



Oral Statement

Habit & Modus Operandi

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Governing Statutes

Federal Rules of Evidence 406

“Evidence of a person’s habit or an organization’s routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.”

Under FRE 406 evidence of habit is admissible.

Is it Habit?

The courts will consider three factors when deciding if an act was habit or not:

- 1) The degree to which the conduct is reflexive or semi-automatic as opposed to volitional**
- 2) The specificity or particularity of the conduct**
- 3) The regularity or numerosity of the examples of the conduct**

Oral Statement: Habit & Modus Operandi

Modus Operandi is a “particular way or method of doing something, especially one that is characteristic or well-established.

5.1 Oral Statement

This is a personal injury suit. Plaintiff, Charles Smith, charges that on February 1, [-2], the defendant, William Barnes, was driving his car in excess of the speed limit and that his speeding caused the car to leave the road, and injuring Smith, who was a passenger in Barnes's car.

The case is now on trial. Plaintiff calls Ralph Fletcher, a witness to the accident. Fletcher testifies that he had been sitting on the porch of his house at 4000N. Clark Street for one hour when the Barnes car sped by. Fletcher says that the car was traveling 70 mph in a 55 mph zone. Fletcher says during the hour he drank a glass of iced tea, read the local newspaper, relaxed, and just watched the traffic.

You know from the police reports that a police officer, James Watson, interviewed Fletcher a few minutes after the accident. According to the report, Fletcher stated that the Barnes car was "traveling about 65 to 70 mph," and that he (Fletcher) "had just gone out on the porch moments before Barnes's car came by."

Cross Examination of Ralph Fletcher

1. The purpose of cross-examination is to test the credibility of statements made during direct examination.

Example: Fletcher testifies he has been sitting on the porch during that hour, when he reported to the police Fletcher said that he just gone out on the porch moments before Barnes's car came by. Fletcher testimony contradicts the statement made to the police officer.

Impeachment

Impeach in this sense means to question or reduce the credibility of the witness or evidence.

The defendant should call the police officer James Watson as a witness to testify.

Redirect Examination

Redirect examination is the trial process by which the party who offered the witness has a chance to explain or otherwise qualify any damaging or accusing testimony brought out by the opponent during cross-**examination**. According to Rule 406. Habit; Routine Practice Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness. Example: Fletcher will need to prove that under Rule 406 that his routine practice is to have a natural habit of sitting in his porch and drink tea and read the newspaper everyday at the same time, he can call on witness to testify the validity of his testimony. The prosecution can also bring any other evidence such as speeding tickets or driving record that can show a trend that Barnes has exceeded the speed limit in other instances.