but at best, and with difficulty, impeach by challenging the government's method of sampling and testing.

"Section 372 (b), then, must have been intended to provide defendants with an opportunity for independent analysis; and it is clear that the results of such analysis may be among the most important pieces of evidence defendants can offer in their own behalf. Deprival of the chance to make this test, unlike the elimination of the informal hearing involved in the Morgan case, prejudices defendants' substantial rights. This consideration, added to the statute's mandatory wording, and the analogy of cases under other acts, lead us to the conclusion that provision of a portion of the sample, save in properly excepted cases, is a condition precedent to prosecution.

"Since, despite seasonable written request, no samples of the food involved in counts III, IV, VI and VII were furnished defendants, nor any reason offered for this failure, the convictions on these counts must be reversed. Counts II and V remain for consideration. The principal grounds of reversal urged as to these is that there was insufficient evidence to support a finding that the candy was physically adulterated with filth, or that it had been manufactured under conditions proscribed by the Act.

"As to this second ground, government inspectors testified that, at times not far removed from the date of manufacture of the candy, conditions at appellants' plant were unsanitary. They gave evidence as to the presence of rats and cockroaches, and a showing was made that candy-making machines were left uncleaned after use. This, despite existence to contrary testimony, supports a finding of uncleanliness at the plant.

"It is true that the evidence of actual physical adulteration of the candy involved in counts II and V did not disclose any extremely high proportion of alien substances, and that this evidence was met by evidence of an independent analysis of other portions of the samples which disclosed no adulteration whatsoever. However, evidence was offered to the effect that in a first test an analysis of three pounds of the candy involved in count II disclosed the presence of two small rodent hairs in one of the three one-pound subdivisions; that on a later inspection some months later, and two weeks previous to the trial, there were found in three pounds of the candy a total of two rodent hairs and three insect larva and fragments.

"As to count V testimony was offered tending to show that in a total of two pounds of candy sampled, seven rodent hairs were found, as well as two insect fragments, and a fragment resembling a rodent pellet. We can not say that there was no evidence supporting the judgment of the trial court. The convictions on counts II and V are sustained.

"Since two non-concurrent fines were validly levied on individual defendant Kennepohl, the assessed total of his Five Hundred Dollar fine remains unchanged, though the judgment is reversed as to counts III, IV, VI and VII. Since only two valid Five Hundred Dollar fines were levied on the corporate defendant Triangle Candy Company, the total fine imposed on it must be reduced from Fifteen Hundred Dollars to One Thousand Dollars.

"The judgment against Kennepohl is affirmed as to Counts II and V; as to counts III, IV, VI and VII it is reversed. The judgment against Triangle Candy Company is affirmed as to counts II and V; as to counts III, IV, VI and VII it is reversed."

8844. Adulteration of candy. U. S. v. 3 Cartons of Candy (and 2 other seizure actions against candy). Default decrees of condemnation and destruction. (F. D. C. Nos. 15319, 15352, 15367. Sample Nos. 11347-H, 11430-H to 11434-H, incl., 11713-H.)

LIBELS FILED: Between February 26 and March 12, 1945, Districts of Maine, Rhode Island, and New Hampshire.

ALLEGED SHIPMENT: Between the approximate dates of January 10 and February 17, 1945, by the Hedison Bros. Confectionery Co., from Boston, Mass.

PRODUCT: 3 30-pound cartons of candy at Brunswick, Maine; 32 10-pound cartons, 8 12-pound cartons, and 11 35-pound containers, of candy at Providence, R. I.; and 4 35-pound cartons of candy at Nashua, N. H.

LABEL, IN PART: "Peanut Brittle," or "Chocolate Victory [or "Covered Nut & Fruit Victory"] Mixture."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of larvae, insect fragments, and rodent hair fragments; and, Section 402 (a) (4), it

had been prepared under insanitary conditions whereby it may have become contaminated with filth.

DISPOSITION: March 23 and April 17, 1945. No claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

8845. Adulteration of candy. U. S. v. 8 Cases of Candy (and 1 other seizure action against candy). Default decrees of condemnation and destruction. (F. D. C. Nos. 15199, 15252, 15381. Sample Nos. 27520–H, 28229–H, 28230–H.)

LIBELS FILED: February 6 and 28, 1945, Eastern and Western Districts of Washington.

ALLEGED SHIPMENT: On or about January 13 and 17, 1945, by Mello-Sweets, Inc., from Portland, Oreg.

PRODUCT: 132 1-pound bars of candy at Seattle, Wash., and 8 cases, each containing 20 1-pound boxes and 10 2-pound boxes, of candy at Wenatchee, Wash.

LABEL, IN PART: (Portion) "Valentine Candies," or "Mello-Sweets Inc. Nut Log."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of rodent hairs and rodent hair fragments; and, Section 402 (a) (4), it had been prepared under insanitary conditions whereby it may have become contaminated with filth.

DISPOSITION: March 15 and April 28, 1945. No claimant having appeared, judgments of condemnation were entered and the product was ordered destroyed.

8846. Adulteration of candy. U. S. v. 189 Boxes and 167 Boxes of Candy. Default decree of condemnation. Product ordered disposed of by the United States marshal. (F. D. C. No. 15675. Sample Nos. 18401–H, 18402–H.)

LIBEL FILED: March 26, 1945, District of South Dakota.

ALLEGED SHIPMENT: On or about February 21, 1945, by Close and Co., from Chicago, Ill.

PRODUCT: 356 boxes of candy at Sioux Falls, S. Dak.

LABEL, IN PART: "Drop Kicks Assorted Flavors," or "Close's Root Beer Barrels Candy with Flavor."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of rodent hairs and hairs resembling rodent hairs.

DISPOSITION: May 1, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered disposed of by the United States marshal.

8847. Adulteration of licorice candy. U. S. v. 30 Boxes of Licorice Candy (and 3 other seizure actions against licorice candy). Default decrees of destruction. (F. D. C. Nos. 15648 to 15651, incl. Sample Nos. 18331–H, 18332–H, 18871–H, 18872–H, 18874–H.)

LIBELS FILED: March 23 and 24, 1945, District of Minnesota.

ALLEGED SHIPMENT: Between the approximate dates of January 23 and March 2, 1945, by the Licorice Products Co., from Dubuque, Iowa.

PRODUCT: 242 boxes of licorice candy at Minneapolis, Minn., and 46 boxes and 3 drums of the same product at St. Paul, Minn.

LABEL, IN PART: "120 Count 1 Cent Each Four Aces," "24 Count 5¢ Each Imps," or "Licorice Rolls."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance by reason of the presence of rodent hairs and insect fragments; and, Section 402 (a) (4), it had been prepared under insanitary conditions whereby it may have become contaminated with filth.

DISPOSITION: June 8 and 13, 1945. No claimant having appeared, judgments were entered ordering that the product be destroyed.