

INCREASING THE PRESENCE OF HISPANICS IN PATENT LAW

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INTRODUCTION

In September 2018, I was honored to make a presentation concerning patent law to members of the Society of Hispanic Professional Engineers (“SHPE”) Houston Professional Chapter.¹¹⁸ In addition to speaking about the basics of patent law and careers in patent law, I also discussed the issues of the underrepresentation of Hispanics¹¹⁹ in law, generally, and in patent law, in

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¹¹⁸ The SHPE Houston Professional Chapter is a local chapter of the national organization Society of Hispanic Professional Engineers. *See generally* SOCIETY OF HISPANIC PROFESSIONAL ENGINEERS, <https://shpe.org> (last visited May 7, 2019). The chapter is

dedicated to promoting careers in the fields of Science, Technology, Engineering and Mathematics (STEM). [The] chapter executes over 30 projects annually targeting Elementary, Middle School, and High School students and awards scholarships to students pursuing college. [The chapter] also work[s] very closely with area college students . . . to support and mentor their membership. [The chapter] operate[s] on membership dues and tax deductible, in-kind donations. [The chapter] also offer[s] opportunities for professional development through workshops and social networking.

SHPE HOUSTON, <http://www.shpehouston.org> (last visited MAY 7, 2019). The chapter’s mission is to serve as “a network of mentors, role models and leaders in STEM brought together to inspire, motivate and empower the Greater Houston Hispanic community.” *About: SHPE Houston*, <http://www.shpehouston.org/about.html> (last visited May 7, 2019).

¹¹⁹ Throughout this essay, I use the term “Hispanic” to mean “of, relating to, or being a person of Latin American descent and especially of Cuban, Mexican, or Puerto Rican origin

particular. This essay describes what I learned about these issues when I prepared for and made this presentation to SHPE Houston.

My goal in presenting to SHPE Houston was to reach out to Hispanic engineers to encourage them to attend law school, allowing them to ultimately practice patent law. Patent-law practitioners normally must have a background in engineering or science.¹²⁰ Indeed, practicing before the U.S. Patent and Trademark Office absolutely requires such a technical background.¹²¹ Patent-law practitioners commonly work in engineering or science careers for at least a few years before attending law school. Thus, a professional organization such as SHPE Houston should be an ideal place to target in attempting to recruit working engineers who wish to branch out into a new career in law.

I targeted SHPE Houston to reach out to Hispanic engineers, in particular, in an attempt to address my perception that members of minority groups, in general, and Hispanics, in particular, are underrepresented in patent-

living in the U.S.” *Hispanic: Definition of Hispanic by Merriam-Webster*, <https://www.merriam-webster.com/dictionary/Hispanic> (last visited May 7, 2019) [<https://perma.cc/4XEM-C52M>]; *see also, e.g.*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 856 (3d ed. 1996) (defining “Hispanic” as “[a] U.S. citizen or resident of Latin-American or Spanish descent”). I also intend to include within my use of the term “Hispanic” persons identifying as Latinos, Latinas, or Latinxs.

¹²⁰ *See, e.g.*, American Chemical Society, *Chemistry and the Law*, <https://www.acs.org/content/acs/en/careers/college-to-career/chemistry-careers/chemistry-law.html> (last visited May 8, 2019) [<https://perma.cc/LG4G-Z3FD>]; School of Law: Loyola University Chicago, *Separating Myth from Reality: IP Law and Practice*, <https://www.luc.edu/law/academics/centersinstitutesandprograms/intellectualpropertylawprogram/myths-from-reality> (last visited May 8, 2019), [<https://perma.cc/93TF-PUSS>]; *Careers in Science: Patent Law*, YALE SCI., <http://www.yalescientific.org/2012/03/careers-in-science-patent-law> (March 14, 2012), [<https://perma.cc/72HN-B56C>].

