sel,[280] and the last case rejecting a claim of denial of assistance of counsel had been decided in 1950.[281]

Against this background, a unanimous Court in *Gideon v. Wainwright*[282] overruled *Betts v. Brady* and held "that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."[283] Justice Black, a dissenter in the 1942 decision, asserted for the Court that *Betts* was an "abrupt break" with earlier precedents, citing *Powell* and *Johnson v. Zerbst*. Rejecting the *Betts* reasoning, the Court decided that the right to assistance of counsel is "fundamental" and the Fourteenth Amendment does make the right constitutionally required in state courts.[284] The Court's opinion in *Gideon* left unanswered the question whether the right to assistance of counsel could be claimed by defendants charged with misdemeanors or serious misdemeanors as well as with felonies, and it was not until later that the Court held that the right applies to any misdemeanor case in which imprisonment is imposed—that no person may be sentenced to jail who was convicted in the absence of counsel, unless he validly waived his right.[285] The Court subsequently extended the right to cases where a suspended sentence or

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[280] Hudson v. North Carolina, 363 U.S. 697 (1960), held that an unrepresented defendant had been prejudiced when his co-defendant's counsel plead his client guilty in the presence of the jury, the applicable state rules to avoid prejudice in such situation were unclear, and the defendant in any event had taken no steps to protect himself. The case seemed to require reversal of any conviction when the record contained a prejudicial occurrence that under state law might have been prevented or ameliorated. Carnley v. Cochran, 369 U.S. 506 (1962), reversed a conviction because the unrepresented defendant failed to follow some advantageous procedure that a lawyer might have utilized. Chewning v. Cunningham, 368 U.S. 443 (1962), found that a lawyer might have developed several defenses and adopted several tactics to defeat a charge under a state recidivist statute, and that therefore the unrepresented defendant had been prejudiced.

[281] Quicksal v. Michigan, 339 U.S. 660 (1950). *See also* Canizio v. New York, 327 U.S. 82 (1946); Foster v. Illinois, 332 U.S. 134 (1947); Gayes v. New York, 332 U.S. 145 (1947); Bute v. Illinois, 333 U.S. 640 (1948); Gryger v. Burke, 334 U.S. 728 (1948). *Cf.* White v. Ragen, 324 U.S. 760 (1945).

[282] 372 U.S. 335 (1963).

[283] 372 U.S. at 344.

[284] 372 U.S. at 342–43, 344. Justice Black, of course, believed the Fourteenth Amendment made applicable to the States all the provisions of the Bill of Rights, Adamson v. California, 332 U.S. 46, 71 (1947), but for purposes of delivering the opinion of the Court followed the due process absorption doctrine. Justice Douglas, concurring, maintained the incorporation position. *Gideon*, 372 U.S. at 345. Justice Harlan concurred, objecting both to the Court's manner of overruling Betts v. Brady and to the incorporation implications of the opinion. Id. at 349.

[285] Scott v. Illinois, 440 U.S. 367 (1979), adopted a rule of actual punishment and thus modified Argersinger v. Hamlin, 407 U.S. 25 (1972), which had held counsel required if imprisonment were possible. The Court has also extended the right of assistance of counsel to juvenile proceedings. *In re* Gault, 387 U.S. 1 (1967). *See also* Specht v. Patterson, 386 U.S. 605 (1967).