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An Empirical Study of Homicide Cases and Criminal Justice System in Taiwan

Author
SU, KAIPING

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An Empirical Study of Homicide Cases and Criminal Justice System in Taiwan

By

Kaiping Su

A dissertation submitted in partial satisfaction of the
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Committee in charge:
Professor Franklin E. Zimring, Chair
Professor Malcolm M. Feeley
Professor Steven Raphael

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Abstract
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Professor Franklin E. Zimring, Chair

This is a first-ever longitudinal study of Taiwan's homicide cases and the practice of Taiwan's criminal justice system. For portraying the practice of criminal justice system, this study adopts longitudinal research method to study a cohort of homicide cases known to police department of Taipei City, the capital of Taiwan, from 2006 to 2012, and to follow the cohort of sample cases throughout the legal system.

This study focuses on four aspects. First, to present homicide case mortality as the cases went through the legal system, from police investigation, prosecution, to court adjudication and punishment. The attempt is to show the picture of how the legal system may exclude cases from the system by the end of each phase and the reasons of the exclusion. Second, this study discovers how legal agencies, mainly police, prosecutor, and judge, may dispose of homicide cases before them by two indexes: time and energy. This part provides us an understanding of what kinds of homicide practically cost more resources of Taiwan's legal system, and this study tries to figure out why it was like this. Third, this study compares the decisions of each legal agency to see how similar or different their decisions of the same cases may be, and analyzes the reasons behind. Last but not least, this study attempts to discover how, if any, the decision of one legal agency in homicide cases may have influence on those of other agencies.

By incorporating all the dimensions above, the true mission of this study is to reveal how Taiwan's criminal procedure practically works thoroughly, from investigation, prosecution, adjudication, to punishment. By comparing how major and minor homicide cases were processed by the system, we will learn representative empirical features of Taiwan's criminal justice system and criminal procedure.

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ACKNOWLEDGEMENTS

My favorite novelist, Lawrence Block, once said, "*There is one interesting exercise of imagination for a writer: Just imagine the book you are trying to write already exists somewhere in perfect form, and you try to get it down as much as you can.*" I believe many other writers have said similar things as well, but it is definitely not the case about my dissertation. When I say my J.S.D. dissertation could not have been done without the assistance of many people, I do mean it.

First of all, this dissertation could not have been done without my most reverend committee members: Professor Franklin E. Zimring, Professor Malcolm M. Feeley, and Professor Steven Raphael. Professor Zimring, serving as Chair of my dissertation committee, is the first person in the world to descern the value of this dissertation's topic. It is also he who always insisted that I could definitely find a way to overcome all difficulties to access primary source data from original police documents which no scholars had ever obtained before. Other than the dissertation, Professor Zimring, who has served as my adviser through my whole four-year career at Berkeley Law, has massively supported me in every possible way. As a nationally renowned Professor, he devoted incredible time and energy to helping my study at Berkeley Law. We met twice or more every week, and each meeting would usually last for 30 minutes to an hour. Even after completing the dissertation, we regularly met at least once a week to talk about his recent work, my career plan, crime news and research around the world, and so on. It has amazed me, and perhaps everyone who knows a little about how the academic world usually functions, that a senior law professor would dedicate so much to mentoring an international student. I owe a great deal to Professor Zimring and deeply appreciate his time, energy, and wonderful sense of humor.

Professor Feeley supported me and my dissertation writing in a different way which is also essential. He has built my confidence in my work and, more importantly, in myself by relentlessly encouraging me of how crucial my dissertation study is and how well I have done my job. Moreover, he connected me with many well-known scholars who are in my field and willing to help me by previewing my work or answering specific questions. "*Using my name to connect people that you'd like to know and just let me*

know after that", he said. "*If people in an institute could not tell the very importance of your work and appreciate the person who could do this level of empirical research, you don't want to waste your time working with them*", he also said. (On the other hand, Professor Zimring answered the same question by saying "*Get them to call me about the importance of your work. I'd be happy to let them know*.") Professor Feeley's Texan style of nice and warm support has helped me through my J.S.D. program and toward future career. I couldn't possibly thank him enough.

I am also grateful to Professor Raphael, an economist and professor of public policy, who served as the outside reader in my committee. He clearly spent a lot of time on my work and provided crucial reading suggestions. I have been amazed by how an outside reader could possibly tease out things which may not be fully addressed in the writing using his differently trained eyes. Some of his questions were among the most difficult ones for me to answer, but undoubtedly significant to the integrity of this study. I very much appreciate his efforts to point the questions out to me so that I had an opportunity to improve my work.

I am fortunate to have received assistance from many people during my years at Berkeley Law. Without any of them, this dissertation could not have been done. Toni Mendicino, my instructor of cryptography (of deciphering Professor Zimring's scribble on my manuscript), has helped me a lot not only in decipherment but also in warmly emotional support of my study. The staff of Advanced Degree Programs Office at Berkeley Law, including Liza S. Jimenez, Erin Weldon, Natalie C. Golden, and in particular associate director Evelyn Borchert, has helped me through the LL.M. to J.S.D. years, when they always patiently received me and gave prompt answer as well as crucial help. Mark Painter, my language partner speaking and even writing excellent Chinese, has assisted me in polishing the English writing in many sections of my work and listened to my tentative presentation of work a lot of times (and still stayed conscious and could make comments.) I also appreciate my teachers, classmates and friends in North America for their genuine support in various ways and times. Their names are: Professor William H. D. Fernholz, Professor Jonathan Simon, Joe Lorencz, Paul and Adrienne Volk, Tori Hsiu-Yu Fan, Jacob Gi-Kuen Li, Mao Hong Lin, Grace Zhiyu Li, David Musayelyan, Ivana Stradner, Jerome Shun Hsiang, and Olivia Haruko Kamra.

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cover my expenses for the first three years of study and a fellowship from the Graduate Division of UC Berkeley which received the endowment from the Taiwanese couple Dr. and Mrs. James Soong to cover the last year. The original police documents and some statistics not open to the public were officially provided by Taiwan's Criminal Investigation Bureau (approved by its Commissioner Te-Hua Lin) and by Taipei City Police Department (approved by Taipei City mayor Wen-Je Ko). I also would like to thank my academic mentor Professor Jaw-Perng Wang, without whom I could not have had the opportunity to study abroad and thereby change my whole life. It is no doubt that my family members, especially my wife Amy Ai-Min Hung, have played a more than important role not only in my study but in every aspect of my life. It is their love and support which make me who I am and lead me to where I am.

Last but not least, thank God for making all of these things happen in my life. It has been a miracle for me to experience that, as a child from a poor family, I could one day study abroad and achieve a doctorate. I even appreciate more that the Lord has brought me closer to him in amazing ways, let me know more about him, and make me understand that all of these are not because of me but because of him, not for displaying me but for glorifying him.

I. Introduction

A. First Longitudinal (Cohort) Study of Taiwan's Criminal Procedure in Homicide Cases

1. Homicide Study Which Shows Characters of Taiwan's Criminal Justice System

This is a first-ever longitudinal study of Taiwan's homicide cases. Homicide, which in nature is killing of human beings, can be separated into two major, corresponding clusters under Taiwan's legal system: in terms of the accusation, "murder" and "manslaughter"; or in terms of the act of killing, "intentional killing" and "negligent killing". This study consists of both of the intentional and negligent killings to show a complete picture of Taiwan's homicide and focuses on four aspects: first, to present homicide case mortality as the cases went through the legal system, from police investigation, prosecution, to court adjudication and punishment, which attempts to show the picture of how the legal system may exclude cases from the system by the end of each phase and the reasons of the exclusion.

Second, this study discovers how legal agencies, mainly police, prosecutor, and judge, may dispose of homicide cases before them by two indexes: time and energy, which each agency spent on different types of killings. This part provides us an understanding of what kinds of homicide practically cost more resources of Taiwan's legal system and this study tries to figure out why it was like this.

Third, this study compares the decisions of each legal agency (police, prosecutors, judges) to see how similar or different their decisions of the same cases may be, and analyzes the reasons of their similarity or difference.

Last but not least, this study attempts to discover how, if any, the decision of one legal agency in homicide cases may have influence on those of other agencies. In particular, this study is interested in how the possible decisions in "later" legal phases may affect decisions made in "earlier" phases. For example, police or prosecutor may have concerns about how their cases may be decided later by court, in both conviction and punishment, so that police or prosecutor makes their decision accordingly. In fact, even the court may consider the potential punishment provided by the law and accordingly makes its decisions of conviction.

By incorporating all the dimensions above, the true mission of this study is to reveal how Taiwan's criminal procedure practically works thoroughly, from investigation, prosecution, adjudication, to punishment. Homicide is an especially ideal topic for this purpose of study, because homicide covers a broad range of criminal offenses, from relatively major offense (intentional killings) to relatively minor offense (negligent killings), all of which is based on identical fundamental fact: The death of a human being. Therefore, a lot of meaningful information can be extracted from distinct homicide categories and used to compare with each other. By comparing how the relatively major and minor criminal cases were processed by the system, we will learn representative empirical features of Taiwan's criminal justice system and criminal procedure. The perception of these features is of great importance, since many legal reform issues about Taiwan's criminal justice system and criminal proceedings have been seriously addressed recently.[1]

In order to portray the practice of criminal justice system, this study adopts longitudinal research method to study a cohort of homicide cases known to police department of Taipei City, the capital of Taiwan, from 2006 to 2012, and to follow the cohort of sample cases throughout the legal system. Thanks to the official help of Taiwan's Central Investigation Bureau (CIB) and Taipei City Police Department (TCPD), this study collected data about 222 deaths and 377 suspects from homicide cases known and solved by TCPD and subsequently sent to prosecutor.[2] As these police cases coursed through different agencies, the volume of case sample would reduce, as described in the figure below.

[1] The substantial reforms, suggestions, discussions which have been made about Taiwan's criminal procedure recently include: the abolishment of military court system (inclusive of military prisons)during peacetime in 2013, official discussion about adoption of jury trial for criminal cases, official discussion about abolishment of criminal penalty for medical malpractice, official discussion about abolishment of death penalty, etc.

[2] The process in which the CIB and TCPD provided us these cases and the difficulty I encountered about it are intriguing and will be described in the following section Ⅰ. C. 2. "*Known, Solved and Reported by Taipei City Police Department*".

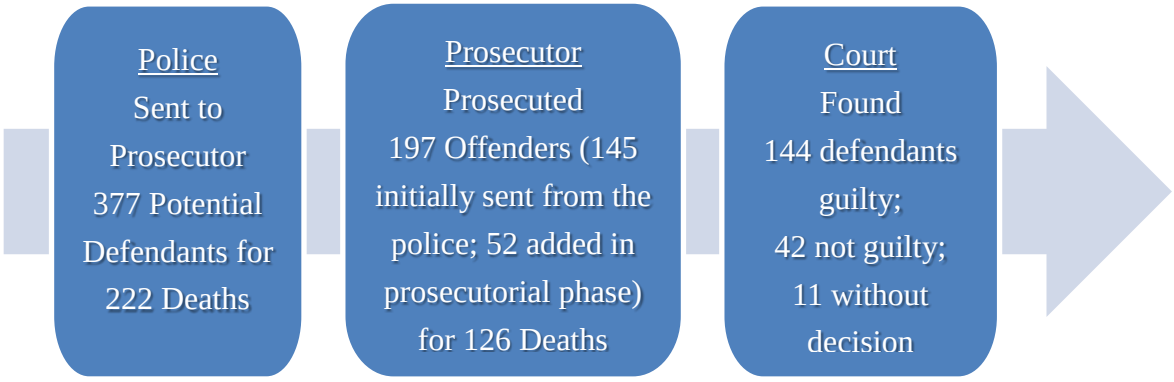


Figure I.1 Case Mortality of Case Sample Collected for This Study

The case morality, the process by which cases were excluded from the system, is crucial to our study and can only be discovered by the method of a longitudinal (cohort) study, which follows the same cohort of cases forward over time. Through the longitudinal method, this study is able to approach essential features of Taiwan's justice system by learning how legal agencies, in particular prosecutor and court, exerted their discretionary power in deciding criminal cases.

2. Two Dominant Empirical Findings of This Study

While the narratives and analyses of sample homicide cases will be presented in detail in the following chapters, two dominant empirical findings of this study should be mentioned in this introductory section, because they have prominent positions in this study and their influence on homicide dispositions will be ubiquitous. Hence, an early understanding of the two facts can provide an overview of this study and guide readers through all the other findings.

The first important finding of this study is the unbreakable distinction between two groups of homicide cases: killings made with (or during) intentional attack, and those made without. Homicide cases collected for this study mainly belong to four categories, according to Taiwan's Criminal Code (hereinafter "TCC"):

a. Murder or Intentional Killing: A person killed another with the intention to kill;
b. Intentional Attacks Which Caused Accidental Death: A person simply had the intention to attack another (usually intended to cause a bodily harm, but turned out to kill the victim accidentally.

c. Simple Negligent Killing: A person killed another without any intention to attack or harm the victim, but the death happened accidentally. For example, Jack gave his friend Jenny a ride but drove negligently and Jenny was killed in a traffic accident.
d. Occupational Negligent Killing: It is in fact simple negligent killing in nature, but the killing was made by an offender in particular professions and during professional practice. For example, that a doctor killed his patient due to medical accident, or a taxi driver killed his passenger because of traffic violation, is considered as occupational killing.

Among them, the first two (intentional killing and intentional attacks which caused accidental death) can be lumped together as "killings made by intentional attacks", and the last two together are "killings made without intentional attacks (or unintentional behavior)," as shown in **Figure I.2**.[3]

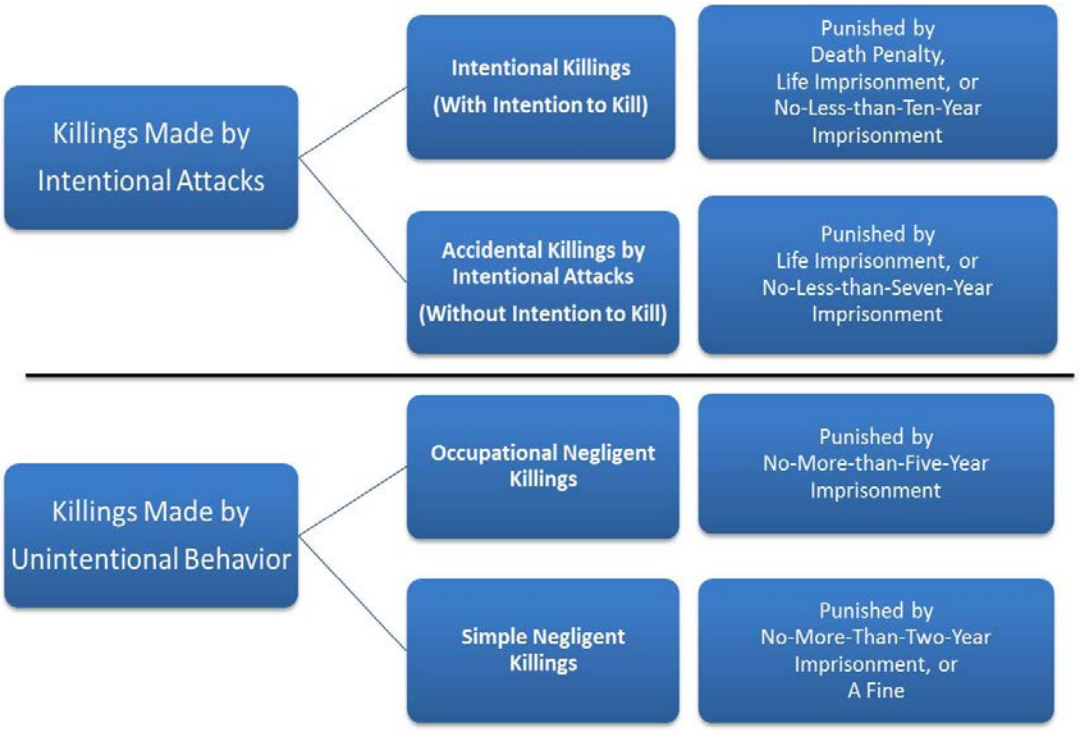


Figure I.2 Unbreakable Line between Killings Made by Intentional Attacks or Not

[3] By the definition of killings above, please note that while simple negligent killing is a lesser included offense of occupational negligent killing, killings accidentally generated by intentional assaults are not considered as lesser included offense of killings made with intention to kill, because the former lacks the necessary element of intention to kill in the first place.

The first noteworthy finding of this study is the line between killings made by intentional attacks (a. and b. above) and unintentional behavior (c. and d. above) is clear and almost unbreakable in the practice of Taiwan's legal system. Although the death in the second type of homicide (b. above, i.e. intentional attack causing accidental death) is caused accidentally and similar to negligent killings in terms of the cause of death, the legal agencies treated it much more like they did intentional killings and less like they did negligent killings. For example, when a homicide was decided by the police as intentional killing and sent to prosecutor, and the prosecutor disagreed with the police, the prosecutor would usually decide the killing as being made accidentally during intentional attack but rarely as a simple or occupational negligent killing. Similarly, when an offender was charged with occupational negligent killing by prosecutor, and the judge disagreed, the offender usually ended up to be convicted of simple negligent killing, instead of killings with any intentional attacks. Among all the 222 killings collected in our sample, only three killings (1%) seemed to break the boundary between intentional and unintentional attacks, with reduction from the top two charged categories to the non-intended lower grades.

The second dominant empirical finding is that potential punishment of each grade of homicide could possibly affect the decisions of legal agencies in deciding the grading of homicide. To be clear, this study finds that judges (so did police and prosecutors but maybe to a less extent) may weigh the potential punishment of each grade of killing to decide the conviction. It may sound counterintuitive or against the law on the book, because conviction is supposed to be decided first and subsequently punishment later accoding to TCC. However, this study finds that the "**instrumental**" use of differential grades of homicide conviction worked as a method for judges to avoid a minium term of punishment that they disfavor. (The potential punishment of each grade of homicide shows in **Figure I.2** above.)

The abovementioned two fundamental empirical findings relate to each other in two aspects. First, the existence of the unbreakable line between intentional attack and unintentional behavior provides us insight into how the potential punishment may influence decisions of legal agencies. As displayed in **Figure I.2** above, despite that each grade of homicide carries punishment largely distinct from another, the punishment of the two grades of killings made by intentional attacks are closer to each other, and so are the two grades made by unintentional behavior. In this case, even though a legal agency

disagreed with another's decision of homicide grade, considering the gap of punishment between the two subcohorts (intentional attacks v.s. unintentional behavior), the agency was prone to stay at the same subcohort of killing rather than to cross the line and incur a total different level of potential punishment. Second, the concerns for potential punishment also help explain why legal agencies would group accidental killings caused by intentional attack with intentional killings, instead of with negligent killings, in their practice. This is because the punishment of accidental killings caused by intentional attack is relatively closer to that of intentional killings and far more blameworthy than negligent killings. Therefore, although the accidental killing would be closer to negligent killing in terms of the cause of death, legal agencies still viewed accidental killings closer to intentional killings due to their similarity in potential punishment.

Other than the two fundamental findings introduced above, some other findings are also of great importance and will be discussed in detail in this study. They include:

a. The types of homicide cases which police and prosecutor tended to exclude from the criminal justice system;
b. The views of different legal actors (police, prosecutor, and court) about what types of homicides were more or less serious and cost more or less resources;
c. The agreement or disagreement between prosecutorial charges and judicial convictions in determining homicide types;
d. The impact of prosecutorial charges and judicial convictions in determining punishment for homicide;
e. The effect of the mandatory minimum and maximum penalties for certain types of homicide on the distribution of punishments;
f. The distribution of sentencing as a problem of distributive justice; and
g. The characteristics of homicide cases where defendants were sentenced to death.

B. Relevant Prior Research and Theoretical Framework of This Study

Procedures, charges and punishment are three essential aspects within the criminal justice system and subject to law agencies' discretion to make appropriate decisions. For analyzing the interaction of the three, there are four American authoritative studies adopted to set out the framework of this study: "*Is Plea Bargaining Inevitable?*" authored by Schulhofer (1984), "*Felony Arrests: Their Prosecution and Disposition in New York*

City's Courts", by the Vera Institute of Justice (1981) with the book reporting the sample study, "*The Limits of Law Enforcement*" authored by Zeisel (1982), also the research designer of the above Vera's report, and "*Punishing Homicide in Philadelphia: Perspectives on the Death Penalty*" by Zimring et al. (1976). Each of them has integrated ***all*** of the three aspects— procedure, charge, punishment— under their empirical context.

1. Procedure

The work of Schulhofer (1984) describes in detail how felony cases are disposed in Philadelphia. By analyzing the caseload pressure and the cooperation among members of the courtroom in two courts, and comparing bench trial and plea bargaining at length, the author declares that Philadelphia bench trial can be genuine adversary proceedings, in which, with only minimal increase in the resources, defendants retain many of the constitutional protections sacrificed in plea bargaining. Building on the studies of organizational and socialization theories, Schulhofer considers "judicial assignments", the managerial design of Philadelphia trial court system, as the incentive for judges and defense lawyers to cooperate with each other.[4]

While the interviews with courtroom members and observations on court proceedings conducted in Schulhofer's research is not carried on in this study, Schulhofer's research offers a framework of two important approaches included in my research: (1) how to compare advantages and disadvantages of different litigation patterns; (2) how to assess the procedural preferences of prosecutors and judges in Taiwan.

2. Charge

"*Felony Arrests: Their Prosecution and Disposition in New York City's Courts*", studied by Vera Institute of Justice (1981), is an outstanding report on the deterioration of felony charges throughout criminal justice system. The motive for Vera to commence this study is that New York City Police Commissioner blamed courts for their indulgence in the disposition of cases. The Commissioner illustrated his accusation with 136 felony

[4] Here, I would like to point out more related literatures of organizational and socialization theories explaining the relationship and interaction among legal professionals in a certain procedure. For example, Nardulli (1978), Feeley (1973), Mohr (1976), Cole (1970), Heumann (1981), Eisenstein & Jacob (1991), Skolnick (2011), etc.

arrests for the possession of handguns, in which none retained its felony status through to a conviction. Furthermore, only 53 felony arrested defendants received imprisonment sentences, and the average sentence was one month. Since the “charge reduction” may also have occurred in Taiwan, Vera's study on how and why it takes place offers a sound framework for my research to tackle the issue under Taiwan's context.

This study is inspired by Vera's study in both its research method and its findings. As for the research method, Vera's study includes two groups of samples: the "wide" sample of 1,888 cases out of 100,000 that were commenced by arrests on felony charges, covering every major crime category, and the "deep" sample of cases that were selected for interviews with officials (police officers, prosecutors, judges and defense attorneys) involved in a sample of 369 felony arrests.

As for findings, Vera's report finds out two intriguing things. First, many felony arrests involve victims and offenders with prior relationships. Second, this relationship has great influence on the decisions of law agencies. Are the findings in New York City also true in Taiwan? It is examined and answered in this study. More importantly, based on its findings, Vera's report indicates that law officials may simply apply the law as one of several forms of social control (Zimring & Hawkins 1973; Fuller 1975; Fagan & Meares 2008). That is, while the law is undoubtedly a significant measure, officials may be reluctant to invoke it in the full force when there is another basis for social control. On the other hand, although officials are obligated to dispose cases according to the law, the law, however, is usually vague and ambiguous in language which needs officials' interpretation in each specific case. When and how officials may favor other social control measures rather than the law? How differently can the law be interpreted in the same or similar cases by different agencies? What's the rationale for officials to do as such? This study also explores these issues under Taiwan's context.[5]

3. Punishment

In the “*Punishing Homicide in Philadelphia: Perspectives on the Death Penalty*”, Zimring et al. show how to gather data on a representative sample of homicides (204

[5] By and large, Taiwan’s existing empirical research in criminal justice system tends to separate procedural issues from substantive ones (such as charges), or even further to separate issues of sentences from those of charges (Wang & Wu 2001; Wang 2008). There have been few Taiwan’s studies that connect charges and procedures and investigate how charges may be changed throughout the criminal procedure, or why and when the legal agencies would favor a certain procedure (Wang 2008; Sun 2009).

killings) and how to relate the empirical findings to other legal and policy issues such as death penalty. Zimring et al.'s work covers three critical issues in the death penalty debate, which my research also covers: (1) the exercise of prosecutorial, judicial and jury discretion, (2) the impact of severe mandatory minimum sentences, and (3) the "justice" of capital punishment for criminal homicide (Pp. 229).[6]

First of all, the exercise of discretion of law officials is at the heart of this study. It is speculated about by how different officials dispose the same cases with different procedures, charges and punishments. Second, this study is able to explore the impact of mandatory sentences in a broader sense: not only of the minimum, but also of the maximum sentences of negligence killing. In Taiwan, negligent killing is a homicide with a maximum two-year imprisonment and thereby it may subject to any kinds of prosecutorial and judicial procedures, from the most serious to the most lenient ones. Thus, it is interesting to analyze the impact of the lenient mandatory maximum sentences on officials' disposition. Third, Taiwan's value of human lives and the justice of capital punishment are also probed in this study. In Taiwan, the punishment between intentional and negligent killings are tremendously different: intentional killing is subject to potential death penalty, and negligent killing is slightly punished. For intentional killing, what elements within a case may induce law officials to sentence convicts to death? For negligence killing, is it reasonable that a killing of life only deserves less than two year imprisonment? How the police, prosecutors, and judges may adjust their disposition so that their estimates of life values and justice may appear? These issues are discussed in this study under Taiwan's context.

C. Selection and Collection of Sample Cases

As for case sample, this study collects **all, non-traffic, homicide cases**, which were known and solved by Taipei City Police Department, and reported to corresponding

[6] Compared with the foregoing two theoretical frameworks, Taiwan has richer empirical studies on sentence issues. The first study on how judges exercise discretion on sentencing is on the commission of larceny. It comprehensively analyzes the impact of influential factors, including venues, genders of judges and defendants, ages of judges, guilty pleas, behaviors of prosecutors, on judges' sentencing (Judicial Reform Foundation & Taipei Bar Association 2004). Later on, there have been empirical studies on sentencing of robberies (Guo 2008), sexual assaults (Lin 2011), homicides (Chen et al. 2011) and research regarding the influential factors in judges' general sentencing (Guo 2011a; Guo 2011b). These literatures have two features in common. First, most of the research are studied by or participated with judges. Second, in the part of analysis, almost all of them simply concentrate on how influential factors function on the sentencing of their target crime. However, none of Taiwan's extant literatures has extended their findings to other critical criminal justice issues, as which was done by Zimring et al (1976).

prosecutor's offices from 2006 to 2012. As a result, this study covers 222 deaths, 377 suspects and 211 police cases.[7] Before displaying and discussing these numbers, I would like to introduce how and why this study collects sample with these features.

1. Non-Traffic Homicide Cases

This study excludes traffic killings for avoiding their similarity in nature and dominance when included in unintended killings. First of all, most traffic killings are highly similar and relatively uncomplicated. The typical facts in traffic killings are: Offender(s) were driving vehicle(s), collided with other vehicle(s) or pedestrian(s), and the result was death(s). Since almost all traffic manslaughter cases conform to this pattern, the meaning of analyzing these cases to find their mutual characters in criminal procedure disposition will be relatively little.

Second, traffic killings occupy a large volume among manslaughter cases. The proportion of traffic cases to total manslaughter cases processed by police is around 55% to 60% each year. If this study takes traffic cases into sample and follows all of them throughout the criminal justice system, the number of negligent killings in our sample will increase from current 133 deaths to around 330 deaths (assuming traffic cases would be 60% of manslaughter), and the total sample cases of this study will jump to 420 deaths and 682 suspects. By doing so, the volume of sample will be too large to be adequately studied in this dissertation given limited time and resources. Rather, this study attempts to explore the manslaughter cases which seem various but with mutual characters and to discuss the social and legal context behind them. Therefore, almost all traffic cases, which are pure traffic accidents conforming to the typical pattern described above, are excluded from the sample of this study.

Nevertheless, the exclusion of traffic cases has some exceptions. A few special types of killings were related to traffic incidents, but not ***pure*** traffic cases, were still collected and studied in this study. For instance, if a person drives his car to intentionally hit another person, it is not an accident following the above typical pattern of traffic killings, so it will be included into our sample. However, while our sample doesn't have any actual murder case related to traffic killings, two special kinds of traffic killings of

[7] The "211 police cases" indicates the number of cases counted by Taipei's police agencies. The number of cases changes in each stage of criminal justice system process.

manslaughter are covered: The case No. 15 and No. 211. In case No.15, a juvenile suspect rode his bicycle to carry his cousin (the victim). When they rode downhill, the rider lost control of his bike and fell down, injuring and eventually killing the passenger. The offender was accused of manslaughter because of his negligence in losing control. Since it is a relatively rare type of traffic manslaughter case which lacks the elements of the typical pattern above, the case is collected in my sample. In case No. 221, the victim was a motorcycle rider, who first struck a pothole, then was ejected from his motorcycle, and was hit by the coming bus. Of course, the bus driver was accused of manslaughter. However, in addition to the bus driver, police also accused two other offenders, who were contractors of the construction site with the pothole, for their negligence of oversight. Therefore, the case turned out to be a construction safety case also, which is a significant category in the study of manslaughter, so that it is collected into our sample cases.

2. Known, Solved and Reported by Taipei City Police Department

(a) Reasons for Choosing Known and Solved Cases in Taipei

There are both theoretical and practical reasons that this study limits case sample collection to cases known and solved by Taipei City Police Department. First of all, this study chooses Taipei City to collect sample cases, because it is Taiwan's capital and its police department takes charge of Taiwan's largest populous metropolitan area. Therefore, sample cases collected from Taipei City may have more diverse features for our study than other administrative areas. Taipei City proper is home to 2,702,315 people, while its metropolitan area, associated with Taipei city and the nearby cities of New Taipei and Keelung, has a population of 7,042,210 people.[8] For picturing the populous city and metropolitan area, the city in the United States with similar population size is Chicago, the third most populous city and metropolitan area in the U.S., only after New York City and Los Angeles.[9] Despite the similar population, the volumes of crime incidents in Taipei and Chicago are vastly different. For example, Chicago had 436 murder offenses

[8] The Population Estimate of December 31st 2014. Source: Taiwan Ministry of Interior. Retrieved: March 5th, 2015. Available at: http://sowf.moi.gov.tw/stat/year/list.htm

[9] According to the population estimate of July 1st 2013, Chicago has a population of 2,718,782. On the other hand, its metropolitan area of "The Chicago-Naperville-Arlington Heights, IL Metro Division" has a population estimate of 7,343,641 as of July 1st 2014.
Source: "American FactFinder". United States Census Bureau. Retrieved: March 5th, 2015. Available at: http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk

known to law enforcement agencies in 2011, and 504 in 2012[10], whereas Taipei only had 12 murder offenses in 2011 and 9 in 2012.[11] However, while Taipei has apparently lesser criminal offenses than Chicago, it is not a safe city by standards of Taiwan. I compare general crime rates and violent crime rates in entire Taiwan, in Taipei City, and in other cities of Taiwan (excluding data of Taipei City from data of entire Taiwan), as shown in **Figure I.3** and **Figure I.4** below.

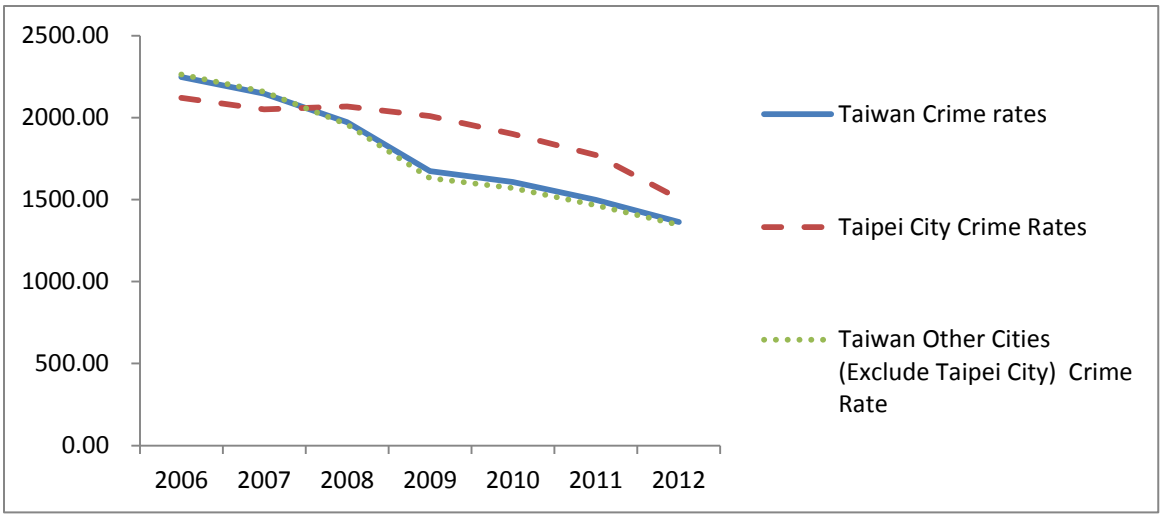
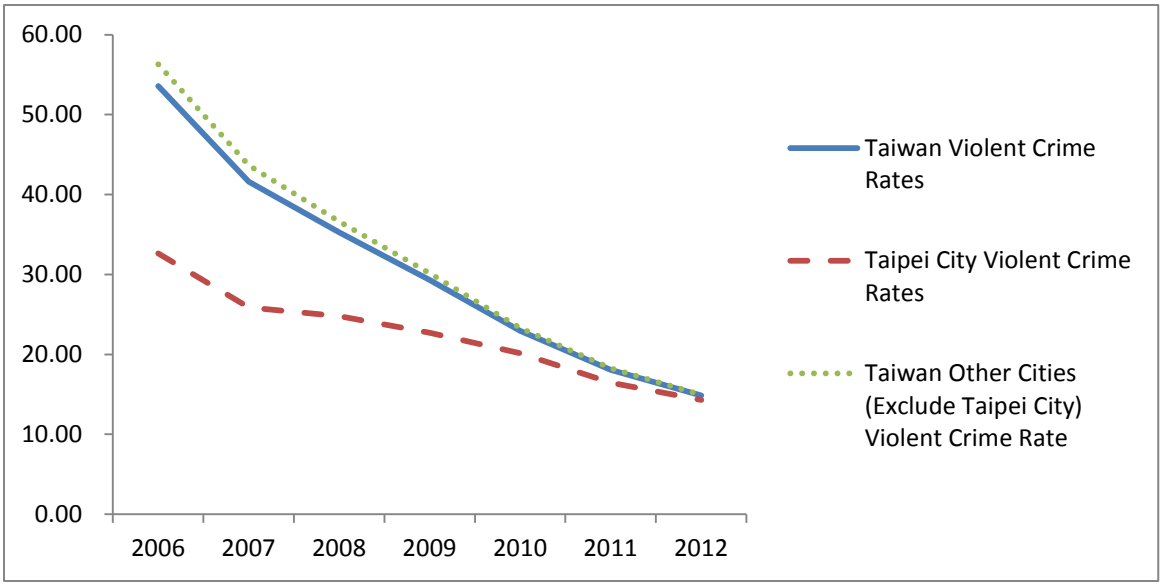


Figure I.3 Comparing Crime Rates in Taiwan and Taipei City



[10] Chicago Police Department. Available at: https://portal.chicagopolice.org/portal/page/portal/ClearPath/News/Crime%20Statistics/Crime%20Statistics%20Year%20End/1_pdfsam_compstat%20public%20report%202014%20yearend%2031-dec.pdf

[11] Numbers of deaths caused by murder, provided by Taipei City Police Department.

Figure I.4 Comparing Violent Crime Rates in Taiwan and Taipei City

Another theoretical reason to choose cases ***solved*** by Taipei police is the longitudinal character of this study. Since this study aims at discovering how cases are processed in criminal procedure, it expects that the collected cases have been disposed of and shifted from one phase to another in the criminal justice system. The first shift in criminal procedure is from the phase of police to the phase of prosecutor. Unsolved homicide cases, while they are known to the police as well, lack the shift that this study wants to observe, and thereby they cannot be followed through other processes.

Practically, our sample collection was supervised and conducted by Taiwan's **Criminal Investigation Bureau** (or **CIB**). However, due to the limit of technology of case data preservation and for probably other unknown reasons, we discover that the original collection of national sample cases provided to us was incomplete, and the only full report exception was the cases of Taipei police department. With the official assistance of Taipei City Government and its police department, we verified the cases provided by the CIB were highly complete and compatible with the data preserved by Taipei Police Department *per se.* Here, as an important dictum, I would like to introduce the data collection process of CIB and the difficulty they encountered.