¹²¹ UNITED STATES PATENT AND TRADEMARK OFFICE: OFFICE OF ENROLLMENT AND DISCIPLINE (OED), GENERAL REQUIREMENTS BULLETIN FOR ADMISSION TO THE EXAMINATION FOR REGISTRATION TO PRACTICE IN PATENT CASES BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE 4–8 (Oct. 2018). Even if an applicant to practice before the Patent Office has the required technical background, he or she must still pass a registration examination and a character check. United States Patent and Trademark Office, *Becoming a Patent Practitioner*, <https://www.uspto.gov/learning-and-resources/patent-and-trademark-practitioners/becoming-patent-practitioner> (last visited May 9, 2019), [<https://perma.cc/HNE7-NUFV>].

law careers.¹²² I suspected that this underrepresentation was particularly problematic given that (1) Hispanics and other minorities tend to be underrepresented in law in general,¹²³ and (2) Hispanics and other minorities are underrepresented in the fields of science, technology, engineering, and mathematics (“STEM”).¹²⁴ I perceived that this combination of two “filters” would lead to a serious underrepresentation problem. Unfortunately, my research confirmed that my perceptions were correct.

The remainder of this essay describes (1) the problem of the underrepresentation of Hispanics in law, in general, and patent law, in particular; and (2) possible causes of and solutions to this problem.

A. *The Underrepresentation Problem*

As I described to the attendees of my presentation, Hispanics and other minorities are underrepresented in law in general. The American Bar Association (“ABA”), has characterized law as “America’s least diverse profession.”¹²⁵ ABA statistics back up this characterization: “85 percent of all lawyers in America are white, and 65 percent are men.”¹²⁶ And, unfortunately,

¹²² I have also targeted other engineering organizations with minority membership. For example, I recently made a presentation to the membership of the National Society of Black Engineers Houston Professionals.

¹²³ See, e.g., J. Shontavia Johnson, et al., *Diversifying Intellectual Property Law: Why Women of Color Remain “Invisible” and How to Provide More Seats at the Table*, LANDSLIDE, Mar./Apr. 2018, https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2017-18/march-april/diversifying-intellectual-property-law [<https://perma.cc/5HH5-ARUF>].

¹²⁴ See, e.g., Lindsey E. Malcom, *Charting the Pathways to STEM for Latina/o Students: The Role of Community Colleges*, 148 NEW DIRECTIONS FOR INSTITUTIONAL RES. 29, 30 (2010), https://facstaff.nec.mass.edu/wp-content/uploads/2012/03/charting_the_pathways_to_stem_latina_students.pdf [<https://perma.cc/B8KN-XB8D>] (“The underrepresentation of Latinos (as well as African Americans and Native Americans) in the sciences is not a new problem.”).

¹²⁵ Johnson, et al., *supra* note 123.

¹²⁶ *Id.*; see also NALP, 2018 REPORT ON DIVERSITY IN U.S. LAW FIRMS 3 (2019) (“[T]he percentage of Black/African-American associates has declined most years since 2009, and despite small increases in the last three years remains below its 2009 level.”), https://www.nalp.org/uploads/2018NALPReportonDiversityinUSLawFirms_FINAL.pdf

this lack of diversity is not improving much, if at all. Indeed, “despite two decades of extensive efforts, gender and other diversity at the partner and [general counsel] level is essentially unchanged.”¹²⁷ Moreover, “minority representation in the [legal] industry has grown by less than one percentage point since 2000.”¹²⁸ And relief from this problem does not appear forthcoming from law schools: minority law-school enrollment has only increased by 1.8% between 2000 and 2015.¹²⁹ Not surprisingly from these facts, a survey recently revealed that “law firms are perceived to have the lowest commitment to diversity when it comes to hiring and retention.”¹³⁰

Additionally, statistics show that Hispanics, in particular, are underrepresented in the legal profession. As of July 2017, the Hispanic population in the United States was 58.9 million people—i.e., 18.1% of total U.S. population.¹³¹ But, according to the ABA, Hispanics made up only five percent of active attorneys in the United States.¹³² Figure 1 below summarizes demographic statistics for Hispanic attorneys and attorneys of other racial and ethnic groups nationwide.

