

of mental disorder, the Government must present affirmative rebuttal evidence or suffer a directed verdict. A directed verdict requires not merely "some evidence," but proof sufficient to compel a reasonable juror to entertain a reasonable doubt concerning the accused's responsibility.⁶ *Durham v. United States*, 94 U.S.App.D.C. at 232, n.8, 214 F.2d at 866, n.8; *Hall v. United States*, 4 Cir., 295 F.2d 26. See 9 Wigmore, *Evidence*, §2487; Abbott, *Two Burdens of Proof*, 6 Harv.L.Rev. 125. Whether uncontradicted evidence, including expert opinion evidence, which is sufficient to raise a jury question on the mental issue is also sufficient to require a directed verdict depends upon its weight and credibility. *Douglas v. United States*, 99 U.S.App.D.C. 232, 239 F.2d 52. *Davis v. United States*, 160 U.S. 469, clearly supports this position. There the Supreme Court said that the jury, in considering an insanity plea, must weigh all the evidence, including the presumption of sanity. *Id.* at 488. Whether uncontradicted expert testimony overcomes the presumption depends upon its weight and credibility, and weight and credibility ordinarily are for the jury. See *Stewart v. United States*, 94 U.S.App.D.C. 293, 295, 214 F.2d 879, 882.

II.

Our eight-year experience under *Durham* suggests a *judicial* definition, however broad and general, of what is included in the terms "disease" and "defect." In *Durham*, rather than define either term, we simply sought to distinguish disease from defect. Our purpose now is to make it very clear that neither the court nor the jury is bound by

⁶ *Wright v. United States*, 102 U.S.App.D.C. 36, 250 F.2d 4; *Douglas v. United States*, 99 U.S.App.D.C. 232, 239 F.2d 52; *Satterwhite v. United States*, 105 U.S.App.D.C. 398, 267 F.2d 675; *Hopkins v. United States*, 107 U.S.App.D.C. 126, 275 F.2d 155; *Campbell v. United States*, D.C.Cir., — F.2d — (3/29/62).