

ing to commence a prosecution. Prejudice that may result from delays between discovering a crime and completing its investigation, or between discovering sufficient evidence to proceed against a suspect and instituting proceedings, is guarded against primarily by statutes of limitation, which represent a legislative judgment with regard to permissible periods of delay.<sup>19</sup> The protection afforded by the speedy trial guarantee of the Sixth Amendment “is activated only when a criminal prosecution has begun and extends only to those persons who have been ‘accused’ in the course of that prosecution.”<sup>20</sup> Nevertheless, invocation of the right need not always await indictment, information, or other formal charge but can begin with the actual restraints imposed by arrest if those restraints precede the formal preferring of charges.<sup>21</sup> In two cases involving both detention and formal charges, the Court held that the speedy trial guarantee had been violated by states that brought criminal charges against persons who were already incarcerated in prisons of other jurisdictions when the states that brought the criminal charges had ignored the defendants’ requests to be given prompt trials and had made no effort through requests to the prison authorities of the other jurisdictions to obtain custody of the prisoners for purposes of trial.<sup>22</sup> But an individual’s speedy trial rights can be at issue even when he is not subject to detention and it is uncertain whether the government will ever pursue further prosecution. Thus, a state prac-

<sup>19</sup> *United States v. Marion*, 404 U.S. 307, 322–23 (1971). *Cf.* *United States v. Toussie*, 397 U.S. 112, 114–15 (1970). In some circumstances, pre-accusation delay could constitute a due process violation but not a speedy trial problem. If prejudice results to a defendant because of the government’s delay, a court should balance the degree of prejudice against the reasons for delay given by the prosecution. *Marion*, 404 U.S. at 324; *United States v. Lovasco*, 431 U.S. 783 (1977); *United States v. MacDonald*, 456 U.S. 1, 8 (1982).

<sup>20</sup> *United States v. Marion*, 404 U.S. 307, 313 (1971). Justices Douglas, Brennan, and Marshall disagreed, arguing that the “right to a speedy trial is the right to be brought to trial speedily which would seem to be as relevant to pretrial indictment delays as it is to post-indictment delays,” but concurring because they did not think the guarantee violated under the facts of the case. *Id.* at 328. In *United States v. MacDonald*, 456 U.S. 1 (1982), the Court held the clause was not implicated by the action of the United States when, in May of 1970, it proceeded with a charge of murder against defendant under military law but dismissed the charge in October of that year, and he was discharged in December. In June of 1972, the investigation was reopened, but a grand jury was not convened until August of 1974, and MacDonald was not indicted until January of 1975. The period between dismissal of the first charge and the later indictment had none of the characteristics which called for application of the speedy trial clause. Only the period between arrest and indictment must be considered in evaluating a speedy trial claim. *Marion* and *MacDonald* were applied in *United States v. Loud Hawk*, 474 U.S. 302 (1986), holding the speedy trial guarantee inapplicable to the period during which the government appealed dismissal of an indictment, since during that time the suspect had not been subject to bail or otherwise restrained.

<sup>21</sup> *United States v. Marion*, 404 U.S. 307, 320, 321 (1971).

<sup>22</sup> *Smith v. Hooy*, 393 U.S. 374 (1969); *Dickey v. Florida*, 398 U.S. 30 (1970).