[<https://perma.cc/4HHL-FUTW>].

¹²⁷ David Perla & Sanjay Kamlani, *Diversity In The Legal Profession: The More Things Change, The More They Stay The Same—Until They Don't*, ABOVE THE LAW, May 16, 2017, <https://abovethelaw.com/2017/05/diversity-in-the-legal-profession-the-more-things-change-the-more-they-stay-the-same-until-they-dont> [<https://perma.cc/Z4L8-CUKC>]; see also NALP, *supra* note 126, at 5 (“Gains [in representation of women, minorities, and minority women among partners in U.S. law firms] have been minimal at best.”)

¹²⁸ *Id.*

¹²⁹ Renwei Chung, *Minorities in the Legal Profession Have Increased by Less than One Percent Since 2000*, ABOVE THE LAW, Dec. 4, 2015, <https://abovethelaw.com/2015/12/minorities-in-the-legal-profession-have-increased-by-less-than-one-percent-since-2000> [<https://perma.cc/4FF7-9WYX>].

¹³⁰ Renwei Chung, *Americans Rank Law Firms Dead Last in Commitment to Diversity*, ABOVE THE LAW, Apr. 8, 2016, <https://abovethelaw.com/2016/04/americans-rank-law-firms-dead-last-in-commitment-to-diversity> [<https://perma.cc/PJG6-R6SJ>].

¹³¹ U.S. Census Bureau, *HISPANIC HERITAGE MONTH 2018*, (Sept. 13, 2018), <https://www.census.gov/newsroom/facts-for-features/2018/hispanic-heritage-month.html>, [<https://perma.cc/8H3N-4RD2>].

¹³² American Bar Association, *ABA National Lawyer Population Survey: 10-Year Trend in Lawyer Demographics* (2018), https://www.americanbar.org/content/dam/aba/administrative/market_research/National_Lawyer_Population_Demographics_2008-2018.authcheckdam.pdf [<https://perma.cc/XV77-ERH9>].

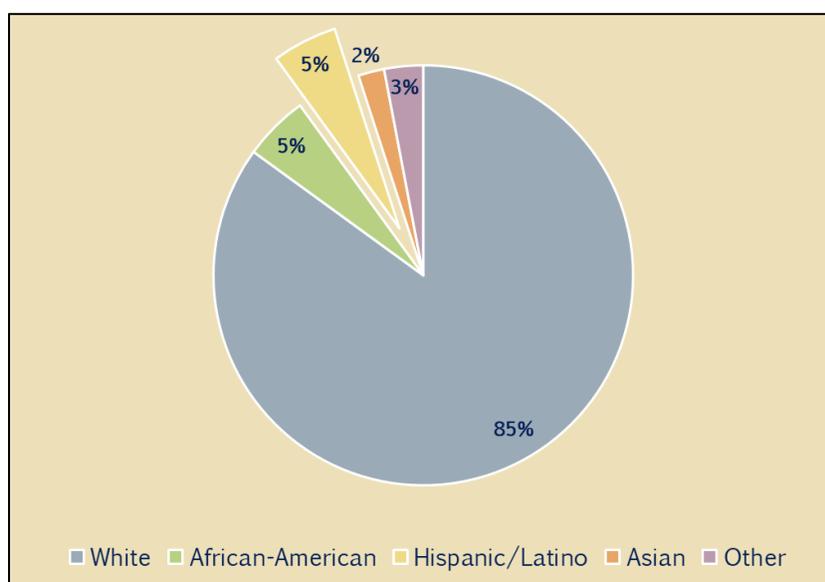


Figure 1. Attorney Demographics by Race/Ethnicity Nationwide, 2018.¹³³

Moreover, statistics concerning law-firm employment shows that Hispanics make up only 4.71% of associates, and a paltry 2.49% of partners at U.S. law firms.¹³⁴ Thus, the representation of Hispanics in law remains far below the 18.1% representation of Hispanics in the U.S. population overall.

