denial . . ."). A properly instructed jury could conclude after hearing all of the evidence at trial that the defendant intended the natural meaning of the words she used, not the allegedly truthful answer she suggests now, and therefore that she lied. In sum, the defendant's post-hoc efforts to inject confusion into clear questioning are unavailing and should be rejected, and the jury should decide whether the defendant's answers were false.

2. July 2016 Deposition

Count Six charges the defendant with perjury arising from three colloquies at the second deposition. During the deposition, the defendant acknowledged that she had engaged in "sexual activities" with persons "other than Mr. Epstein at Mr. Epstein's home in Palm Beach." (Ex. 11 at 54:24-55:5). Although she did not remember the names of any of those women, she recalled a "blond" and a "brunette." (*Id.* at 56:22-57:18). [redacted] lawyer later inquired as to whether any of those women were "professional masseuses" or whether any of them gave Epstein or the defendant "massages." (*Id.* at 85:21-86:12). Following that line of questioning, the following colloquy occurred:

> Q. When you and Mr. Epstein were engaged in sexual activity that included these other women, were any devices or sex toys used as part of the sexual activity?
>
> A. No.
>
> Q. Were you ever involved in sexual activities in Mr. Epstein's Palm Beach house that included the use of sex toys or any kind of mechanical or other device?
>
> MR. PAGLIUCA: Objection to form and foundation.
>
> A. No.
>
> Q. Were you ever involved in sexual activities in any of Mr. Epstein's properties other than Palm Beach that included the use of sex toys or any kind of mechanical or other device?

A. No.

Q. Were you aware of the presence of sex toys or devices used in sexual activities in Mr. Epstein's Palm Beach house?

MR. PAGLIUCA: Objection to form and foundation.

A. No, not that I recall.

(*Id*. at 87:15-88:14).

After questions about Epstein's other properties, [redacted] lawyer asked the following question:

Q. Do you know whether Mr. Epstein possessed sex toys or devices used in sexual activities?

MR. PAGLIUCA: Objection to form and foundation.

A. No.

(*Id*. at 89:8-13).

The defendant now argues that these questions are ambiguous because they contain "numerous undefined terms," such as "sex toy or device" and "sexual activities." (Def. Mot. 4 at 14). She asks, for instance, whether "bath oil" would count as a sex toy or device. (*Id.*). Yet this argument is simply another attempt to imbue ambiguity after the fact into commonly used words with common sense meanings. The mere fact that a term could apply equally to several different objects does not automatically mean that the question is impermissibly vague and can never form the basis of a perjury charge. *See, e.g.*, H.L.A. Hart, *Positivism and the Separation of Law and Morals*, 71 Harv. L. Rev. 593, 607 (1958) ("A legal rule forbids you to take a vehicle into the public park. Plainly this forbids an automobile, but what about bicycles . . . ?"). Instead, it is well-settled that "[t]he jury should determine whether the question—as the declarant must have understood it, giving it a reasonable reading—was falsely answered." *Lighte*, 782 F.2d at 372. So

long as the question involves a phrase "which could be used with mutual understanding by a questioner and answerer," it is not fundamentally ambiguous. *Id.* at 375 (internal quotation marks omitted); *see United States v. Jenkins*, 727 F. App'x 732, 735 (2d Cir. 2018) ("An individual of ordinary intelligence would not think that a question asking for information regarding 'real estate, stocks, bonds, . . . or other valuable property' would allow omission of information regarding money market funds . . . .").

The use of broad or inclusive terms does not render the question fundamentally ambiguous. As the Second Circuit explained in the context of the term "employment activities," "[t]he broad language of the question is not fundamentally ambiguous; it is instead designed to capture *all* employment activities in an applicant's recent history." *United States v. Polos*, 723 F. App'x 64, 65-66 (2d Cir. 2018). So too here. A "sex toy or device" is an intelligible phrase with an understood meaning. *See Sex Toy*, *Oxford English Dictionary Online*, https://www.oed.com/view/Entry/176989 (last visited February 12, 2021) ("[A] device or object designed for sexual stimulation (as a dildo, vibrator, etc.) or to enhance sexual pleasure or performance."). To the extent the term "sexual activities" contains ambiguity, it was defined earlier in the deposition. (Ex. 11 at 54:4-23 (defining "sexual activities" to include "Kissing, touching with hands or mouths or other parts of your body" and stating "Whenever I use the term sexual activities, I will be using it in the way we just defined it.")).

