

Interviewing Witnesses



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Purpose of Interviews

An important investigative tool in developing reliable evidence

- ✓ To understand how the industry works
- ✓ To get another side of the story
- ✓ To test what you think you know
- ✓ To identify potential witnesses for litigation
- ✓ To learn industry participants' views
 - Are they concerned about the merger?
 - Were they harmed by the party's conduct?

Purpose of Interviews

Focus on facts, not conclusions



The screenshot shows the Law360 website interface. At the top left is the Law360 logo with the tagline 'A LexisNexis Company'. To the right is a search bar containing the text 'News, cases, companies, firms' and a magnifying glass icon. Further right is a search button with a magnifying glass and the word 'Advanced'. Below the search bar is a blue banner with the text 'The Road To 9' and a sub-header 'Read up on Judge Gorsuch, the nominee to the U.S. Supreme Court'. The main article title is 'Witness Opinions Nixed Ahead Of Anthem-Cigna Trial' by Jimmy Hoover. The article text states that on Monday, a D.C. federal judge presiding over the Department of Justice's antitrust challenge to a \$54 billion merger between Anthem Inc. and Cigna Corp. shot down various witness declarations the health insurers had hoped to use at trial next week. The article also mentions that during a hearing ahead of the Nov. 21 trial, U.S. District Judge Amy Berman Jackson largely sided with the government on a series of motions to exclude from evidence the declarations of Shubham Singhal, a McKinsey & Co. consultant Anthem hired to show the efficiencies of the planned merger, and dozens of health insurance industry workers.

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The Road To 9
Read up on Judge Gorsuch, the nominee to the U.S. Supreme Court

Witness Opinions Nixed Ahead Of Anthem-Cigna Trial

By **Jimmy Hoover**

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Law360, Washington (November 14, 2016, 3:43 PM EST) -- On Monday, the D.C. federal judge presiding over the Department of Justice's antitrust challenge to a \$54 billion merger between [Anthem Inc.](#) and [Cigna Corp.](#) shot down various witness declarations the health insurers had hoped to use at trial next week.

During a hearing ahead of the Nov. 21 trial, U.S. District Judge Amy Berman Jackson largely sided with the government on a series of motions to exclude from evidence the declarations of Shubham Singhal, a [McKinsey & Co.](#) consultant Anthem hired to show the efficiencies of the planned merger, and dozens of health insurance industry workers.

Who to Interview

Cast a wide net—and make sure you interview the right person

- ✓ Complainants
- ✓ Market participants
 - Competitors
 - Customers (or their representatives)
 - Suppliers
- ✓ Government agencies
- ✓ Trade organizations
- ✓ Industry analysts and experts
- ✓ The parties

Preparing for an Interview

Help the interview go smoothly

- ✓ Set goals
- ✓ Prepare an outline (by topics)
- ✓ Do your homework
 - Prior interview reports
 - Documents
 - Internet research
- ✓ Set a time limit
- ✓ Decide: in-person vs. over the phone

