

person suffering from a mental defect would have less ability than normal persons to distinguish between right and wrong in complex situations (Tr. 233); would tend to act impulsively under stress (*ibid.*); and would readily become dependent upon and be strongly influenced by someone who befriended him (Tr. 234-235). The witness testified further that McDonald had a mental defect, which she defined as "a state of mental development which does not reach the level of average intelligence," (Tr. 245) and that "if McDonald had a person on whom he was dependent * * * and if that person should produce a gun and threaten another * * * McDonald [would not] be as able as the average adult to assess and evaluate the situation and the consequences of whatever action he might take * * *" (Tr. 235).⁵ The psychiatrist stated that McDonald would lack the ability of normal persons to foresee the consequences of his acts and offered an opinion that appellant's relationship to Davis was to some extent a product of his mental deficiency.

Evidence of a 68 I.Q. rating, standing alone and without more, is not evidence of a "mental defect," thus invoking the *Durham* charge. Where, as here, other evidence of mental abnormality appears, in addition to the I.Q. rating, the *Davis* case would control and the instruction should be given. The introduction of competent evidence of mental disorder raises the issue of causality sufficient for jury consideration. See *Durham v. United States*, 94 U.S.App. D.C. 228, 241, n.49, 214 F.2d 862, 875, n.49; *Blocker v. United States*, 107 U.S.App.D.C. 63, 274 F.2d 572; *Goforth v. United States*, 106 U.S.App.D.C. 111, 269 F.2d 778; *United States v. Amburgey*, D. D.C., 189 F.Supp. 687. Cf. *Tatum v. United States*, 88 U.S.App.D.C. 386, 190 F.2d 612.

It does not follow, however, that whenever there is any testimony which may be said to constitute "some evidence"

⁵ McDonald's testimony suggests that he was financially and socially dependent upon Davis. (See Tr. 161-163.)