In Texas, although Hispanic representation in the legal profession is slightly higher than the national level, it nonetheless remains well below that of the general Hispanic population within Texas. In 2017, the Hispanic population of Texas was 11.1 million people¹³⁵—i.e., 39.4% of the population.¹³⁶ But,

¹³³ *Id.*

¹³⁴ NALP, *supra* note 126, at 9.

¹³⁵ Texas Demographic Ctr., *Estimates of the Population by Age, Sex, and Race/Ethnicity for July 1, 2017 for State of Texas*, https://demographics.texas.gov/Resources/TPEPP/Estimates/2017/2017_ASRE_Estimate_alldata.pdf [<https://perma.cc/X7LM-5S36>].

¹³⁶ U.S. Census Bureau, *QuickFacts: Texas*, <https://www.census.gov/quickfacts/tx> (last visited May 8, 2019), [<https://perma.cc/MH77-H3KT>].

according to the State Bar of Texas, Hispanics made up only 8.9% of attorneys in Texas.¹³⁷ Figure 2 below summarizes demographic statistics for Hispanics and other racial and ethnic groups in Texas.

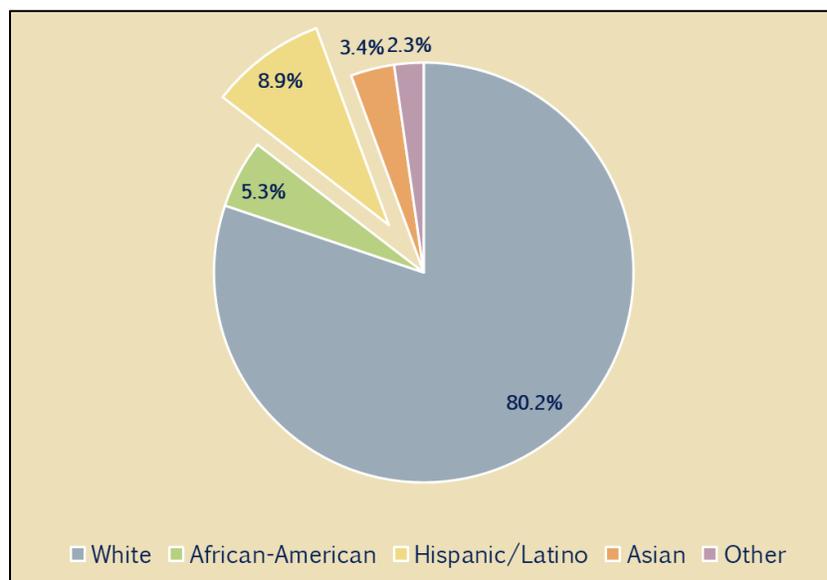


Figure 2. Attorney Demographics by Race/Ethnicity in Texas, 2017.¹³⁸

Thus, analogous to the nation as a whole, the representation of Hispanics in law in Texas lags far below the 39.4% representation of Hispanics in the overall Texas population.

My research revealed that statistics concerning the number of Hispanic attorneys practicing patent law are difficult to come by (which is telling, in and of itself). One statistic I was able to uncover concerns the number of attorneys who primarily practice IP law in U.S. law firms. According to the American

¹³⁷ State Bar of Texas: Department of Research and Analysis, *Racial/Ethnic Minority Attorneys: Attorney Statistical Profile (2016-17)*, <https://www.texasbar.com/AM/Template.cfm?Section=Archives&Template=/CM/ContentDisplay.cfm&ContentID=35990> [https://perma.cc/H9C7-3RVE].

¹³⁸ *Id.*

Intellectual Property Law Association (“AIPLA”), the average number of Hispanic attorneys who primarily practiced IP law per law firm in the United States was only 0.7 in 2016, as compared to 21.4 for white attorneys.¹³⁹ Figure 3 below summarizes these statistics.