(b) Data Collection Process and Difficulty

CIB is Taiwan's highest police department of criminal case investigation and supposedly have records of all Taiwan's criminal cases. The Commissioner of the CIB, Lin Te-Hua, approved our request for cooperation of providing non-traffic homicide cases for research. As the Commissioner Lin mentioned, it was unprecedented that the CIB agrees to provide data for private research purpose, which signals the rareness of the cases provided and the significance of this study. Nonetheless, while the Commissioner and the CIB are fully supportive to this study, their first time official offering of data for research incidentally reveals the gap between ideal and reality.

Our original request for data collection was to ***nationally*** collect all Taiwan's non-traffic homicide cases with trial court decisions and expand the time to collect up to 300 cases. Accordingly, the CIB provided us their "nationwide" cases reported by police to prosecutor's office from 2006 to 2012. Cases reported by police after 2012 may be too

recent to have a trial court decision, and on the other hand, the police also have concerns for that this study might influence those undecided cases. Thus, the police traced back from the end of 2012 to collect non-traffic cases and stopped in 2006 when the cases collected amounted to about 300. However, when receiving the results of "nationwide" cases, we found cases provided by the CIB unusually concentrated in Taipei City. For example, from 2006 to 2009, over 90% of homicide cases provided by the CIB in their sample occurred in Taipei, which disagreed with the statistics published by Taipei City Police Department and the CIB. More importantly, according to the statistics published by the CIB (but for reference only), Taiwan had 1,458 murder deaths nationwide from 2006 to 2012, but the CIB only provides 148 murder deaths *nationwide* during the same period.[12]

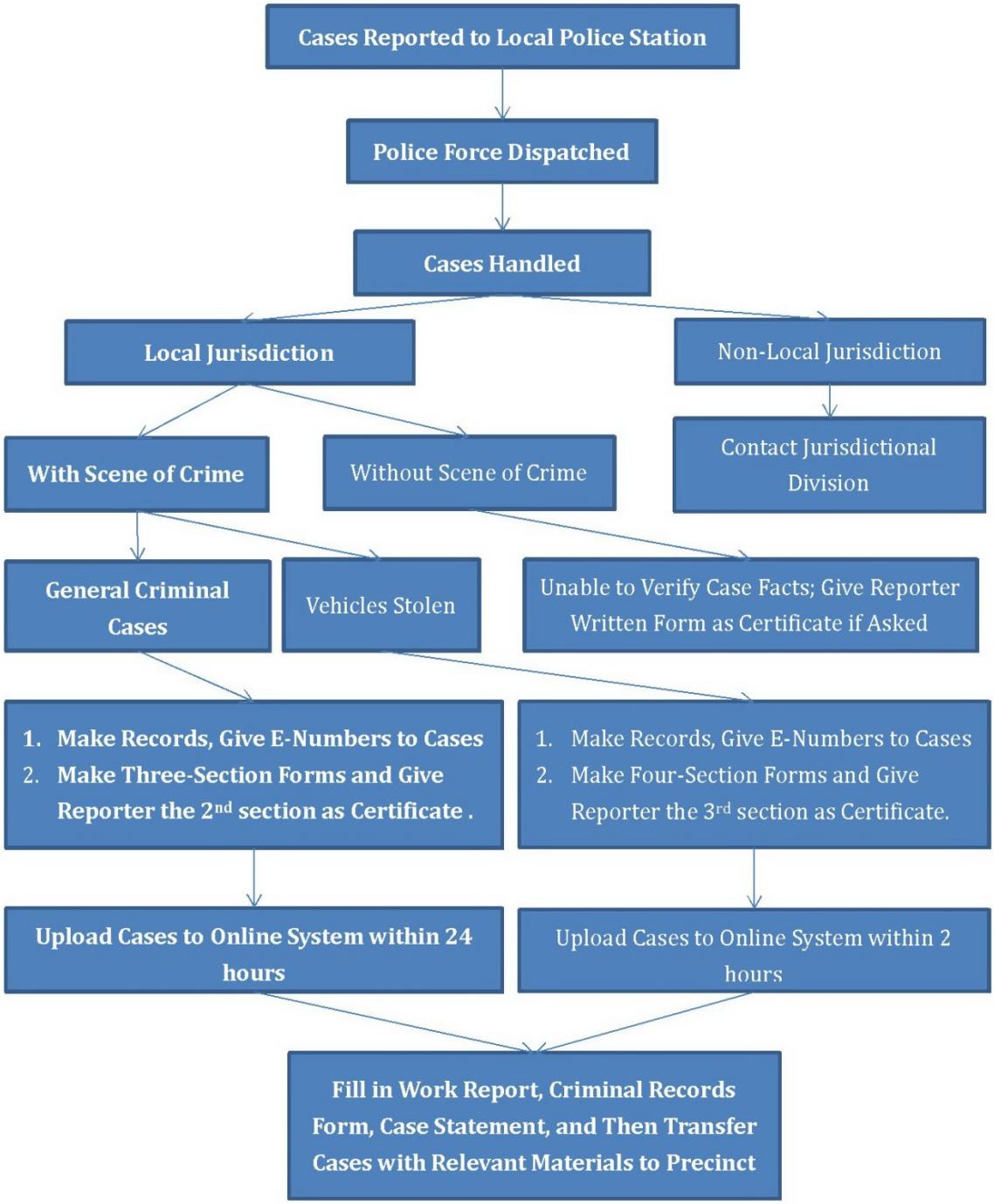
For making sure the cases provided to us were not mistakenly incomplete, we discussed our finding with the CIB back and forth. As a result, the CIB agreed to rerun the process of their cases collection, which we were told very time- and resource-consuming, and the CIB still had exactly the same results. While the CIB admitted the over concentration of homicide cases in Taipei City was abnormal, they could not figure out what the problem may be.

For solving the unexpected problem, we took two actions: first, we asked the CIB to provide details in their data collection process and saw if we may find the problem; second, we requested Taipei City Government for their assistance to either verify these cases or provide their own cases for our study. Fortunately, both actions have positive results in the end. For the first action, we eventually figured out where the problems may result, and for the second action, we successfully verified that Taipei cases provided by the CIB are relatively complete and usable for our study. Here, I would like to first describe the process of CIB case collection and the probable causes of providing incomplete nationwide data. Then I will show how Taipei data were verified with the official assistance from Taipei City Government.

To know how the CIB collects cases and why they do so, we must have an understanding of how Taiwan's police undertake criminal investigation. **Flowchart I.1**

[12] "Distribution of Victims Died or Injured in Murder and Bodily Harm, 2003-2012" (*Crime Statistics - 2012*, P. 69) published by Criminal Investigation Bureau, National Police Agency, Ministry of the Interior, Republic of China.

below outlines the flow of information that produces the statistics and case description in this study.



Flowchart I.1 Sources of Information in Homicide Cases in Taipei

As the flowchart above shows, when a criminal case reported to a police station, (the lowest-level local police department), the station will send police to handle the case. If

police in charge find the case not within their jurisdiction, the police should contact the correct jurisdictional police division and transfer the case. If the police do have jurisdiction over the case, the disposition process differs by whether there is a scene of crime and whether it is a vehicle stolen case.

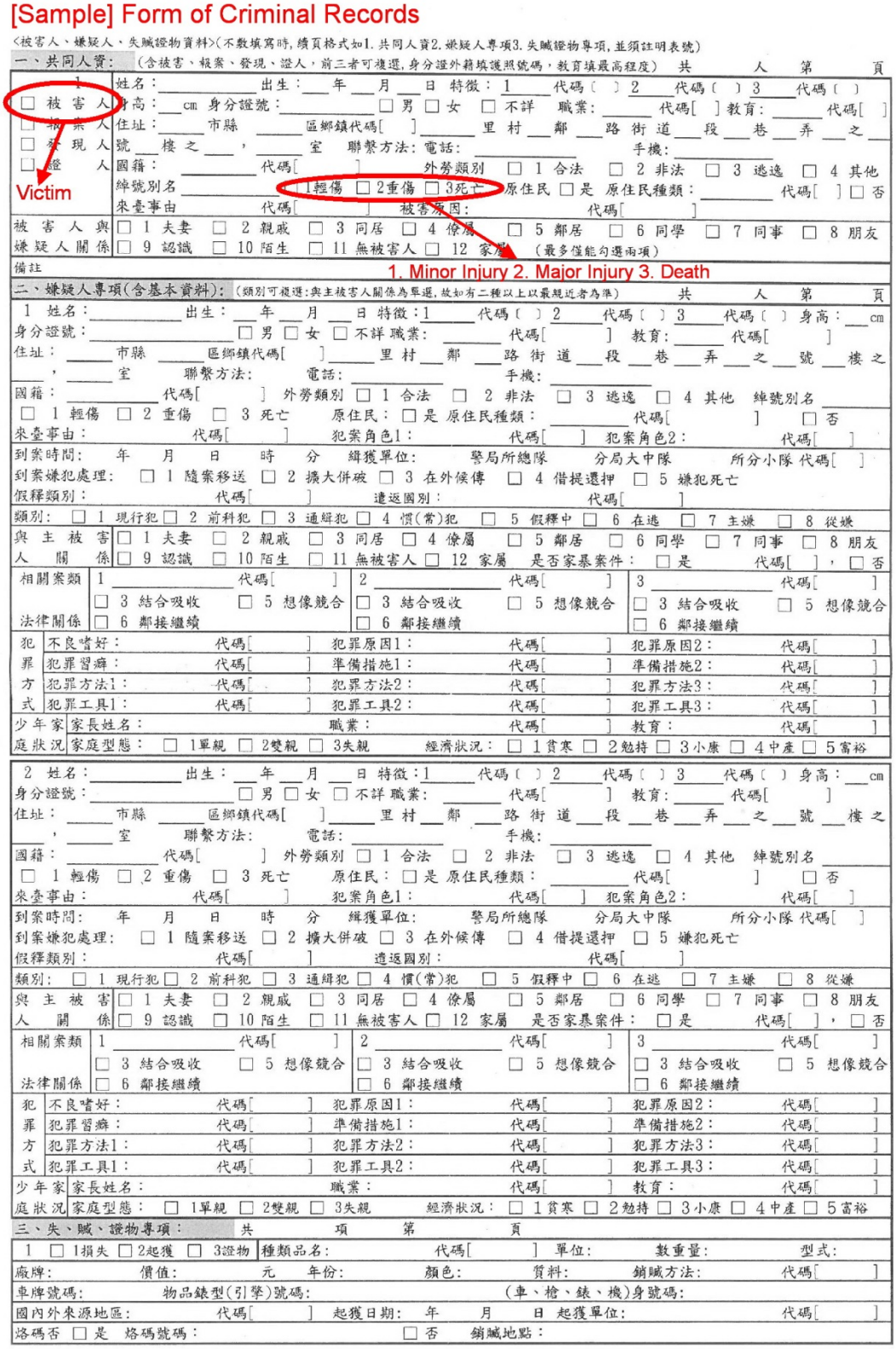
If a general criminal case (other than vehicles stolen) occurs with a scene of crime, the police start their investigation by searching the scene of crime and questioning relevant people including suspects and witnesses. The police then record the results of their investigation and give the case an electronic number (*E-number*), by which the case reporter could understand the progress of the case online. The police also fill in a three-section form which records the basic facts known to and reported to the police. The three-section form has the same content on each section, and one section is handed to the reporter as a certificate of case report. Then the police have to upload the case records within 24 hours to the online system, from which the case reporter can look up the progress of police disposition. Finally, the police fill in their work report and other record forms and transfer the case to the precinct, an intermediate-level police division. The precinct uses the materials from the station for further investigation and then transferred the case to the prosecutor's office.

Among all the documents produced by police, "Form of Criminal Records" (the "Form") and "Criminal Case Report" (the "Report") are of the most importance in my study. Both the "Form" and the "Report" record the facts known to the police and are transferred with the case to the prosecutor's office. However, they are different in record styles and amounts.

On the "Form", there are almost all checkboxes for police to check or to fill in codes or numbers. The "Report", instead, has various columns which the police use narratives to describe their stories of understanding and handling of criminal cases. On the other hand, while police may produce multiple "Forms" for a single case in the process of investigation, each case usually has only a single "Report", which police use to close their investigation. Samples of the "Form" and the "Report" are shown below (both of them include two pages):

Sample of "Form" (Two Pages)

[Sample] Form of Criminal Records



〈被害人、嫌疑人、失贓證物資料〉(不敷填寫時,續頁格式如1.共同人資2.嫌疑人專項3.失贓證物專項,並須註明表號)

一、共同人資: (含被害、報案、發現、證人,前三者可複選,身分證外籍填護照號碼,教育填最高程度) 共 人 第 頁

1 ☐被害人 ☐報案人 ☐發現人 ☐證人

姓名: 出生: 年 月 日 特徵: 1 代碼〔 〕 2 代碼〔 〕 3 代碼〔 〕

身高: cm 身分證號: ☐男 ☐女 ☐不詳 職業: 代碼[ ] 教育: 代碼[ ]

住址: 市縣 區鄉鎮代碼[ ] 里 村 鄰 路 街 道 段 巷 弄 之

號 樓之 , 室 聯繫方法: 電話: 手機:

國籍: 代碼[ ] 外勞類別 ☐1合法 ☐2非法 ☐3逃逸 ☐4其他

綽號別名 ☐1輕傷 ☐2重傷 ☐3死亡 原住民 ☐是 原住民種類: 代碼[ ] ☐否

來臺事由 代碼[ ] 被害原因: 代碼[ ]

Victim

被害人與嫌疑人關係: ☐1夫妻 ☐2親戚 ☐3同居 ☐4僚屬 ☐5鄰居 ☐6同學 ☐7同事 ☐8朋友 ☐9認識 ☐10陌生 ☐11無被害人 ☐12家屬 (最多僅能勾選兩項)

備註 1. Minor Injury 2. Major Injury 3. Death

二、嫌疑人專項(含基本資料): (類別可複選;與主被害人關係為單選,故如有二種以上以最親近者為準) 共 人 第 頁

1 姓名: 出生: 年 月 日 特徵: 1 代碼〔 〕 2 代碼〔 〕 3 代碼〔 〕 身高: cm

身分證號: ☐男 ☐女 ☐不詳 職業: 代碼[ ] 教育: 代碼[ ]

住址: 市縣 區鄉鎮代碼[ ] 里 村 鄰 路 街 道 段 巷 弄 之 號 樓之 , 室 聯繫方法: 電話: 手機:

國籍: 代碼[ ] 外勞類別 ☐1合法 ☐2非法 ☐3逃逸 ☐4其他 綽號別名

☐1輕傷 ☐2重傷 ☐3死亡 原住民: ☐是 原住民種類: 代碼[ ] ☐否

來臺事由: 代碼[ ] 犯案角色1: 代碼[ ] 犯案角色2: 代碼[ ]

到案時間: 年 月 日 時 分 緝獲單位: 警局所總隊 分局大中隊 所分小隊 代碼[ ]

到案嫌犯處理: ☐1隨案移送 ☐2擴大併破 ☐3在外候傳 ☐4借提還押 ☐5嫌犯死亡

假釋類別: 代碼[ ] 遣返國別: 代碼[ ]

類別: ☐1現行犯 ☐2前科犯 ☐3通緝犯 ☐4慣(常)犯 ☐5假釋中 ☐6在逃 ☐7主嫌 ☐8從嫌

與主被害人關係: ☐1夫妻 ☐2親戚 ☐3同居 ☐4僚屬 ☐5鄰居 ☐6同學 ☐7同事 ☐8朋友 ☐9認識 ☐10陌生 ☐11無被害人 ☐12家屬 是否家暴案件: ☐是 代碼[ ], ☐否

相關案類	1 代碼[ ]	2 代碼[ ]	3 代碼[ ]
法律關係	☐3結合吸收 ☐5想像競合 ☐6鄰接繼續	☐3結合吸收 ☐5想像競合 ☐6鄰接繼續	☐3結合吸收 ☐5想像競合 ☐6鄰接繼續

犯罪方式						
	不良嗜好:	代碼[ ]	犯罪原因1:	代碼[ ]	犯罪原因2:	代碼[ ]
	犯罪習癖:	代碼[ ]	準備措施1:	代碼[ ]	準備措施2:	代碼[ ]
	犯罪方法1:	代碼[ ]	犯罪方法2:	代碼[ ]	犯罪方法3:	代碼[ ]
	犯罪工具1:	代碼[ ]	犯罪工具2:	代碼[ ]	犯罪工具3:	代碼[ ]
少年家庭狀況	家長姓名:		職業:	代碼[ ]	教育:	代碼[ ]
	家庭型態: ☐1單親 ☐2雙親 ☐3失親		經濟狀況: ☐1貧寒 ☐2勉持 ☐3小康 ☐4中產 ☐5富裕			

2 姓名: 出生: 年 月 日 特徵: 1 代碼〔 〕 2 代碼〔 〕 3 代碼〔 〕 身高: cm

身分證號: ☐男 ☐女 ☐不詳 職業: 代碼[ ] 教育: 代碼[ ]

住址: 市縣 區鄉鎮代碼[ ] 里 村 鄰 路 街 道 段 巷 弄 之 號 樓之 , 室 聯繫方法: 電話: 手機:

國籍: 代碼[ ] 外勞類別 ☐1合法 ☐2非法 ☐3逃逸 ☐4其他 綽號別名

☐1輕傷 ☐2重傷 ☐3死亡 原住民: ☐是 原住民種類: 代碼[ ] ☐否

來臺事由: 代碼[ ] 犯案角色1: 代碼[ ] 犯案角色2: 代碼[ ]

到案時間: 年 月 日 時 分 緝獲單位: 警局所總隊 分局大中隊 所分小隊 代碼[ ]

到案嫌犯處理: ☐1隨案移送 ☐2擴大併破 ☐3在外候傳 ☐4借提還押 ☐5嫌犯死亡

假釋類別: 代碼[ ] 遣返國別: 代碼[ ]

類別: ☐1現行犯 ☐2前科犯 ☐3通緝犯 ☐4慣(常)犯 ☐5假釋中 ☐6在逃 ☐7主嫌 ☐8從嫌

與主被害人關係: ☐1夫妻 ☐2親戚 ☐3同居 ☐4僚屬 ☐5鄰居 ☐6同學 ☐7同事 ☐8朋友 ☐9認識 ☐10陌生 ☐11無被害人 ☐12家屬 是否家暴案件: ☐是 代碼[ ], ☐否

相關案類	1 代碼[ ]	2 代碼[ ]	3 代碼[ ]
法律關係	☐3結合吸收 ☐5想像競合 ☐6鄰接繼續	☐3結合吸收 ☐5想像競合 ☐6鄰接繼續	☐3結合吸收 ☐5想像競合 ☐6鄰接繼續

犯罪方式						
	不良嗜好:	代碼[ ]	犯罪原因1:	代碼[ ]	犯罪原因2:	代碼[ ]
	犯罪習癖:	代碼[ ]	準備措施1:	代碼[ ]	準備措施2:	代碼[ ]
	犯罪方法1:	代碼[ ]	犯罪方法2:	代碼[ ]	犯罪方法3:	代碼[ ]
	犯罪工具1:	代碼[ ]	犯罪工具2:	代碼[ ]	犯罪工具3:	代碼[ ]
少年家庭狀況	家長姓名:		職業:	代碼[ ]	教育:	代碼[ ]
	家庭型態: ☐1單親 ☐2雙親 ☐3失親		經濟狀況: ☐1貧寒 ☐2勉持 ☐3小康 ☐4中產 ☐5富裕			

三、失、贓、證物專項: 共 項 第 頁

1 ☐1損失 ☐2起獲 ☐3證物 種類品名: 代碼[ ] 單位: 數重量: 型式:

廠牌: 價值: 元 年份: 顏色: 質料: 銷贓方法: 代碼[ ]

車牌號碼: 物品錄型(引擎)號碼: (車、槍、錶、機)身號碼:

國內外來源地區: 代碼[ ] 起獲日期: 年 月 日 起獲單位: 代碼[ ]

烙碼否 ☐是 烙碼號碼: ☐否 銷贓地點:

刑案紀錄表　　警察局　　分局　年　月　日　　表號　　號

<案件基本資料>

一　案件別　□ 1發生　□ 2發破　□ 3破獲　□ 4緝獲逃犯　□ 5起獲贓證物

二　案號　　年　月　日　　分局　　號　[本欄勿庸填寫，由電腦自動設定]

三　案類

（A暴力犯罪）	（B竊盜）	（F其他一）	（G其他二）	（H其他三）
□ A010故意殺人	□ B001竊盜	□ F001詐欺背信	□ G001妨害家庭	□ H001就業服務法
□ A020強[海]盜	□ B002汽車竊盜	□ F002公共危險	□ G002妨害名譽	□ H002洗錢防制法
□ A030搶奪	□ B003機車竊盜	□ F003傷害(含重傷害)	□ G003妨害公務	□ H003兒童及少年性交易防制條例
□ A040擄人勒贖		□ F004侵占	□ G004妨害秩序	□ H004動產擔保交易法
（性侵害）	（C毒品）	□ F005重利	□ G005毀棄損壞	□ H005野生動物保育法
□ A051強制性交	□ C000毒品	□ F006誣告	□ G006偽造文書	□ H006組織犯罪條例
□ A052共強性交	（D槍彈刀械）	□ F007遺棄	□ G007偽造貨幣	□ H007公寓大廈條例
□ A053對幼性交	□ D000槍彈刀械	□ F008贓物	□ G008著作權法	□ H008懲治走私條例
□ A054性交猥褻	（E賭博）	□ F009妨害風化	□ G009刑法瀆職	□ H009過失致死
□ A060恐嚇取財	□ E000賭博	□ F010妨害自由	□ G010兩岸條例	_____ 代碼[ ]

四　刑案等級：□ 1 普通　□ 2 重大　□ 3 特殊

五　犯罪實施階段：□ 1 既遂　□ 2 未遂　□ 3 預備或陰謀

六　發生經過：□ 1 被害人報案　□ 2 親友報案　□ 3 他人檢舉　□ 4 勤務中發現　□ 5 自首投案　□ 6 其他

七　報案方式：□ 1 親自報案　□ 2 書面　□ 3 電話　□ 4 傳真　□ 5 網路　□ 6 上級轉交　□ 7 其他

八　發生氣候：□ 1 晴　□ 2 陰　□ 3 雨　□ 4 霧　□ 5 微風　□ 6 大風　□ 7 颱風　□ 8 其他

九　發生場所：1 主要 _____ 代碼[ ]　2 次要 _____ 代碼[ ]　3 附屬 ___ 代碼[ ]

十　發生（現）破獲時間（地點）及管轄或受理單位：

發生	___年___月___日___時___分	市縣　區鎮鄉 代碼[ ]　里村　鄰　路街道___段 巷　弄之　號　樓之，　室管轄　警局所總隊　分局大中隊　所分小隊 代碼[ ]
發現	___年___月___日___時___分	市縣　區鎮鄉 代碼[ ]　里村　鄰　路街道___段 巷　弄之　號　樓之，　室管轄　警局所總隊　分局大中隊　所分小隊 代碼[ ]
報案	___年___月___日___時___分	報案三或四聯單流水編號（　）　<汽機車失竊四聯單餘三聯單> 受理　警局所總隊　分局大中隊　所分小隊　代碼[ ]
破獲	___年___月___日___時___分	市縣　區鎮鄉 代碼[ ]　里村　鄰　路街道___段 巷　弄之　號　樓之，　室管轄　警局所總隊　分局大中隊　所分小隊 代碼[ ]

（外國填國名，公海填海名，管轄代碼填寫處理單位）

十一不詳嫌疑人：　人　（如超過三人請描述其中較清楚之三人）（綽號含別名）

性別	□ 1 男 □ 2 女 □ 3 不詳	□ 1 男 □ 2 女 □ 3 不詳	□ 1 男 □ 2 女 □ 3 不詳
綽號身高	綽號　身高 CM	綽號　身高 CM	綽號　身高 CM
特徵	代碼 [ ]	代碼 [ ]	代碼 [ ]

十二研判犯罪方式（發破或破獲免填）

犯罪原因：	代碼[ ]	犯罪習癖：	代碼[ ]	準備措施：	代碼[ ]
犯罪方法1：	代碼[ ]	犯罪方法2：	代碼[ ]	犯罪方法3：	代碼[ ]
犯罪工具1：	代碼[ ]	犯罪工具2：	代碼[ ]	犯罪工具3：	代碼[ ]

十三偵破線索：　代碼[ ]（如有二以上線索，請填最主要或關鍵者）

十四偵破單位：（依出力多寡次序填列，可填至派出所，緝獲逃犯及起獲贓證物免填）

1	代碼[ ]	2	代碼[ ]	3	代碼[ ]
4	代碼[ ]	5	代碼[ ]	6	代碼[ ]

十五移送書：（移送單位請填分局或相等層級或以上單位）

移送單位	代碼	流水編號	移送日期	移送文號	移送處所	代碼	移送處所	代碼
1								
2								
3								

十六移送法條：（發破表及破獲表除汽車竊盜外必填）

法　第　條之　第　項第　款第　目
備註

第　層決行

填表　　建檔　　審核　　主官

Sample of "Report" (Two Pages)

[Sample]
Criminal Case Report

○○案 檔號：
保存期限：

○○○警察局○○分局案件移送（報告）書(稿)

發文日期：101 年 00 月 00 日　發文字號：○○○○○字第 1010000001 號

單位代碼 流水編號					移送 屬性		
犯罪嫌疑人	性別	年齡	出生日期	職業	出生地	國民身分證 統一編號	照片
王○○							□有 □無
	戶籍地： 居住所：						
關係人	性別	年齡	出生日期	職業	出生地	何種關係	
李○○							
	戶籍地： 居住所：						
選任辯護人	辯護對象		事務所名稱、住居所、聯絡處所或聯絡電話				
上列嫌犯因涉○○○○、○○○○等嫌疑案件，依法應予移送偵查，茲詳開各項於下：							
犯罪時間 犯罪地點							
拘捕時間 拘捕地點							
犯　　罪　　事　　實							

Facts of Offense

偵辦經過	
犯罪證據	
所犯法條	
發查（交）核退案件	
偵辦意見	
附送	
承辦單位人員電話	

此致

臺灣臺北地方法院

局長 ○ ○ ○

Sample of “Criminal Records Form” (“Form”) and Sample of “Criminal Case Report” (“Report”)

Obviously, the upside of the "Report" is its narrative style, which provides a story with details of offenses and police investigation process. By reading the narrative on the report, we are able to discover how police consider an offense and what level of efforts police make on a case.

However, the downside of the "Report" is that it doesn't clearly indicate whether the victim was dead. In Taiwan's Criminal Code (TCC), "***Homicide***" is used as the tittle of the 22nd Chapter, which covers various offenses related to killing of people, including intended killing, negligent killing, and attempt (but fail) to kill, etc. Thus, almost all documents produced within Taiwan's criminal justice system follow the TCC and may use "homicide" as a generic tittle to label the crimes related to killing of human being, even though a killing was attempted but failed to accomplish. The "Reports" also follow the rule and may use "homicide" to label cases in which offenders attempt to kill people but fail. Thus, if one expects to find cases only with death by reading "Reports", he has to read the detailed facts of offense, which could be very time-consuming. Instead of collecting qualified sample cases directly from "Reports", Taiwan's CIB undertook their collection from the "Form", because there is a particular checkbox on the "Form" for police to check if victims are in "Minor Injury", "Major Injury", or "**Death"**, as shown in page 1 of Sample "Form" above.

Specifically, the process that the CIB collected our sample cases was as follows: In the beginning, the Information Management Office of the CIB used the variable "***Death of Victim***" to start searching cases and found more than 3,000 qualified "Forms". Then they matched the "Forms" with their related "Reports" by case number and had a result of 966 "Reports", which are all homicide cases with dead victims reported by the police to the prosecutor's office from December 31st, 2005 to the end of March, 2014, the time when I requested the representative cases from them. Then, they manually excluded unqualified cases (such as traffic cases and the cases known to police after January 1st, 2013), covered the involved personal information (such as I.D. number), and provided me all the homicide cases happening in Taipei City from 2006 to 2012.

Due to the above data retrieving process from the "Form" translated to the "Report" and other reasons, the number of case "Reports" provided by the CIB is not identical to the official statistics counted by Taipei City from their police "Forms", but their trends are quite similar, as shown in **Figure I.5** and **Figure I.6** below.

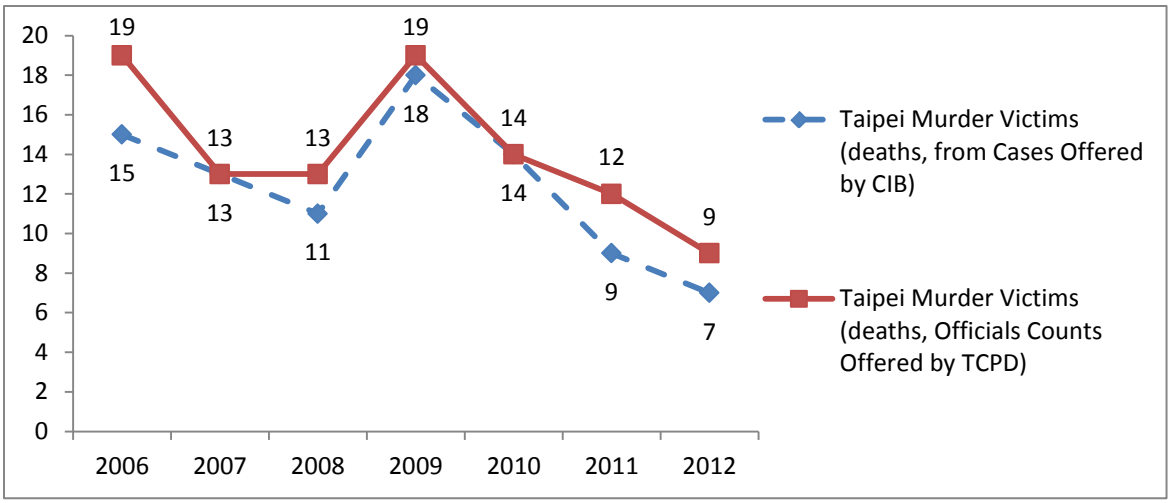


Figure I.5 Comparing Taipei Murder Victims (Deaths) by CIB Cases with Taipei City Official Statistics (2006 - 2012).

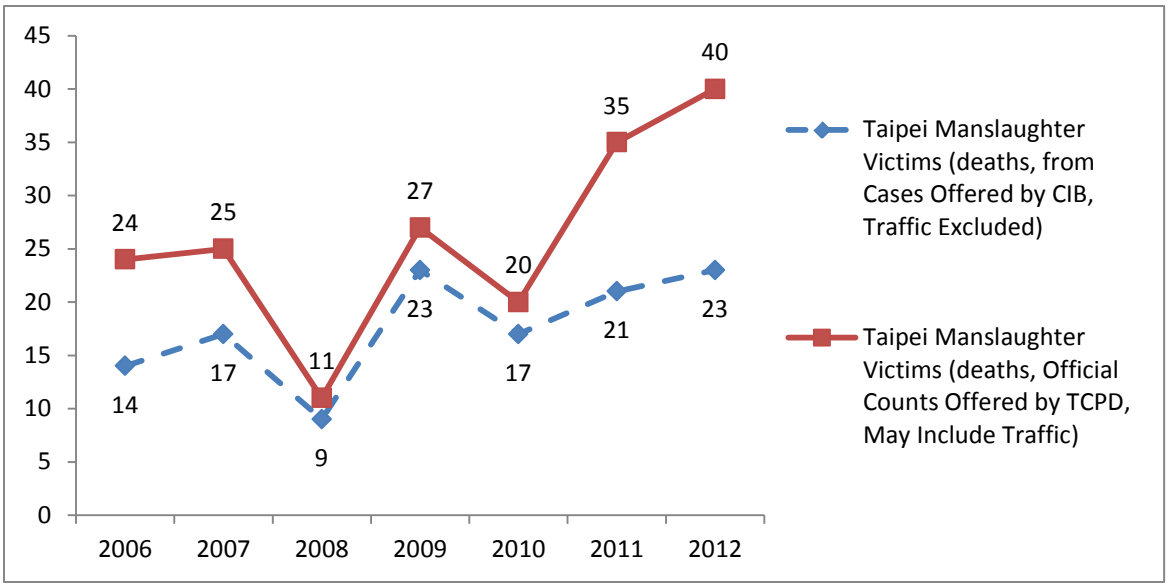


Figure I.6 Comparing Taipei Manslaughter Victims (Deaths) by CIB Cases and Taipei City Official Statistics (2006 - 2012).

Other factors which may influence the number of cases provided include:

1) The Time When the Systems of “Form” and “Report” initiated:

The central online system of the “Form” has been created since 1992, but the “Report” system has started since 2007. Before the dates, the “Form” and the “Report” were kept only by each precinct and may be missing and incomplete.

2) The Ways Which the Form and Report Are Created:

Due to the need for facts of offense, the representative cases used in my study are from the system of “Reports”. However, the official statistics of Taipei City are produced from the “Forms”. When police fill in the “Forms”, they need to check a box called “The Type of Cases”, and they are limited to check only a single type no matter how various types of crimes may also involve. Since the instruction given to the police is nothing more than “to check the closest and severest type”, different police may check different types for cases with very similar facts.

The most apparent example is manslaughter in traffic cases: Driver A drove carelessly, bumped into and killed B. The cases with these basic facts may be checked as the type of “*manslaughter*” or as the type of “*driving negligence*” by different police. While the “*driving negligence*” should be a more precise type for police to check, many police may not notice it and simply go for “*manslaughter*” when they see it at the first glance. Thus, the official statistics, which produced from the “Forms”, may also include this kind of inaccuracy in the numbers of manslaughter victims. According to the CIB police officer who manually processed the 966 cases down to the final outcomes, he had seen many traffic cases among the 966, which means these traffic cases with dead victims were checked as “*manslaughter*” instead of “*driving negligence*” by the police filling in the “Forms”. On the other hand, after the manual exclusion process, the representative cases provided by the CIB have ruled out all the traffic cases. This could be a significant reason why the number of cases (“Reports”) provided by the CIB is not identical to the official statistics.

In conclusion, while there are factors which may make difference between the “Form” and the “Reports”, the trends of homicide cases between CIB-provided cases and Taipei City official statistics are still similar. More importantly, the CIB-provided representative cases from 2006 to 2012 could be considered as the best data a researcher can have ever accessed to Taipei’s homicides. Thus, the 222 deaths in our sample consist of all murder and manslaughter cases which resulted in death of victims in the seven year

period from 2006 to 2012, but they don’t include deaths caused by ***pure*** traffic accidents, or “traffic manslaughter”.

II. Police: Murder, Manslaughter and "Others"

According to Taiwan's Criminal Code, there are two major types of *mens rea* which may constitute criminal offenses: either with intention, or with negligence. As for homicides, killing with intention constitutes *murder*; whereas killing with negligence constitutes *manslaughter*, which includes intentional attacks causing accidental death. If a killing of human is made with neither intention nor negligence, the killing is neither murder nor manslaughter and should be considered as not criminal. Therefore, when the police report their solved cases to prosecutor, among other details, they will provide prosecutor two pieces of major information: the police understanding of how the killing happened, and the police decision of what kind of killing it was, i.e. murder or manslaughter. There are 165 cases, consisting of 222 deaths and 377 suspects, sent by TCPD (Taipei City Police Department) to prosecutor from 2006 to 2012. By the police decision of murder or manslaughter, this study reveals the features and characters of the two types of homicide as follows.[13]

A. Police: Murder in Taipei

1. Number of Deaths and Suspects Accused of Murder by Police

Figure Ⅱ.1 shows the numbers of suspects and dead victims counted by Taipei police.

[13] As described above, these police cases sent to prosecutor are all non-traffic homicide cases, which were known and solved by Taipei City Police Department, and reported to corresponding prosecutor's offices from 2006 to 2012.

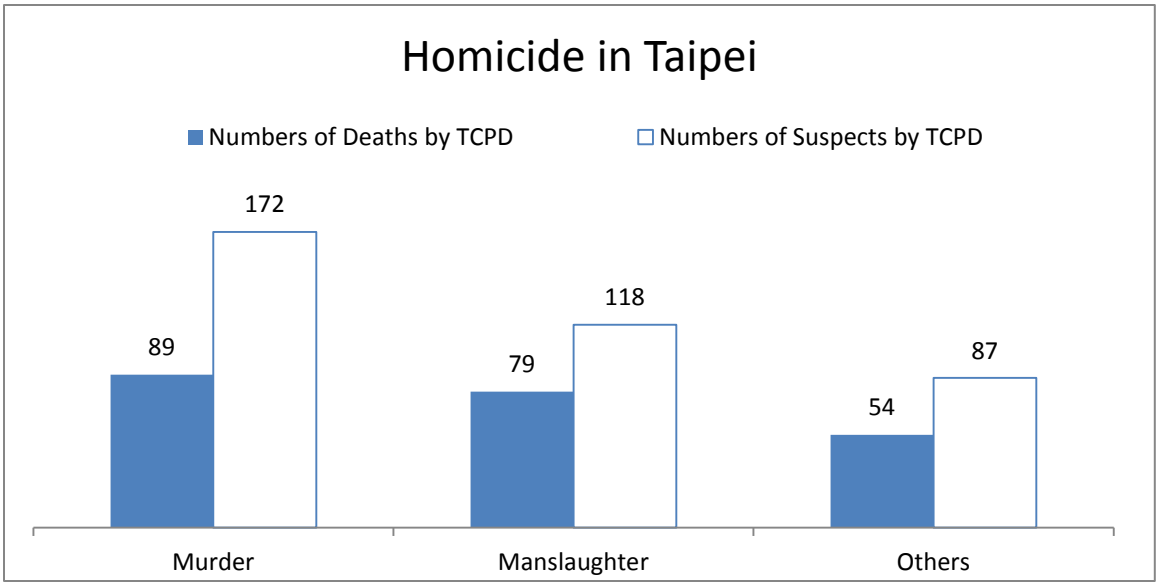


Figure II.1 Numbers of Suspects and Victims (Deaths) Counted by Taipei Police in Different Categories of Homicide

Note: The third category of "Others" refers to ***ambiguous unintended killings*** which police did not make a decision of murder or manslaughter.

