witness would justify an appropriate delay, and such factors as crowded dockets and negligence will fall between these other factors.[29] It is the duty of the prosecution to bring a defendant to trial, and the failure of the defendant to demand the right is not to be construed as a waiver of the right.[30] Yet, the defendant's acquiescence in delay when it works to his advantage should be considered against his later assertion that he was denied the guarantee, while the defendant's responsibility for delay may preclude a claim altogether. A delay caused by assigned counsel should generally be attributed to the defendant, not to the state. However, "[d]elay resulting from a systemic 'breakdown in the public defender system' could be charged to the State."[31] Finally, a court should look to the possible prejudices and disadvantages suffered by a defendant during a delay.[32]

Public Trial

"The traditional Anglo-American distrust for secret trials has been variously ascribed to the notorious use of this practice by the Spanish Inquisition, to the excesses of the English Court of Star Chamber, and to the French monarchy's abuse of the letter de cachet. All of these institutions obviously symbolized a menace to liberty. . . . Whatever other benefits the guarantee to an accused that his trial be conducted in public may confer upon our society, the guarantee has always been recognized as a safeguard against any attempt to employ our courts as instruments of persecution."[33]

The Supreme Court has cited many civic and process-related purposes served by open trials: they help to ensure the criminal defendant a fair and accurate adjudication of guilt or innocence; they

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[29] Barker v. Wingo, 407 U.S. 514, 531 (1972). Delays caused by the prosecution's interlocutory appeal will be judged by the *Barker* factors, of which the second—the reason for the appeal—is the most important. United States v. Loud Hawk, 474 U.S. 302 (1986) (no denial of speedy trial, since prosecution's position on appeal was strong, and there was no showing of bad faith or dilatory purpose). If the interlocutory appeal is taken by the defendant, he must "bear the heavy burden of showing an unreasonable delay caused by the prosecution [or] wholly unjustifiable delay by the appellate court" in order to win dismissal on speedy trial grounds. Id. at 316.

[30] Barker v. Wingo, 407 U.S. at 528. *See generally* id. at 523–29. Waiver is "an intentional relinquishment or abandonment of a known right or privilege," Johnson v. Zerbst, 304 U.S. 458, 464 (1938), and it is not to be presumed but must appear from the record to have been intelligently and understandingly made. Carnley v. Cochran, 369 U.S. 506, 516 (1962).

[31] Vermont v. Brillon, 129 S. Ct. 1283, 1292 (2009) (citation omitted).

[32] Barker v. Wingo, 407 U.S. 514, 532 (1972).

[33] *In re* Oliver, 333 U.S. 257, 268–70 (1948) (citations omitted). Other panegyrics to the value of openness, accompanied with much historical detail, are Gannett Co. v. DePasquale, 443 U.S. 368, 406, 411–33 (1979) (Justice Blackmun concurring in part and dissenting in part); Richmond Newspapers v. Virginia, 448 U.S. 555, 564–73 (1980) (plurality opinion of Chief Justice Burger); id. at 589–97 (Justice Brennan concurring); Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 603–07 (1982).