The defendant's objections to the next colloquy in the indictment are similarly unavailing. Shortly after the above exchange, the following conversation occurred:

> Q. At any time in any of Mr. Epstein's properties, did you engage in sexual activities with any woman other than when you had three-way sexual activities with Mr. Epstein?
>
> MR. PAGLIUCA: Object to the form.

A. Can you repeat the question?

Q. At any time, in any of Mr. Epstein's properties, did you engage in sexual activities with any woman other than when you had three-way sexual activities with Mr. Epstein?

MR. PAGLIUCA: Same objection.

A. No.

Q. Other than yourself and the blond and brunette that you have identified as having been involved in three-way sexual activities, with whom did Mr. Epstein have sexual activities?

MR. PAGLIUCA: Objection to form and foundation.

A. I wasn't aware that he was having sexual activities with anyone when I was with him other than myself.

Q. I want to be sure that I'm clear. Is it your testimony that in the 1990s and 2000s, you were not aware that Mr. Epstein was having sexual activities with anyone other than yourself and the blond and brunette on those few occasions when they were involved with you?

A. That is my testimony, that is correct.

(Ex. 11 at 91:8-92:16).

The defendant primarily argues that her answers were literally true. In the defendant's telling, the phrase "[w]hen I was with him," refers not to the duration of the defendant's relationship with Epstein, but instead to only those moments when she was in the act of having sex with Epstein and either the blond or brunette identified above. (Def. Mot. 4 at 16). Accordingly, as the defendant would have it, the question asked whether any of Epstein and the defendant's three-person sexual encounters involved a fourth person, the answer to which is no, she argues, because three-person sexual activities by definition cannot involve four people. And in any event, she further argues, because the question asked the defendant about the 1990s and 2000s, it therefore covered any "'sexual activities' spanning more than a millennium." (*Id*. at 16-17).

The defendant, therefore, argues that the questioner asked whether a logically impossible event occurred or will occur at some point over the course of a millennium. But the defendant's professed confusion—which again was not raised during the deposition itself—ignores the plain and obvious context of the question, which did not refer to a time period far exceeding the human life span, and was not limited to only the times in which the defendant was in the act of having sex with Epstein. Plainly, a jury could find that the defendant correctly understood the question when she answered it in July 2016, and that she ascribed a natural meaning to the words used in the questions, and not the tortured illogical meaning she now assigns to those questions: whether, during the course of her relationship with Epstein, she was aware of anyone other than herself having sexual relations with Epstein. The Government expects its evidence to show that she was. *See, e.g.*, Indictment ¶ 1 (stating that the defendant "assisted, facilitated, and contributed to" Epstein's sexual abuse of minors). At a minimum, the defendant's answers were not "literally true under any conceivable interpretation of the questions." *Lighte*, 782 F.2d at 374. And the defendant's professed confusion now and proposed illogical reading of the questions in the instant motion does not render them fundamentally ambiguous. *See Bonacorsa*, 528 F.2d at 1221 ("A defense to a charge of perjury may not be established by isolating a statement from context, giving it in this manner a meaning entirely different from that which it has when the testimony is considered as a whole."). Accordingly, a jury should be permitted to determine what meaning the defendant ascribed to those questions and whether her answers were in fact false.

Finally, the defendant answered the following questions:

> Q. Did you ever give a massage to anyone other than Mr. Epstein at any of Mr. Epstein's properties?
>
> A. First of all, I never said I gave Mr. Epstein a massage.

Q. I will ask that question if you want, but I was focusing on people other than Mr. Epstein right now.

A. I don't give massages.

Q. Let's just tie that down. It is your testimony that you've never given anybody a massage?

A. I have not given anyone a massage.

Q. You never gave Mr. Epstein a massage, is that your testimony?

A. That is my testimony.

Q. You never gave [Minor Victim-2] a massage is your testimony?

A. I never gave [Minor Victim-2] a massage.

(Ex. 11 at 112:17-113:12).