Among the entire sample set of 222 deaths, 89 deaths were considered by Taipei police as murder which involved 172 suspects. That is, each murder death involved average 1.9 suspects. Despite the average number of almost 2 suspects responsible for a death, most cases (76%) were actually committed by a single suspect. **Figure II.2** and **Table II.1** below show the percentage and real numbers of suspects committing a murder. Besides, while I use the unit of "case" instead of "death", they are almost identical under the context of murder. From 2006 to 2012, all police murder cases but one reported to prosecutor had only a single victim. The only exception is the case No. 64, in which a businessman, without criminal record, shot and killed two people after the breakdown of their negotiation.

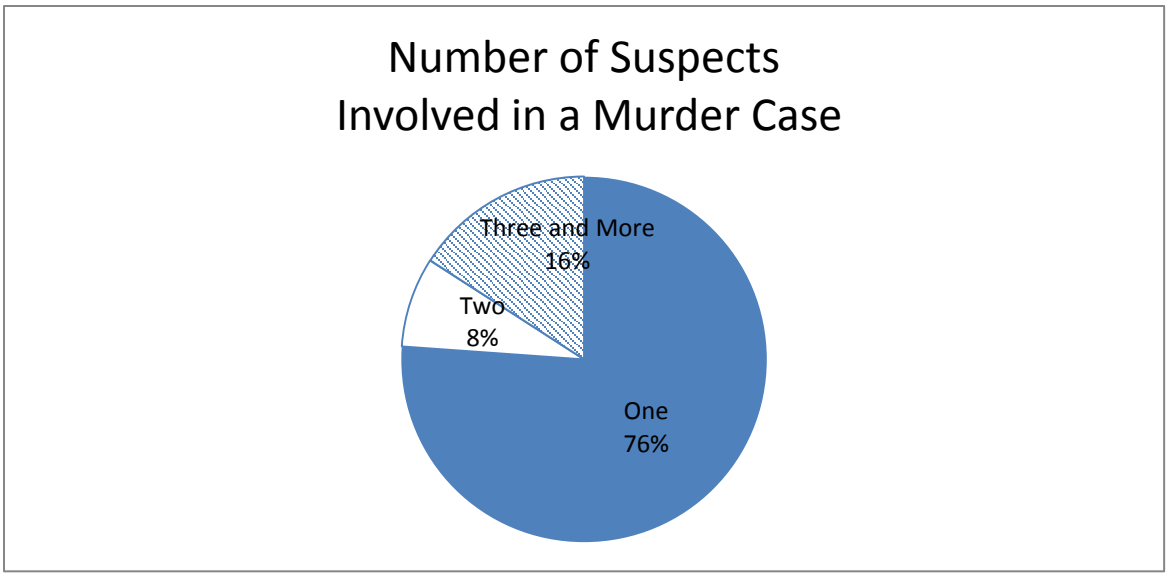


Figure II.2 Percentages of Different Numbers of Suspects Involved in a Murder in Taipei

Number of Suspects Involving in A Murder Case	Number of Cases	Number of Suspects
One	67	67
Two	7	14
Three	1	3
Four	4	16
Five	2	10
Six	1	6
Seven	2	14
Eight	1	8
Nine	0	0
Ten	0	0
Eleven	2	22
Twelve	1	12
Total	88	172

Table II.1 Numbers of Suspects Involved in a Murder

2. Offender-Victim Relationship in Murder

As for offender-victim relationship, by referring to the classification of FBI's *Uniform Crime Reports* (UCR) and the website of "*Easy Access to the FBI's Supplementary Reports: 1980-2012*" (EZA SHR)[14], this study also adopts four categories: **Family**, **Acquaintance**, **Stranger**, and **Unknown**. Please note that the FBI applies (and so does this study) "**Family**" relationship to a narrow definition so that romantic relationship like boyfriend-girlfriend or ex-husband-wife is classified into "**Acquaintance**" instead of "**Family**".[15]

On the other hand, unlike the FBI's approach,[16] this study codes relationship between multiple offenders and victims by the relationship which most directly relates to fatal incidents. For example, in case No. 95, six people (X1 to X6) murdered one victim (Y). Among the multiple offenders, only one (X1) knew the victim because they had been friends previously but incurred hatred afterwards. In this case, since the fatal incident happened due to the previous friendship between offender X1 and victim Y, This particular death is coded as "Friend" (Acquaintance) relationship, despite that other offenders (X2 to X6) were not friends with the victim. By doing so, the variable of offender-victim relationship can better project the direct causes of homicides.

By applying the above rule, as the **Figure II.3** shows below, more than 60% (54 out of 89 deaths) of murder cases were committed by various "acquaintances". Besides, the numbers of intentional killings made by family members (18%, 16 deaths) and strangers (60%, 17 deaths) are similar.

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[14] http://www.ojjdp.gov/ojstatbb/ezashr/asp/methods.asp

[15] According to the definition of relationship from the FBI's EZA SHR, "**Family**" includes: Husband, Wife, Common-law husband, Common-law wife, Mother, Father, Son, Daughter, Brother, Sister, In-law, Stepfather, Stepmother, Stepson, Stepdaughter, and Other family member, whereas "**Acquaintance**" means: Boyfriend, Girlfriend, Ex-husband, Ex-wife, Employee, Employer, Friend, Homosexual relation, Neighbor, and Other known individual. *Id.*

[16] The FBI's EZA SHR describes how they have handled the victim-offender relationship: "In the few incidents with multiple victims (5%, or 655 of 12,887 incidents reported in 2012), the offender records contain information on the first victim. Versions of this application released prior to September 2010 provided information on the oldest victim. We now provide information from the first recorded victim. Data from the first victim record is more complete and more accurate in terms of the Victim-Offender relationship variable (see the section on "Handling the Victim-Offender Relationship" for more information). In incidents where there were multiple offenders, the victim records contain information on the oldest offender. Note that, in some instances, offender age is not present on the record. When this occurs, information associated with the first offender is used." *Supra note* 7.

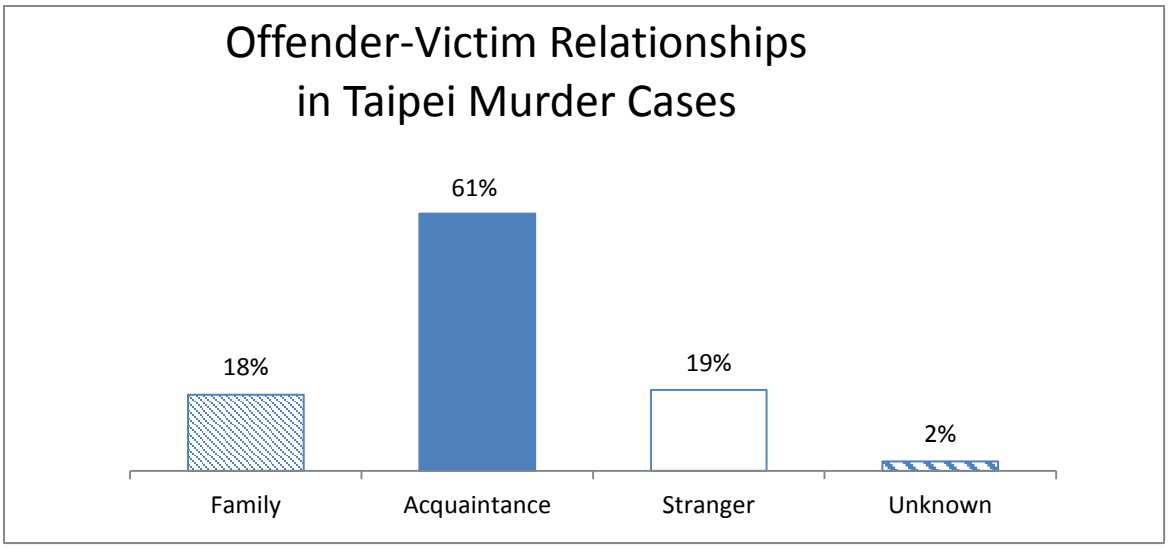

Figure II.3 Offender-Victim Relationships in Taipei Murder Cases

Among the acquaintance-relationship murder, 20% are made by offenders who had "romantic relationship" with victims, and 24% made by "friend". The two relatively intimate relationships together compose less than half (44%) of the deaths made by acquaintances, as indicated in the figure below.

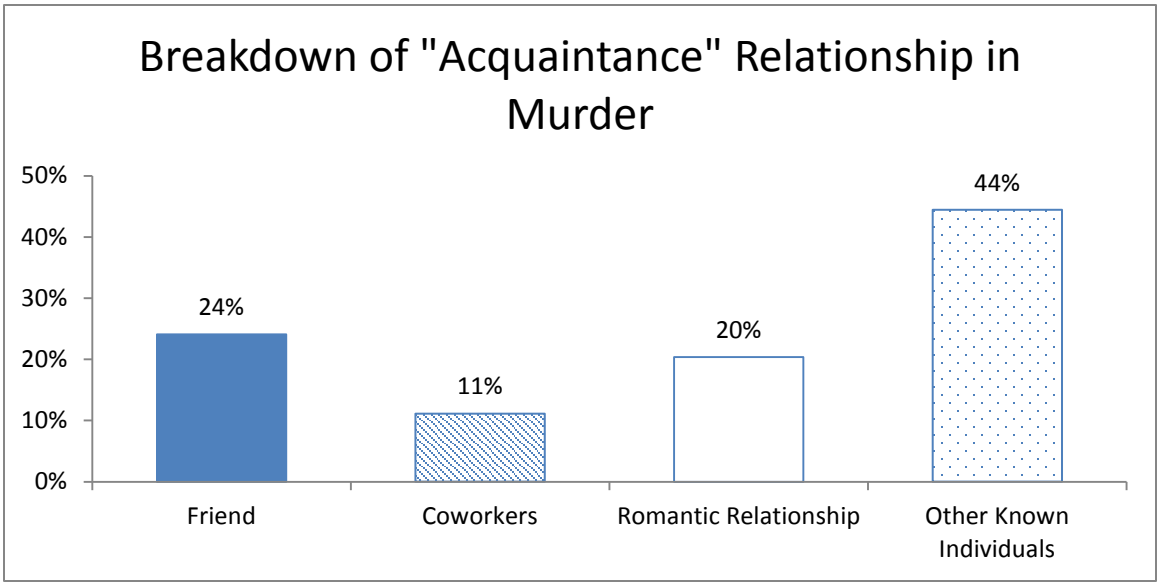

Figure II.4 Four Sub-categories among Relationship of Acquaintance in Murder

B. Police: Manslaughter Cases in Taipei

1. Number of Deaths and Suspects in Manslaughter

79 deaths with 117 suspects are classified by police as (non-traffic) manslaughter, meaning average 1.5 people involved for each negligent, accidental death. The proportion and number of suspects involving in manslaughter cases are shown in **Figure II.5** and **Table II.2** below.

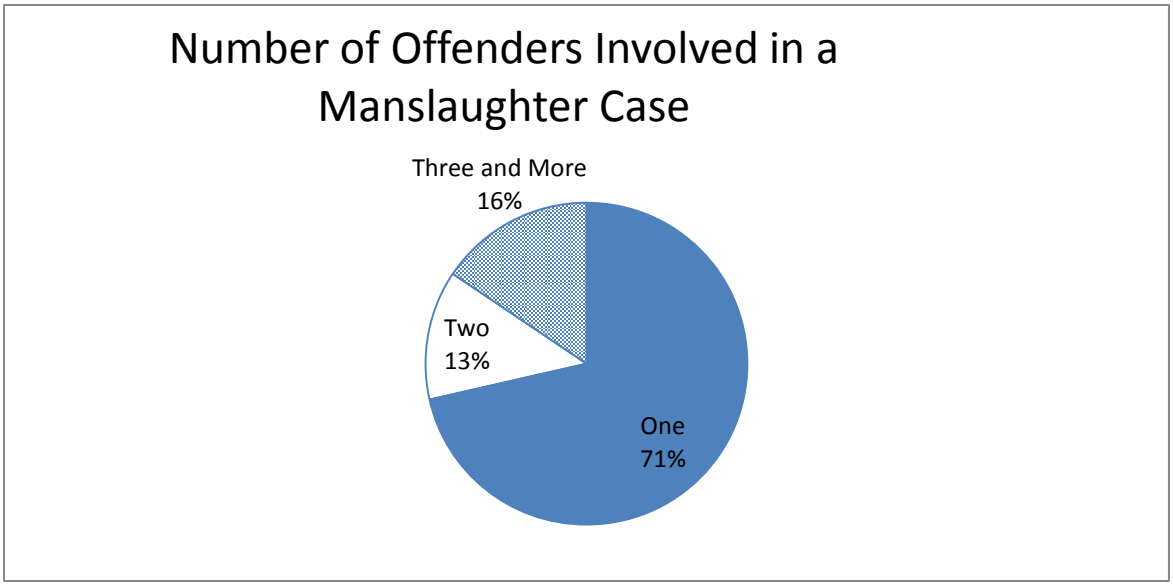

Figure II.5 Percentages of Different Numbers of Suspects Involved in a Manslaughter Case in Taipei

Number of Suspects Involving in A Manslaughter Case	Number of Cases	Number of Suspects
One	55	55
Two	10	20
Three	8	24
Four	3	12
Five	0	0
Six	1	6
Total	77	117

Table II.2 Numbers of Suspects Involved in a Manslaughter Case

2. Offender-Victim Relationship in Manslaughter

In manslaughter, deaths were dominantly caused by acquaintances (82%). Family members (8%) commit manslaughter nearly as many as strangers (6%) do. **Figure Ⅱ.6** shows the relationship between offenders and victims in police-considered manslaughter cases.

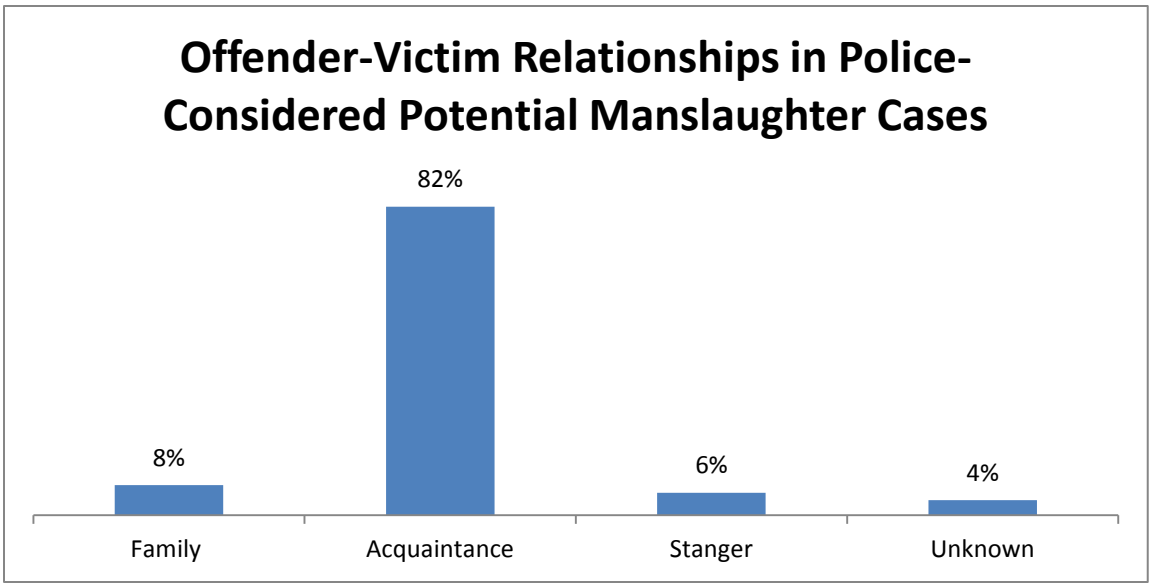

Figure II.6 Offender-Victim Relationships in Taipei Manslaughter Cases

By breaking down the relationship of acquaintance, as shown in **Figure II.7**, this study finds that nearly all deaths were caused by either coworkers (42%) or goods or service provider (52%). If we probe into these two sub-relationships, we will find the constituent of “coworker” relationship is relatively simple: 74% (20 out of 27 deaths) happened between coworkers at a construction site. On the other hand, the “goods or service provider” relationship is more diverse and have four major scenarios, as revealed in **Figure II.8** below.

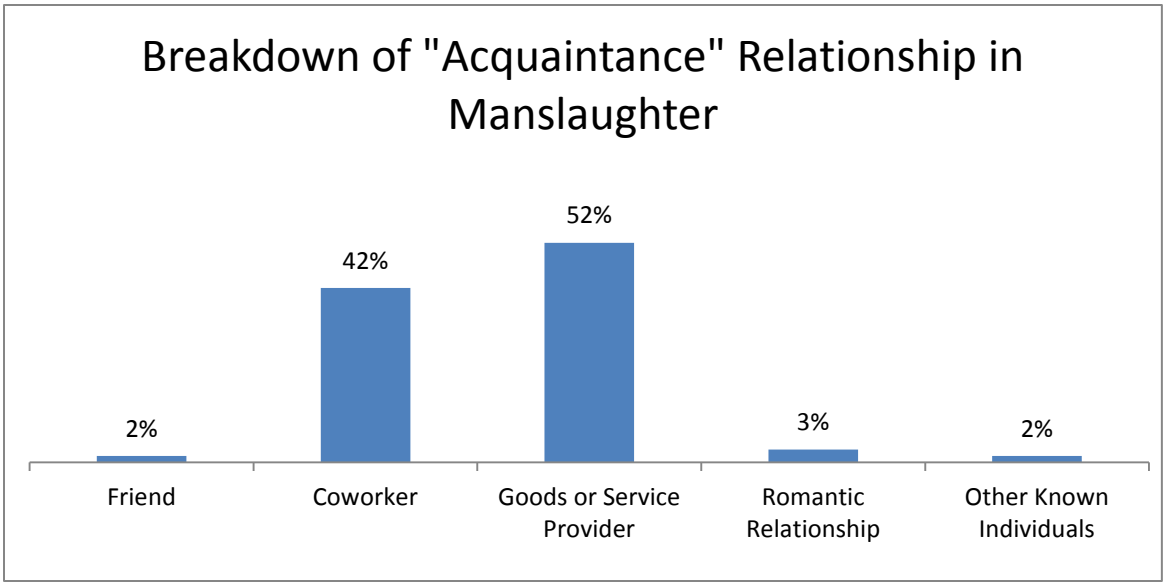

Figure II.7 Four Categories among Relationship of Acquaintance in Manslaughter

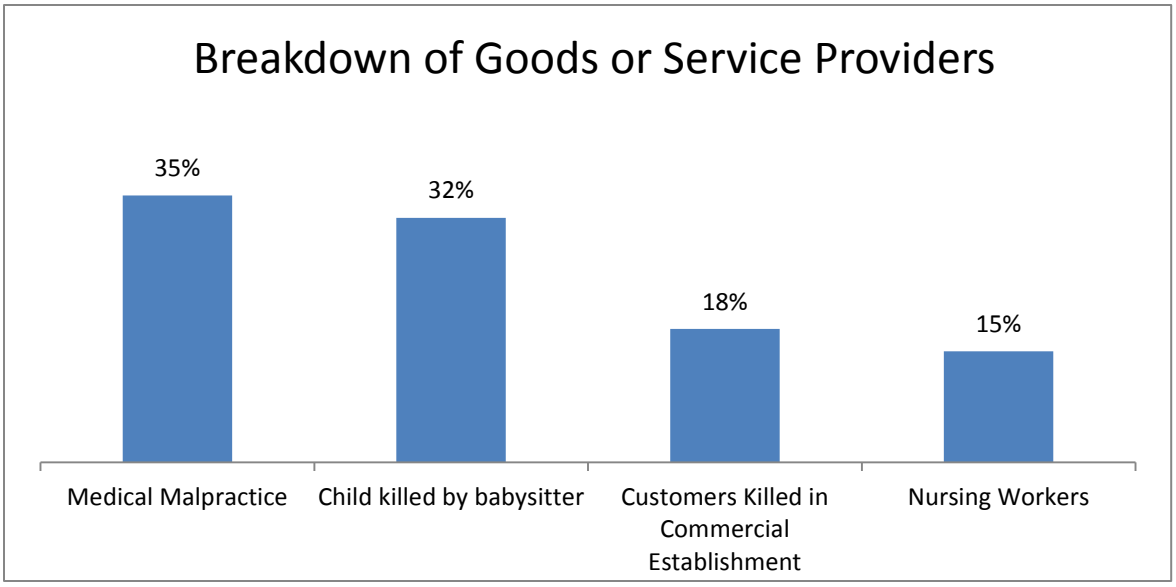

Figure II.8 Four Major Scenarios among Relationship of Goods or Service Providers in Manslaughter

Note: The sub-category "Customers Killed in Commercial Establishment" generally means customers are killed in the places where provide goods or service to them, such as a gym, a restaurant, or a grocery store.

Here, for “commercial establishment”, this study applies the definition of Code of Federal Regulations (CFR).[17]

It is noteworthy that Taiwan’s medical practitioners, mainly doctors and nurses, can possibly be accused of criminal offense of manslaughter for their malpractice, which is even the major type among the category of goods or service provider. If combing medical practitioners with nursing workers, most of which took care the senior or disabled at their homes, general health care providers made up half of goods or service providers who were accused of manslaughter. Taiwan’s health care providers have criticized for years that criminal justice system is hostile to them and exposes them to unreasonable legal risk. In the following section, this study will examine whether their argument is true.

C. Police: “Others” Cases in Taipei

Remember **Figure Ⅱ.1** and it’s the third category of “Others”? Despite the smallest category, “Others” category still consist of 54 deaths and 87 suspects. However, what does the category of “Others” mean? How can there be a category of illegal killing which is neither murder nor manslaughter under TCC’s dichotomous definition of homicide?

1. First Type of “Other”: Two Expressive Cases

“Other” is composed of two kinds of cases: first, cases where death occurred but suspects were accused by police of crimes other than murder or manslaughter. There are only two cases as well as deaths in this category: No. 165 and No. 127. In the case No. 165, the victim was killed by electric leakage during his work, and his employer was accused by police of violation of *Occupational Safety and Health Act*. While this could also be manslaughter in TCC, the police did not accuse the employer of manslaughter. Rather, the police applied *Occupational Safety and Health Act*, which does not cover criminal punishment for the killing. Subsequently, however, while the prosecutor in charge prosecuted the case for **both** manslaughter **and** violation of *Occupation Safety Act*, the prosecutor did not criticize the police.

[17] As 37 CFR 258.2 provides, the term “commercial establishment” means an establishment used for commercial purposes, such as bars, restaurants, private offices, fitness clubs, oil rigs, retail stores, banks and financial institutions, supermarkets, auto and boat dealerships, and other establishments with common business areas; provided that the term “commercial establishment” shall not include a multi-unit permanent or temporary dwelling where private home viewing occurs, such as hotels, dormitories, hospitals, apartments, condominiums and prisons, all of which shall be subject to the rates applicable to private home viewing.

The No. 165 may be simply understood as that police misapply the law, but the case No. 127 is more expressive, given the suspect himself was a police. In the case No. 127, according to the police document, the victim was drunk and had a fight with some people in a park. The police (suspect) was reported of the fight and went to handle it. When the police arrived, the victim had laid on the ground. The police moved the victim to his police car and the drunken victim cursed him. Then the police used his "leg" (not foot) to kick the victim's "face" (not head) twice. After about five hours, the victim died. The police kicking the victim was accused of "intentional serious injury" and was the only suspect that police department reported to prosecutor. That is, despite the death, no offender responsible for the death was reported to prosecutor, according to the police data collected in this study. In the report to prosecutor, police department didn't explain why the offender was accused of "serious injury" instead of "ordinary injury" or "manslaughter". Neither did police department state that who else was the potential offender responsible for the death. Thus, the case No. 127 was recorded as an exceptional police case which involved a death but seemed no suspect responsible for the death.[18]

2. Second Type of "Other": Ambiguous Unintended Killings

Except for the two cases above, all the "Other" cases, including 52 deaths and 85 suspects, go for the second subcategory named "*Ambiguous Unintended Killings*". These *Ambiguous Unintended Killings* cases are with facts quite similar to other cases decided by police as manslaughter. Yet, the difference is that police did not accuse suspects of committing any offenses. In other words, the police made no decisions about these cases and simply sent them to prosecutor for deciding whether an offense was committed and what the offense could be.

For these cases, the police would use explicit wordings to express that they made no decisions. For example, the police often put: "*Whether the suspects were involved in the case, we don't dare to decide by ourselves. We would report/transfer the case to you*

[18] It is noted that prosecutor subsequently did the case differently in two aspects. First, the prosecutor prosecuted the police suspect for "ordinary injury" instead of "serious injury". Second, the prosecutor added another offender who was prosecuted for "intentional serious injury causing accidental death". That is, the prosecutor found the offender who was supposed to be responsible for the death. As for trial, the police offender was convicted of "ordinary injury" and sentenced to a 50-day short-termed imprisonment, which could be substituted by a fine, with suspended sentence. On the other hand, the other offender prosecuted for "intentional **serious** injury causing accidental death" was convicted of a slighter "intentional **regular** injury causing accidental death" and sentenced to an imprisonment of eight and a half years.

(prosecutor) for disposition." (Case No. 19, 49, 113, 156, 175, 207). In most cases, police simply put: "*We would report/transfer the case to you (prosecutor) for your disposition.*" In one case, the police even put: "*While the complainant accused the five suspects of manslaughter and forgery, we haven't found tangible evidence of the accusation*" and "*Whether the five suspects were involved in these offenses, we would report the case for your disposition.*" (Case No. 217)

Which types of cases that police may tend to make no decisions but refer to prosecutors? Generally, they are all potential manslaughter cases, in which a death (or deaths) occurred and was apparently not due to intentional offenses of suspects. Although the police didn't accuse these suspects of manslaughter, it is clear that *Ambiguous Unintended Killings* cases consisted of facts very similar to police-considered manslaughter cases. In addition, while filling in their official report, the police put "*Manslaughter*" in the blank of "*Offense Charged*" for all but two *Ambiguous Unintended Killings* cases. The only two exceptions are the case No. 59 and the case No. 90, both of which were recorded as "*Offenses against Public Safety*" as their "*Offense Charged*". Since "*Offenses against Public Safety*", which is in fact a chapter within TCC, also covers manslaughter, the two cases actually can also be viewed as manslaughter cases with other *Ambiguous Unintended Killings* cases.

Ambiguous Unintended Killings cases share similar character and features with police-considered manslaughter cases: most deaths were caused by acquaintances; among acquaintances, goods or service provider is the major subcategory; medical malpractice occupies the largest proportion of the relationship of goods or service provider, etc., as shown in **Figure II.9**, **Figure II.10**, and **Figure II.11** below.

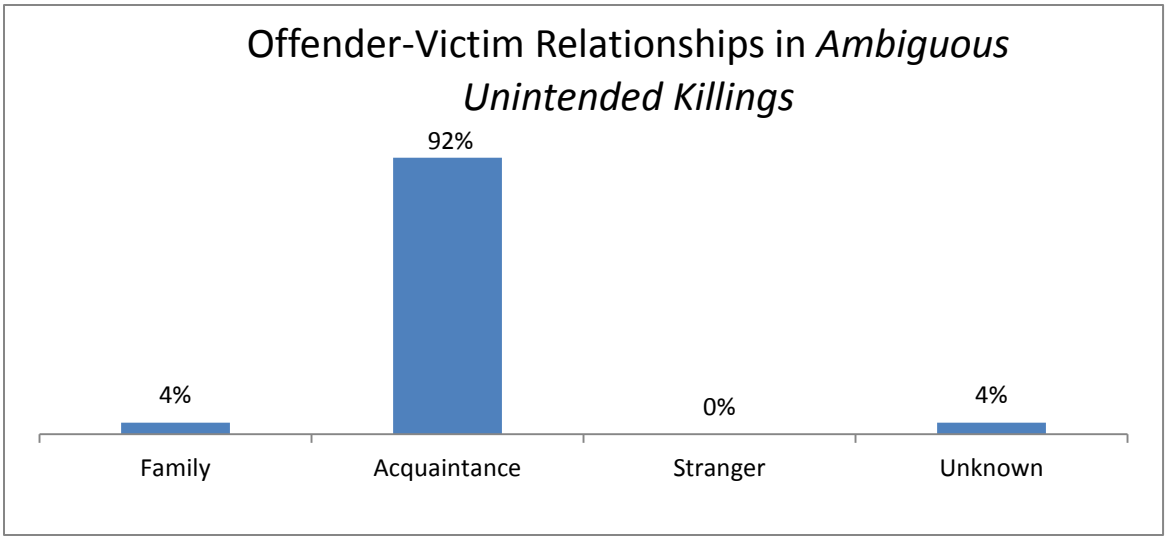

Figure II.9 Offender-Victim Relationships in *Ambiguous Unintended Killings*

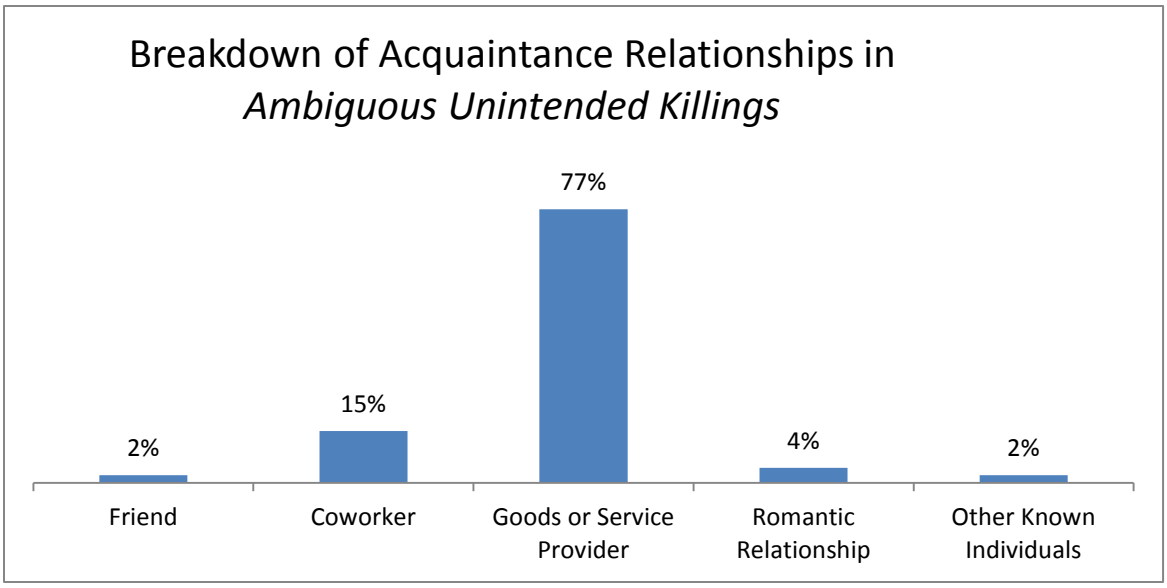

Figure II.10 Major Categories among the Relationship of Acquaintance in Ambiguous Unintended Killings

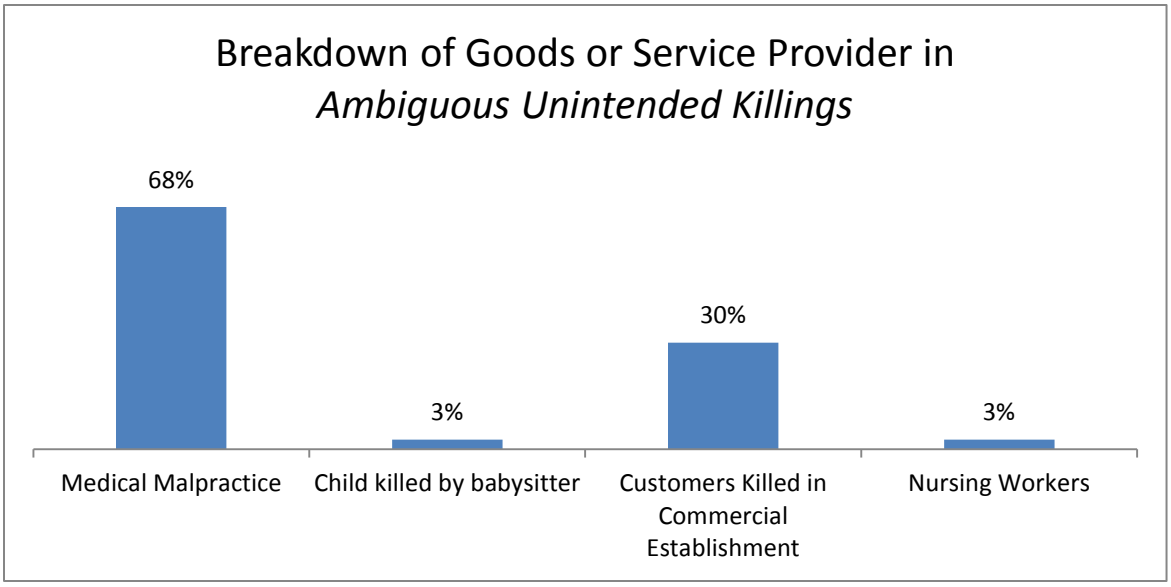

Figure II.11 Four Major Categories among Relationships of Gods or Service Providers in Ambiguous Unintended Killings

Despite their similarity, we may still find difference between *Ambiguous Unintended Killings* cases and police-considered cases. First, the proportion of goods or service providers among the acquaintances in *Ambiguous Unintended Killings* cases (77%) is obviously higher than it in police-considered manslaughter cases (52%). Second, medical malpractice makes up 15% (12 out of 79 deaths) of all police-considered manslaughter cases, whereas it occupies almost half of all *Ambiguous Unintended Killings* cases (25 out of 52 deaths). The police seemed to have difficulty in confirming whether medical practitioners were negligent in malpractice cases, so that they simply sent these cases to prosecutors. As the police put in the case No. 217, which has been quoted before, even though police hadn't "*found tangible evidence of the accusation* [of forgery and manslaughter]," they still "*report*[ed] *the case for* [prosecutor's] *disposition.*"

After introducing the composition of each police-considered type of homicide, we can undertake the comparison between distinct homicide types and manifest their individual features. We will depart from the comparison between the cases considered by police as murder (intentional killings) and those considered by police as manslaughter (negligent killings) without concerns. Then we will combine police-considered manslaughter cases with those which police were reluctant to make their decisions as a group of "potential manslaughter cases" and compare it with murder.

D. Comparison 1: Police-Considered Murder vs. Police-Considered Manslaughter

1. Comparison between Volumes of Suspects Involved

The first empirical difference to note between police-considered murder and manslaughter cases is the volumes of suspects in each case (or related to a death). As earlier shown in **Figure Ⅱ.1**, in murder, 89 deaths involved 172 police-considered suspects, whereas in manslaughter, 79 deaths involved only 118 suspects. That is, each murder death was related to almost two suspects and each manslaughter death only had one and half suspect.

While most murder and manslaughter deaths involved only one suspect (76% vs. 71%), the volumes of murder suspects had a wider range and a more dispersed distribution. As for range, a single murder death, in the view of the police, could possibly involve as many as eleven or twelve suspects, and the manslaughter case with the most suspects had only 6. As for distribution, in manslaughter investigations, 84% of deaths were committed by only a single or two suspects, 95% under three suspects, and 99% under four. The only manslaughter case with more than four suspects is the case No. 116, in which six people (contractors and their workers) were accused for their negligence in the process of construction so as to cause a fire. This is also the only manslaughter case which includes multiple victims— three people died in the fire. As for murder, however, murder cases involved with four or more people accounted for 15%, which was three times the size of manslaughter; even six or more suspects still accounted for 8% of all murder cases, eight times the proportion in manslaughter.

Figure Ⅱ.12 below shows the comparison of percentages of different numbers of suspects involved in each murder or manslaughter case.

