

**QUESTION 15 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK
V OR IN EXAMPLIFY ANSWER SCREEN 15**

Defendant Davis is on trial in state court for homicide. The charges arose out of an adult birthday party that turned violent. Davis and two of his friends, all members of a criminal gang (the Sharks), arrived as invited guests. But then other guests, some whom were members of another criminal gang, noticed the Sharks were brandishing guns. Not wanting any violence, a rival gang member asked the Sharks to leave peacefully. Instead, a fight ensued that ended when Davis yelled at rival gang member Van to "get back, get back, or I'll shoot," before opening fire, killing Van. Davis does not deny being the shooter but claims he shot Van in self-defense. The Shark witnesses who accompanied Davis to the party deny seeing any violence by Davis.

The prosecutor plans to introduce two rap videos featuring Davis rapping about brandishing guns and escalating to deadly violence whenever he or his gang members feel disrespected. Other Sharks appear with Davis in both videos. The Sharks made one video one year before Van's death, and made the other nine months after the death. The prosecutor argues that the videos are evidence that Davis was not acting in self-defense, but rather out of a motive to instigate violence. The prosecutor also plans to introduce other evidence of the Sharks' gang affiliations to demonstrate their "see no evil" denials arise out of gang loyalty against "snitching" on Davis.

Davis objects to the rap video as hearsay under MRE 801 and also as violative of MRE 403 (Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion and Waste of Time). Davis also objects that the evidence of other witnesses' gang affiliation should be excluded under MRE 404(b) pertaining to admissibility of other crimes, wrongs or acts.

1. How should the court rule on each of Davis' MRE 801 and 403 objections to the rap videos? Explain why.

2. How should the court rule on Davis' 404(b) objection to the other Sharks' gang affiliations? Fully explain your analysis.

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