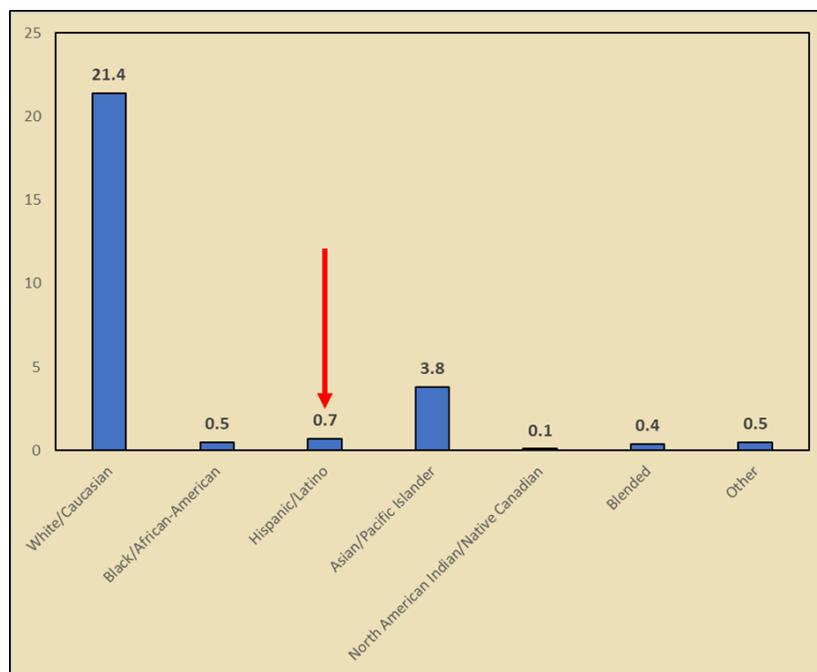


Figure 3. Mean Number of Attorneys and Agents Per Surveyed Firm Whose Practice is Primarily IP Law, 2016.¹⁴⁰

This statistic dramatically demonstrates the underrepresentation of Hispanics in IP-law practice in U.S. firms.

¹³⁹ AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION, 2017 REPORT OF THE ECONOMIC SURVEY F-11 (2017).

¹⁴⁰ *Id.*

B. Possible Causes and Solutions

Having identified the problem of the underrepresentation of Hispanics in law, in general, and patent law, in particular, the issue becomes one of how to begin to solve this problem. To think about how to solve the problem, it is necessary to consider the possible causes of the problem. I see two major potential causes: (1) an insufficient number of Hispanic students studying STEM subjects in college, followed by an insufficient number of these students going to law school; and (2) active or at least tacit discrimination in the hiring, promotion, and retention practices of the employers of patent lawyers.

1. The Pipeline Problem

One cause of the problem seems to be a pipeline issue: an insufficient number of qualified Hispanic students who majored in a STEM subject in college later attending law school. To solve the problem of underrepresentation, the pipeline must flow at all stages. For more Hispanics to ultimately practice patent law, more Hispanics must enter the pipeline that flows to law school.¹⁴¹ Without Hispanic students first becoming interested in STEM subjects at young ages, the pipeline of Hispanics qualified to ultimately practice patent law dries up right at the start. And even if Hispanic students become interested in STEM subjects early on, the pipeline dries up if these students then decide to major in non-STEM subjects in college. And even if Hispanic students major in STEM subjects in college, if they never decide to attend law school, then the pipeline dries up at the end.

¹⁴¹ Cf., e.g., Allison Smith & Hugo A. Garcia, *Increasing the Trickle: A Proposed Critical Multiculturalist Conceptual Model to Increase the Pipeline to a More Diverse STEM Doctorate Population*, 12 J. MULTICULTURAL EDUC. 206, 206–09 (2018) (discussing the importance of maintaining a pipeline of diverse students to achieve more diverse STEM doctoral programs), <https://www.emeraldinsight.com/doi/pdfplus/10.1108/JME-09-2016-0052>.