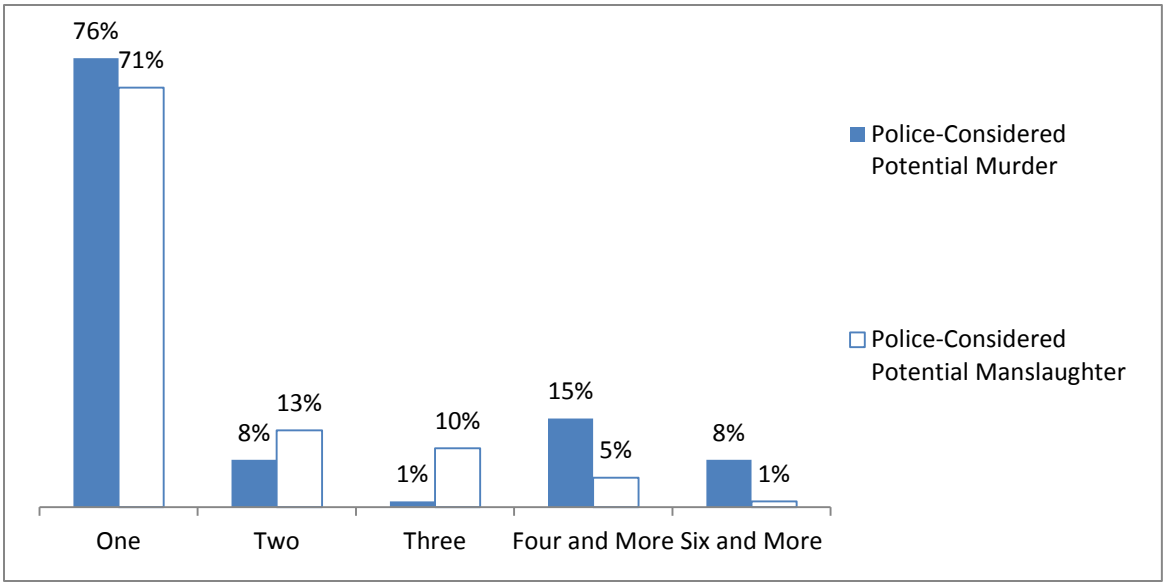

Figure II.12 Percentages of Different Numbers of Police-Considered Suspects Involved in Each Murder or Manslaughter Death Investigated

There are some possible causes of the more suspects involved in murder than in manslaughter: murder criminals acted with their intention and may tend to gang up for offense; the gang-up offense may also aggravate the conflict between offenders and victims so as to cause deaths; the police may tend to send as many people probably involved in the case into criminal justice system as they can.

On the other hand, since suspects had no intentional to kill in manslaughter, the volumes of suspects are, at least to some degree, decided by the police discretion. For example, a worker was struck by a construction vehicle and died at a construction site. Police considered that it was due to the unsafe working environment. Then, except for the vehicle driver, how many other "suspects" should police implicate in this manslaughter case? The victim's direct working team leader? Superintendent of the construction site? General manager or even president of the company hiring the victim to work in the unsafe site? This study discovers in case No. 86 that it is possible for the police to send all of the above people as potential offenders, including even the president of the construction company, to prosecutor. Similarly, in Case No.7, where a chain gym was on fire and caused an accidental death, the police sent, among other potential defendants, the CEO of Taiwan's largest chain gym group to prosecutor. While it is still rare for the police to involve such high-level supervisors, these cases can give us an idea of how the police may possibly have and exert their discretionary power. How and why police (and

other agencies in criminal justice system as well) practically exert their discretionary power in a certain way is a core issue of this study and will be explored more later when combing prosecutor and court statistics with police data.

2. Comparison between Offender-Victim Relationships

As for offender-victim relationships, it is intriguing to find that **Family** members were similarly as "dangerous" as **Strangers** in both police-considered murder and manslaughter. As indicated in **Figure Ⅱ.13**, the two types of relationships contributed very similar percentages of deaths in both murder (18% vs. 19%) and manslaughter (8% and 6%).

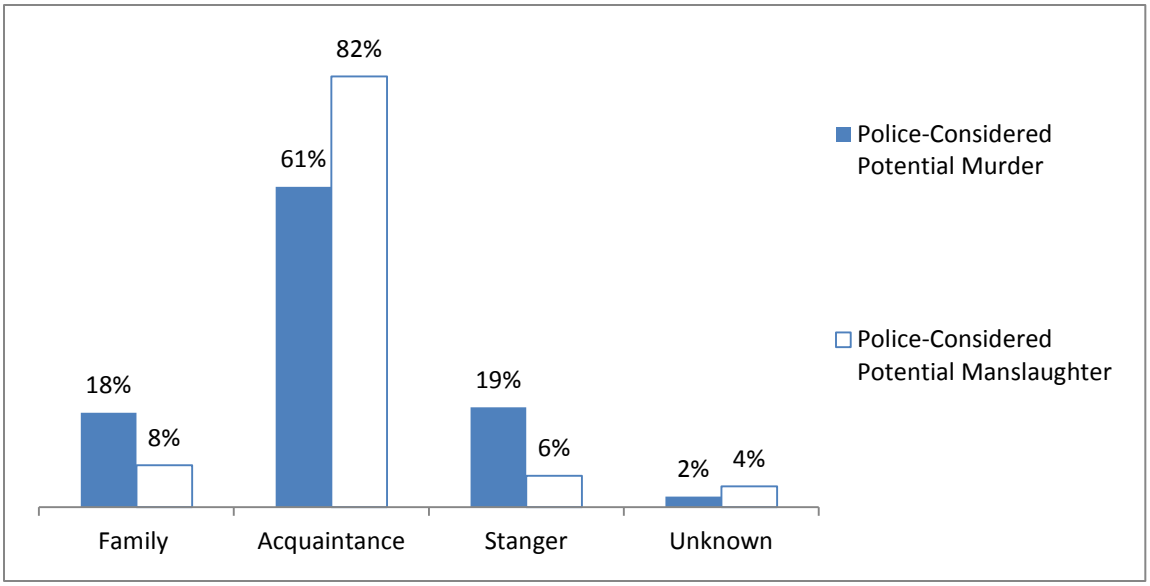

Figure II.13 Offender-Victim Relationships in Police-Considered Murder and Manslaughter Cases

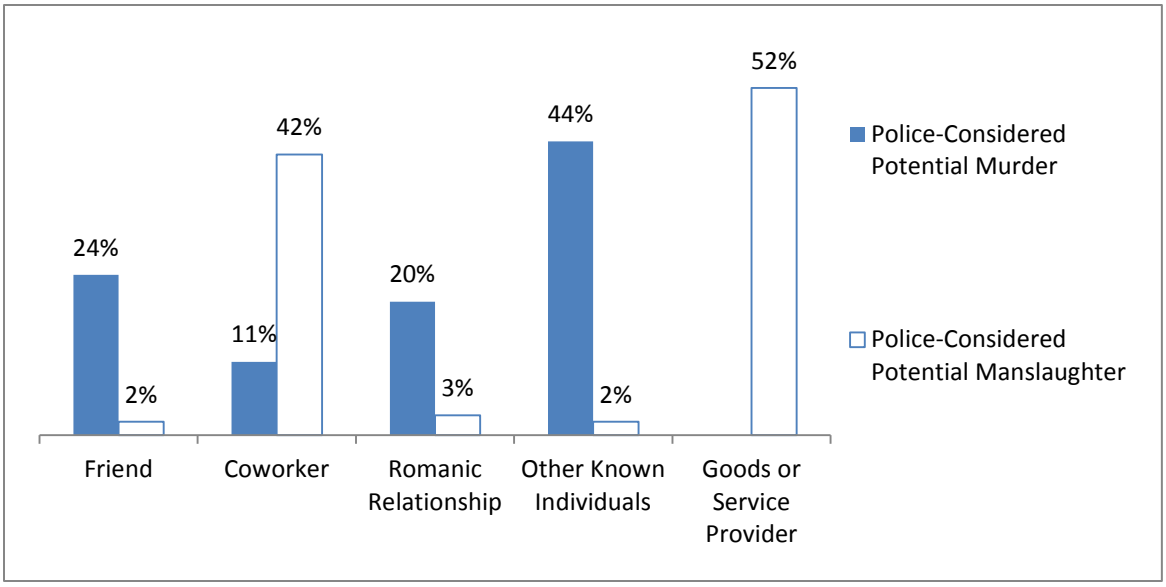

Figure II.14 Comparison of Breakdown of Relationship of "Acquaintances" between Murder and Manslaughter

On the other hand, while "Acquaintance" is the most popular offender-victim relationship in both murder and manslaughter, the compositions of "Acquaintances" relationship in murder and manslaughter are very different. As displayed in **Figure II.14**, it is clear that "Goods or Service Provides and "Coworkers" are the two major sub-relationships in manslaughter; whereas in murder, the distribution of distinct types of sub-relationships is relatively average and with a major part of "other known individuals", which suggests that murder caused by acquaintances may often be made by people known to each other but without regular contact.

E. Comparison 2: Murder vs. (Non-Traffic) Potential Manslaughter

By combing police-considered manslaughter and *Ambiguous Unintended Killings* cases together, we can have a broader understanding of Taipei's potential range of non-traffic manslaughter cases. By doing so, we have 131 deaths and 202 suspects which are potential manslaughter. Then we may compare characters of murder and of non-traffic potential manslaughter in Taipei, as shown in **Figure II.15** below.

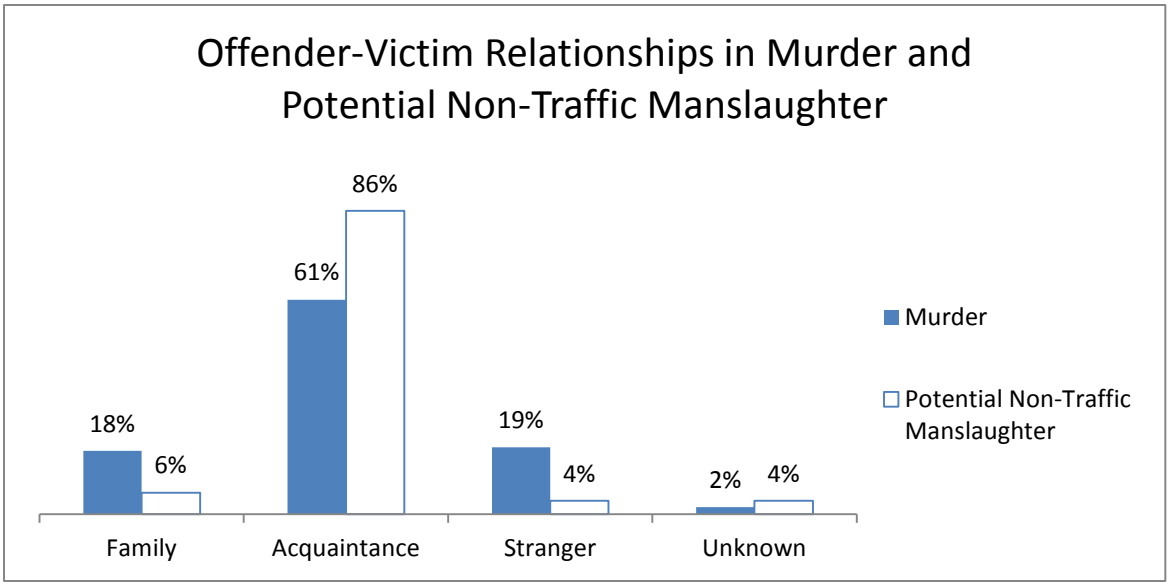

Figure II.15. Offender-Victim Relationships in Murder and Potential Non-Traffic Manslaughter Cases

First of all, acquaintance is still the largest group of offender-victim relationship in both murder and non-traffic potential manslaughter.[19] Second, despite both types of killings concentrated on the relationship of "Acquaintance", the extent apparently differed. Potential manslaughter deaths were so extremely concentrated on "Acquaintance" that few deaths were caused by other relationship. The ratio of acquaintance-caused death to other-relationship-caused death is more than 6:1 (86%:14%) in potential manslaughter, where as it is only 1.5:1 (61%:39%) in murder. On the other hand, quite a few murder victims were killed by their family members, and the percentage in murder (18%) was three times as much as in potential manslaughter (6%).

[19] Note that the relationship distribution in manslaughter could be very different if traffic cases were included. Offenders in traffic manslaughter cases usually just randomly happened to hit victims by a vehicle, so most of their relationship will be "stranger". Considering the huge volumes of traffic cases (accounting for 55% to 60% of total manslaughter deaths each year), the percentage of "stranger" relationship would increase a lot, if traffic cases were added into potential manslaughter cases.

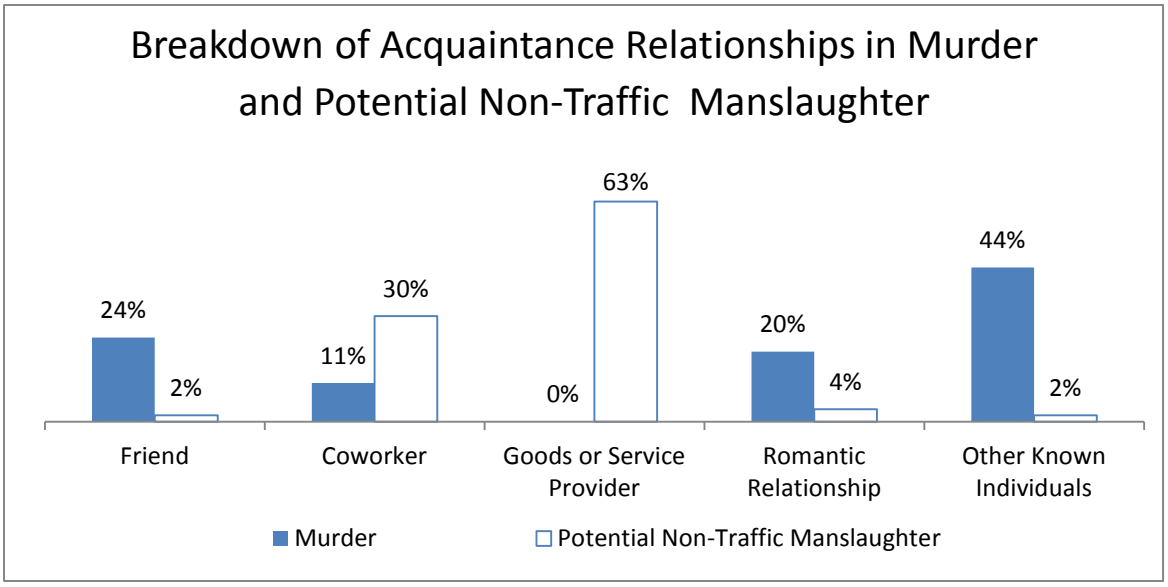

Figure II.16 Major Categories of Acquaintance in Murder and Potential Non-Traffic Manslaughter

Third, probing into the relationship of "Acquaintance", we will find many murder cases were still committed between people of relatively close relationship. As **Figure II.16** displays, 44% of victims were murdered by either their "Friends" or (current or previous) lovers ("Romantic Relationship"). On the other hand, potential manslaughter deaths were made almost all by "Coworkers" and "Goods or Service Providers", 93% combined together. It is noteworthy that victims of potential manslaughter killed by "Goods or Service Providers" were more than twice as many as those killed by coworkers. Why "Goods or Service Providers" could be so dangerous that it contributed such a high proportion of potential manslaughter? **Figure II.17** below can help us understand.

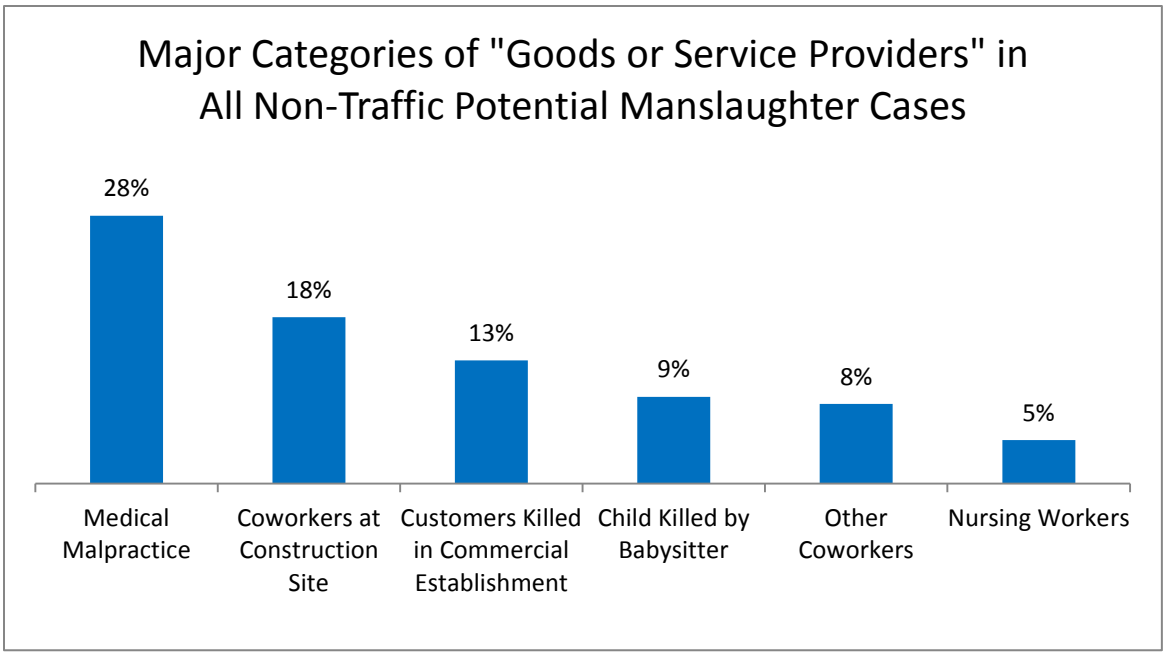

Figure II.17 Major Categories of Goods and Service Providers of Potential Non-Traffic Manslaughter

F. The Legal Risk of Being A Doctor (Medical Practitioner)in Taiwan

Figure II.17 lists the top 5 major offender-victim relationships that caused potential, non-traffic manslaughter deaths. Note that, the percentage listed here is of ***all*** non-traffic potential manslaughter deaths, instead of only acquaintance relationship. The major relationship of all potential manslaughter is still “Medical Malpractice”, 10% higher than the second largest relationship, “Coworkers at Construction Site”. It seems that being a doctor is more dangerous and legally vulnerable than being a construction worker in Taiwan in terms of legal risk. Doctors encounter many more deaths than construction firms.

Now, please consider the two seemingly contradictory facts. On one hand, “Medical Malpractice” was the major offender-victim relationship which police were reluctant to accuse manslaughter but sent to prosecutor without their firm conclusions. On the other hand, however, medical professionals, nearly all of whom were doctors, were simultaneously the major profession and relationship sent to prosecutor by the police as potential manslaughter offenders.

What do the two facts tell us? Does it mean that Taipei's doctors are too unprofessional to trust, or it means Taiwan's criminal justice system is, as many medical professional have argued, hostile to health care providers or practitioners? Taiwan's medical industry has experienced continual brain drain, and many have claimed that hostile legal environment is a crucial cause. Is that true? Or does it mean that police are more eager to pass medical cases on to prosecutors than to come to firm conclusions? While this issue is addressed here to make readers note the phenomenon, we will return to discuss this important issue after understanding how other agencies, prosecutor and court, in the criminal system treated these medical professionals.

G. Evaluation of Police Work: Time-Consumption, Length of Reports, and Agreement with Prosecutorial Decisions

1. Meaning and Importance of Police Time Consumption and Length of Police Reports

The police, as a legal agency, have their own view to consider the importance of distinct types of criminal cases and may accordingly apply different approaches to deal with them. It is crucial to know how the police may think about each certain class of homicide cases, because the police are the threshold of the criminal justice system, and their disposition of cases can have essential influence on the dispositions of following agencies. It is also crucial to know the police consideration through empirical analysis of case records, because it is almost impossible to know in any other way otherwise.

To understand which types of homicide cases may be more or less important to the police, we may evaluate it by examining which cases would cost more police resources. To achieve this goal, this study applies two indicators: police time consumption, and the length of police reports. As for time consumption, the first thing to know is that police have incentives to report cases to prosecutors as soon as possible. If old cases stick with police and new cases keep coming in, the workload of police would be heavier over time, which police certainly dislike. In particular, since homicide cases relate to loss of human life, police will be harshly pressed by the bereaved and even by the public to complete their investigation as fast as they can. Thus, if certain type of homicide case usually stays with police longer than other types do, there must be a reason for police to keep them. In

other words, it is the reason that makes the police "have to" keep the cases. Therefore, it will be helpful for us to find which types of homicide cases, if any, tend to stay with police longer than other types do, and to find the reason behind it.

The same rationale above can also be applied to the length of a police report. It is reasonable to assume that the police usually do not like paper work. While other legal officials may dislike paper work as well, the distaste of police for paper writing is for obvious and legitimate reason: the police are usually not reviewed, paid, or evaluated by how many words they write. On the other hand, however, the police are required, legally and practically, to record sufficient information of each case which they report to prosecutor. Otherwise, the case will be returned to police for supplemental investigation, which instead will increase their workload.[20] That is, police dislike paper writing but have incentives to write "sufficiently" on their official case reports. Therefore, the length of a police report, especially the length of "facts of offense", is a critical indicator that shows how many efforts police genuinely make on each case. Police will not write more words than necessary if the case is not so important to them. For example, on the report of case No. 211, in which a murderer choked his girlfriend to death, the police put wordings such as "*we saw through his lies for many times*", "*our precinct built up a special team to handle this case right away*", "*we screened out and analyzed thousands of data*", "*tireless in investigation*". These more words used not only directly expressed police efforts but also suggested the significance of the case from police perspective.

2. Time Consumption

(a) Date of Offense, Arrest/Presence, and Report

[20] Article 231-1 of Taiwan's Code of Criminal Procedure (TCCP):
(a) If a public prosecutor considers that the case sent or reported by the judicial police officer or judicial policeman has not been investigated completely; the case file and evidence may be returned for more information or be sent to other judicial police officer or judicial policeman for investigation. (b) The judicial police officer or judicial policeman shall send or report the result after completing supplementary investigation.
(C) A public prosecutor may set up a time period for supplementary investigation specified in the preceding section.

There are three important dates on police reports: date of offense, date of arrest/willing presence of suspects, and date of report (to prosecutor). Date of offense means the time when homicide happened. In some cases, the date of offense may last for a period of time. For example, in case No. 232, the victim owed money to a pawn shop, which hired the two suspects to collect the debt. The suspects imprisoned the victim for nine days and eventually abused him to death. For the sake of time measurement, this study will use the final day of the offense period, i.e. the day when victim died, as the offense date.

Date of arrest or willing presence of suspects (date of arrest/presence) indicates the time when police had their suspects before them. Since some cases have multiple offenders, the date of arrest/ presence may be multiple in a case, too. There are also 33 deaths (out of total 222) with no record of date of arrest/presence. It is noteworthy that "date of case known to police" is not recorded on police reports and should be between date of offense and date of arrest/presence. Finally, date of report is the time when the police file their report and transfer the case to prosecutor.

The specific question this study would like to explore is "how much time police spend from knowing the occurrence of a homicide case to solving them". Ideally, we should measure from the time when the case was known to police, to the time when police finished their investigation. However, as mentioned above, the precise dates when cases were known to police are unavailable. Our alternative is to use date of offense to serve as the time when police knew of the cases. By doing so, our measure of time spent by police on cases will be either equivalent to or longer than the real time police actually spent. On the other hand, date of report serves well as the end of police phase of investigation.

(b) Time Consumption for Police to Report A Case

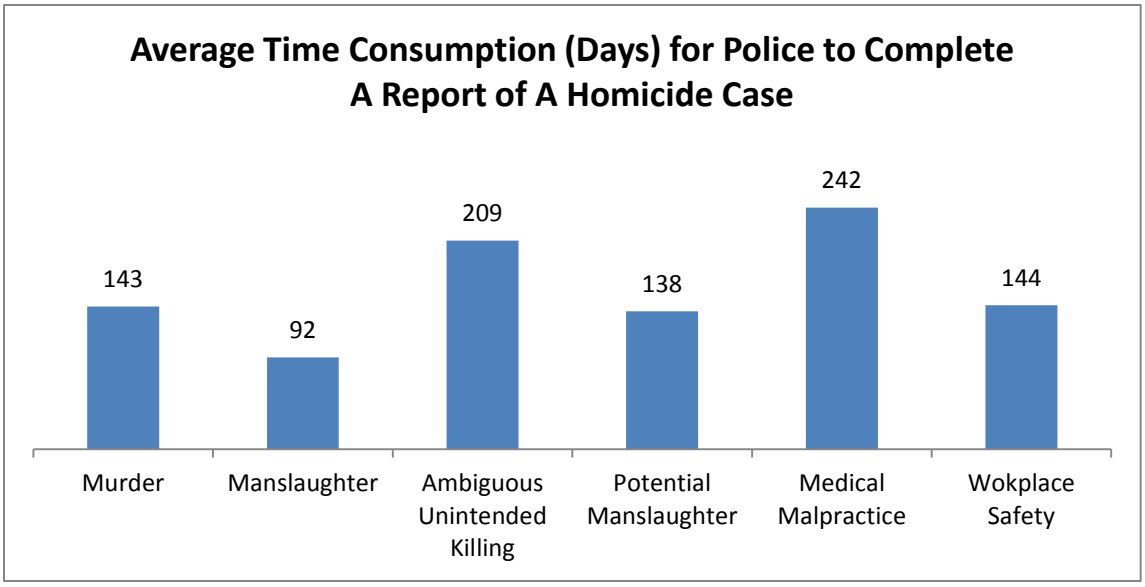

Figure II.18 Average Days Taipei Police Spent Before Reporting a Case to Prosecutors

Note: The fourth category of "Potential Manslaughter" refers to the combination of police-considered manslaughter cases and ambiguous unintended killings cases.

By using the measure above, **Figure II.18** shows the average timespan, from date of offense to date of a police report, in distinct types of homicides. A few impressive points should be noted: First, police spent generally similar time on murder and potential manslaughter cases on average, but individual case types differed a lot. This study discovered that the time consumption could extremely vary from case to case. According to police reports collected in this study, the police sometimes even were able to file their report to prosecutor on the same day when the homicide happened or was reported to them. However, on the other hand, some cases took really long. For murder, the longest time-span from the commission of the offense to the completion of a police report took 7,710 days, i.e. more than 21 years (No. 221, rape and murder of a child). The second longest one took 3,302 days, i.e. more than nine years (No. 210, a gang case). For manslaughter, the longest period took 2,126 days (No. 159, workplace safety) and the second longest one took 1,240 days (No. 184, sudden death from overwork).

Second, *Ambiguous Unintended Killings* cases alone took police apparently longer (1.5 times longer) time to report than murder and potential manslaughter cases did. In fact, if not taking the average 209 days *Ambiguous Unintended Killings* into consideration, an average police-considered manslaughter case only

took police 92 days to report. That is, although both were potential manslaughter cases, *Ambiguous Unintended Killings* cases stayed with police twice as long as police-considered manslaughter cases did. The difference of time consumption between *Ambiguous Unintended Killings* and police-considered manslaughter may provide us a clue to learn some features of the cases which the police were reluctant to decide themselves.

Third, among all kinds of offender-victim relationships, “Medical Malpractice” cases took police the most time on average. As described above, “Medical Malpractice” occupied the largest proportion among all potential manslaughter cases (28%) and “Coworkers/Workplace Safety” made up the second largest proportion (26%). However, “Medical Malpractice” took average 242 days for police to report a case conclusion, which is 1.7 times as long as to report a “Coworker/Workplace Safety” case. In fact, if excluding “Medical Malpractice” cases, police only needed an average of 98 days to report each potential non-traffic manslaughter case.

Why the police spent so much time to handle, or stay with, “Medical Malpractice” cases but still don’t make decisions by themselves eventually? Are medical cases especially difficult for police to resolve? Or there are other reasons for police to keep these types of cases with them? The answers to these questions will be explored after we understand how Taiwan’s criminal justice system handles medical malpractice cases as a whole.

3. Energy: Length of Police Reports (Counts of Chinese Characters Used)

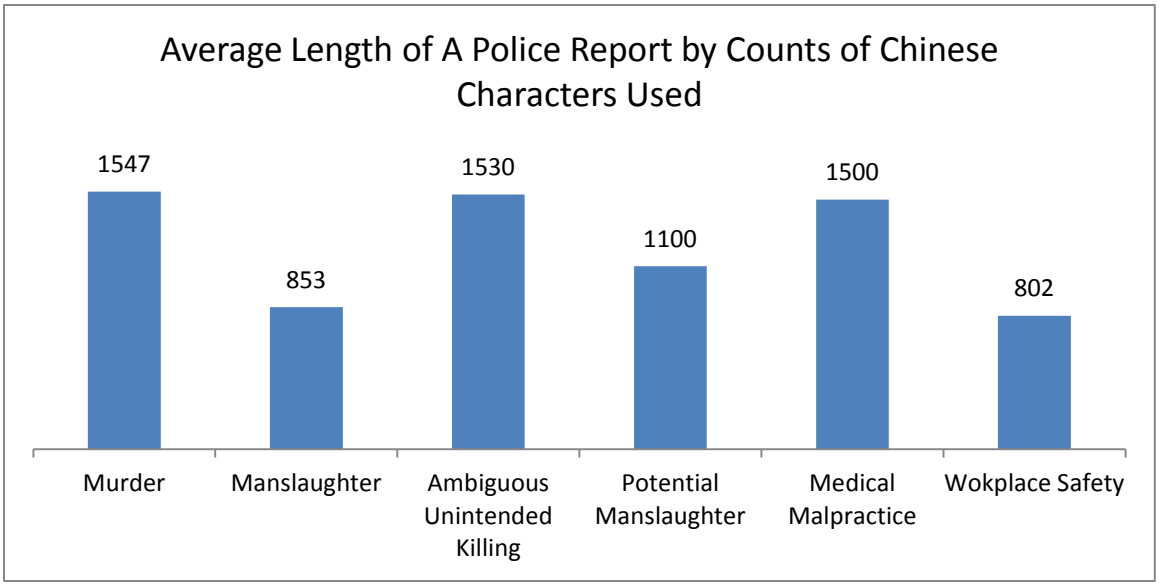

Figure II.19 Average Length of Each Police Report by Counts of Chinese Characters

Note: The fourth category of "Potential Manslaughter" refers to the combination of police-considered manslaughter cases and ambiguous unintended killings cases.

Figure II.19 shows the average amounts of Chinese characters used in the "*Facts of Offense*" column of a police report. Clearly, murder cases were described with the most details on police reports, and the phenomenon gives us an idea of the importance of murder in the eye of police. At the same time, it is noteworthy that cases of "Ambiguous Unintended Killing" and "Medical Malpractice" also took similar counts of words for police to write their reports. If amounts of words used on police reports and time consumption together can imply the significance of cases in the police's view, "Medical Malpractice" would be the most significant type of cases in Taiwan's homicide.

4. Agreement of Police Decisions with Prosecutorial Decisions.

Another way to evaluate how well police did their work is whether the subsequent prosecutorial decisions agreed with theirs. From 2006 to 2012, Taipei's police sent 377 homicide suspects to prosecutors. Among them, 172 people considered by police as murder suspects and 118 people as manslaughter suspects. There are also 87 suspects that we called "*Ambiguous Unintended*

Killings" cases, in which police investigated as they did manslaughter cases, sent to prosecutors, but did not have their own decisions. **Figure II.20, Figure II.21, and Figure II.22** below show the agreement rates of police and prosecutorial decisions in different types of homicide cases.

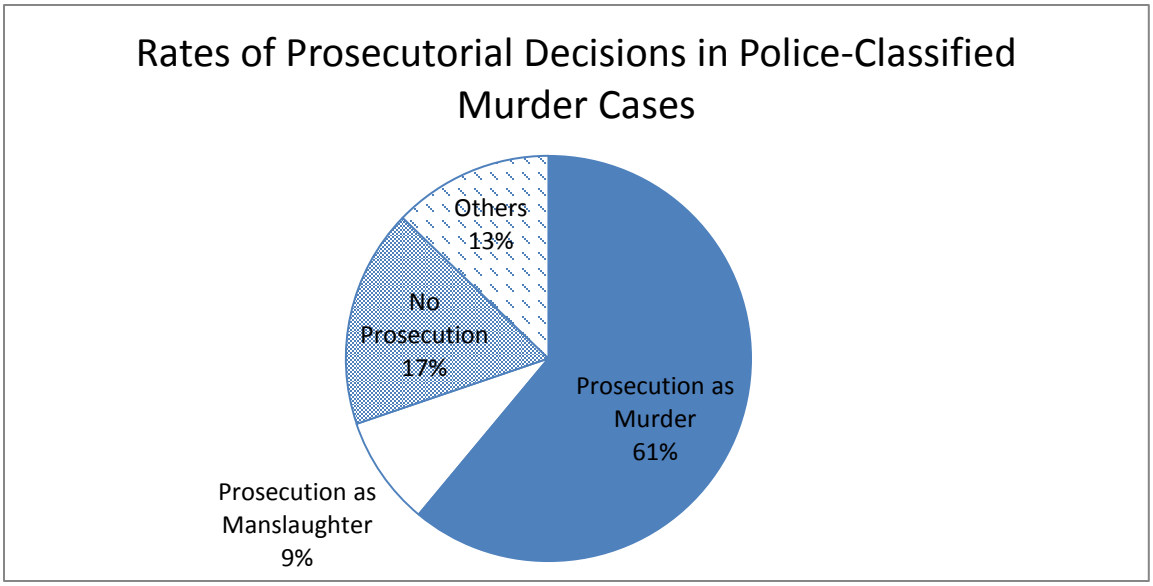

Figure II.20 Rate of Prosecution in Police-Classified Murder Cases

Among murder offenders, 61% of suspects charged by police were also considered as committing murder by prosecutors. Combined with the suspects considered by police as murderers but prosecuted only as manslaughter offenders, the prosecution rate in total is 70%. On the other hand, 17% of murder suspects sent by police were not prosecuted at all. There are also 13% of suspects who were juveniles (disposition undisclosed), fugitives, record unavailable, or dead before prosecutors made decisions.

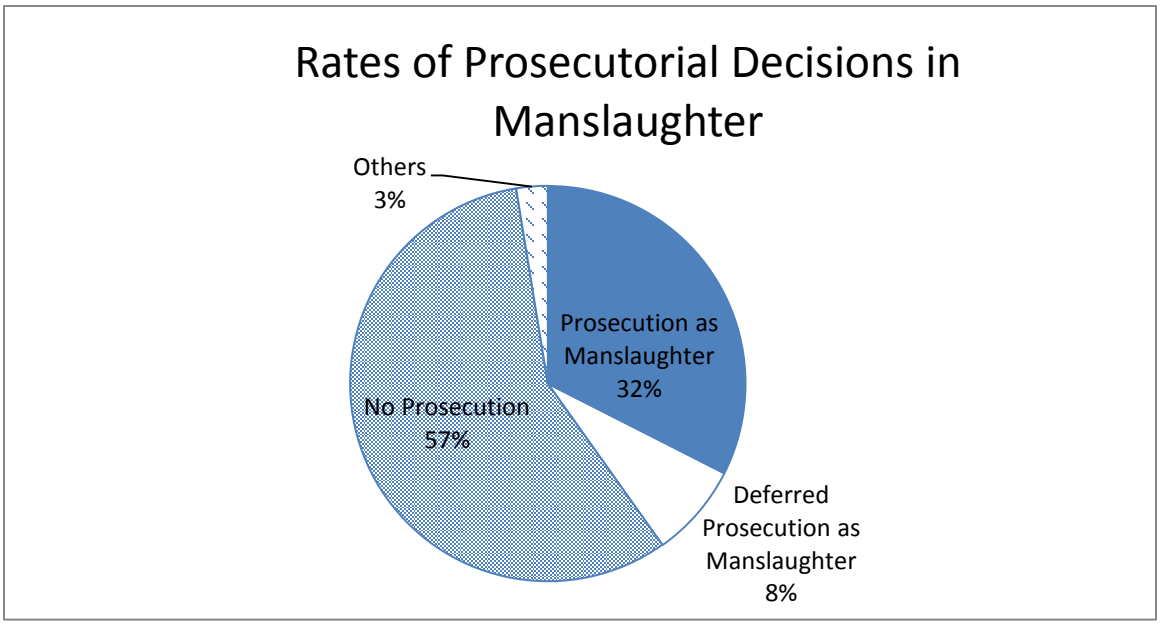

Figure II.21 Rate of Prosecution in Police-Classified Manslaughter Cases

In police-considered manslaughter cases, the agreement rates are relatively low. Only 32% police-considered manslaughter suspects were prosecuted as manslaughter offenders. With another 8% of police-sent manslaughter suspects who were deferred-prosecuted,[21] only at most 40% of offenders were also considered by prosecutor as manslaughter offenders. There were up to 57% of police-considered manslaughter suspects who were not prosecuted subsequently.

