**UNLAWFUL USE OF SECRET SCIENTIFIC MATERIAL**

**Penal Law § 165.07**

**(Committed on or after September 1, 1967)**

The (*specify*) count is Unlawful Use of Secret Scientific Material.

Under our law, a person is guilty of Unlawful Use of Secret Scientific Material when, with intent to appropriate to himself or herself or another the use of secret scientific material, and having no right to do so and no reasonable ground to believe that he or she has such right, he or she makes a tangible1reproduction or representation of such secret scientific material by means of writing, photographing, drawing, mechanically or electronically reproducing or recording such secret scientific material.

The following term(s) used in that definition has/have a special meaning:

SECRET SCIENTIFIC MATERIAL means a sample, culture,micro-organism,specimen,record,recording, document, drawing or any other article, material, device or substance which constitutes, represents, evidences, reflects, or records a scientific or technical process, invention or formula or any part or phase thereof, and which is not, and is not intended to be, available to anyone other than the person or persons rightfully in possession thereof or selected persons having access thereto with his or her or their consent, and when it accords or mayaccord such rightful possessors an advantage over competitors or other persons who do not have knowledge or the benefit thereof.2

To APPROPRIATE secret scientific material of another to oneself or a third person means (a) to exercise control over it, or to aid a third person to exercise control over it, permanently [or for so extended a period or under such circumstances as to acquire the major portion of its economic value or benefit], or (b) to dispose of the property for the benefit of oneself or a third

1*See People v. Aleynikov*, 31 NY3d 383 (2018) for a discussion on the meaning of “tangible.”

2Penal Law § 155.00 (6).

person.3

INTENT means conscious objective or purpose. Thus, a person intends to appropriate to himself or another the use of secret scientific material when that person's conscious objective or purpose is to do so.4

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, both of the following two elements:

1. That on or about (*date*), in the County of (County) , the defendant, (*defendant's name*) made a tangible reproduction or representation of secret scientific material by means of writing, photographing, drawing, mechanically or electronically reproducing or recording that secret scientific material; and
2. That the defendant did so, having no right to do so and no reasonable ground to believe that he/she had that right, and with the intent to appropriate to himself/herself or another the use of that secret scientific material.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

3Penal Law § 155.00 (4). 4Penal Law § 15.05 (1).