testimony or inference that petitioners were ordered to leave the tea room on account of color. However, the Supreme Court of Arkansas did not so treat the cases. It found that the "prosecutions arise out of the activities of the defendants in seeking to be served at eating facilities maintained [6] for whites, the defendants being Negroes." In the face of this, as well as the discussion of the court on the claim under the equal protection clause of the 14th amendment, we find the State's contention in this regard frivolous.

Our consideration of the Civil Rights Act of 1964 leads us to the conclusion that Congress removed from the category of punishable crimes any offense with respect to discrimination in public accomodations as defined in the Act and we, therefore, do not discuss the other issues raised in the cases.

(FACTS HERE.)

3. Application of Title II of the Civil Rights Act of 1964 to the

We have held in No. 515, Heart of Atlanta Motel v. U.S. et al, and No. 543, Katzenbach, Acting Attorney General, et al, v. Ollie McClung, that Title II of the Act is constitutional under the attack there made. It follows that if the establishments involved [7] here come under the Act that they too would be controlled by it. We believe that each of them does. The luncheon area involved in each of these cases is located on the premises of a retail establishment; i.e., in Hamm's case, McCrory's Dime Store, a national retail chain operation, and in Lupper's case, the Blass Department Store. Both of these establishments appear to be within the terms of §201 (b) (4) of the Act. It provides that any establishment [McCrory or Blass] within the premises of which is physically located any such covered establishment [the lunch counter in Hamm's case and the tearoom in Lupper's,] and

No 2 + No 5

~~[illegible]~~

These are "sit in cases" that came here from the highest courts of South Carolina and Arkansas, respectively. Each of those courts has affirmed convictions based upon state trespass statutes against petitioners, who are Negroes, for participating in "sit in" demonstrations in the luncheon and tearoom sections of stores in the respective States. We granted certiorari in each of the cases, __ US __, and heard them together. The petitioners in each of the cases asserted both in the state courts and here the denial of rights, privileges and immunities secured by the Fourteenth Amendment; in addition, each claims here that the Civil Rights Act of 1964, passed subsequent to their convictions and the affirmances thereof in the state courts, abate these actions.

1. The Facts

2. In No. 2, Hamm v. Rock Hill, the petitioner, ~~a [illegible]~~ along with the Reverend C. A. Ivory, now deceased, ~~[illegible]~~ entered ~~the~~ a McCrory variety store at Rock Hill, S.C., five and dime store which was a unit of a national chain operation. They made a purchase or two after which they proceeded to the lunch counter. Service of food was sought which was refused. The manager asked petitioner and Reverend Ivory to leave the store but they refused. Whereupon the manager called the police. The prosecution under § 16-388 of the S.C. Code of Laws, making it an offense for anyone to enter into the place of business of another having been warned not to do so or who refuses to leave immediately after having entered thereon, resulted in convictions of petitioner. Rev. Ivory died subsequently. The conviction was affirmed by both the Court of General Sessions and the Supreme Court of South Carolina, 241 S.C. 446 (1962).

3. Lupper v. Arkansas, No. 5, involves a group of ~~[illegible]~~ Negroes entering the department store of Gus Blass & Company at Little Rock. The group went to the mezzanine tearoom of the store at the busy luncheon hour, seated themselves and requested service which was refused. Within a few minutes the group, including petitioners, were advised that Blass reserved the right to refuse service to anyone and was not prepared to serve them at the time. Upon being requested to leave, the petitioners refused to do so. Police officers were summoned who located petitioners on the first floor of the store and arrested them. The officers' testimony that petitioners admitted the whole offense was denied. The prosecutions in the Little Rock Municipal Court resulting

in convictions of petitioners were based upon § 41-1433, Arkansas Statutes Ann. (1963 Supp) which prohibits a person to remain on the premises of a business establishment after having been requested to leave by the owner or manager thereof.[4] On appeal to the Pulaski Circuit Court, a trial _de novo_ resulted in verdicts of guilty and the Arkansas Supreme Court affirmed, 236 Ark. 596 (1963), _sub nom._ _Briggs et al v. State_.

2 The Contentions of the Parties.

The initial claim of the petitioners in each case is that Title II of the Civil Rights Act of 1964, 78 Stat. 241, abates the case. The reasoning is that since § 201 (a) of that Act declares that all persons shall be entitled to the full and equal enjoyment of any place of public accommodation, which under § 201 (b)(2) includes restaurants, lunchrooms and similar facilities that serve or offer to serve interstate travelers, [201(c)] that the offense alleged here is no longer a punishable crime under § 203 (c) which provides that no person shall be punished for exercising any right under § 201.

Respondents each reply that no such effect was intended by[5] the Congress in the Civil Rights Act of 1964 wherein it is specifically provided that none of its provisions were to be "construed as invalidating any provision of state law unless... inconsistent with any of the purposes of the Act, or any provision thereof;" that the Act does not give a right to trespass, only injunctive relief being available and to adamantly remain after being requested to leave was beyond its purpose; and, finally, that the Act operated prospectively only.

In addition to these overlapping contentions, Arkansas claims that it has a savings statute §§ 1-103 and 1-104 of Ark. Stat. Ann. that would prevent the abatement. It also asserts that there is no