[21] It means offenders would not be prosecuted if they would behave well in a certain period of time.

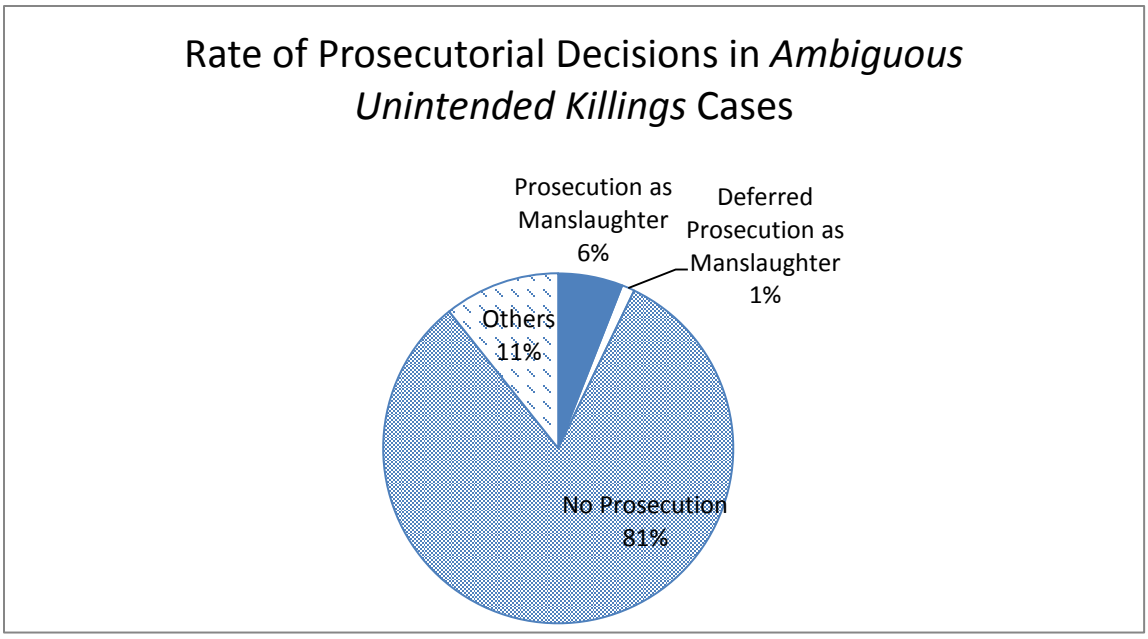

Figure II.22 Rate of Prosecution in Police-Classified Cases of Ambiguous Unintended Killing

The prosecution rate is much lower in *Ambiguous Unintended Killings* cases. In this category, only 7% of suspects were considered by prosecutor as committing manslaughter, and up to 81% of "suspects" sent to prosecutors were not prosecuted. Our readers may be surprised by the high non-prosecution rates, but they may not think so after looking at the prosecution rates of "Medical Malpractice." From 2006 to 2012, TCPD sent 37 medical malpractice cases, including 37 deaths and 73 potential offenders, to prosecutor. How many of the suspects were prosecuted for manslaughter? The answer is astonishing: only one (Case No.147), which is also the only case handled by military prosecutor because the suspect was an army doctor and worked in a military hospital. That is to say, while the police hesitated to decide most (68%, 25 out of 37 deaths) of the medical malpractice cases, 100% of medical malpractice cases sent by the police to the regular criminal justice system were never prosecuted.

It is intriguing that medical malpractice cases cost police so many resources but were never prosecuted, as far as our case sample is concerned. As described earlier, the average time spent on medical malpractice by police was 242 days, which was 1.7 times more than police-considered murder and potential manslaughter. As for the length of police reports, Medical Malpractice cases took words as many as murder cases did, and was 1.5 times more than potential

manslaughter cases. If all the efforts of police toward medical malpractice ended up no prosecution, it seems as Professor Malcolm M. Feeley's famous book title: "*The Process is the Punishment*", and it may be true to both suspects of medical malpractice and the police dealing with these cases. As for medical practitioners, the lengthy and tedious process for them to go through Taiwan's criminal justice system is a genuine punishment. The medical practitioners would suffer from discredit, extreme pressure, and financial expenses for legal assistance, until prosecutor made their cases a decision of non-prosecution. On the other hand, the process could also be the punishment to the police, who had to stay with the cases for 8 months on average and write lengthy report in the end.

III. Prosecutor Part One: Introduction to Taiwan's Prosecutorial System

Before probing into how Taiwan's prosecutors practically dispose of our collected homicide cases, I would like to generally introduce how the prosecutorial system was designed to function in Taiwan. By describing how the prosecutorial system is expected to function, readers will have a better understanding of how and why prosecutors may deal with homicide cases in certain ways.

A. Source of Prosecutors and Their Cases

The first thing to know about prosecutors is how they are chosen. In Taiwan, the major process of selecting prosecutors and judges is through an annual national judicial exam, which all law school graduates may take but the annual admission rate is as low as 2%. After passing the exam, the prosecutor and judge-to-be will be trained together for two years and eventually choose to be prosecutor or judge (and their workplaces as well) by their performance in training. In this way, Taiwan's prosecutors start their career at the average age under 30.[22] While they are relatively young and still have much to learn from their seniors and experiences, all prosecutors are authorized to dispose of cases in their own names.

There are four sources of prosecutors' cases:

1. from police or other legal enforcement agencies such as the Bureau of Investigation;
2. from prosecutors themselves who initiate the investigation;
3. from citizens (including victims, offenders, their family members and any other people knowing an offense occurs);[23]

[22] In 2009, examinees passed national judicial exam were at the average age of 27.67. After two-year training, they would be formally put on the position of prosecutor or judge at the average age of 29.67. *See*: http://twforum.com/forums/showthread.php?t=428639

[23] Article 232 of Taiwan's Code of Criminal Procedure (TCCP): "The victim of a crime may file a complaint."
TCCP Article 233: "A statutory agent or spouse of the victim may file an independent complaint.
If a victim is dead, a complaint may be filed by spouse, lineal blood relative, collateral blood relative within the third degree of kinship, relative by marriage within the second degree of relationship, family head, or

4. from government agencies (including cases transferred by other prosecutors and cases investigated by internal ethics officers)

As **Figure III.1** shows below, most cases are sent to prosecutors from police department. Since this study collects all non-traffic homicide cases sent from police to prosecutors in Taipei, these sample cases may represent the major source of non-traffic homicide cases handled by prosecutors.

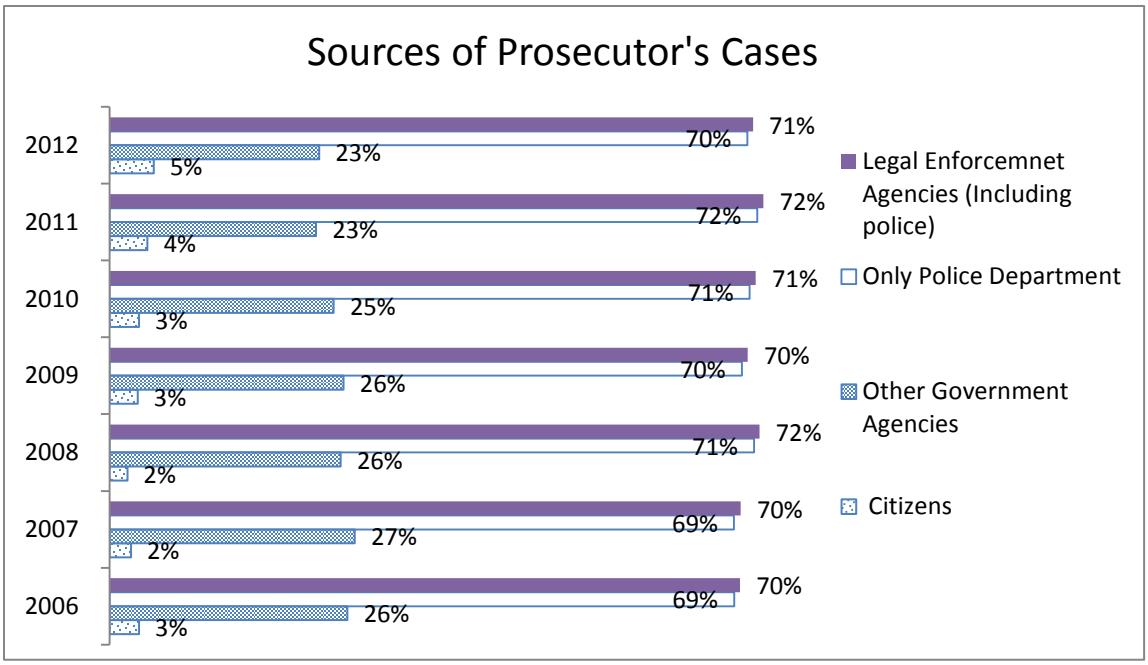

Figure III.1 Sources of Prosecutor's Cases, 2006-2012.

Source: Ministry of Justice, Taiwan.

B. Prosecutorial Rulings of Homicide Cases

In Taiwan, prosecutors have three possible ways, which are officially named as "Rulings", to dispose of cases: "*Ruling of Public Prosecution*", "*Ruling of Non-Prosecution*", and "*Ruling of Deferred Prosecution*". Comparing with the other

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family member, provided that the complaint may not be contrary to the clearly expressed opinion of the victim in a case chargeable only upon complaint."

TCCP Article 240P: "Any person who knows that there is suspicion that an offense has been committed may report it."

TCCP Article 241: "A public official who, in the execution of his official duties, learns that there is suspicion that an offense has been committed must report it."

rulings, public prosecution is the most general ruling and may apply to all kinds of cases with sufficient suspicion.[24] According to Taiwan's Code of Criminal Procedure (hereinafter "TCCP"), a public prosecution shall be initiated whenever a prosecutor obtains sufficient evidence to show an accused is suspected of having committed and offense.[25] Thus, theoretically, as long as evidence and suspicion is "sufficient", prosecutor shall make a ruling of public prosecution without additional consideration. Thus, ruling of public prosecution does not manifest prosecutor's discretionary power as much as ruling of non-prosecution and ruling of deferred prosecution do, while prosecutors still have certain extent discretionary power to consider the sufficiency of evidence and suspicion.

There are ten circumstances under which prosecutors *shall* make a ruling of non-prosecution. These circumstances include one substantive reason (insufficient suspicion of having committed an offense) and nine procedural reasons (the accused is dead, the corresponding court has no judicial power over the case, a law enacted after the commission of an offense abolishes the punishment, etc.)[26] Despite the ten circumstances above, for less serious offenses with a maximum punishment of imprisonment no more than three years, detention, or a fine, prosecutors are authorized to make a ruling of non-prosecution as long as they considers it "*appropriate*".[27] As a result,

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[24] Here, "sufficient suspicion" is the standard provided by TCCP Article 251 that prosecutors should prosecute a case. In practical function, "sufficient suspicion" refers to "sufficient evidence". Thus, I will use "sufficient suspicion" and "sufficient evidence" interchangeably hereinafter.

[25] TCCP Article 251: "a. If the evidence obtained by a public prosecutor in the course of investigation is sufficient to show that an accused is suspected of having committed an offense, a public prosecution shall be initiated. b. A public prosecution shall be initiated notwithstanding that the location of the accused is unknown."

[26] TCCP Article 252: "If one of the following circumstances exists, a ruling not to prosecute shall be made:
(1) A final judgment has been rendered;
(2) The period of statute of limitation has already expired;
(3) There has already been an amnesty;
(4) A law enacted after the commission of an offense abolishes the punishment;
(5) The complaint or request in offenses chargeable only upon complaint or request has been withdrawn or the time within which a complaint may be filed has expired;
(6) The accused is dead;
(7) The court has no judicial power over the accused;
(8) The act is not punishable;
(9) The punishment is remitted under law;
(10) The suspicion of an offense having been committed is insufficient.

[27] TCCP Article 253: "If a public prosecutor considers it appropriate not to prosecute a case specified in Article 376 after having taken into consideration the provisions of Article 57 of the Criminal Code, he may make a ruling not to prosecute."
TCCP Article 376: "Once judged by the court of second instance, cases involving the following offenses are not appealable to the court of third instance:

prosecutors have greater discretionary power in non-prosecution ruling than in public prosecution ruling.

From the standpoint of discretionary power, deferred-prosecution is purely a function of prosecutorial discretion. There are no particular circumstances which require that prosecutor shall make a ruling of deferred-prosecution. All deferred-prosecution rulings are rendered by prosecutors' discretion, as long as the offenses are other than those punishable with death penalty, life imprisonment, or with a minimum punishment of imprisonment for not less than three years.[28] Once prosecutors consider a case worthy of deferred-prosecution, they will set up a period of time from one year to three years. During the given period of deferred-prosecution, if defendants commit particular types of crimes or break their promises in exchange for deferred prosecution (such as failure to pay compensation to victims or to make community service), prosecutors have the power to set aside the ruling of deferred-prosecution and retrieve the previous investigation.[29]

Since murder in Taiwan carries the minimum punishment of ten years imprisonment, prosecutors can't rule a deferred-prosecution for murder offenders. That is, either public prosecution (when suspicion is considered sufficient) or non-prosecution (when suspicion is considered insufficient) can be ruled by prosecutors for murder cases. Nevertheless, manslaughter, which are punished by the maximum of two years imprisonment, could be

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(1) Offenses with a maximum punishment of no more than three years imprisonment, detention, or a fine only;
(2) Offense of theft specified in Articles 320 and 321 of the Criminal Code;
(3) Offense of embezzlement specified in Article 335 and Paragraph 2 of Article 336 of the Criminal Code;
(4) Offense of False Pretense specified in Articles 339 and 341 of the Criminal Code;
(5) Offense of breach trust specified in Article 342 of the Criminal Code;
(6) Offense of extortion specified in Article 346 of the Criminal Code;
(7) Offense of swag specified in Paragraph 2 of Article 349 of the Criminal Code."

[28] TCCP Article 253-1, Section 1: "If an accused has committed an offense **other than those punishable with death penalty, life imprisonment, or with a minimum punishment of imprisonment for not less than three years**, the public prosecutor, after considering the matters specified in Article 57 of the Criminal Code and the maintenance and protection of public interest, deems that a deferred prosecution is appropriate, he may make a ruling to render a deferred prosecution by setting up a period not more than three years and not less than one year thereof, starting from the date the ruling of deferred prosecution is finalized."

[29] TCCP Article 253-1, Section 1: "A public prosecutor may, ex officio or based on the application of the complainant, set aside the ruling of deferred prosecution and continue the investigation or initiate a prosecution, if the defendant commits the following during the period set forth for deferred prosecution:
(1) Has intentionally committed an offense punishable with a minimum punishment of imprisonment during the period of deferred prosecution and a prosecution is initiated by a public prosecutor;
(2) Has committed other offense intentionally before deferred prosecution and was sentenced to a minimum of imprisonment punishment during the period of deferred prosecution;
(3) Has failed to comply with or perform the matters specified in the items of section I of Article 253-2."

handled by any of the three rulings above when prosecutors consider defendants suspected. It is noteworthy that prosecutors are allowed to grant a case of clear negligent killing non-prosecution, even though the case is with sufficient suspicion, as long as prosecutors consider it "*appropriate*". Such great discretionary power leads this empirical study to a crucial issue: how and why do prosecutors use their discretion in certain ways? We will go into more details later in this chapter.

C. Time Limits of Prosecutorial Disposition

Both prosecutors and judges in Taiwan are given time limits to close cases before them. The limits seem strict and serious, for procrastination without legitimate reasons can be an unfavorable factor in performance review of prosecutors and judges. For prosecutors, different types of time limits are provided by their internal administrative rule, "*Implementation Directions for Due Period and Prevention of Procrastination of Case Disposition in Prosecutor's Offices*" (hereinafter "*Implementation Direction for Prosecutors*"). For example, the due period of closing a general criminal case of investigation is eight months, but prosecutors only have four months to deal with cases considered as "major criminal offenses".[30]

In addition to the disposition period, the *Implementation Directions for Prosecutors* also provides that prosecutors shall relentlessly proceed investigation for cases assigned to them. If no action has been taken for two months, the internal evaluation section within prosecutor's office will use a formal form to prompt prosecutors to move.[31] If there is still no action for three months, prosecutor's office shall, as required by *Implementation Direction*, "*probe into the causes of procrastination and endeavor to improve it*".[32] If there are legitimate reasons (as enumerated in the *Implementation Directions for Prosecutors*) for the no actions, such as suspects or significant witnesses can't be summoned or arrested to prosecutor's office for investigation, prosecutors in charge shall explain the reasons to chief prosecutor and evaluation section of prosecutor's office.[33] Otherwise, it can also be unfavorable for their performance evaluation. As the superintendent of prosecutor's office, the Ministry of Justice also takes procrastination seriously and monthly requires all prosecutor's offices to report cases which can't be

[30] Article 35 of *Implementation Directions for Prosecutors*.
[31] Article 33, Section 1 of *Implementation Directions for Prosecutors.*
[32] Article 33, Section 2 of *Implementation Directions for Prosecutors.*
[33] Article 34 of *Implementation Directions for Prosecutors*.

closed within the due period provided, no matter whether there are legitimate reasons.[34] If procrastination without legitimate reasons has been confirmed, prosecutors in charge may be impeached or administratively punished for procrastination, and their chief prosecutors may also be punished for their lack of oversight.[35]

D. Legal Effects of Prosecutorial Rulings

1. Ruling of Prosecution

Prosecutorial rulings will trigger a series of legal effects. Once a prosecutor initiates a ruling of prosecution, a corresponding court shall make a judgement on all offenses and all prosecuted defendants. On the other hand, a court is prohibited from making a judgement on a crime which has not been prosecuted at all.[36] Once a part of an offense has been prosecuted, the court shall try the entire case, which means all facts related to the offense shall be tried.[37] However, a court is not allowed to try a defendant who has not been prosecuted.[38] For example, X killed Y and was charged by a prosecutor for manslaughter. A corresponding court tried the case and found two additional facts: (a) There was evidence showing that X had intention to kill, so it was not manslaughter but murder under Taiwan's criminal law; (b) Another person Z also participated in the killing. Since the killing of Y had been prosecuted, the court shall and would have the authority to try all the facts related to the killing, such as X's intention to kill, even if the prosecutor had not mentioned these facts. However, since the offender Z had not been prosecuted, the court would not be allowed to try Z, unless the prosecutor made an additional prosecution of Z.

The regulations above combing with the due period requirement result in the practice that prosecutors may make multiple rulings on a single offense at different time. Take a case involved with four suspects for example. A prosecutor can make a single ruling to prosecute all of the four suspects, but the prosecutor may also make various rulings at the same time (say, the prosecutor makes a ruling of prosecution for two, a

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[34] Article 36 of *Implementation Directions for Prosecutors*.
[35] Article 44 of *Implementation Directions for Prosecutors*.
[36] TCCP Article 268: "A court shall not try a crime for which prosecution has not been initiated."
[37] TCCP Article 267: "If part of the facts of a crime is prosecuted by a public prosecutor, all such facts are considered to be included."
[38] TCCP Article 266: "A prosecution shall not affect a person other than the accused charged by the public prosecutor."

ruling of non-prosecution for one, and a ruling of deferred-prosecution for the last one), or he may make various rulings at different time (say, the prosecutor makes a ruling of prosecution for two defendants, and after three months, makes another ruling of non-prosecution for another two defendants). The practice of multiple rulings make it difficult to measure how much energy and time prosecutors spend on certain types of case, which is important to this study. We will have further discussion about how to overcome the measure issue in the following section.

2. Ruling of Non-Prosecution

By and large, once a ruling of non-prosecution has been made, it shall be final, which means no other prosecution or investigation would be initiate toward the same case,[39] but with two exceptions: (a) reconsideration of the ruling; (b) circumstances similar to retrial.

(a) Reconsideration of the Ruling

A ruling of non-prosecution may not satisfy complaints, who are usually victims (of course, in the no-killing cases) or their family members.[40] Thus, complaints are allowed to apply for *reconsideration* for non-prosecution or deferred-prosecution ruling within seven days after receiving the ruling.[41] Once reconsideration has been applied by complaints, it will first be sent to the original prosecutor making the ruling to see if the prosecutor may change the decision. If not, the reconsideration application will be reviewed by a chief

[39] TCCP Article 260: "If a ruling not to prosecute has become final or if a ruling of deferred prosecution has not been set aside during the period set forth in the ruling, no prosecution of the same case shall be initiated except under one of the following conditions:
(1) New facts or evidence is discovered;
(2) Circumstances for retrial exist as specified in one of the Items 1, 2, 4, or 5 of section I of Article 420."

[40] TCCP Article 232: "The victim of a crime may file a complaint." Article 233: "(1) A statutory agent or spouse of the victim may file an independent complaint. (2) **If a victim is dead, a complaint may be filed by spouse, lineal blood relative, collateral blood relative within the third degree of kinship, relative by marriage within the second degree of relationship, family head, or family member, provided that the complaint may not be contrary to the clearly expressed opinion of the victim in a case chargeable only upon complaint.**"

[41] TCCP Article 256, Section 1: "Within seven days after receipt of a written ruling not to prosecute or a written ruling of deferred prosecution, a complainant may make an application in writing for reconsideration of the ruling, setting forth his reasons for dissatisfaction, through the original public prosecutor to the chief public prosecutor for the immediate superior Court or public prosecutor general; provided that if consent of the complainant has been obtained prior to the ruling was made under Articles 253 and 253-1, he may not make application for reconsideration."

prosecutor at the higher level of corresponding prosecutor's office to decide whether the case needs reconsideration. If the chief prosecutor considers that the application is well-grounded, he shall set aside the original ruling and either order a prosecutor to rule a public prosecution or assign the case to another prosecutor for continuing the investigation.[42] If the chief prosecutor considers the application groundless, he shall dismiss it, and then the final relief for complaints is the application for *setting the case for trial*, which is a process of judicial review of non-prosecution ruling. We will introduce the process in the following chapter of court.

(b) Circumstances Similar to Retrial

The other possibility to overturn a ruling of non-prosecution or deferred-prosecution is the appearance of some exceptional circumstances, including strictly-limited discovery of new facts or new evidence, discovery of that material evidence on which ruling is based has been proven false, and etc.[43]

While Taiwan's Ministry of Justice provides no statistics for circumstances similar to retrial, the Ministry has counted the application for reconsideration and the results. As **Figure III.2** reveals below, around 90% reconsideration applications were considered by higher level chief prosecutors as illegal or

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[42] TCCP Article 258: "If the chief public prosecutor of the higher court or the public prosecutor general considered that an application for reconsideration is groundless, he shall dismiss it; if he considers that the application is well-grounded, he shall set aside the original ruling under the circumstances specified in Article 256-1, or perform one of the following under the circumstance specified in Article 256:
(a) If the investigation is incomplete, he may personally investigate or order another public prosecutor to investigate, or order the public prosecutor of the original court to continue it;
(b) If the investigation has been completed, he shall order the public prosecutor of the original court to initiate a prosecution."

[43] *See* supra note 17 and TCCP Article 420, Section 1: "After a guilty judgment has become final, a motion for retrial may be filed for interests of the convicted under the following circumstances:
1. Where exhibits on which the original judgment is based have been proven fabricated, or altered;
2. Where material testimony, expert opinion, or interpretation on which the original judgment is based has been proven false;
…
4. Where judgment by a common court or special court on which the original judgment is based on has been changed in a final judgment;
5. If a judge participating in the original judgment, judgment before the trial or investigations before the judgment, or prosecutor participating in the investigation or the prosecution commits offenses in his/her post out of the case and the offenses have been proved; or he/she neglect the duties out of the case and has been "administrative punished" but the behaviors are sufficient to affect the original judgment…."

groundless and thereby dismissed. Only about 9% to 12 % of applications were allowed for reinvestigation and about 3% would be ordered for a direct initiation of prosecution. That is, 12% to 15% of applications may have positive outcomes from the standpoints of complaints. Considering the total amounts of reconsideration applications, the numbers of cases reconsidered are from 5,000 to more than 7,000 per year.

Except for the 3% of applications which chief prosecutors directly order to initiate a prosecution, the 9% to 12% of reconsidered application are simply assigned to different prosecutors to reinvestigate, and it does not guarantee the overturn of non-prosecution rulings. Although the Ministry of Justice does not provide the data of how many prosecutorial rulings have varied results after reinvestigation, our collected sample cases show that only 1 out of 6 cases where complaints applied for reconsideration has their ruling changed from non-prosecution to prosecution.[44]

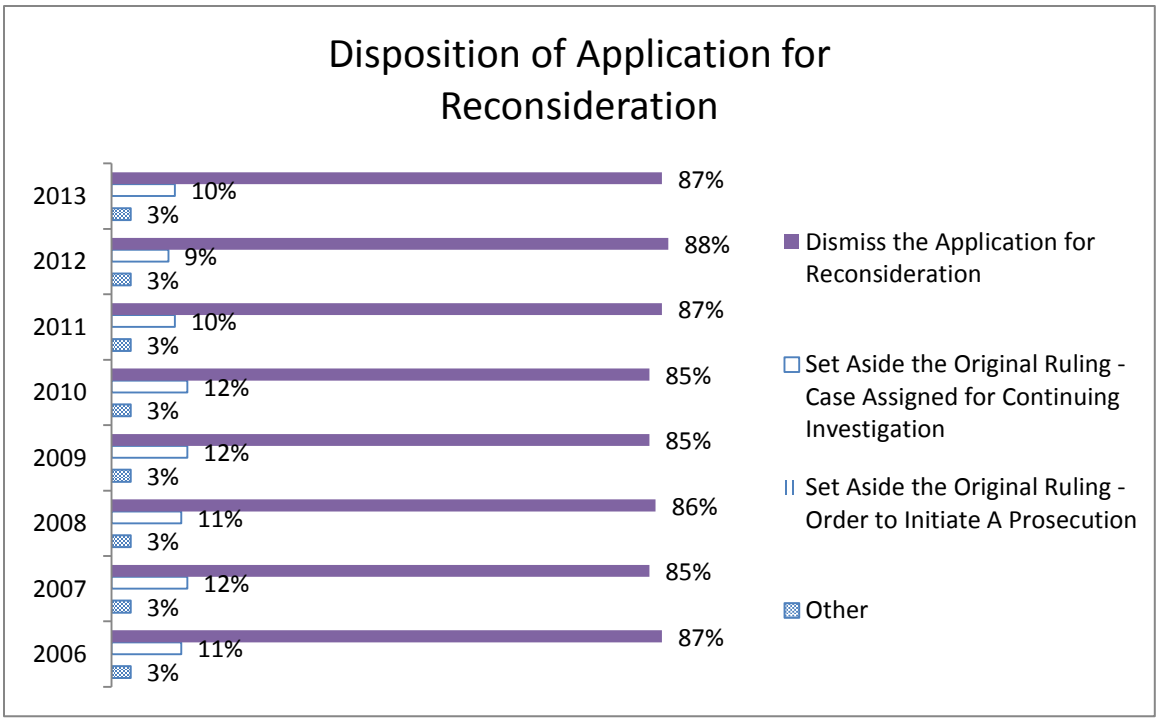

Figure III.2 Disposition of Application for Reconsideration, 2006-2013.

Source: Ministry of Justice, Taiwan.

[44] Case No. 101, in which 5 adults and 7 juveniles involved for murder. 3 adults among the 5 were prosecuted for murder after the first prosecutor's investigation, and 2 adults received non-prosecution. After reconsideration and reinvestigation, 1 of the 2 was prosecuted or murder.

Notes: Total Numbers of Application for Reconsideration Each Year: 2006= 36,262, 2007= 38,298, 2008= 42,173, 2009= 43,167, 2010= 50,402, 2011= 55,246, 2012= 55,996, 2013=55,123

3. Ruling of Deferred-Prosecution

Ruling of deferred-prosecution is similar to non-prosecution in terms of the potential for overturning a ruling by reconsideration or retrial-like circumstances. Nevertheless, deferred-prosecution is different from non-prosecution in that it may also be set aside because of defendants' own behavior. Generally speaking, if a defendant does not behave well ***within*** or ***before*** the one- to three-year period set forth for deferred-prosecution, and the legal outcome of his bad behavior appears ***within*** the deferred-prosecution period, his deferred–prosecution may be set aside by prosecutor.[45] For example, if a defendant of manslaughter promised to compensate the victim's family but failed, the deferred-prosecution may be set aside. Once the deferred-prosecution has been set aside, prosecutor may continue the investigation or initiate a prosecution. Note that, according to the TCCP, even if all the requirements are met, it is still prosecutors' authority to decide whether to set aside the deferred-prosecution. That is, as for deferred-prosecution, to render, arrange the conditions in exchange, and set aside are all up to prosecutors' discretion. Comparing with prosecution and non-prosecution, deferred-prosecution could be prosecutors' most powerful tool for case disposition, because the law authorizes prosecutors almost unlimited power in applying deferred-prosecution to qualified cases.

[45] TCCP Article 253-1: " (Section 1) A public prosecutor may, ex officio or based on the application of the complainant, set aside the ruling of deferred prosecution and continue the investigation or initiate a prosecution, if the defendant commits the following during the period set forth for deferred prosecution:
(1) Has intentionally committed an offense punishable with a minimum punishment of imprisonment during the period of deferred prosecution and a prosecution is initiated by a public prosecutor;
(2) Has committed other offense intentionally before deferred prosecution and was sentenced to a minimum of imprisonment punishment during the period of deferred prosecution;
(3) Has failed to comply with or perform the matters specified in the items of section I of Article 253-2.
(Section2) In case a ruling of deferred prosecution is set aside by the public prosecutor, the accused may not request the refund of or compensation for the part that had already been performed."

IV. Prosecutor Part Two: Empirical Facts, Analyses, and Findings

A. Prosecutor: Filter of Criminal Justice System

As introduced previously, this study collected all non-traffic killings occurred in Taipei from 2006 to 2012, and the total amount of deaths is 222. While facing the same 222 deaths, police and prosecutors had quite different views of how the deaths were caused, as shown in **Figure IV.1** and **Figure IV.2**.

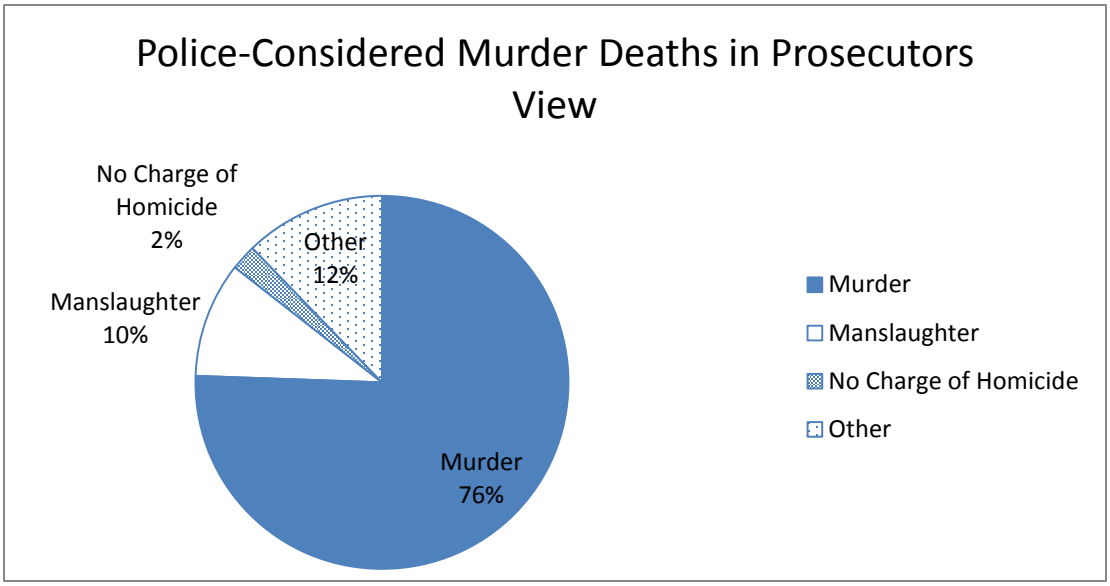

Figure IV.1 How Prosecutors Consider Police-Considered Murder

Note: Total Police-Considered Murder Deaths = 90; among them, Prosecutor-Considered Murder Deaths = 68, Prosecutor-Considered Manslaughter Deaths = 9; Prosecutor-Considered No Charge of Homicide Deaths =2; Others = 11 (including 1 involving with both murder and manslaughter, 8 offenders committing suicide after offenses, 1 juvenile, and 1 aider to suicide).

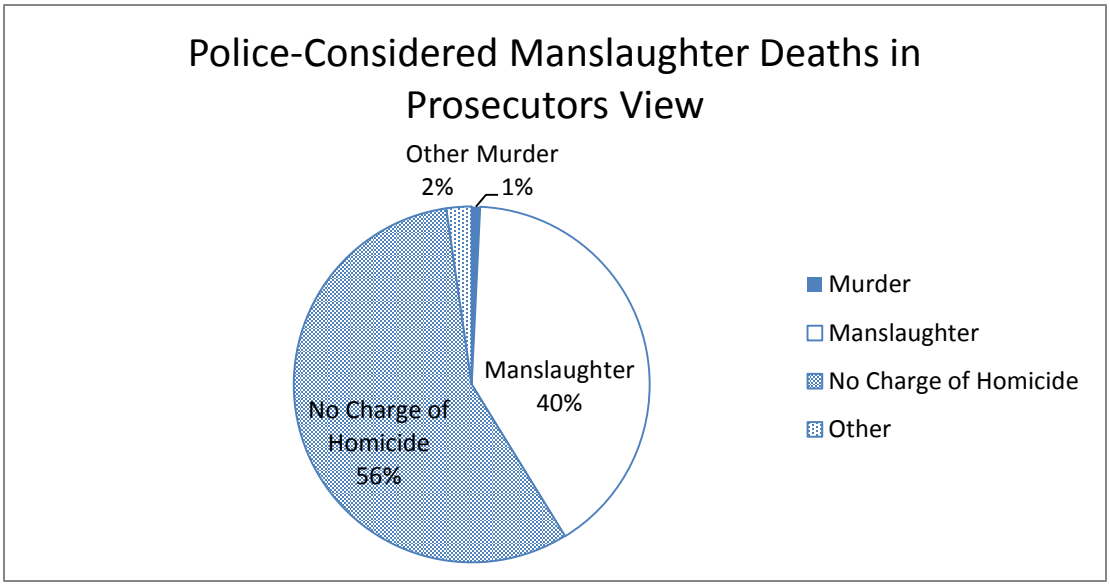

Figure IV.2 How Prosecutors Consider Potential Police-Considered Manslaughter

Note: Total Police-Considered Potential Manslaughter Deaths = 131 (including 79 police-considered manslaughter and 52 ambiguous unintended killings that police are reluctant to make decisions); among them, Prosecutor-Considered Murder Deaths = 1, Prosecutor-Considered Manslaughter Deaths = 53; Prosecutor-Considered No Charge of Homicide Deaths =74; Other = 3 (including 1 juvenile at police-considered manslaughter, and 2 no data at ambiguous unintended killings).

Figure IV.1 along with **Figure IV.2** provides us a general idea of how prosecutors may serve as a "filter" for the criminal justice system. Among police-considered murder deaths, prosecutors degraded 10% of murder to manslaughter and 2% of murder to no homicide charge at all. On the other hand, among police-considered manslaughter, prosecutors considered defendants inculpable for killing up to 56% of deaths.

While 12% reduction of murder and 56% reduction of manslaughter seem great numbers, the prosecutor "filter" actually worked more than that if we take the volumes of suspects involved into consideration. Among our sample cases, there are total 377 suspects handled by police and sent to prosecutor's office. According to prosecutor's rulings, among the 377 suspects, 107 were prosecuted for murder, 70 were for manslaughter (including defendants prosecuted as manslaughter offenders and deferred-prosecuted defendants), and 200 were disposed of by prosecutor as neither murder nor manslaughter. Thus, the prosecutorial decisions are quite dissimilar to police views, as shown in **Figure IV.3**.

