

Testimony of  
**George B. Shepard**

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Senate Judiciary Committee Hearing  
"Strengthening Our Criminal Justice System: The John R. Justice  
Prosecutors and Defenders Incentive Act of 2007"  
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Thank you for the opportunity to testify before your committee, and to support with great enthusiasm passage of the John R. Justice Prosecutors and Defenders Incentive Act. I am currently Professor of Law at Emory University School of Law in Atlanta, Georgia. I have training in both law and economics. I am the author of two books and dozens of articles. Specifically, I have written three articles and several op-ed pieces on the impacts of law-school accreditation.

My main point today will be the following: if we limited or even eliminated the accreditation requirements for law schools, we could substantially reduce the costs of implementing the Act, while at the same time improving the training of lawyers.

Many of the participants in the accreditation system are public-spirited and selfless, and the system may provide some benefits. However, my research shows that the system has also imposed large harms. It has increased the cost of legal education substantially. It has suppressed potential new schools that would offer legal education that would be cheaper, and sometimes also better. The system has excluded many from the legal profession, particularly the poor and minorities. It has raised the cost of legal services. And it has, in effect, denied legal services to whole segments of our society.

Today, I will focus on one of these harms: how the accreditation system substantially increases the costs of legal education. The Act is excellent and essential legislation. However, we need to recognize that passage of the Act is necessary partly because of the accreditation system; without the accreditation system, many more students would graduate from law school with no loans or much smaller ones, so that they would not need to use the benefits that the Act provides. With the accreditation system, the Act will, in effect, transfer much taxpayers' money from the federal government to overpriced law schools. The Act is essential. But the accreditation system increases the cost of implementing it.

Strict accreditation requirements are a relatively recent phenomenon, having begun in the Great Depression. What seems normal now after 70 years was in fact a radical change from a much more open system that had functioned well for more than a century before then. Until the Great Depression, no state required an applicant to the bar to have attended any law school at all, much less an accredited one. Indeed, 41 states required no formal education whatsoever beyond high

school; 32 states did not even require a high school diploma. Similarly, bar exams were easy to pass; they had high pass rates.

Often, the best lawyers did not go to law school. For example, my great grandfather was Henry Russell Platt. He was a founding name partner of what is currently a leading law firm in Chicago, which until recently was called Mayer, Brown, and Platt. He never went to law school.

During the Depression, state bar associations attempted to eliminate so-called "overcrowding" in the legal profession; they felt that too many new lawyers were competing with the existing ones for the dwindling amount of legal business. They attempted to reduce the number of new lawyers in two ways. First, they decreased bar pass rates. Second, they convinced courts and state legislatures to require that all lawyers graduate from ABA-accredited law schools.

The ABA's accreditation requirements increase the cost of becoming a lawyer in two ways. First, they increase law school tuition. They do this by imposing many costs on law schools. For example, accreditation standards effectively raise faculty salaries; limit faculty teaching loads; require high numbers of full-time faculty rather than cheaper part-time adjuncts; and require expensive physical facilities and library collections. The requirements probably cause law schools' costs to more than double, increasing them by more than \$12,000 per year, with many schools then passing the increased costs along to students by raising tuition. The total increase for the three years of law school is more than \$36,000.

The impact of the increased costs from accreditation can be seen by comparing tuition rates at accredited schools and unaccredited schools. Accredited schools normally charge more than \$25,000 per year. Unaccredited schools usually charge approximately half that amount. One example of the many expensive accreditation requirements is the ABA's requirement that an accredited school have a large library and extensive library collection. Insiders confirm that the ABA requires a minimum expenditure on library operations and acquisitions of approximately \$1 million per year. This is more than \$4,000 per student in an averaged-sized school.

The second way that the ABA requirements increase students' cost of entering the legal profession is as follows. The ABA requires students to attend at least six years of expensive higher education: three years of college and three years of law school. Before the Great Depression, a young person could enter the legal profession as an apprentice directly after high school, without college or law school. Now, a person can become a lawyer only if she can afford to take six years off from work after high school and pay six years of tuition.

The requirement of six years of education is expensive. The sum of the tuition payments and foregone income can easily exceed \$300,000, or more. For example, a conservative estimate is that attending a private college and law school for six years would cost approximately \$25,000 per year for a total of \$150,000. In addition, let's assume conservatively that a student who could qualify for college and law school would have earned only \$25,000 per year if the student had not attended college and law school. The amount of income that the student sacrifices for six years to become a lawyer is \$150,000. The total is \$300,000.

The student has to pay for the increased costs from accreditation somehow. Unless the student is wealthy, large student loans will be necessary. Under the Act, for students who become prosecutors or public defenders, the taxpayers will pay for the loans.

To reduce the costs that the Act imposes on taxpayers, the accreditation system's restrictions should be loosened. For example, law schools might be permitted to experiment with smaller libraries, cheaper practitioner faculty, and even shorter programs of two years rather than three, like business school. Or the requirements might be eliminated completely; students without a degree from an accredited law school would be able to practice law.

Removing the flawed, artificial accreditation bottleneck would not in fact be a drastic change, and it would create many benefits but few harms. The current system's high-end qualities would continue, while a freer market for variety would quickly open up. To Rolls-Royce legal educations would be added Buicks, Saturns, and Fords. The new system would develop a wider range of talent, including lawyers at \$60, \$40, and even \$25 an hour, as well as those at \$300 and up. This would fit the true diversity of legal needs, from simple to complex. With cheaper education available to more people, some lawyers for the first time would be willing and able to work for far less than at present.

The addition of many more lawyers would produce little additional legal malpractice or fraud, and the quality of legal services decline little, if at all. Private institutions would arise within the market for legal services to ensure that each legal matter was handled by lawyers with appropriate skills and sophistication. For example, large, expensive law firms would continue to handle complicated, high-stakes transactions and litigation. However, law companies that resembled H&R Block would open to offer less-expensive legal services for simple matters. Accounting and tax services are available not only for \$300 per hour at the big accounting firms, but also for \$25 per hour at H&R Block. The new law companies would monitor and guarantee the services of their lawyer-employees.

Elimination of the accreditation requirement is a modest, safe proposal. It merely reestablishes the system that exists in other equally-critical professions, a system that worked well in law for more than a century before the Great Depression. Business and accounting provide comforting examples of professions without mandatory accreditation or qualifying exams. In both professions, people may provide full-quality basic services without attending an accredited school or passing an exam. Instead, people can choose preparation that is appropriate for their jobs. A person who seeks to manage a local McDonald's franchise or to prepare tax returns need not attend business school or become a CPA first. Yet there is no indication that the level of malpractice or fraud is higher in these fields than in law. Likewise, there is no indication that malpractice and fraud were any more frequent during the century before accreditation and the bar exam, when lawyers like Abraham Lincoln practiced. Lincoln never went to law school.

The John R. Justice Prosecutors and Defenders Incentive Act is superb legislation. However, the ABA accreditation system increases the Act's costs. Limiting or eliminating the accreditation requirements would produce few harms and many benefits. The benefits would include making the Act much cheaper to implement.