To insure that the early and middle sections of the pipeline do not dry up, many government organizations, schools, colleges and universities, and businesses are creating initiatives whose goal is to increase the participation of Hispanics in STEM fields.¹⁴² Everyone should welcome and support such initiatives. In addition to helping to keep the pipeline to patent law flowing for Hispanic students, STEM initiatives targeted at K–12 students work toward increasing the number of Hispanic engineers and scientists even if they do not go to law school, which in itself is an extremely laudable goal.

Assuming that more and more Hispanics graduate from college with STEM majors, law schools must actively reach out to these graduates to encourage them to attend law school and ultimately practice patent law. This sort of outreach was what I had in mind when I presented to SHPE Houston. Many engineers—of all races and ethnicities—do not realize that patent law is a potential career for them. My goal was to inform the SHPE Houston members of the opportunities available in patent law and to encourage those members who might be interested to explore these opportunities by thinking about attending law school. And I hope to continue this sort of outreach in the future. Time will tell whether this effort, and others like it, succeed.

2. The Discrimination Problem

A second major problem contributing to the underrepresentation of Hispanics in law, in general, and patent law, in particular, is discrimination. Traditionally, white males have been the dominant demographic group in the legal profession. Undoubtedly throughout the years, many legal employers have actively or at least tacitly discriminated against Hispanics and other racial and ethnic minorities, leading to the underrepresentation of these groups in the legal

¹⁴² See, e.g., Kimberly Leonard, *Building a Latino Wave in STEM*, U.S. NEWS & WORLD REP., May 19, 2016, <https://www.usnews.com/news/articles/2016-05-19/building-a-latino-wave-in-stem>.

profession. And this underrepresentation has tended to continue over the years because it can be difficult to increase the diversity of an organization that has very little diversity to begin with.

Although there is likely no quick fix to this aspect of the problem, reasons for hope exist. The demographics of American society are changing rapidly: the Hispanic population is currently the second-fastest-growing group in the United States.¹⁴³ In particular, this population continues its speedy growth in Houston.¹⁴⁴ Indeed, in 2016, “Harris County, Texas, had the largest numeric increase (39,600)” in Hispanic residents of all counties in the nation.¹⁴⁵ I am hopeful that this population growth will help to change attitudes about the abilities and talents that Hispanics can bring to all professions, including patent law.

Moreover, improvements in the pipeline of qualified Hispanic STEM majors who attend law school should ultimately have a positive effect. When employers seek to hire new patent attorneys, a larger pool of highly qualified Hispanic candidates should increase the likelihood of the hiring of more Hispanic candidates. Once legal employers begin to hire Hispanic candidates more often, then the presence of Hispanics within the ranks of these employers will grow. This greater presence of Hispanics should eventually lead to a greater presence of Hispanics as partners in law firms and other high-level positions. And these Hispanic partners and high-level attorneys will be in a position to hire more new Hispanic attorneys in the future. Thus, a positive snowball effect results.

¹⁴³ Antonio Flores, *How the U.S. Hispanic Population Is Changing*, PEW RESEARCH CENTER: FACT TANK, Sept. 18, 2017, <https://www.pewresearch.org/fact-tank/2017/09/18/how-the-u-s-hispanic-population-is-changing> [https://perma.cc/7MVC-S7KY].

¹⁴⁴ See U.S. Census Bureau, *The Nation's Older Population Is Still Growing*, *Census Bureau Reports*, June 22, 2017, <https://www.census.gov/newsroom/press-releases/2017/cb17-100.html> [https://perma.cc/H7Q7-K268].

¹⁴⁵ *Id.*

C. Conclusion

Although Hispanics are currently underrepresented in law, in general, and patent law, in particular, there is reason for hope for the future. Efforts to increase the flow of the pipeline of qualified Hispanics into the legal profession, as well as efforts to change the culture of discrimination present in the legal profession, should ultimately succeed. And when these efforts succeed, everyone wins. Society wins because the profession of patent law becomes more diversified. Law schools win because they increase both the quality and diversity of their student bodies. And the individuals who pursue patent-law careers win by entering a fulfilling and potentially lucrative profession.