

## J. Y. Interpretation No.43 (December 29, 1954) \*

**ISSUE:** What remedy should be sought when a judgment was mistaken about the identity of an accused that was a related party in the action? And, what if the accused was not a related party in the action?

**RELEVANT LAWS:**

Articles 199 and 245 of the Code of Criminal Procedure (刑事訴訟法第一百九十九條、第二百四十五條); Article 232 of the Code of Civil Procedure (民事訴訟法第二百三十二條).

**KEYWORDS:**

clerical error (誤寫), correctional judgment (判決更正).\*\*

**HOLDING:** Based on the petition, the original judgment was mistakenly issued against John Doe as Jane Doe. Such a judgment violates the law and should be corrected through proper procedures such as appeal, extraordinary appeal and retrial if there is in fact a Jane Doe as a related party in the case and Jane Doe

**解釋文：**來呈所稱：原判誤被告張三為張四，如全案關係人中別有張四其人，而未經起訴，其判決自屬違背法令，應分別情形依上訴、非常上訴及再審各程序糾正之。如無張四其人，即與刑事訴訟法第二百四十五條之規定未符，顯係文字誤寫，而不影響於全案情節與判決之本旨。除判決宣示前得依同

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\* Translated and edited by Professor Andy Y. Sun.

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was never formally prosecuted. If Jane Doe does not exist, then this [situation] is clearly a case of clerical error, which does not qualify under Article 245 of the Code of Criminal Procedure and should impact neither the facts of the case nor the gist of judgment. Corrections of such a judgment may then be added to, deleted from or modified in the judgment itself if [the error is] found before public announcement. For judgments [of this kind] that have already been announced or service [of notice] is rendered, reference may be made to Article 232 of the Code of Civil Procedure, and in accordance with Article 199 of the Code of Criminal Procedure, by having the original trial court issue a correctional judgment either in response to a petition or ab initial so as to demonstrate [the court's] authority.

法第四十條增刪予以訂正外，其經宣示或送達者，得參照民事訴訟法第二百三十二條，依刑事訴訟法第一百九十九條由原審法院依聲請或本職權以裁定更正，以昭鄭重。