

describe the key conversations you had with company officials regarding promises for sales commissions. If you answer, “at the interview, the human resources manager told me that ‘there may be a commission for me,’” say goodbye to your case.

A contract has to be a definite bargain between the parties. If a vague and non-definite promise was all that was communicated, then legally there is no contract. A better response would be to explain that notwithstanding that which the human resources manager stated, your boss told you specifically the commission rates, when you would be paid commissions, and all of the duties you had to complete to successfully earn the commission.

### **The Defense Lawyer’s Job at Your Deposition**

Having been a former defense lawyer for a Madison Avenue firm in New York City, I can tell you what defense lawyers do during your deposition. They have two aims. First, in case you haven’t figured this message out by now, their job is to induce you to admit to certain facts or conclusions that will completely and utterly destroy any chance you have in meeting the legal elements of your case. Now in the examples described above, I’m sure these plaintiffs didn’t walk into their depositions intending to destroy their cases. They simply didn’t focus on the reasons the defense attorney was asking the question or didn’t concentrate well enough to answer the question. Another technique of which you need to be aware is that defense lawyers will rephrase your answer to ask a follow-up question in such a manner that your next logical statement will compromise a legal element of your case.

## Your Deposition

The second aim of defense lawyers is to assess your likeability and credibility. At the conclusion of each deposition that I performed in New York, I had to write a report to my client providing the factual highlights of the deposition as well as how the plaintiff, a person just like you, came across at deposition. Was this person likeable or not likeable? Was he or she argumentative, ill mannered, rude, or nice? Would a jury like or hate this person? Would a judge believe this person?

After completing this section of my report, I then had to meet with one of the firm's partners and assess the value of the claim for the company I was defending, which meant that I had to advise my corporate client about what I believed the case could be worth if it were tried before a judge and jury. Ultimately, I had to provide a recommended settlement range for the company to pay the plaintiff to drop the case. The more believable and likeable the person came across at his or her deposition, the higher the case was valued.

It's critical to come across at deposition as a likeable and believable person. The deposition stage of the case is the time that many cases will settle because both sides have now had the opportunity to judge each side's credibility; therefore, let your lawyer do the arguing with the defense lawyer. Stay far away from argument. If you can't really understand the question, say so. If the defense lawyer attempts to put words into your mouth, explain your answer to that lawyer in the best possible way you can.