children to attend school because they had not been vaccinated. The Breen parents objected to the vaccine because there was no smallpox outbreak at the time. The Illinois Supreme Court ruled that "the laws of Illinois give to every child in the State of proper age the right to attend public schools, and there is no provision which requires vaccination." The Court argued that the board of health's mandate was too broad and that the board could only exercise its police power to vaccinate against smallpox in the event of an actual outbreak.

In 1918, an outbreak of smallpox occurred in Granite City, and the school and local board of health denied admission to Clifton Hagler and others because they had not been vaccinated. The case reached the Illinois Supreme Court in *Hagler v. Larner*, 284 Ill. 547 (1918). Chief Justice Warren Duncan stated in the opinion that there "is manifest lack of uniformity in the decisions" of "the various jurisdictions in this country." The Court ruled in favor of the school district and the local board of health, arguing that "no child has a constitutional right to carry to others in school the loathsome disease of smallpox. Vaccination is now recognized as the only safe prevention of the spread of small-pox. It is approved by medical science generally and by governmental authorities throughout the civilized world."

The opinion continued to discuss the purpose of vaccinations, which is to "not only arrest the spreading of the disease, but the prevention of fatalities among those who are actually exposed to the disease." Duncan also recognized that "it is true that occasionally very disastrous results happen from the use of impure vaccine, yet they have no right to insist on their children continuing in school and mixing in large congregations without obeying such requirements when small-pox is epidemic in the community."

The principal distinction in the two vaccinations cases is whether there was an actual local outbreak. This distinction remained in *Burroughs v. Mortenson*, 312 Ill. 163 (1924), which stated that the school superintendent cannot arbitrarily exclude a child who has not been vaccinated unless smallpox is epidemic in the vicinity of the school.

In 1967, the Illinois legislature passed a law requiring vaccinations for students entering first grade for measles, smallpox, diphtheria, polio, tetanus, and pertussis. The law was strengthened in a 1980 Illinois law. Also in 1980, interestingly, the World Health Organization declared smallpox eradicated—the only infectious human disease to be completely eliminated.