Steps of an Interview

Be organized

1

Preliminaries

- Introductions
- Explain purpose
- Answer any questions
- Note the time limit

2

Background

- Witness
- Company

3

Topics

- Organized by element
- Signal new topics
- Save ultimate question for end

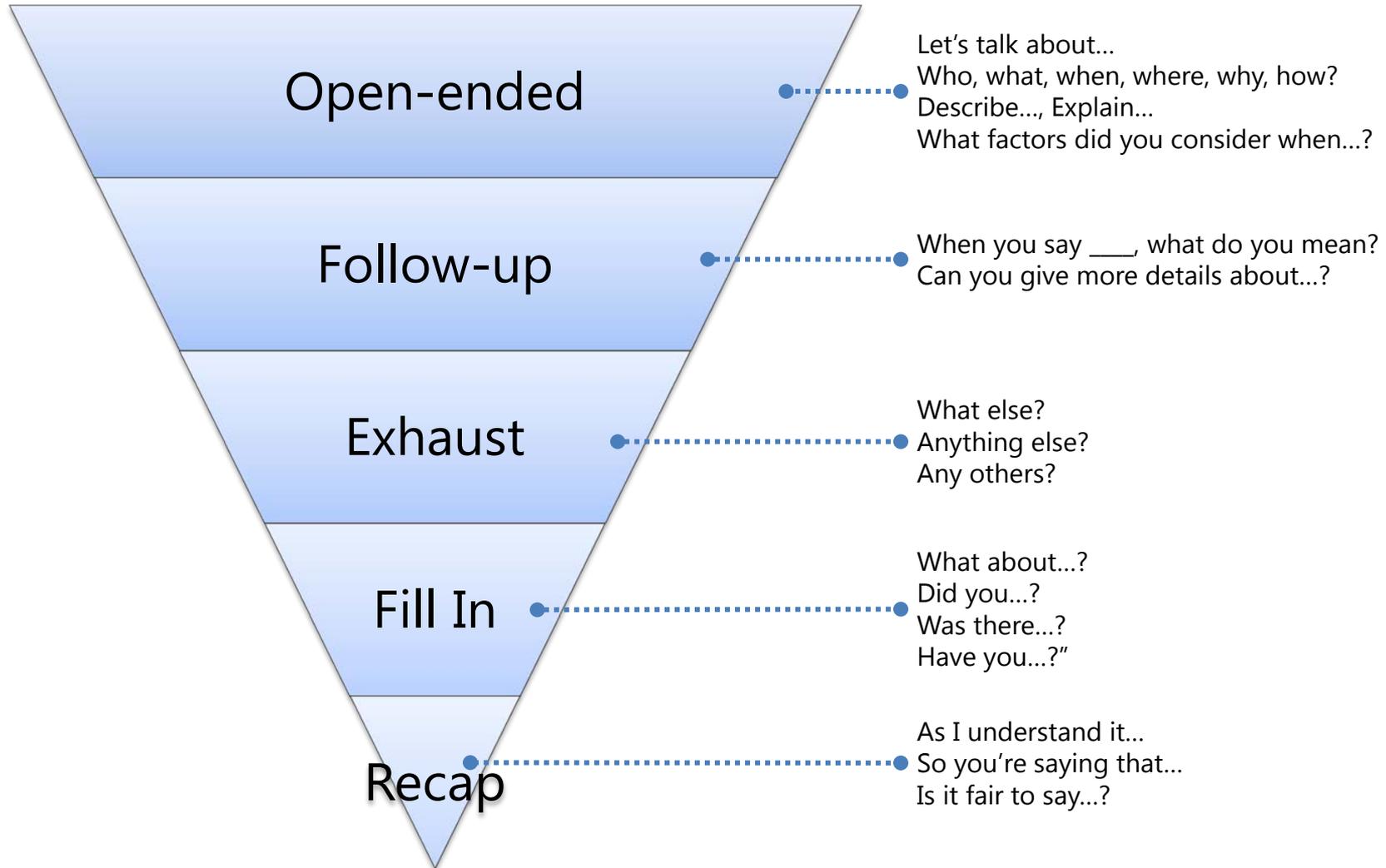
4

Conclusion

- Anything else we should know?
- Anyone else we should talk to?
- Follow up

Questioning Techniques

Use the funnel technique



After the Interview

Keep a good record

- ✓ Debrief immediately after the interview
 - Review highlights
 - Discuss implications for investigation
 - Assess witness impressions
- ✓ Promptly prepare an interview report
 - Organize by topic
 - Circulate for review
 - Include witness impressions

Concluding Remarks

- ✓ **Be curious.**

Every witness is an expert about their own experience, so approach interviews with the mind-set of an interested student, ready to be taught.

- ✓ **Listen and be flexible.**

Focus on the witness's answer, not the next question. Don't be tied to your outline; follow up and pursue unexpected answers.

- ✓ **Be professional and courteous.**

Show you're prepared. Don't get frustrated if the witness or attorneys are uncooperative. Keep the tone conversational; interviews are not interrogations.

- ✓ **Lay the foundation.**

Always test the basis of the witness's knowledge, including for friendly witnesses.



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