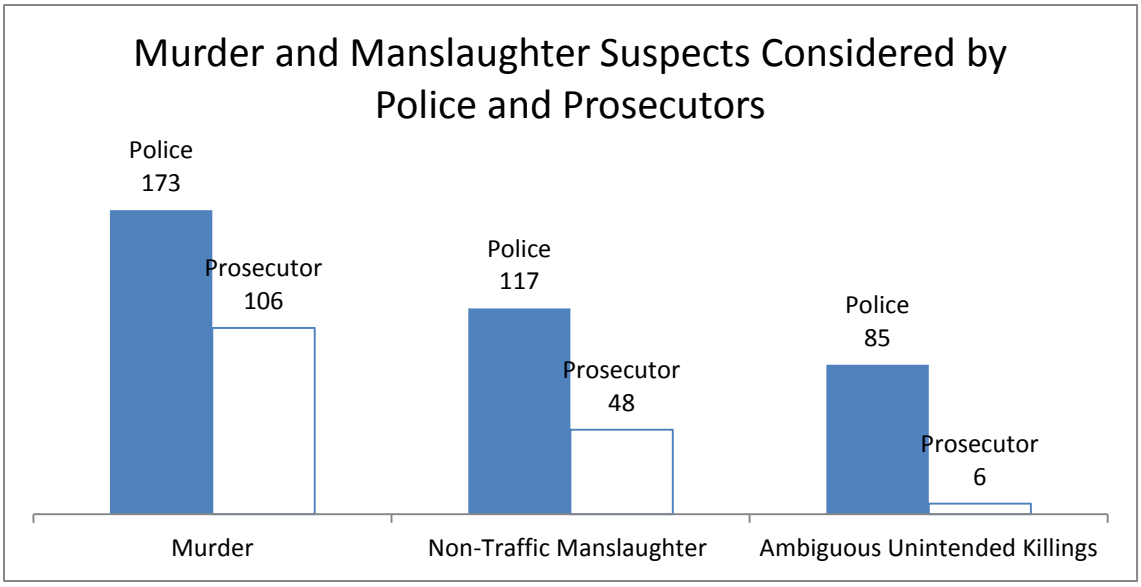

Figure IV.3 Volumes of Homicide Suspects/ Offenders Considered by Police and Prosecutor

Note: The column of "Ambiguous Unintended killings" means that only 6 suspects out of 85 were considered by prosecutors as manslaughter offenders.

As **Figure IV.3** shows, for people sent by police as murder suspects, prosecutors agreed with only 60% of police decisions (106 out of 173), whereas for people sent by police as manslaughter suspects, prosecutor only agreed with 40% (48 out of 117, including 39 prosecuted and 9 deferred-prosecuted suspects). If we include the suspects involved in police-considered "*Ambiguous Unintended Killings*", which are potential manslaughter cases, prosecutors' agreement rate of non-traffic manslaughter are even lower. Among 85 suspects sent by police for ambiguous unintended deaths, prosecutors only prosecuted 6 people and all for manslaughter. Thus, among all potential non-traffic suspects, prosecutors only consider 27% of them as manslaughter offenders (54 out of 202). That is, as a filter of the criminal justice system, prosecutors impressively filter out 40% of murder suspects and 73% of manslaughter suspects.

B. Filtration by Types of Homicide

Empirical data above show that prosecutors filter out police-considered murder and manslaughter by a different magnitude: less in murder (12% of deaths or 40% of suspects are reduced) and much greater in manslaughter (56% of deaths or 73% of suspects are reduced). In the following section, this study takes a closer look at why

prosecutors would make the differences and what type of homicide prosecutors would tend to filter out.

1. Murder

Most suspects involved in murder deaths were filtered out by prosecutors for insufficient suspicion or evidence of their commission of killing. Among all 173 police-considered murder suspects, 17% (30 out of 173 suspects) were rendered non-prosecution ruling for lack of sufficient evidence. For the rest, 9% (15 out of 173 suspects) were charged by police for murder but degraded by prosecutors to manslaughter, and 13% (22 out of 173 suspects) were not prosecuted as either murder or manslaughter offenders for other reasons, including 8 people dead before prosecutorial ruling, 3 fugitives, 8 juveniles, 1 abettor to murder, 1 aider to murder, and 1 participant in suicide. **Figure IV.4** shows how prosecutors considered police-considered murder suspects.

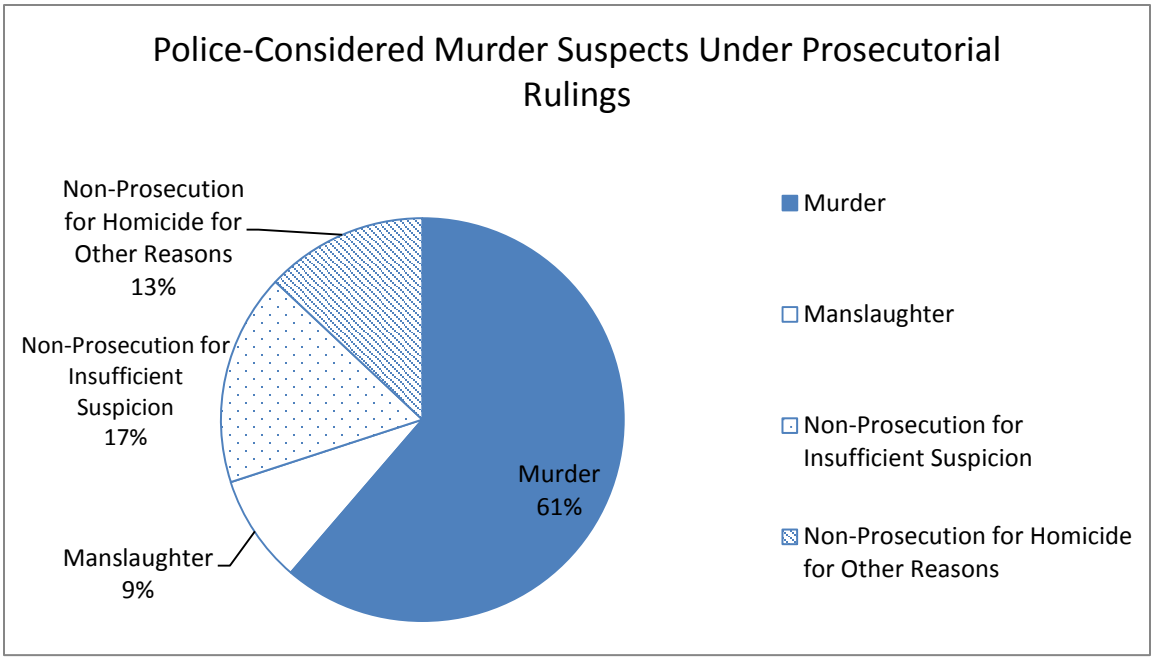

Figure IV.4 How Prosecutors Consider People Sent by Police as Murder Suspects

2. Potential (Non-Traffic) Manslaughter

Prosecutor agreed with police in a lesser degree in manslaughter. In other words, the filter effect of prosecutorial function was more apparent. As **Figure IV.5** indicates, up to 55% (64 out of 117) of police-considered-manslaughter suspects were not prosecuted for insufficient suspicion. For the rest, 1 suspect considered by prosecutor as murderer (1%), and 4 suspects (3%) were not prosecuted for insanity (1 suspect), juvenile (1 suspect), and no complaint filed (2 suspects).[46]

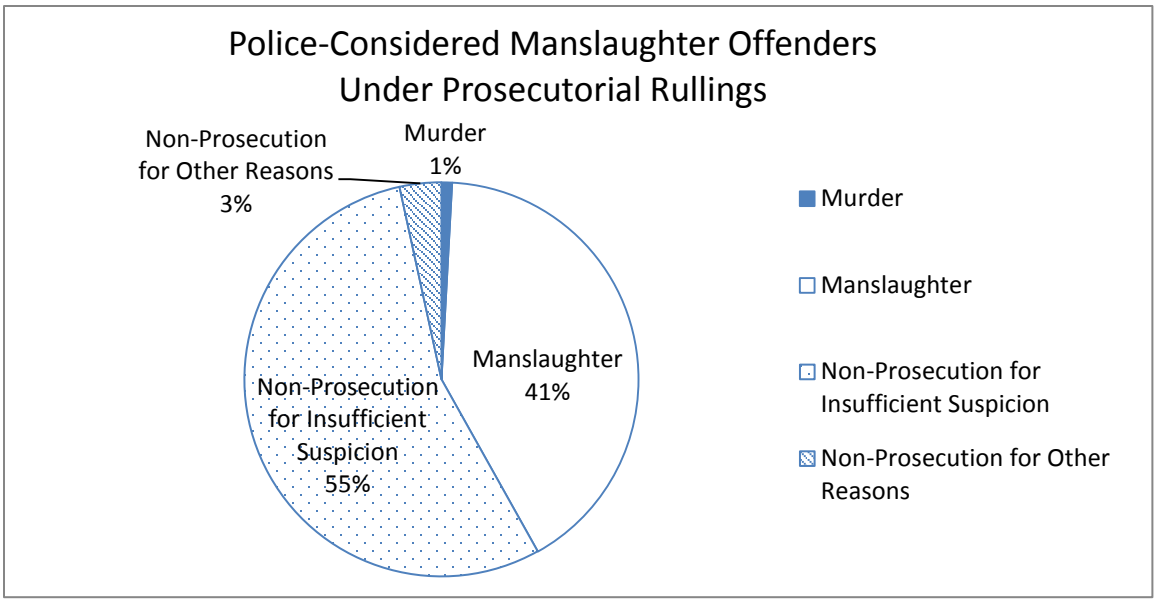

Figure IV.5 How Prosecutors Considered People Sent by Police as Manslaughter Offenders

The concentration of non-prosecution for insufficient suspicion is even more obvious in cases of *ambiguous unintended killings*, which cases police hesitated to make decisions. As **Figure IV.6** shows, as high as 87% of suspects (74 out of 85) of ambiguous unintended deaths were not prosecuted for insufficient suspicion. It is 32% higher than the same category of non-prosecution in police-considered manslaughter and actually a proof of that Taiwan's police work as a "signal system" to prosecutors. The "signal system" is a brand-new perspective to analyze the relationship between Taiwan's prosecutors and police, which we will have further discussion below.

[46] In the case No. 230, four suspects were sent by police for involvement in an in-home private nursing manslaughter. Among the four, two were rendered non-prosecution for insufficient suspicion, whereas the other two were not prosecuted because "*no complainant had filed a complaint*". However, it is noted that homicide, even manslaughter, is not the type of minor cases "*chargeable only upon complaint*". That is, according to the law, even though no complainant has filed a complaint, the prosecutor in charge still shall investigate thoroughly and prosecute offenders of sufficient suspicion.

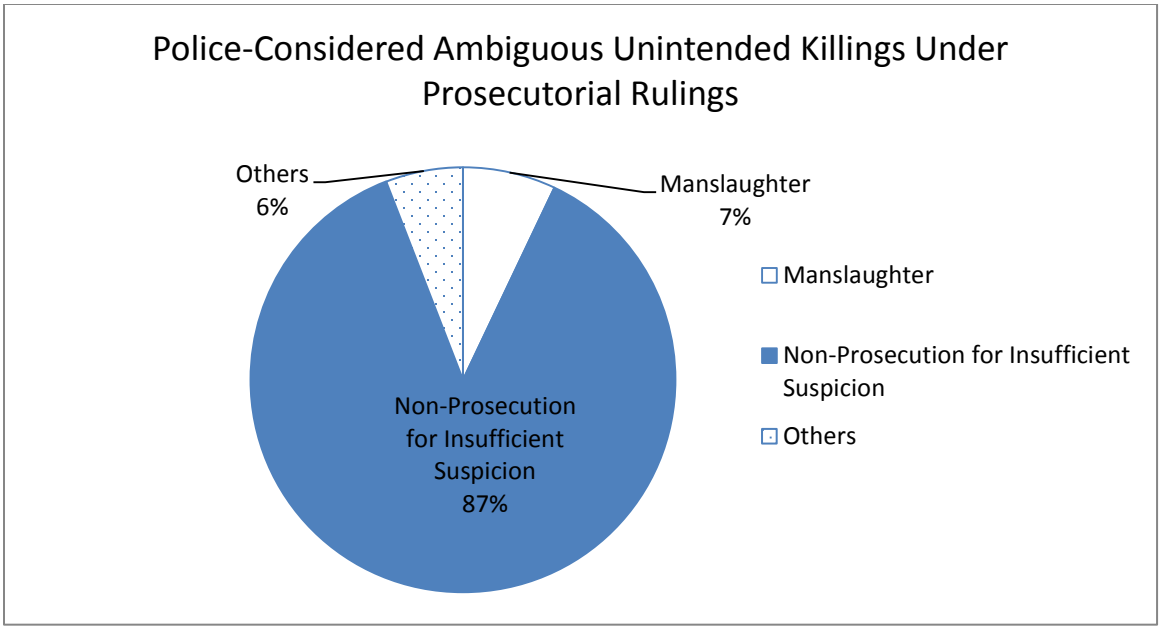

Figure IV.6 **How Prosecutors Consider Suspects Sent by Police in Ambiguous Unintended Killings**

Note: The category of "Others" includes 5 suspects sent by police. Among them, 1 died before prosecutorial ruling and 4 had no data in prosecutorial phase.

Among all potential manslaughter suspects, i.e. combining police-considered-manslaughter suspects with suspects involving in ambiguous unintended deaths, only 27% suspects were prosecuted, and 68% were rendered rulings of non-prosecution for insufficient suspicion, as shown in **Figure IV.7** below.

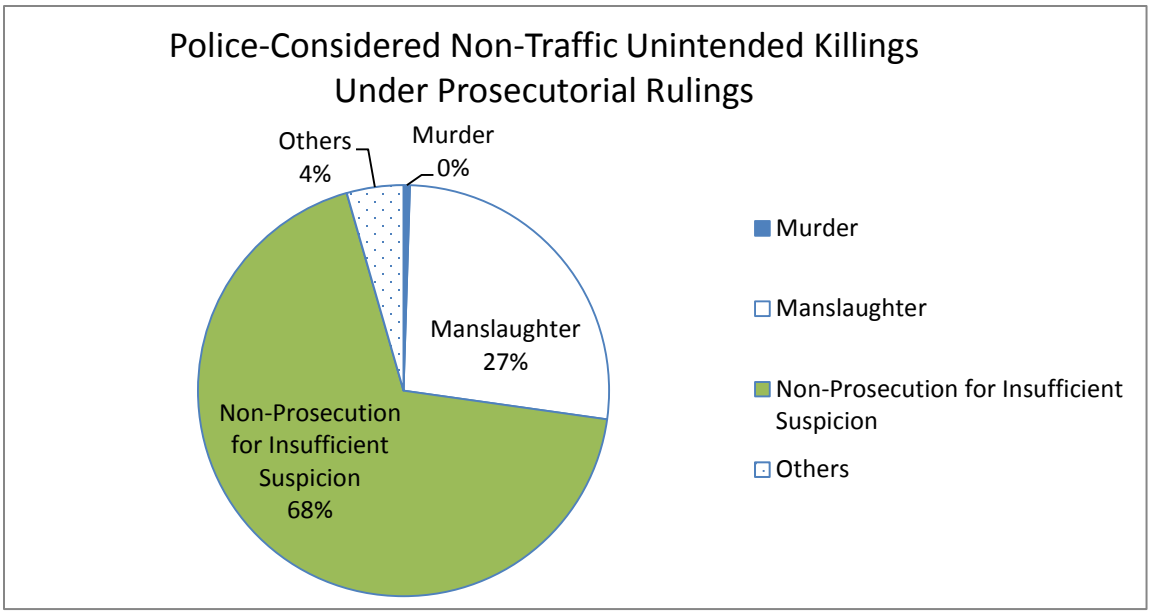

Figure IV.7 How Prosecutors Consider Suspects Sent by Police for Involvement in Non-Traffic Unintended Killings

3. Summary

With the empirical data above, we may try to address the inquiry: **what types of homicide, if any, may prosecutors tend to filter out from the criminal justice system?** As indicated in **Figure IV.8**, between murder and manslaughter cases, it is clear that **prosecutors tended to make a non-prosecution ruling in manslaughter cases much more often than in murder cases.**

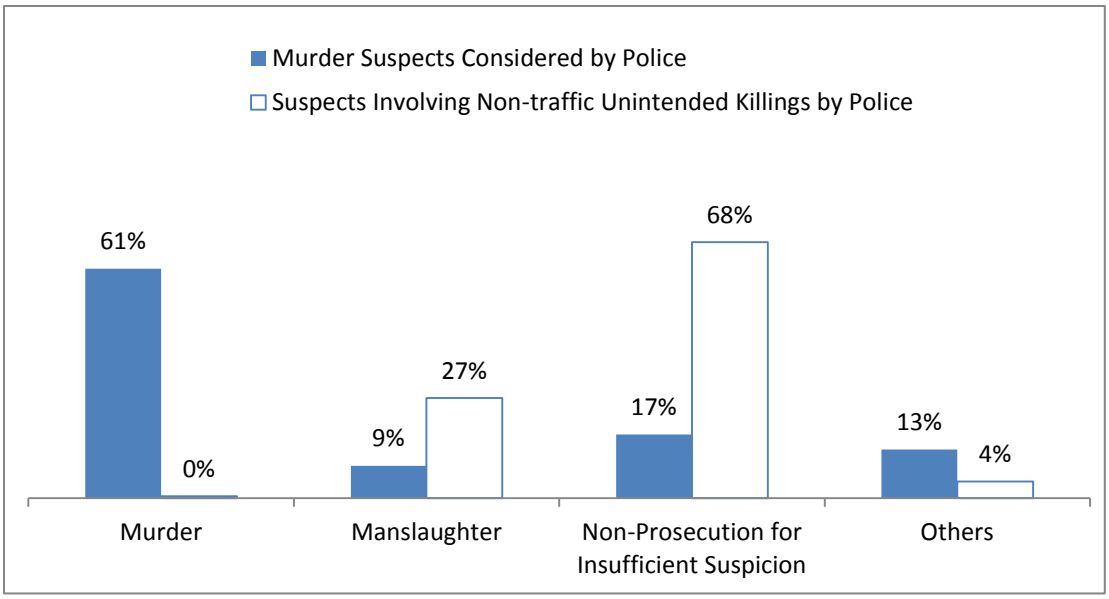

Figure IV.8 Prosecutorial Rulings of Suspects Sent from Police

According to the empirical data above, Taipei's prosecutors serve as an effective filter for criminal justice system, but is it a good thing? It is hard to say. On one hand, it is good for suspects who were "filtered out" by prosecutors, because they would not have to suffer more in the criminal justice system. However, on the other hand, these people were also unfortunate for they had suffered in the phases of police and prosecutors. **Therefore, our empirical data actually reveals a crucial direction of reform in Taiwan's criminal justice system: how to prevent innocent people, if they are, from struggling into the muddy criminal justice system on the threshold?**

Obviously, it is arguable that not all suspects rendered rulings of non-suspicion were genuinely innocent. It is not difficult to imagine there are always suspects who did offend but were not prosecuted for lacking sufficient evidence or for other reasons. However, despite the fact that we may not be able to tell if the non-prosecuted suspects were innocent, the 68% non-prosecution rate of manslaughter cases is still astonishingly high. The high non-prosecution rate in manslaughter will lead us to a further inquiry of prosecutorial disposition of homicide cases: **Would prosecutors tend to filter certain types of homicide cases out of the criminal justice system?**

C. Particular Types of Cases Which Prosecutors Tend to Filter Out

1. Among Murder Cases?

If we probe into the 17% murder cases which were sent from police to prosecutors but not being prosecuted, we may find **NO** particular pattern of murder cases that prosecutors tended to exclude from the criminal justice system. First of all, the 30 non-prosecuted murder suspects were involved in 13 deaths,[47] and 11 out of these 13 deaths have other suspects prosecuted for murder or manslaughter. It means that the reason why prosecutors did not prosecute the suspects is probably not the character of the death but the culpability of particular suspects. In the only two deaths, case No. 188 and 214, in which all suspects involved were not prosecuted, we may not find similar characteristics either.

In the case No. 188, two suspects found the victim passed out, and the suspects, who had criminal records and did not want to be involved in the incident, put the victim in a plastic bag and threw the bag into water. The offense at issue is that the victim died before or after being thrown into water. If the victim died after being thrown into water, as the police considered based on a forensic report, it is either murder or manslaughter. However, the prosecutor in charge considered the opposite by more forensic evidence and did not prosecute the two suspects for killing (but for abandoning corpse instead). In the case No. 214, the suspect was sent by police for killing his girlfriend after a quarrel. The suspect argued that the victim committed a suicide but police did not adopt it. However, the prosecutor investigated the victim's

[47] The case No. 46 (1 suspect), No. 55 (1), No. 67 (1), No.76 (6), No. 82(1), No.101 (1), No.154 (2), No.188 (2), No.189(1), No.214 (1), No. AD 2 (1), No. AD 6 (2), No. AD 13 (10).

medical record of mental disorder, forensic report of stab wound, and the suspect passed the polygraph. Accordingly, the prosecutor considered the suspect without sufficient suspicion and thereby ruled non-prosecution.

As abovementioned, there is no apparent pattern for non-prosecution in terms of murder cases. Rather, for 88 out of 90 deaths, prosecutors prosecuted at least one suspect in each case for either murder or manslaughter.[48] In sum, there are almost always one or more people criminally culpable for a murder killing.

2. Among Potential Non-Traffic Manslaughter?

Among all potential non-traffic potential manslaughter, 68% (138 out of 202) of suspects were not prosecuted for lack of sufficient suspicion. Unlike murder, which is difficult to sort out into certain groups, manslaughter killings can be categorized into four major classes by its causes or offender-victim relationship: **Medical Malpractice**, **Workplace Safety**, **Nanny Care**, and **Domestic Violence between Family Members**. **Figure IV.9** and **Figure IV.10** below show that the four major classes together occupied 69% of potential manslaughter deaths in our case sample. Would they be the particular types of cases which prosecutors tended not to prosecute?

[48] The case No. 95 is the only case in which the prosecutor had both murder and manslaughter prosecution rulings. In the case, police sent 6 suspects, of which 1 was prosecuted for murder and 3 for manslaughter. The other two suspects fled and are still wanted.

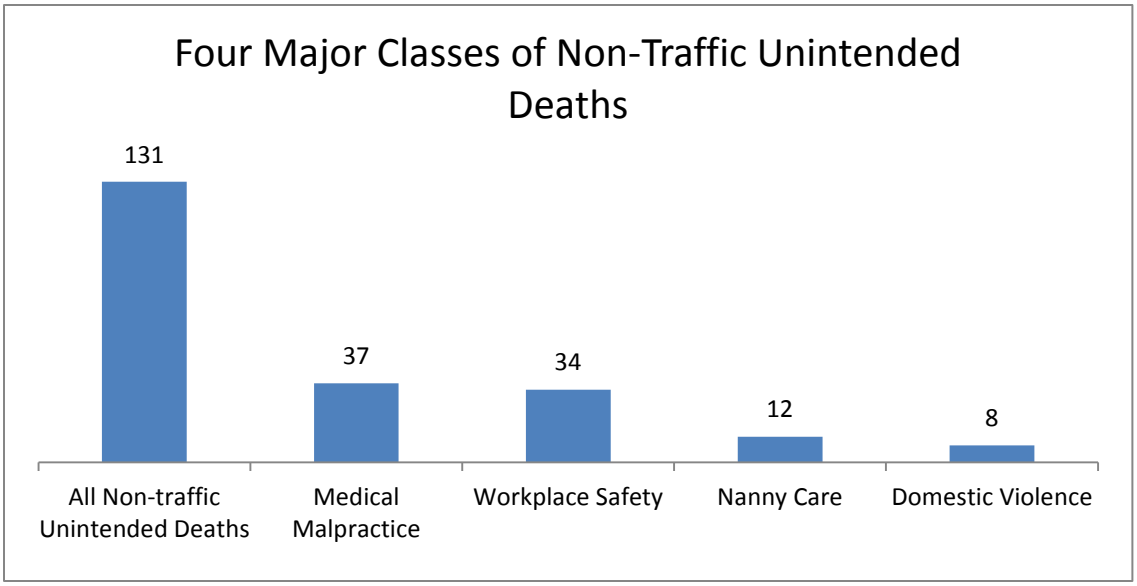

Figure IV.9 Four Major Classes of Non-traffic Unintended Deaths (Counts of Deaths)

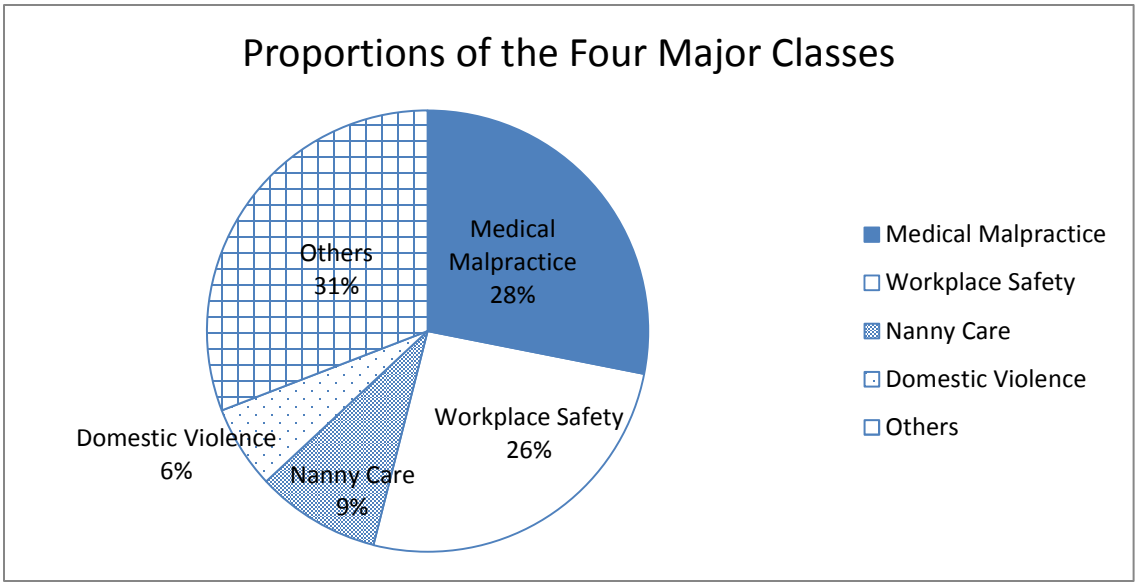

Figure IV.10 Proportions of the Four Major Classes among All Potential Manslaughter Cases

(a) Medical Malpractice

Among all 131 potential manslaughter deaths involving 202 suspects, medical malpractice contributed 37 deaths (28%) and 73 suspects (36%). Then how many of the suspects, most doctors and some nurses, were prosecuted for manslaughter? The

answer is, perhaps to many people's surprise, only one.[49] There was only one suspect who had ever been prosecuted for malpractice among all the criminal cases sent by TCPD from 2006 to 2012. It may be more impressive to know that the only charged doctor was prosecuted by "military" prosecutor instead of regular prosecutor, because the doctor was a medical officer and served in a military hospital where the accused malpractice was performed. That is, none of medical practitioners sent by police had been prosecuted for manslaughter in the regular criminal justice system. Furthermore, unlike murder suspects who may not be prosecuted for killing but still for other crimes, neither for manslaughter nor for any other crimes had almost all medical professionals been prosecuted. The only exception is the case No. 302, in which the suspect, not a doctor but a radiographer, was prosecuted for neglecting the degree of care to cause serious injury.[50] Generally, among our sample, neither doctors nor nurses had ever been prosecuted for any crimes related to malpractice in the regular criminal justice system.

*(b) **Workplace Safety***

Workplace safety is the second largest cause of non-traffic unintended deaths in Taipei. Among our sample, 34 deaths were related to workplace safety and 52 suspects were involved. Among the 52 suspects, 26 were considered as manslaughter offenders by prosecutors. Prosecutors prosecuted 17 out of the 26 and rule deferred-prosecution for the residual. On the other hand, 24 were not prosecuted for lack of sufficient suspicion. That is, 46% of suspects were not prosecuted.

*(c) **Nanny Care***

Despite the third largest cause of non-traffic unintended deaths, the volume of nanny care cases was much lower than the first two groups. Among 12 deaths related to nanny care, 5 out of 12 suspects were considered as manslaughter offenders (4

[49] The case No. 210.

[50] Taiwan Criminal Code (TCC) Article 284 Section 2: "**A person in the performance of his occupational duties or activities causes injury to another by neglecting the degree of care required by such occupation** shall be sentenced to imprisonment for not more than one year, short-term imprisonment or a fine of not more than one thousand yuan; **if serious physical injury results**, he shall be sentenced to imprisonment for not more than one year, short-term imprisonment, or a fine of not more than two thousand yuan."

prosecuted and 1 deferred prosecuted),[51] and the residual 7 were rendered as non-prosecution. That is, 58% of suspects were not prosecuted.

*(d) **Domestic Violence***

Here, I use the term "domestic violence" in its narrow sense, as the FBI defines the relationship of "Family" in the EZA SHR, so romantic relationship like boyfriend-girlfriend or ex-husband-wife were not count in.[52] Among our sample, 8 non-traffic unintended deaths were caused by 10 family members. Among them, 3 deaths were child abuse caused by 5 offenders. Among all 10 offenders, except for one juvenile suspect, 3 suspects were prosecuted for manslaughter and 6 were not prosecuted. Thus, 60% of suspects were not prosecuted.

*(e) **Others***

In our sample, there were 202 suspects in total of non-traffic unintended killings, and 138 of them were non-prosecuted for lack of sufficient suspicion. Thus, except for the four major groups above, the rest of suspects in total were 55 people, and 29 of them were not prosecuted for lack of sufficient suspicion. **Figure IV.11** shows the amounts of total suspects in each group and the amounts of non-prosecuted suspects. Figure IV.12 shows the percentage of non-prosecuted suspects in each group.

[51] One prosecuted nanny was also the victim's relative (the case No. 239): She is the baby's grandaunt. The reason I count the case as nanny care instead of domestic violence is that the offender worked as a nanny to the victim and killed the victim for her neglect. Thus, the case has all essences of nanny care rather than domestic violence.

[52] According to the definition of relationship from the FBI's EZA SHR, "**Family**" includes: Husband, Wife, Common-law husband, Common-law wife, Mother, Father, Son, Daughter, Brother, Sister, In-law, Stepfather, Stepmother, Stepson, Stepdaughter, and Other family member, whereas "**Acquaintance**" means: Boyfriend, Girlfriend, Ex-husband, Ex-wife, Employee, Employer, Friend, Homosexual relation, Neighbor, and Other known individual. *Id.*

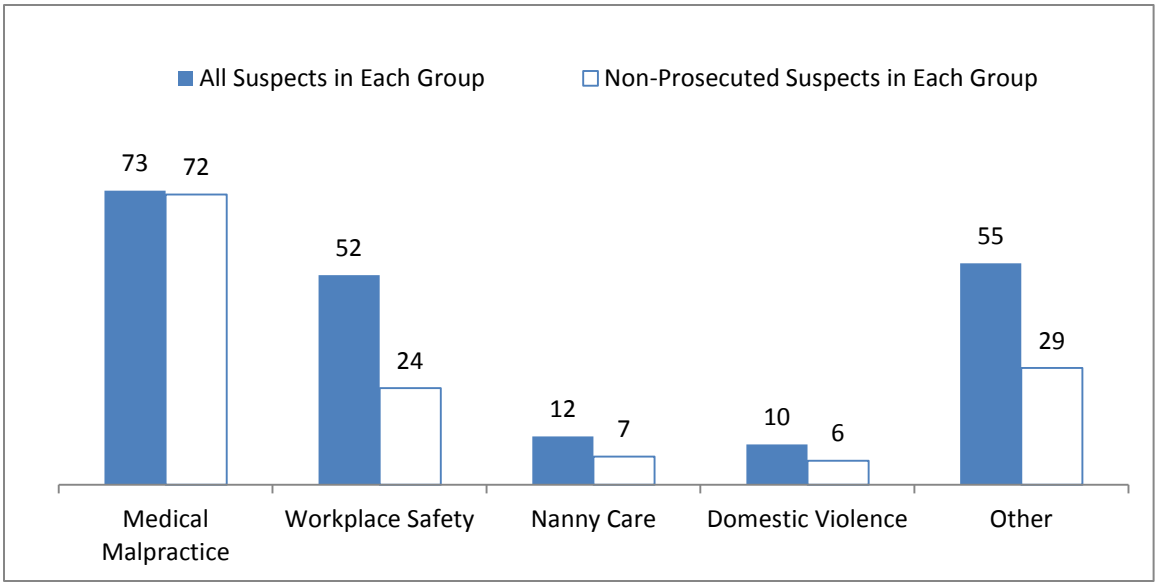

Figure IV.11 Amounts of Total Suspects and Non-Prosecuted Suspects in Each Group

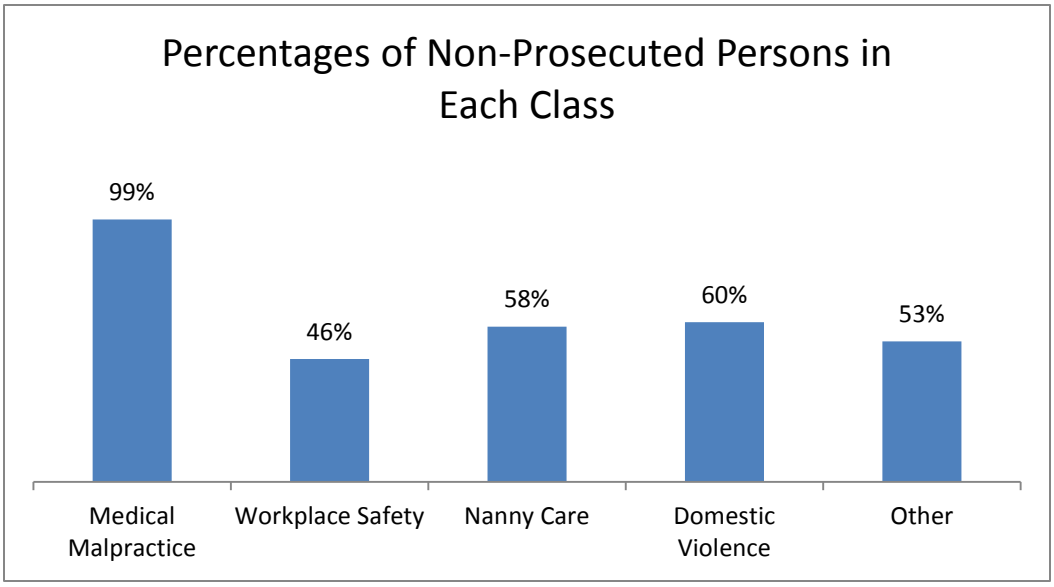

Figure IV.12 Percentages of Non-Prosecuted Persons in Each Class

D. The Unique Medical Malpractice Cases

The empirical data clearly speaks that prosecutors treated medical malpractice differently, by excluding (almost) all of these cases from going into the court. From **Figure IV.12** above, we can see that the non-prosecution rate in all groups is about 50%

except for the group of medical malpractice, in which the non-prosecution rate is 99% (or 100%, if only regular criminal justice system was considered).

In fact, as discussed earlier, not only prosecutors but also the police treated medical malpractice cases differently. Among all cases police affirmatively considered as manslaughter, only 15% (12 out of 79 deaths) cases were medical malpractice, whereas medical malpractice occupied 48% of cases which police considered as ambiguous and made no decisions. That is, although police must transfer all medical malpractice cases with complaint filed by complainants, the police *per se* were reluctant to consider the cases transferred as manslaughter. The differentiated treatment given by prosecutor and police to medical professionals leads us to a new inquiry: why did police and prosecutor both tend to exclude medical malpractice cases from the criminal justice system? We will have a further discussion after exploring how the court treated medical malpractice cases sent from approaches other than police.

E. Empirical Disproof of "Police Are Laymen" Stereotype

1. High Agreement of Police and Prosecutors' Decisions in Murder

The empirical data also provides proof to overthrow the stereotype which considers the police as laymen in law. Taiwan's police have been often considered by legal professionals as laymen, even though most police officers have actually been trained in law to an extent and some even have law degree. Accordingly, despite that prosecutors rely on police in criminal investigation, prosecutors usually don't take police decisions of what offenses shall be charged seriously. That is, no matter what police may recommend to charge in their report, prosecutors would make their own decisions.