The defendant argues that these questions were fundamentally ambiguous because the deposition elsewhere discussed both sexual and professional massages. It was unclear, she explains, what kind of massage the questioner meant. (Def. Mot. 4 at 17.) The defendant's argument is, yet again, misguided. This line of questioning used broad language, and at no point during this set of questions did [redacted] counsel suggest that the questions were limited to sexual or professional massages. *Cf. Lighte*, 782 F.2d at 376 (concluding that the word "you" was ambiguous when the prior two questions asked about the defendant "as an individual" and then switched "without indication" to the defendant "as trustee"). The defendant's answers were unequivocal, with no expressions of confusion or internal contradictions. *Cf. Markiewicz*, 978 F.2d at 809 (explaining that a question was ambiguous as to whether it asked about the deponent's personal or professional capacities, in light of the deponent's confusion in the next questions). A properly instructed jury could conclude that the defendant meant what she said: she never gave anyone a massage, including Epstein and Minor Victim-2.

Government has reviewed the full report and confirmed that there is nothing exculpatory contained therein. To the contrary, the report *inculpates* the defendant. Accordingly, the defendant is not entitled to its immediate disclosure. The Government will produce an unredacted version of this document together with all other witness statements in advance of trial.[67]

Fourth, the defense requests production of pages from a personal diary that is in the custody of a civilian third party and is not in the custody or control of the Government. (Def. Mot. 10 at 10). Leaving aside the fact that the defense cites no authority for the proposition that the Government has an obligation to obtain the personal papers of a third party, *see United States v. Collins*, 409 F. Supp. 3d 228, 239 (S.D.N.Y. 2019) ("The Government's '*Brady* obligations extend only to materials within prosecutors' possession, custody or control or, in appropriate cases, that of the Department of Justice, perhaps another part of the Executive Branch, or a comparable state authority involved in the federal prosecution.'" (quoting *United States v. Blaszczak*, 308 F. Supp. 3d 736, 742 (S.D.N.Y. 2018))), the Government has already represented that it has asked the third party at issue about the materials the defendant purports to seek and that no such materials exist. In particular, to the extent the defense is concerned with whether there are diary entries from the spring of 1996, the Government has already indicated in response to the defendant's second bail motion that it is aware of none. (*See* Dkt. No. 100 at 11 n. 2 ("Because this victim stopped writing in her journal about a month after that first meeting with Epstein, there are no entries regarding the subsequent trip she took months later to visit Epstein, during which she met the defendant. This victim provided the Government with copies of her journal entries relating to Epstein and informed the Government that the remaining entries are personal in nature and have nothing to do with

[67] As is the case with the other redacted document referenced in this motion, the redacted copy defense counsel attached as Exhibit D was recovered during the execution of a search warrant for one of Epstein's devices and was produced to defense counsel in the form in which it was recovered from the device.

Epstein or the defendant.")). In other words, the defendant again seeks supposedly exculpatory evidence that does not exist. The defendant offers no basis on which to conclude that this representation is false or that any such evidence does in fact exist. As such, this motion should be denied.

Fifth, the defendant asks this Court, again without citing any legal authority, to order the Government to produce copies of *all* subpoenas it has issued for the defendant's records as part of its investigation in this case. (Def. Mot. 10 at 11). This incredibly broad request is nothing more than a fishing expedition inappropriately seeking the details of investigative requests made through the grand jury process. The defense has cited no legal basis for the Court to direct the Government to provide the defense with copies of the subpoenas themselves (as opposed to records or other materials received in response to such subpoenas), let alone *every subpoena* issued for the defendant's records during a multi-year and ongoing grand jury investigation. The types of requests issued by the grand jury have no conceivable bearing on the defense or on any motion the defense may seek to bring. The Government has already produced to the defense all discoverable material that it has received in response to subpoenas issued to date during this investigation. In the absence of any legal authority justifying this request, it should be denied. Additionally, for the reasons discussed above in Sections I and IV, the defendant is not entitled to discovery or a hearing relating to her motion to dismiss the Indictment based on the NPA or her motion to suppress subpoena returns.

Sixth, the defendant asks the Court to direct the Government to immediately disclose any *Brady* and *Giglio* material. (Def. Mot. 10 at 11-13). The motion for disclosure of *Brady* material should be denied as moot because the Government has conducted a search for any such material and has already disclosed any potentially exculpatory information in its possession of which it is