It finally happened. Kind of. In what appeared to be a very impromptu statement on August 10th, our president declared the opioid epidemic a national emergency. What that will do is free up necessary disaster funding to help address the crisis.*

No reasonable person disputes the enormity of the opioid crisis. It has been reported that the opioid crisis kills more than 100 Americans daily. Daily. The Presidential Commission that urged the president to formally designate the crisis a national emergency to help mitigate the damage compared the loss of life to the September 11th terrorist attacks. That is staggering but sadly, not surprising.

As a society, we have treated addiction as a taboo choice for too long. Let’s call it what it is: Addiction is a disease. Some people have it and some don’t. Maybe people are born with it or maybe it’s acquired. Maybe it’s a combination of genetic predisposition and exposure. The chicken/egg debate of addiction’s genesis doesn’t address the issue, though. Once a person has the disease of addiction, it must be treated, and the origin matters not.

But many, despite clear evidence to the contrary, still believe that addiction is all a matter of self-will (or lack thereof) and choice. Much of the criminal justice system still takes a putative approach to addiction. It is disturbing to read appellate records and hear prosecutors argue that use is all a matter of choice and will power in clear cases of addiction. It is more than a little disheartening to have a young client who is an addict accept a deferred offer on a possession charge, knowing the odds are stacked so high that a motion to adjudicate and eventual sentence of incarceration and criminal record are sure to follow. It is frustrating to be a part of this process.

As the societal debate about what to do about the opioid crisis rages on, I am reminded of something my dad wrote to me a (now) long time ago, before I ever became a lawyer much less the editor of the Voice: *Lawyers are in the best position?by virtue of their education, talent, and positions of influence?to positively address the challenges that our society faces.* So, the question is what can we, as criminal defense lawyers, do to positively address this challenge?

We should be doing everything we can do to be better advocates for our clients. Sometimes being a better advocate means being able to inhabit the perspective of our client and of the other players in the criminal justice system to achieve the best possible result for the client. That often involves stepping beyond our own comfort zone. It means asking better questions and having a deeper discussion. To be addicted should not be taboo. Having lung cancer or diabetes is not taboo. As a society, we don’t place moral blame on the latter...
class of individuals? and we treat those individuals. What if our criminal justice system did the same for addicts? What would happen if the criminal justice system began seeing addicts as more than their addiction? What would happen if the criminal justice system treated addicts like people deserving of treatment and help rather than discarded wastes of life? Do you think addicts might actually start seeing themselves as worthy of treatment and help rather than discarded wastes of life forever entangled in the system?? I can tell you from personal experience, the seminar in Roundtop teaches this theory of advocacy and is worth attending.

Sometimes being a better advocate means knowing the law and taking advantage of what the law has to offer. For instance, did you know Chapter Section 462.081 of the Health and Safety Code allows treatment in lieu of jail time for certain misdemeanor offenses without regard to prior criminal history?

(a) The judge of a court with jurisdiction of misdemeanor cases may remand the defendant to a treatment facility approved by the department to accept court commitments for care and treatment for not more than 90 days, instead of incarceration or fine, if:

(1) the court or a jury has found the defendant guilty of an offense classified as a Class A or B misdemeanor;
(2) the court finds that the offense resulted from or was related to the defendant’s chemical dependency;
(3) a treatment facility approved by the department is available to treat the defendant; and
(4) the treatment facility agrees in writing to admit the defendant under this section.

This is not brand-new legislation either. What would treatment mean for the repeat client with a record who happens to be an addict? Have the discussion with clients, prosecutors, and the court about alternative sentencing options.

Inform clients and their families about the new law insulating from liability a family member, friend, or other person in a position to assist a person at risk of experiencing an opioid-related drug overdose? who administers an opioid antagonist. See Tex. Health & Safety Code § 483.101, et. seq. Now, there is no legitimate reason for the family, friend, or roommate of an addict to not have an opioid antagonist on hand for overdoses, just like an EpiPen for anaphylactic shock. Many police departments already regularly carry opioid antagonists on patrol, too.

TCDLA should continue to back legislation like that discussed above and continue to be a prominent voice for criminal justice reform in the face of the opioid epidemic. As members of this organization we should all actively offer whatever support we can to our legislative team.

Being a better advocate also means utilizing diversionary programs whenever possible. Diversionary drug court treatment programs are becoming more prominent, but they must be used. We should become involved in the diversionary court process to give voice to the concerns of defense bar and our clients.

Also, what if, instead of accepting at face value a recommendation of incarceration from the probation department on a revocation case, we have frank discussions with the probation officer about what is in the best interest of our client? The worst that can happen is that the probation department sticks by the recommendation of incarceration, and we are no worse off. The best is that the probation department tries something different, and we have a credible witness for a revocation hearing.

The president has finally said he is ready to declare the opioid crisis a national emergency. As criminal defense lawyers both collectively and individually, will we positively address this challenge society currently faces or will we remain silent?

* As of the writing of this article, the paperwork still needs to be drawn up, though.