Nevertheless, the empirical data suggest that police decisions actually had relatively high agreement rates with prosecutor's charges of offenses. As displayed in **Figure IV.13**, 76% deaths (68 out of 90 deaths) that police considered as murder were also prosecuted as murder, so we may say the agreement rate of police reports is 76% in terms of the recommended offenses.[53] It is a relatively high rate, even higher

[53] Here, we use counts of deaths/killings instead of counts of suspects to compare police and prosecutors' decisions. The reason for that is police are limited to choose either murder or manslaughter for a killing while filling in their "Forms". Once police make choice, they may send all suspects involved in the death

than the 50% rate that courts agreed with prosecutor's decisions in murder (intentional killing).[54]

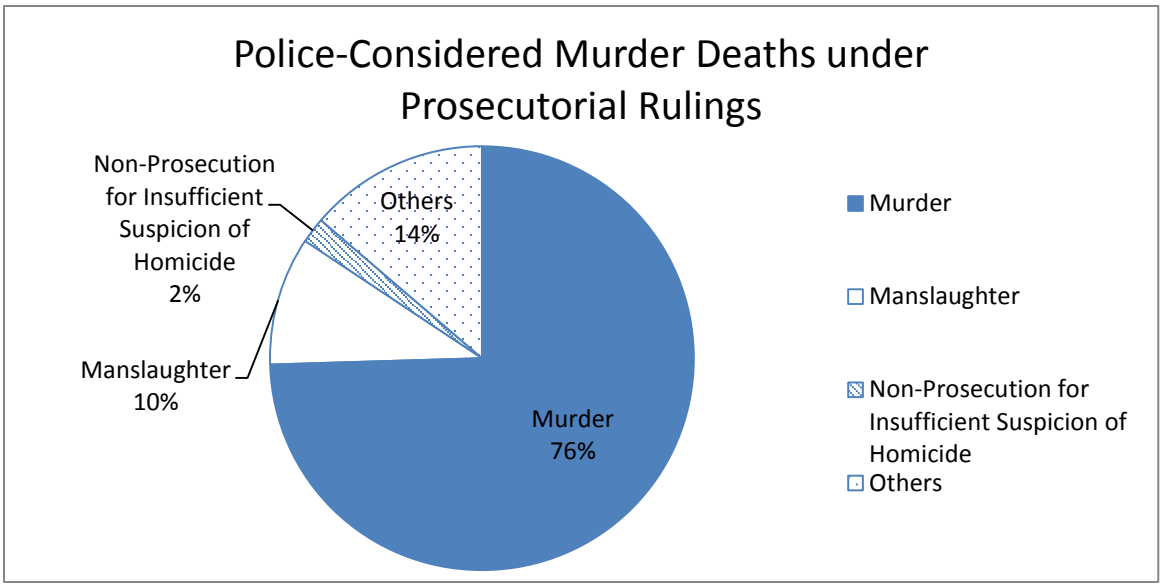

Figure IV.13 Police-Considered Murder Deaths under Prosecutorial Rulings

Note: The category of "Others" includes 11 deaths. Among them, 1 was caused by both murder and manslaughter, 8 were caused by offenders committing suicide right after killing, 1 was for aiding suicide, and 1 was caused by a juvenile.

If we understand the reality Taiwan's police are facing, the agreement rates may be higher than 76%. Since Taiwan's police are given little authority to close a criminal case by themselves, the police have to report almost all cases to prosecutors for rulings, even though police may know some cases will not be prosecuted afterwards. For example, there were 8 murder killings in which suspects committed suicide right after offenses. Despite the TCCP providing that dead suspects were subject to non-prosecution,[55] police still have to report the 8 cases as murder to prosecutors for the non-prosecution rulings. Also, for killings committed by juveniles, cases of contribution to suicide, and cases involved with both murder and manslaughter, police sent them to prosecutors as murder, which was the closest offense that police may have suspects all-in.

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for the same charge. Thus, when we are looking into if police make the correct decision, we focus on the decision of causes of deaths rather than their decisions of each suspect's offense.

[54] *See* **Figure VII.2** and discussion in Chapter VII.

[55] TCCP Article 252: "If one of the following circumstances exists, a ruling not to prosecute shall be made: …(6) The accused is dead".

Given the limited authority of police disposition, if we exclude the cases which police had no choice but report as murder to prosecutor, then we will find that the police only made incorrect assessments in 11 deaths (out of 90), including 9 deaths considered by police as murder but by prosecutor as manslaughter, and 2 deaths considered by police as murder but prosecutor did not think it had sufficient suspicion (evidence) to prosecute. In this way, we can say police actually made the same decisions of causes of murder deaths in as high as 88%.

2. Lower Agreement in Manslaughter and Possible Explanation

The high agreement rate in murder, however, did not seem to apply in manslaughter. Among the cases where police were confident in charging suspects for manslaughter, the agreement rate with prosecutor's decisions is 49% (39 deaths out of 79). On the other hand, among the cases where police hesitated to claim manslaughter, prosecutor considered only 27% (14 deaths out of 52) of the deaths caused by manslaughter.

While the agreement rate in potential manslaughter is much lower than in murder, the low rate can be understood under the context of Taiwan's police practice. Note that, in practice, police have no authority to decline to handle cases filed by complainants or ordinary citizens. Neither can police filter out cases as prosecutor can, even for some obviously irrational cases. Thus, while a homicide occurs and is reported to police, the police have to check the box of either murder or manslaughter on the "Form".[56] While some police may additionally note in the end of their "Reports" that they were not sure if it was a criminal offense,[57] it is conceivable that many police do not bother to note additionally on the "Report" but simply send cases to prosecutor as manslaughter. Therefore, it is reasonable that the agreement rate of potential manslaughter could be lower than murder.

3. Police Decisions as A "Signal System" for Prosecutor's Decisions

[56] See Sample of Form of Criminal Records.

[57] In a rare case (No. 217), police even reported as "While the complainant accused the five suspects of manslaughter and forgery, we haven't found tangible evidence of the accusation". As described in the Chapter 1, these cases which police hesitated to claim as manslaughter are classified as "Ambiguous Unintended Killings", because none of them were related to intentional killings.

The lowest agreement rate exists in the cases that police had no affirmative decisions, i.e. ambiguous unintended killing cases. The prosecution rate is only 27%, but it is actually lower than that. While prosecutors considered 14 deaths (out of 52) as being caused by manslaughter, there were 8 deaths among them caused by the same one incident, and 2 deaths caused by another one. That is, only 6 incidents out of 52 (12%) were considered as manslaughter and only 6 suspects out of 85 (7%) were charged by prosecutor as manslaughter offenders.

However, the extremely low agreement rate in this homicide category does not mean police are useless or prove the stereotype that police are laymen. Instead, the low rate shows how Taiwan's police may share similar concerns with prosecutors and work as a "signal system" to prosecutors. The low agreement was resulted from the cases that police hesitated to accuse suspects as manslaughter offenders, and it is the hesitation which suggests us that police may have similar concerns as prosecutor do, so the same determinants preventing police from affirmatively accusing suspects also applied to prosecutor and made them not to prosecute suspects in this category. In this sense, the police in fact sent a signal in their official reports (or more accurately speaking, by police accusation of offenses) to prosecutor about the case characters and possible dispositions.

F. Time and Energy Consumption in Prosecutorial Rulings

In Chapter II, we applied indicators of time consumption and words used in police reports to explore how much energy or resource police spent on different types of homicide. The same approach can also be applied to prosecutor. Though this approach, we may find the concerns of prosecutors are similar to police again.

1. Amounts of Words Used in Rulings

Like police, prosecutors disfavor time-consuming paperwork and writing unless they are necessary. If prosecutors regularly record more content for a certain type of cases, it means they have to do it for the type of cases, which may be more complicated or important to prosecutors. Thus, we may understand which types of cases may consume prosecutors more time and energy by the length of prosecutors' ruling documents. Figure IV.14 shows the average numbers of Chinese characters written by police and prosecutors in each type of homicide.

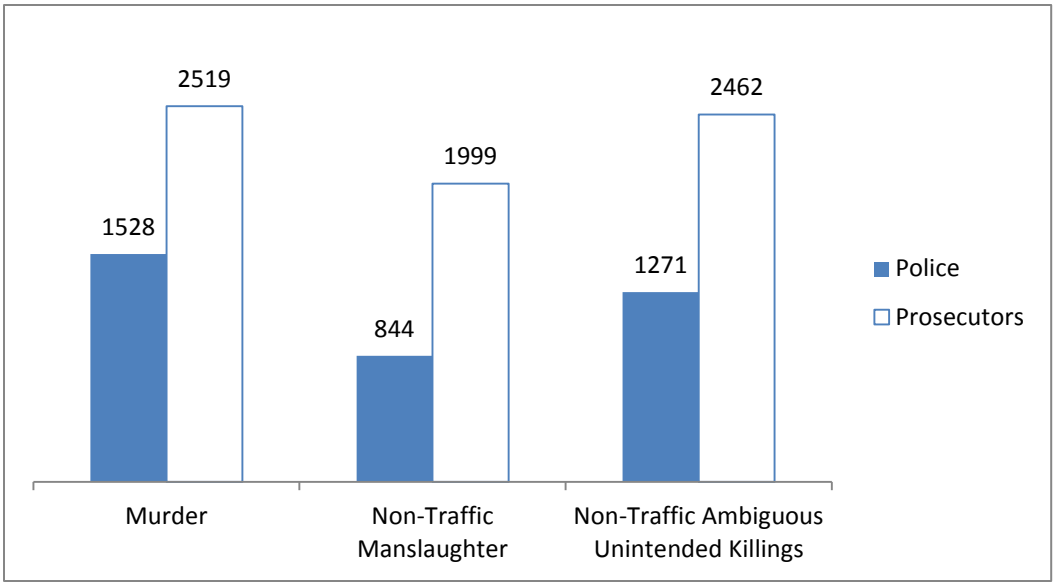

Figure IV.14 Average Counts of Words Used in Each Police Report and Prosecutorial Rulings

Unit: Chinese Characters

The first thing to note is that police used apparently fewer words in their reports than prosecutors in all types of homicide cases. As introduced in Chapter II, police are generally not evaluated by how good their writings are, but instead, prosecutor may be evaluated by their rulings. Prosecutorial rulings are subject to be reviewed by court, lawyers, and higher level prosecutors, so it is important for prosecutor to clearly describe the case details and rationales for their decisions. Therefore, it is understandable that prosecutors used more words in all kinds of homicide cases than police did.

Second, while prosecutors wrote more words than police in their rulings, prosecutor and police showed similar tendency in their priority in different types of cases. For both police and prosecutors, murder cases took the most volumes of words, then ambiguous killing, and then manslaughter. However, it is noteworthy that prosecutors used almost similar numbers of words for murder and ambiguous killings, whereas police used about average numbers of words of murder and manslaughter for ambiguous killings.

2. Time Consumption

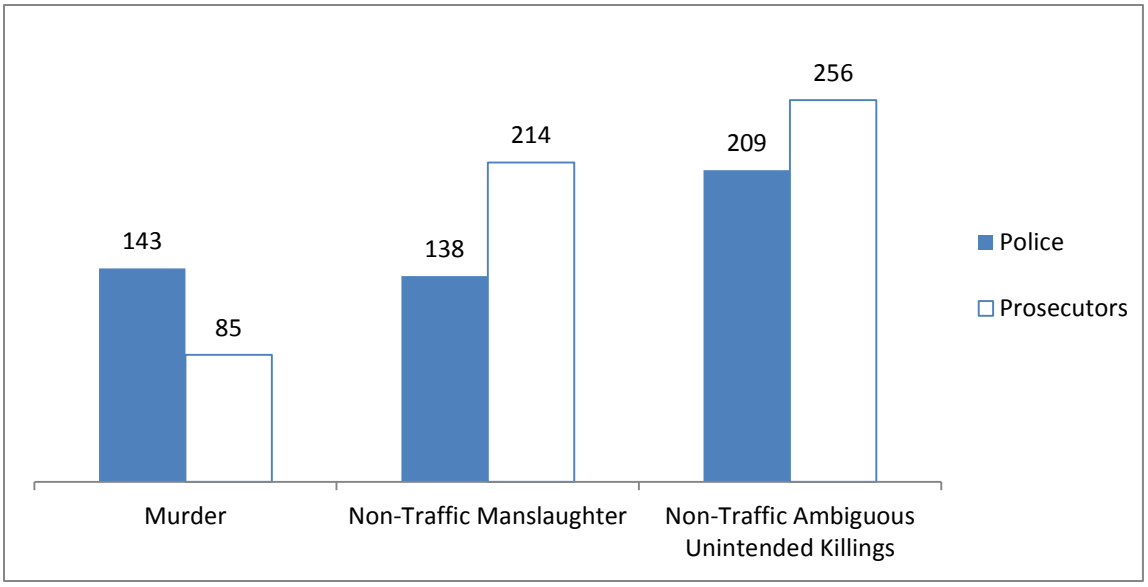

Figure IV.15 Average Time Consumption to Close a Case for Police and Prosecutors

Unit: Days

The time consumption of prosecutorial case disposition tells us a different story. As shown in **Figure IV.15**, for both prosecutors and police, the ambiguous unintended killings took the longest time (much longer than the other two types of cases) to close. However, police spent almost the same time closing murder and potential manslaughter cases, whereas prosecutors spent on potential manslaughter 2.5 times as long as they spent on murder.

There are two possibilities for the longer time for potential manslaughter and even longer time for ambiguous unintended killings. First, prosecutors were waiting for expertise reports. In many unintended killings, whether defendants had committed manslaughter depends on the extent of neglect, which prosecutors may use expertise report to assist them to make decisions. For example, in medical malpractice cases, all prosecutors would require the National Medical Malpractice Examination Committee to examine and determine if there was malpractice in medical treatment, and the average waiting period for the expertise export from the Committee is about 4 months. Since police usually did not apply for expertise reports but simply collected existing data to send cases to prosecutor, the process for police would not be that time-consuming.

The second possibility is that prosecutors may persuade defendants and complaints of unintended killings into civil settlement. Settlement is good for not only both parties but also for prosecutors. On one hand, settlement could make sure that complaints (usually victims' family members) receive compensation as soon as possible. On the other hand, manslaughter offenders could have more lenient treatment from prosecutors and courts if they could settle with complaints. For prosecutors (as well as judges), a successful settlement is the best way to avoid complex factual and legal decisions and most paperwork. Thus, prosecutors have incentives to persuade a settlement and are usually willing to grant time for complaints and offenders to negotiate.

V. Court Part One: Introduction to Taiwan's Criminal Court and Trial

A. Duty of Criminal Trial Court in Taiwan

Court dispositions of homicide cases are perhaps more complex than most people may consider. Given the structure of criminal justice system, some may assume the work of judges relatively "pure", because it seems judges only need to consider the evidence provided by prosecutors and defendants (and their defense lawyers, if there is any) and make judgements on limited numbers of defendants, which have already been screened in advance by police and prosecutors. However, this optimistic assumption may be far from the truth.

From the perspective of comparative law in judicial system, we may find that judges in Taiwan take much heavier duty than their colleagues in the United States. First of all, without a jury system, Taiwan's criminal trials are always bench trials, in which judges shall make all decisions of facts themselves. Finding facts of a previous offense by mere arguments made by parties diametrically opposed to each other has never been an easy task. Nonetheless, Taiwan's new adversarial system, named "Reformed Adversarial System", has made judges' work more of struggle.

B. "New Adversarial System"

The adversarial system adopted by Taiwan's Code of Criminal Procedure in 1999 is used to be named "new" or "reformed" adversarial system. From today's view, the system is of course not "new" anymore, and it may also be difficult to say if the system is a "reformed" one, as Taiwan's government officially declared, in any aspect since day one. According to the classic definition, an adversarial system of criminal justice is a system of "*adjudication in which procedural action is controlled by the parties and adjudicator remains essentially passive.*"[58] However, the notion of "*essentially passive*", usually understood as an umpire-like role of judges, seemed hard for Taiwan's judiciary to embrace without reservation in 1999 when the adversarial system was first adopted. However, a change apparently had to be made to the existing inquisitorial system which many ordinary citizens and legislators had detested for years, and the switch to adversarial system which seemed to try criminal cases in a more reasonable way seemed attractive. Given that Taiwan's criminal trial process had been strongly influenced by both Chinese and German style inquisitorial systems for hundreds of years before switching onto the direction of adversarial system in 1999, a compromise was necessary for the switch (otherwise the change would be impossible at all) and resulted in the "reformed" adversarial system accordingly.

The word "reformed" suggests the improvement in potential drawbacks of the classic adversarial system, which extremely concerned Taiwan's legislators and some legal scholars. That is, if judges do nothing but passively sit as an umpire, decide cases merely by materials provided by parties, truth might not be found and justice might not be achieved once any of the parties fails to provide sufficient evidence. Therefore, Taiwan's legislators in 1999 could not switch the criminal trial process from inquisitorial to adversarial system all-out with the price of possible lack of "justice", so that a "reform" seemed necessary if the adversarial system had to be adopted in any case.

Under the "reformed adversarial system", Taiwan's Criminal Procedure Code provides, "*The court **may**, for the purpose of discovering the truth, **ex officio investigating evidence**; in case for the purpose of maintaining justice or discovering facts*

[58] Damaska, Mirjan R., "Evidentiary Barriers to Conviction and Two Models of Criminal Procedure: A Comparative Study" 121 U. Pa. L. Rev. 506. 1972-1973.

that are critical to the interest of the accused, the court ***shall ex officio investigate evidence****.*"[59] (*emphasis added*). In other words, while prosecutors are responsible to bear the burden of proof as to the crime charged (the most crucial character of adversarial system),[60] judges are also authorized to investigate evidence instead of playing a passive umpire role. More importantly, judges are ***required*** to actively investigate evidence once the evidence may relate to "*maintaining justice or discovering facts that are critical to the interest of the accused*". The legislators expected the obligation above would prevent judges from slacking off as well as help "*maintain justice*". Thus, the new system has been named as "reformed adversarial system".

Despite many debates on the reformed adversarial system, the system does authorize and oblige Taiwan's criminal court judges to investigate evidence. Therefore, judges can't be easily satisfied with the evidence provided. Instead, judges have to look for evidence and truth by themselves oftentimes. While no doubt the obligation of investigation increases judges' workload, it certainly also grants Taiwan's judges greater power to control the process of criminal trial.

C. Court Procedures of Homicide Disposition

Taiwan's judges of criminal courts are powerful because of the many actions they may take during the cases: finding general facts in a case, deciding guilt or innocence, imposing punishment, etc. In addition to all the above crucial authorities (and duties as well), judges have a more fundamental approach to control the trial at a very early stage: selecting the trial procedure.

Before digging into court statistics to see how many cases and offenders are processed by the court, I would like to briefly introduce the four potential criminal procedures which may be applied to cases in Taiwan. The choice of procedures is crucial because it is usually the very first thing which judges have to decide when they receive a case, and the early choice of a procedure often dictates later dispositions.

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[59] TCCP Article 163, Section 2.

[60] TCCP Article 161, Section 1 : "The public prosecutor shall bear the burden of proof as to the facts of the crime charged against an accused, and shall indicate the method of proof." Article 161-1: "The accused may indicate methods of proof favorable to him against the facts charged."

Generally, Taiwan's courts have four possible procedures to deal with criminal cases before them. They are: the regular procedure, the simplified trial procedure, the summary procedure, and the negotiation procedure.

1. Regular Procedure

With all constitutional and legal protections of defendants, a regular procedure can be applied to any case as long as the judge considers it necessary regardless of the seriousness of the case. For example, both a cruel murder and a minor harassment can be handled by regular procedure, while the minor harassment may also be decided using the following three procedures.

Considering the massive consumption of judges' time and energy for trying cases and writing lengthy judgments afterwards in a regular procedure, the following three procedures are created to save judges' time and energy. On the other hand, if a criminal case is qualified for being tried in a simpler procedure, such as the remaining three procedures, but the judge still chooses to stick with the regular procedure to handle it, the choice of procedures may tell us the importance of the case in judge's view.

2. Simplified Trial Procedure

Judges may adopt a simplified trial procedure to dispose cases only under two conditions: (1) defendant pleads guilty, and (2) charges with a potential sentence of less-than-three-years imprisonment.[61] With a simplified trial procedure applied, defendants will lose certain important legal protections.[62] Among the lost protections, the most important ones are cross-examination and hearsay rules, which are also invoke the procedures that require the most time and energy from judges. Thus, the incentive for judges to adopt simplified trial procedure is clear: saving of trial time and words used in

[61] TCCP Article 273-1, Section 1: "If the accused admits guilty on the fact charged, in the proceeding specified in section I of the preceding article, the presiding judge may inform him of the meaning of summary trial procedure and may, after considering the opinions of the party's, agent, defense attorney, and assistant, order that the case be proceeded under the provisions of summary trial procedure by a ruling, unless the accused has committed an offense punishable with death penalty, life imprisonment, or with a minimum punishment of imprisonment for not less than three years or that the court of appeal has jurisdiction of the first instance over the case."

[62] TCCP Article 273-2: "The investigation of evidence in summary trial proceeding shall not be subject to the restrictions as specified in section I of Article 159, Article 161-2, Article 161-3, Article 163-1, and Articles 164 through 170."

judgments. How much time and words could be saved from switching to simplified trial procedure? We will take a look later by comparing the time consumption and words used in different procedures chosen.

3. Summary Procedure

Minor cases could be handled in a simpler way than the regular procedure and the simplified trial procedure. If judges are handling a minor case, in which the defendant's offense and guilt are clear, and judges also would like to sentence the defendant leniently— only granting suspended sentence, a fine, or sentence to limited imprisonment which is legally allowed to commute to a fine, then judges can adopt a summary procedure, which is basically without trial.[63] In summary procedure, a trial session in court is not required. Rather, judges can close a case simply by writing a summary document to grant their decisions.

In addition, while a summary procedure can be triggered by a prosecutor's motion, judges are not constrained by the motion at all. That is, judges can decide to apply a summary procedure, or not, with or without the prosecutor's motion.

4. Bargaining Procedure

A bargaining procedure is the only procedure which can't be started at a judge's sole discretion. Rather, it depends on if the parties can agree and the prosecutor makes a motion to the court.

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[63] TCCP Article 449:
"(Section 1) If a defendant's confession in the investigation process or other existing evidence is sufficient for the court of first instance to determine a defendant's offense, a sentence may be pronounced through summary judgment without common trial procedure upon request by the prosecutor; provided that the defendant shall be questioned before sentencing if necessary.
(Section 2) Where a prosecutor prosecutes a case specified in the preceding paragraph with common procedure and a defendant has confessed to the offense, the court may pronounce a sentence through summary judgment without common trial procedure if appropriate."
(Section3) The sentence specified in the preceding 2 paragraphs is limited to the suspension of sentence, sentence of limited imprisonment and detention which commutation to a fine may be ordered, or a fine."
TCC Article 41, Section 1: "In an offense that carries a maximum principal punishment of not more than five years' imprisonment, if the offender is sentenced to imprisonment for not more than six months or short-term imprisonment, the punishment may be commuted to a fine at a daily rate of NTD one thousand, two thousand or three thousand. This provision does not apply to the cases in which the commutation of the pronounced punishment as imposed is manifestly of little corrective effect, or the legal order cannot be maintained."

When a defendant pleads guilty to a charge with a potential sentence of less-than-three-year imprisonment, and the defendant is willing to negotiate the range of sentence with prosecutors, the parties may start negotiation.[64] However, unlike plea bargaining in the U.S., the negotiation only involves ranges of sentence and has nothing to do with charges, which are never negotiable under Taiwan's criminal procedure. The agreement of sentence range, if made, must be limited to a suspended sentence, less-than-two-year imprisonment, or a fine.

After the agreement has been achieved, it has to be brought back to court for judges' review, which is another major difference comparing with American plea bargaining. In sum, Taiwan's prosecutors are never as dominant as American prosecutors in terms of negotiation process: negotiable ranges are limited, and judges are always the ones who make the final decision.[65] If judges consider the agreement between the parties inappropriate, judges can reject the agreement and start another procedure to dispose of the case. If the agreement is approved by judges, the defendant will be sentenced within the range according to their agreement.

D. Four Potential Procedures v. Four Classes of Homicides

What procedures above may be applied to Taiwan's homicide cases? The answer will depend on what kind of "homicide" is at issue. Here, we use four typical types of

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[64] TCCP Article 455-2:
" (Section 1) Except for those who have committed an offense which is punishable for sentence of capital punishment, life imprisonment, sentence more than three years, or is adjudicated by the court of appeal as the court of first instance, once a case has been prosecuted by a prosecutor or applied for a summary judgment, after consulting with the victim's opinion the prosecutor may, before the close of oral arguments in the court of first instance or before the summary judgment, act on his/her own discretion or upon requests by the defendant, his/her agent or attorney, **which has been approved by the court**, to negotiate the following items outside the trial procedure; once both parties involved reach an agreement and the defendant pleads guilty, the prosecutor may request the court to make judgment pursuant to the bargaining process.
1. The defendant accepts the scope of sentence or accepts the sentence to be placed under probation.
2. The defendant shall apologize to the victim.
3. The defendant shall pay a certain amount of compensation.
4. The defendant shall pay a certain amount to the government treasury, designated public interest organizations, or local autonomous organizations. (*emphasis added*)
(Section 2) The prosecutor shall obtain the victim's consent before negotiating with the defendant on items listed in Subparagraph 2 or 3 of the preceding paragraph.
(Section 3) The bargaining period mentioned in Paragraph 1 shall not exceed 30 days."

[65] However, as described in part Ⅱ, Taiwan' prosecutors have great power in ruling non-prosecution and deferred prosecution. In the two rulings, judges have little chance to intervene or change prosecutors' decisions. Once prosecutors rule a prosecution, judges become predominant and take over the process.

homicides: ***murder***, ***simple manslaughter***, ***occupational manslaughter***, and ***bodily harm resulting in death***, as examples to analyze what kinds of procedures in which each type of homicide may be dealt with.

According to Taiwan's Criminal Code, murder (or intentional killing) is subject to sentence of death, life imprisonment, or imprisonment for not less than ten years.[66] As a result, the only procedure qualified to try an offense of intentional killing is the regular procedure. That is, judges have no discretionary power to choose procedure while handling intentional killing cases.

As for manslaughter (or negligent killing), however, cases are various. For the simple manslaughter, meaning that a killing happens accidentally and relates to no intentional offenses, the maximum sentence is no-more-than-two-year imprisonment.[67] As the requirement of procedures described above, all four procedures may apply to the simple manslaughter. Then, what procedure, if any, prosecutors prefer to use would be interesting to find out.

Similarly, "*occupational manslaughter*" (or occupational negligent killing, TCC Article 276, Section 2, such as that doctors kill patients in medical malpractice, or taxi drivers kill passengers in fatal traffic accidents, etc.) is subject to no-more-than-five-year imprisonment,[68] so all the four procedures are applicable to this kind of manslaughter.

Another common type of manslaughter is "*bodily harm resulting in death*", meaning that death is accidentally resulted from the commission of intentional offenses that cause bodily harm.[69] This is considered as a more serious type of offense than simple and

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[66] TCC Article 271: "
(Section1) A person who takes the life of another shall be sentenced to death or life imprisonment or imprisonment for not less than ten years.
(Section 2) An attempt to commit an offense specified in the preceding paragraph is punishable.
(Section 3) A person who prepares to commit an offense specified in paragraph 1 shall be sentenced to imprisonment for not more than two years."

[67] TCC Article 276, Section 1: "A person who negligently causes the death of another shall be sentenced to imprisonment for not more than two years, short-term imprisonment, or a fine of not more than two thousand yuan."

[68] TCC Article 276, Section 2: "A person in the performance of his occupational duties or activities commits an offense specified in the preceding paragraph by neglecting the degree of care required by such occupation shall be sentenced to imprisonment for not more than five years or short-term imprisonment; in addition thereto, a fine of not more than three thousand yuan may be imposed."

[69] TCC Article 277 : "
Section 1: A person who causes injury to another shall be sentenced to imprisonment for not more than three years, short-term imprisonment, or a fine of not more than one thousand yuan.

occupational manslaughter, which are committed without any intention of offense. Thus, "bodily harm resulting in death" deserves a more severe punishment, which is life imprisonment or imprisonment for not less than seven years. In this case, the offense of "*bodily harm resulting in death*" only the regular procedure is applicable, even if the death was generated from negligence.

In sum, only simple manslaughter and occupational manslaughter can possibly be disposed of by any of the four procedures; whereas murder and bodily harm resulting in death can only be tried with the regular procedure. Since the four types of homicide cases are the most common killings not only in Taiwan but also in the sample cases we examined, in the following sections, we will use empirical data to take a closer look at how judges choose procedures for dispositions of simple and occupational manslaughter, and how time consumed and word used differ among the four procedures.

Section 2: **If death results from the commission of an offense specified in the preceding paragraph, the offender shall be sentenced to life imprisonment or imprisonment for not less than seven years**; if serious physical injury results, the offender shall be sentenced to imprisonment for not less than three years but not more than ten years." (emphasis added)

VI. Court Part Two: Empirical Facts, Analyses, and Findings

This chapter will provide fundamental facts and analyses of our court data in five different dimensions: offenders, deaths and cases, and sub-classes of negligent killings, punishment, and resources costs. In the last two dimensions, some of the most crucial empirical findings and discussions in this study will be addressed.

A. By Offenders

The volume of accused offenders has changed a lot as this study follows case sample throughout the criminal justice system. The initial police-sent 377 suspects, only 145 of them were sent to court by prosecution eventually. With additional 52 offenders prosecuted, there are 197 offenders in the case sample that court had tried. Among them, the court convicted 54 offenders of intentional killings, 90 offenders of negligent killings, and found 42 people innocent in terms of homicide (they may still be convicted of other offenses), one was convicted of aiding a suicide, and 10 have no public court records, as shown in **Figure VI.1**.

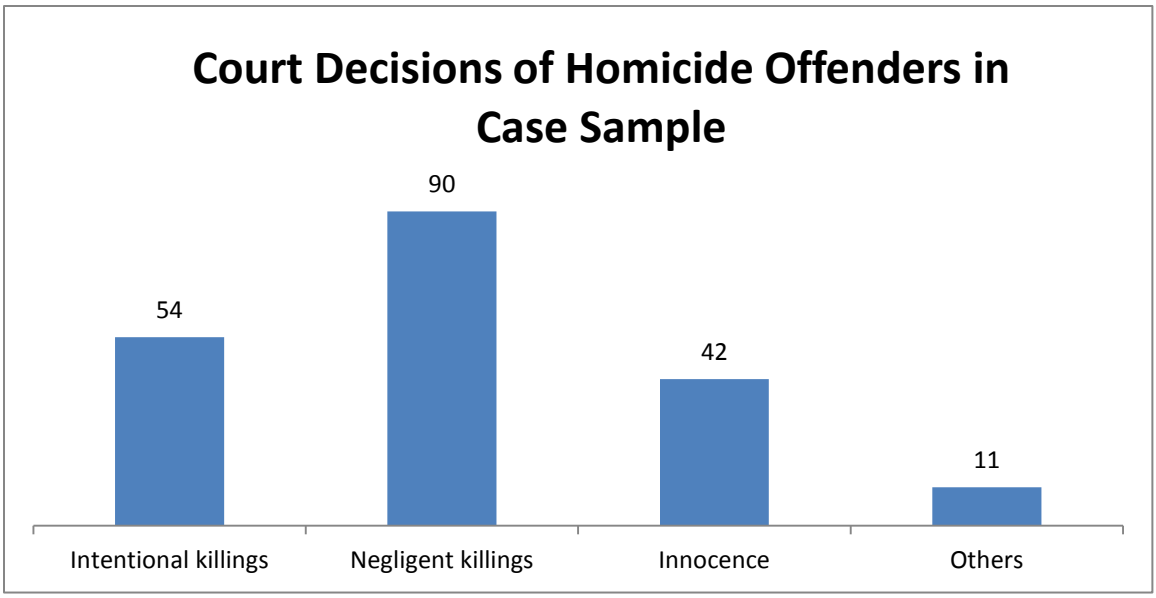

Figure VI.1 How Court Decided 197 Offenders Collected in Case Sample of This Study

If we probe into the largest group, the 90 offenders of negligent killings, we can find three classes of negligent killings: 49 offenders convicted of intentional attack causing accidental death, such as bodily harm resulting in death; only 8 offenders were convicted

of simple manslaughter; and 33 offenders were convicted of occupational manslaughter, such as a nanny accidentally killed the baby in her charge.

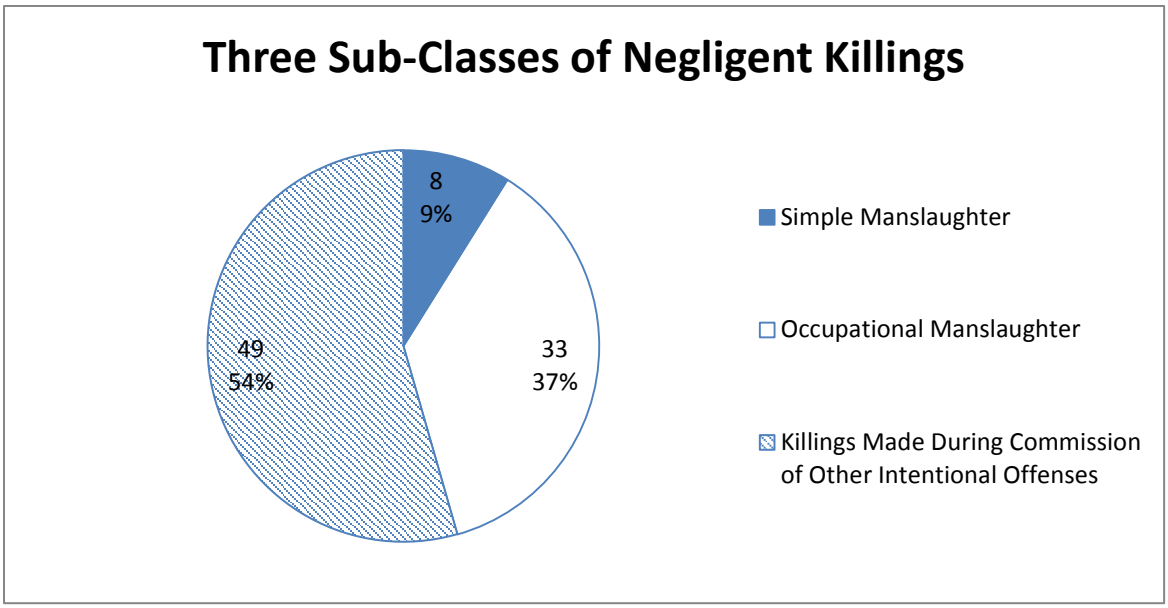

Figure VI.2 Three Sub-Classifications of the Total 90 Negligent Killings Considered by Court

B. By Cases and Deaths

The numbers of cases, deaths and defendants may not always match with each other, because one case can possibly carry multiple defendants and/or multiple victims. In the phase of court, our case sample includes 197 offenders, 115 cases, and 126 deaths. Most of these cases carried only one death, except for: the case No. 64 has 2 deaths made by murder, No. 116 has 3 deaths made by occupational manslaughter, No. 161 has 8 deaths made by occupational manslaughter, and No. 190 has 2 deaths made by simple manslaughter. Among the 126 deaths (covered by 115 cases), court considered 55 deaths (54 cases) caused by intentional killings, 58 deaths (48 cases) resulted from negligent killings, 4 deaths (4 cases) related to neither intentional nor negligent killings, 9 deaths (9 cases) without court records.[70] The numbers of cases and deaths are shown above.

[70] Among the 9 deaths (9 cases) , 8 of them have no court records available in judges' court cases retrieving system; the other one (the case supplement No.2) has court judgment, in which the court acquitted 2 of the 3 accused and seemed to consider only the last accused guilty. However, the last accused is a fugitive and has not been tried officially, so it is still unclear how the court will decide the case in the future when the fugitive is arrested and tried.

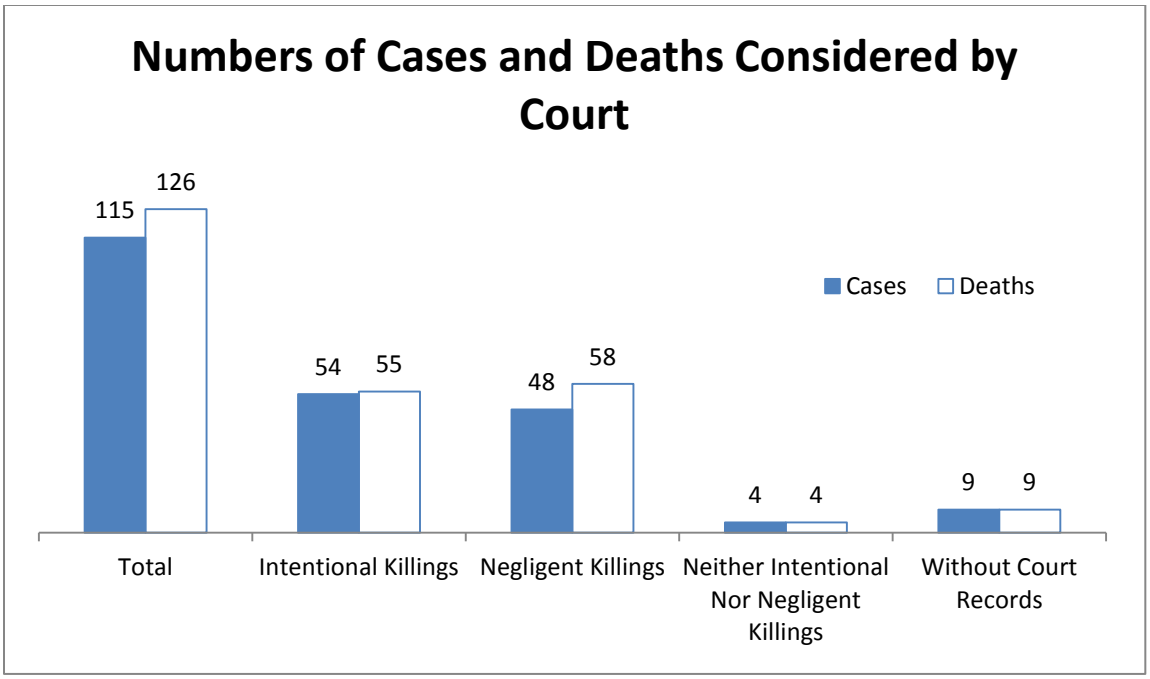

Figure VI.3 Total 115 Cases and 126 Deaths Considered by Court

C. By Three Sub-Classes of Negligent Killings

Comparing with other types of killings, negligent killings have the most offenders (90 out of 197 offenders, 46%) and cause the most deaths (58 out of 126, 46%). Among the 58 deaths caused by negligent killings, simple manslaughter has 8 deaths (7 cases), occupational manslaughter has 29 deaths (20 cases), and 21 deaths accidentally resulting from the commission of other intentional offenses (21 cases).

