Don’t Fence Me In

April 1, 2002 By Denny Lee

Pearl Harbor brought the internment of Japanese Americans. Oklahoma City stoked anti-immigrant laws. And in the current push to combat bioterrorism, September 11 nearly ushered in AIDS quarantines and mandatory treatment.

Such, anyway, was the rush to judgment of many AIDS advocates and civil libertarians after studying a so-called model law, proposed by the Centers for Disease Control and Prevention (CDC) late last year, to give governors broad powers to order lockups and medical exams in the event of any “known epidemics.” The legislation, which was endorsed by the White House, was designed as a template for individual states to adopt and numerous states, most notably California, New York and Massachusetts, began taking steps to enact it.

The CDC presumably intended officials to interpret “known epidemics” as such standard weapons-grade infections as smallpox, but AIDS activists can be forgiven for their knee-jerk alarmism. After all, they had a bitter sense of déjà vu: During the ’80s, at the height of anti-AIDS hysteria, several states passed laws allowing PWAs to be quarantined.

Especially distressing to many critics was the fact that the author of the measure was Lawrence O. Gostin, a widely respected AIDS expert at Georgetown University’s Center for Law and the Public’s Health. (Gostin even co-wrote a legal handbook on AIDS, *The Rights of People With HIV*, for the American Civil Liberties Union) “I think it was an oversight,” said Tanya Ehrmann, the AIDS Action Council’s director of public policy. “He acknowledged his mistakes fairly quickly.”

The final draft of the measure, titled the Model State Emergency Health Powers Act, deleted “known epidemics” from the list of possible emergencies, and is now narrowed to bioterrorism, infectious agents such as a virulent flu or a chemical attack. But privacy advocates remain a bit wary. “When you have fear motivating legislation,” said Joy Pritts, senior counsel at Georgetown’s Health Privacy Project, “you are passing a law that is much broader than bioterrorism.”

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