

**QUESTION 13 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V
OR IN EXAMPLIFY ANSWER SCREEN 13**

When three-year old Babe's mother went out of town, she left Babe in the care of her boyfriend, Dante. When Babe arrived at pre-school the next day, his lunchroom teacher saw a blackened right eye as well as marks on Babe's arms. She asked Babe about the injuries but he said little. Babe was then taken to a classroom, which provided greater light. With his injuries even more visible, his main teacher asked, "Who did this to you?" Reluctantly Babe repeated "Dante, Dante." A supervisor was called and Babe communicated more answers: "Dante hit me with a stick on my face and whipped my arms."

Dante returned after pre-school that afternoon to pick up Babe. Though reluctant to let Babe go with Dante, the staff relented. Being a mandatory reporter of suspected child abuse, the supervisor had already alerted Child Protective Services. The next day, Babe was found by a social worker at Dante's mother's house. Dante was charged with multiple counts of child abuse. Having learned that the prosecution intended to call Babe's teachers and their supervisor as witnesses to quote Babe's words implicating Dante, defense counsel moved to exclude their testimony. The prosecutor responded that, due to his age, Babe was not competent to testify under a state rule of evidence concerning child witnesses and further another state rule of evidence allowed reliable and trustworthy statements of child abuse victims. Defense counsel replied that, any rules of evidence analysis aside, Dante's constitutional right to confrontation would be denied should Babe not testify and his out-of-court statements implicating Dante were admitted through school personnel. The court rejected Dante's argument because the statements were not "testimonial." Trial proceeded without Babe testifying and school personnel quoting Babe's implication of Dante, who was convicted.

Based on the foregoing, address the following questions and fully explain your answers.

1. Define what is meant by "testimonial" statements.
2. What is the significance of classifying Babe's statements as testimonial?
3. Applying the definition of testimonial statements to

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the facts presented, did introduction of the teachers' testimony violate Dante's right to confrontation?

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