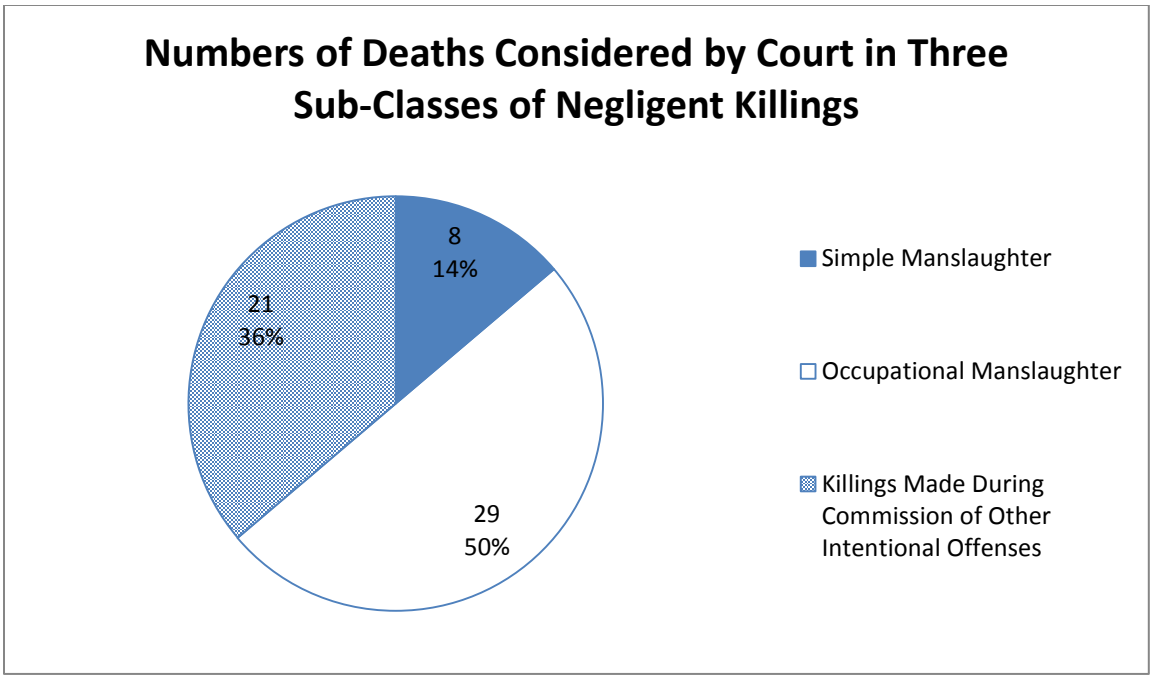

Figure VI.4 Numbers of Deaths Considered by Court in Three Sub-Classes of Negligent Killings

For detailed composition, most deaths of occupational manslaughter were caused by workplace safety accidents, which were responsible for 13 out of 29 deaths. In these accidents, 20 coworkers accidentally killed either their colleagues or outsiders while doing work. The second most apparent group of occupational manslaughter is killing of children by nannies. In each of the 4 cases, a nanny accidentally killed a child in her charge.

On the other hand, almost all the deaths unexpectedly caused during the commission of intentional offenses are classified as intentional offenses of bodily harm (19 out of 21 deaths, 47 out of 49 convicts). The only two exceptions are No. 94, in which the convict

intentionally committed arson and killed a person accidentally,[71] and No. 221, in which a girl died after being raped by the convict.[72]

D. By Punishment

As for punishment, convicts of intentional killings are subject to death penalty, life imprisonment, or more–than-ten-year imprisonment. Among all the 54 convicts of intentional killings in our sample, 2 convicts were sentenced to death, 22 to life imprisonment, and 30 to imprisonment (with 29 terms available.)[73] The average terms of the 29 convicts sentenced to imprisonment are 154 months (or 12 years and 10 months). **Figure VI.5** shows their percentages.

[71] TCC Article 173, Section1: "**A person who sets fire to and destroys an occupied dwelling house** or who sets fire to and destroys an occupied structure, mine, train, electric car, or a vehicle, vessel, or aircraft for public transport on water, on land, or in the air **shall be sentenced to life imprisonment or imprisonment for not less than seven years.**" (emphasis added) Note: While the provision seems to say nothing about killings, according to court's interpretation, the section already includes the punishment for unexpected harm or killing of people during the arson. So, manslaughter is a less included offense of arson in Taiwan's criminal law. That is, if people get killed accidentally by the commission of arson, court will not separately punish the arsonist for negligent killing but simply increase the sentence within the range specified by the section provided above. Thus, the punishment for killing in the case No. 94 turns out to be unavailable, because the court did not sentence the offender for manslaughter specifically.

[72] TCC Article 226, Section 1: "**If the commission of an offense specified in Article 221**, 222, 224, 224-1 or 225 **results in the death of the victim**, the offender shall be sentenced to **life imprisonment or imprisonment for not less than ten years**; if aggravated injury results, the offender shall be sentenced to imprisonment for not less than ten years." Article 221, Section 1: "A person who by threats, violence, intimidation, inducing hypnosis, or other means against the will of a male or female and who has sexual intercourse with such person shall be sentenced to imprisonment for not less than three years but not more than ten years." (emphasis added)

[73] In the judges' case retrieving system, the imprisonment term of the case No. 195 is gibberish. The number of years imposed displays as □ in the system, while we do know the convict was sentenced to imprisonment of a certain term. I am trying to find other sources to attain the information.

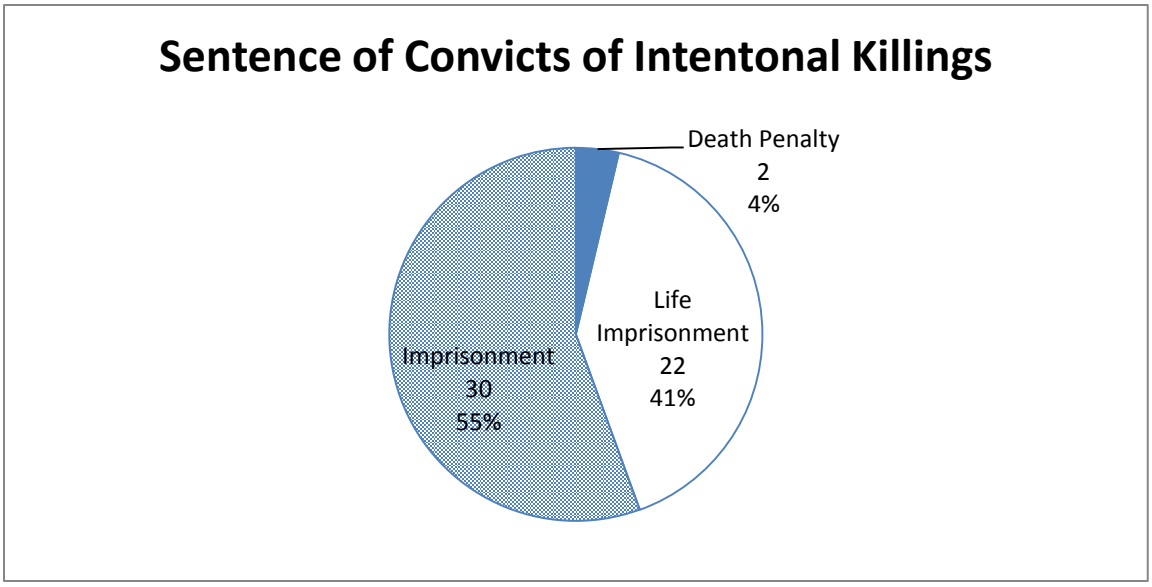

Figure VI.5 How 54 Convicts of Intentional Killings Were Sentenced by Court

For negligent killings, there are 90 offenders in total in our case sample. Except for one offender sentenced to life imprisonment,[74]all the other 89 offenders were sentenced to imprisonment of certain terms. The average of imprisonment terms are 53 months, i.e. 4 years and 5 months.[75] Again, the 53 months are the average of all three sub-classes of negligent killings, in which simple and occupational manslaughter has shorter terms, and deaths caused by intentional bodily harm have longer terms.[76] Separately, convicts of "**bodily harm resulting in death**" were imposed an average term of 92 months, i.e. 7 years and 8 months, whereas convicts of simple manslaughter and occupational manslaughter were both sentenced to 9 months.[77]

1. Empirical Finding: Accumulated Severity of Intentional Killings

[74] It is the case No. 221, in which the offender raped a girl to accidental death. The sentencing range for the commission is from 10-year imprisonment to life imprisonment. Detailed conditions of the offense can be found at footnote 72.
[75] This is the average of 86 offenders of negligent killings. The terms of cases No. 94, No. 153-9, and No. 194 are unavailable.
[76] All the accidental deaths caused during the commission of other intentional offenses and sentenced to imprisonment are caused by intentional bodily harm.
[77] Occupational manslaughter were sentenced slightly severe than simple manslaughter: 7 simple manslaughter convicts were sentenced to 60 months in total, so the average sentence term per convict is 8.57 months. On the other hand, 33 convicts of occupational manslaughter were imposed 287 months in total, so the average sentence term per convict is 8.70 months. The difference of sentence terms between the two is about 4 days.

It is usually hard to compare criminal penalty in a case with in another, because every case is unique and consists of various circumstances. In fact, even in the same case, to compare the punishment imposed on one offender with another is not easy either, because judges may consider not only offenders' commission (what they did) but also characters of each specific offender (who they are). Nonetheless, with the collection of empirical data above, we may still catch a glimpse of what judges actually considered a particular type of homicide case, while a judge himself as an individual may not be aware of how his mind worked.

We have introduced in Chapter V the criminal penalties stipulated for each homicide class in our sample, and now we can review them with the actual punishment imposed on different kinds of homicide in the case sample, as in **Table VI.1**.

Offenses	Stipulated Punishment	Actual Punishment Imposed (number of convicts)
Intentional Killings	Maximum: Death Penalty Minimum: 10-Year Imprisonment	Death Penalty(2); Life Imprisonment (22); 154-Month Imprisonment (29, average)
Bodily Harm Resulting in Death[78]	Maximum: Life Imprisonment Minimum: 7-Year Imprisonment	92 Months (46)
Simple Manslaughter	Maximum: 2-Year Imprisonment Minimum: A Fine	9-Month Imprisonment (7)
Occupational Manslaughter	Maximum: 5-Year Imprisonment Minimum: Imprisonment	9-Month Imprisonment (33)

Table VI.1 Stipulated and Actually Imposed Punishment of Four Classes of Homicides

The first thing we find out here (which may sound like a no-brainer, but it is not) is that intentional killings were sentenced more harshly than negligent killings. The finding seems no surprise at all: Intentional offense is always considered more serious than the same offense out of negligence. In fact, the punishment stipulated for intentional killings is already much more severe than any kind of negligent killings, and also much more than intentional attacks causing accidental death.

Nonetheless, what this study discovered here is something different and crucial: Within the given range of stipulated severe punishment for intentional killing, judges still tended to punish this homicide in an even harsher way. That is, while the law already provides severe potential penalty, court decisions pushed the actual punishment imposed more toward the end of harshness. In short, there was accumulated severity in the punishment for intentional killings, as revealed by the empirical data collected in this study.

[78] As described before, only two cases, No. 94 and No. 221, are intentional offenses carrying an accidental death result but not bodily harm resulting in deaths. No. 94 has no available record for manslaughter punishment because it is a lesser included offense of arson; No. 221 is rape resulting in death and sentenced to life imprisonment. See footnote 71 and 72.

The finding is directly addressed from the data shown in **Table VI.1**. First, the most serious sentences of death and life imprisonment amounted up to 45% of all the punishment for intentional killings. Second, as far as imprisonment is concerned, the average terms of 154 months are 28% higher than the stipulated minimum term of 120 months, i.e. 10 years as provided in the criminal code. On the other hand, while the offense of "bodily harm causing death" also covers a killing as well as an intentional offense, none convict of this manslaughter-type offense was ever sentenced to its maximum stipulated sentence: life imprisonment. As far as termed imprisonment is concerned, the average imprisonment terms imposed on convicts of bodily harm causing death were only 9% higher than the stipulated minimum term (92 months imposed to 84 months stipulated minimum). That is, the punishment of imprisonment for intentional killings is almost three times harsher than bodily harm causing death.

To be clear, the much harsher punishment for intentional killings may not be taken for granted simply because intentional commission is more culpable than negligent commission in nature. Apparently, legislators were already concerned about the different severity of different *mens rea* and correspondingly stipulated harsh and light punishment in the criminal code. However, while legislators already marked out a harsher sentence range for intentional killings and a lighter sentence range for bodily harm resulting in death, judges in deciding individual cases still tended to sentence the intentional killers more harshly and sentence the negligent killers leniently. In other words, the culpability of intentional killings was already affirmed by legislature in the criminal code for the first time and would be heightened by the judicature in individual sentencing decisions for the second time. Although judges may not make their even harsher punishment by intention, their more severe punishment still reflected the accumulated culpability of a single offense and may exceed the genuine culpability of the offense. [79]

2. Empirical Finding: Equal Punishment for Occupational and Simple Manslaughter

The second important finding in terms of punishment is that occupational manslaughter and simple manslaughter are punished equally in court practice. As **Table VI.1** indicates, convicts of (non-traffic) simple manslaughter and (non-traffic)

[79] If a judge **consciously** tends to impose a harsher punishment, in terms of the range of the stipulated sentences, on an offender, the decisions may violate the Proportionality Doctrine and the Cruel and Unusual Punishment Clause of the Eighth Amendment. See *Enmund v. Florida*, 458 U.S. 782 (1982), *Solem v. Helm*, 463 U.S. 277 (1983), and *Tison v. Arizona*, 481 U.S. 137 (1987).

occupational manslaughter were both sentenced to 9-month imprisonment on average. To be clear, occupational manslaughter was not punished more harshly than simple manslaughter, while the former could potentially be punished much severer.

This finding may surprise Taiwan's legislators and legal scholars, because there has been a long-term debate on the legitimacy of occupational manslaughter legislation. While the debate is still going on, this study shows that Taiwan's judges are asserting their opinions before the debate comes to an end. In this instance, we may argue that from judges' perspective, the culpability of occupational manslaughter is generally equal to that of simple manslaughter s.

3. Empirical Finding: Lenient Sentencing in Occupational Manslaughter

The third significant finding is also addressed from the punishment of occupational manslaughter. Comparing with 5-year imprisonment (the stipulated maximum punishment for occupational manslaughter), the average 9-month imprisonment terms actually imposed were obviously low. If the traffic cases, which are usually punished slightly, were added back, the lenient tendency of punishment for occupational manslaughter would be more apparent.

As **Figure VI.6** shows below, the vast majority of traffic manslaughter convicts, both occupational and simple, were sentenced to less than one year imprisonment from 2006 to 2014, the period when our sample cases had results in the district court. Thus, the majority of occupational manslaughter convicts would receive punishment of less than one fifth of the maximum 5-year term.

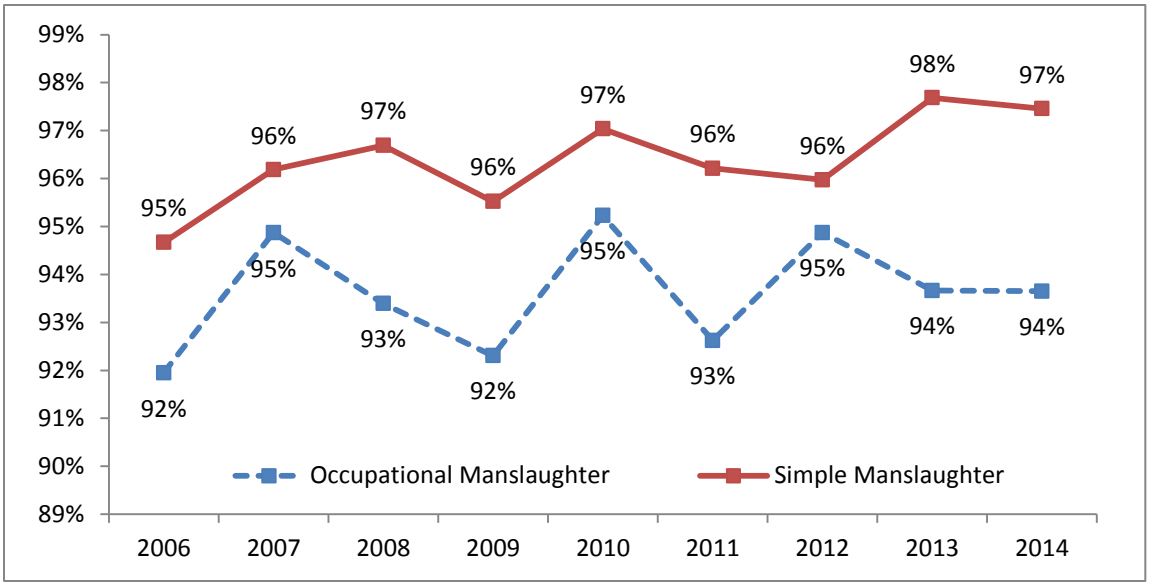

Figure VI.6 The Majority of Simple and Occupation Manslaughter Convicts Were Sentenced to Less-than-One-Year Imprisonment

Why did judges tend to punish occupational manslaughter so leniently? This study attempts to provide an answer by the second finding above: Judges generally did not consider culpability of occupational manslaughter much different from that of simple manslaughter, while the original legislators of occupational manslaughter affirmatively did. Thus, in both traffic and non-traffic manslaughter, judges seldom imposed the maximum sentence authorized by the legislator. Instead, judges always punished occupational manslaughter in the way closer to the lenient end.

To sum up, all the three findings together show us a crucial character of Taiwan's court: While obeying the doctrine of *nulla poena sine lege*, Taiwan's court has developed their own way to decide cases, and the judicial way has been vastly different from what the legislature intended in terms of punishment.

E. Time and Energy Consumption of Court

As analyzed in previous chapters, time consumption of a legal agency to close a case and amounts of words used in their final documents are both indicators for us to figure out how important the case may be in the view of the legal agency. Here, this study examined the time-consumption and numbers of words used in Taipei's court judgements

for a (non-traffic) homicide case, as **Figure VI.7** and **Figure VI.8** respectively show below.

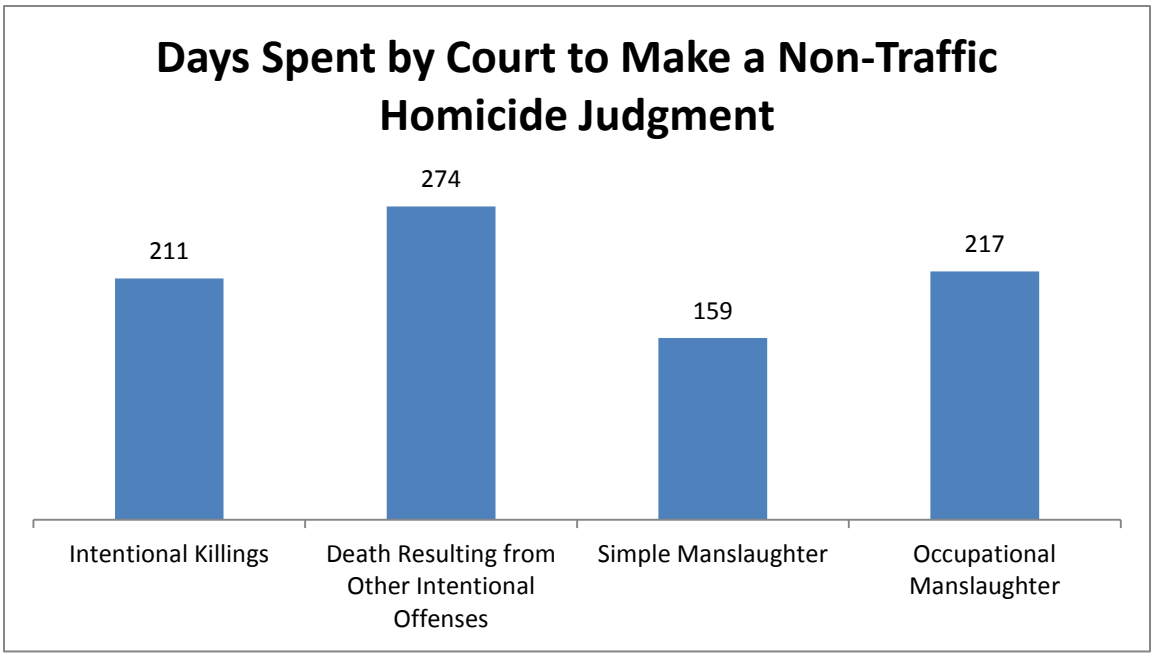

Figure VI.7 Average Time Consumption to Close A Case in Four Classes of Homicides

Note: Number of Judgments in Intentional Killings = 53; in Death Resulting from Other Intentional Offenses = 26; in Simple Manslaughter = 7; in Occupational Manslaughter = 21

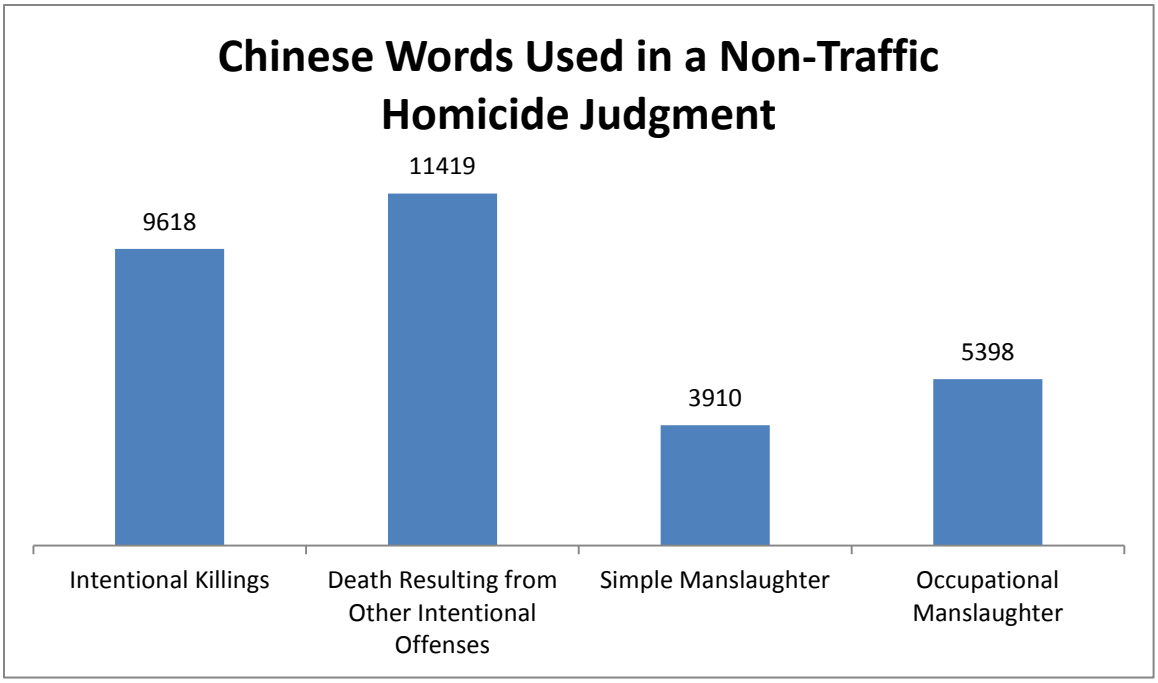

Figure VI.8 Average Numbers of Chinese Words Used in A Homicide Judgment

Note: Number of Judgments in Intentional Killings = 54; in Death Resulting from Other Intentional Offenses = 26; in Simple Manslaughter = 7; in Occupational Manslaughter = 21

The first thing to know is that a case involving single or multiple offenders and victims may have multiple judgments in practice, which makes our collection and calculation of data quite complicated. For example, in the case No. 75, police sent 7 people for one intentional killing death to prosecutors in the first place, and then prosecutors not only charged all the 7 offenders of intentional killing but also added 2 additional offenders accused of the same offense. In the phase of court, all 9 defendants were convicted of bodily harm resulting in death; however, for some reason, the court made 3 separate judgments on different dates to convict the 9 defendants. Thus, we have 3 individual judgments, with 3 different time consumption counts and words counts in respective judgment, for this single case and death. To sum up, the days counted and shown in **Figure VI.7** are the average time spent by court to "make a judgment" (that is, from the date of prosecution to the date of judgments made), not necessary for court to "finish a case".

Readers may surprisingly find that occupational manslaughter (217 days) took judges almost the same time to make a judgement as intentional killings (211 days) did. More interestingly, while it took so much time to close, a judgment of occupational manslaughter only has 5,398 words, which is much less than judgments of intentional killing (average 9,618 words). With 21 judgments in occupational manslaughter and 54 judgments in intentional killing,[80] the sizes of our case sample are quite decent, and we may temporarily exclude the possibility that the inconsistency between time consumption and words used is simply caused by certain particularly deviated sample cases.

1. Empirical Finding: Why Did Judges Wait So Long for Making Simple Decisions?

Why then occupational manslaughter takes so much time for court to make a decision but the decision made seems relatively simple (so the words used in judgments are less)? Although it seems no statistics so far can provide an exact answer, a possible

[80] There are 54 judgments available for counting words used, but only 53 of them are with available time consumption due to the lack of prosecution date.

explanation is, as it is, judges were making relatively simple decisions, but they had to wait for a period of time before making the decisions. Then what did judges wait for? Here, this study provides two possibilities: waiting for expert opinions made by expert witnesses, or waiting for civil settlement achieved between offenders and victims (usually the family members of the deceased), or both in some cases.

The most important issue in a manslaughter or negligent killing case is usually whether defendants are "negligent". To decide the negligence, judges may need assistance from other experts such as doctors (in medical malpractice cases), architects or engineers (in construction safety cases), etc. The expert assistance is particularly necessary in occupational manslaughter cases, because these cases may relate to a certain expertise that judges do not understand. That is also why these cases are considered as occupational manslaughter instead of simple manslaughter.

This possibility also helps explain why simple manslaughter cases took less time (159 days to make a judgment) and used less words (3910 words in a judgments) than occupational manslaughter: The negligence of simple manslaughter is the negligence which may occur in our daily life, so expert opinions are possibly less necessary for judges to decide the existence of negligence in simple manslaughter.

The other possibility for judges to wait before making decisions for manslaughter cases is to await the civil settlement achieved by offenders and victims. In this case, simple manslaughter may take more or less time than occupational manslaughter. A further question is why criminal court judges need to wait for a civil settlement? The answer is for granting lenient punishment or even suspended sentence, as provided in the criminal code.[81]

In our sample, 20 out of 43 manslaughter offenders (including simple and occupational) were granted suspended of punishment and all of them, according to the records in their judgments, achieved civil settlement with the victims. In the 20

[81] TCC Article 74, Section 2:
"The pronouncement of probation may consider the circumstances to order the offender to do the following things:
1. Making an apology to the victim
2. Writing a statement of repentance
3. **Paying an appropriate amount to the victim as compensation for his property or non-property losses**…"

judgments, court displayed appreciation of the offenders' efforts to achieve settlement and so that granted lenient punishment. A noteworthy case is No. 161, in which 8 people died in a fire accident breaking out in a hotel. The accused, the hostess of the hotel, still received the suspended sentence after she settled with all the victims. On the other hand, the settlement after the commission of intentional offense is also appreciated by court. Considering the criminal code provisions, while it is difficult to be granted suspended sentence in intentional offense related to death, achieving settlement with victims would still help in receiving more lenient penalty.[82] The only convict involved in an intentional offense related to killing and still received suspended sentence is the No. 174, in which the convict served as an aider of his wife's suicide, but the decision of suspended sentence were from other consideration rather than civil settlement.

To sum up, the paradox of occupational manslaughter (relatively simple decisions to make but stay with judges longer) may be solved by the assumptions that judges were waiting for expert opinions and/or civil settlement to be achieved. The evidences supporting the assumption include: (1) both occupational and simple manslaughter had fewer words used in their judgments, which shows they were relatively simple type of cases for judges; (2) simple manslaughter cases in which expert opinions were usually unnecessary took apparently lesser time than occupational manslaughter which definitely need expertise more often to decide negligence.

In addition to the two evidences discussed above, the assumption also goes well with the fact that judgments on "death caused by other intentional offenses" took the most time and words. First of all, it is the type of offense made by intention, which makes it a more serious type of offense for both legislators and judges. So the criminal code provides much harsher sentence range, and judges take it seriously for the evil intention.

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[82] TCC Article 74, Section1:
"**A punishment of imprisonment for not more than two years, short-term imprisonment, or a fine may be suspended** for not less than two years but not more than five years from the day the decision becomes final if either of the following circumstances exists and probation is considered appropriate:
1. There has been no previously sentence to an imprisonment or a more severe punishment pronounced for an intentional offense.
2. There has been no sentence to a imprisonment or a more severe punishment for an intentional offense pronounced within five years after completing execution or remission of a previous sentence to imprisonment or a more severe punishment for an intentional offense."
(*emphasis added*)
For any intentional offense related to death, such as intentional killing or bodily harm resulting in death, the stipulated punishment is too high for convicts to be qualified the conditions as provided above. Detailed comparison of stipulated punishment of homicides, *see* **Table VI.1**.

Second, it also covers the negligent killing, which may need expert opinions and/or civil settlement achieved before judges make their decision. That is, the hybrid character of intentional offense and negligent killing makes the type of offense turn out to be the most time-consuming and words-used case types among all the homicides.

2. Empirical Finding: How Adjudicative Procedures May Affect Time-Consumption

Another crucial influential factor of time consumption and words used is procedure applied to try cases. Considering the stipulated sentence range, intentional killings and intentional attack causing accidental death are generally subject to regular procedure, which is usually most time-consuming and may make lengthy judgments, as shown in **Figure VI.9** and **Figure VI.10**.

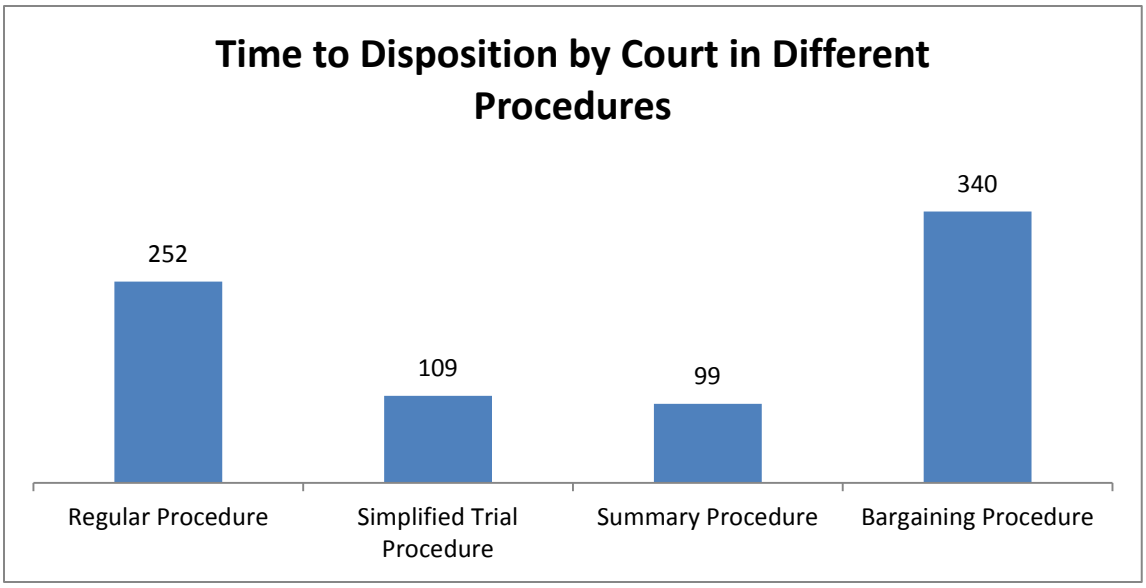

Figure VI.9 Average Time to Disposition by Court in Different Procedures

Note: Number of Judgments Applying Regular Procedure = 94; Applying Simplified Trial Procedure = 7; Applying Summary Procedure = 9; Applying Bargaining Procedure = 2

Unit: Days

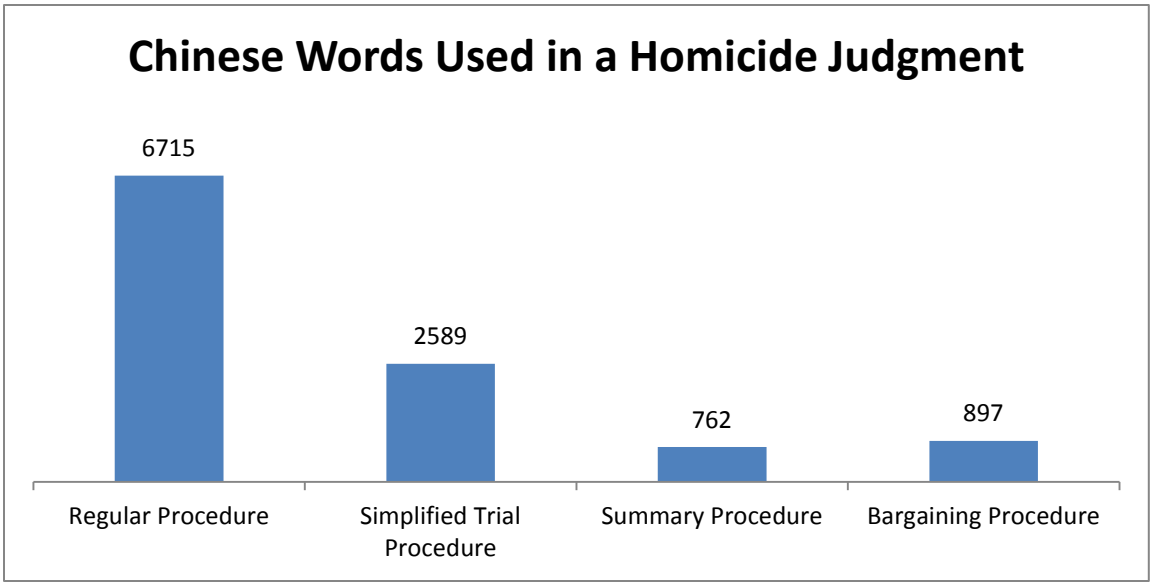

Figure VI.10 Average Numbers of Words Used in Judgments in Different Procedures

Note: Number of Judgments Applying Regular Procedure = 95; Applying Simplified Trial Procedure = 7; Applying Summary Procedure = 9; Applying Bargaining Procedure = 2

Interestingly, in our sample cases, the most time-consuming class of homicide is bargaining procedure (340 days) instead of regular procedure (251 days). However, it is probably because of the limited numbers of our sample cases. Among all the judgments we collected, only two judgments were applied bargaining procedure: No. 10 involved one death and 3 convicts of occupational manslaughter (workplace safety), and court only spent 46 days and 319 words in its judgment. On the other hand, the case No.7 involved one death and 4 convicts of occupational manslaughter (a fire breaking out in a gym, the boss and staff of which were accused), and court spent 634 days and 1,474 words in its judgment. Thus, the gap of time consumption and words used between the two cases are huge, and the simple average is not representative.

To avoid the deviation of limited sample cases, I show both mean (average) and median in **Figure VI.11** and **Figure VI.12** to manifest the time consumption and words used in different procedure. Note that we do not mean to examine if the distribution of values is normal but simply attempted to find out which procedure may generally take court more time and energy to deal with cases than another. As shown in **Figure VI.11** and **Figure VI.12**, regular procedure takes both much longer time and vastly more words in judgments than the other two classes. In addition, we also find while the time consumption of simplified trial procedure and summary procedure are similar, judges

who applied simplified trial procedure had to write 3 times more words than judges who applied summary procedure.

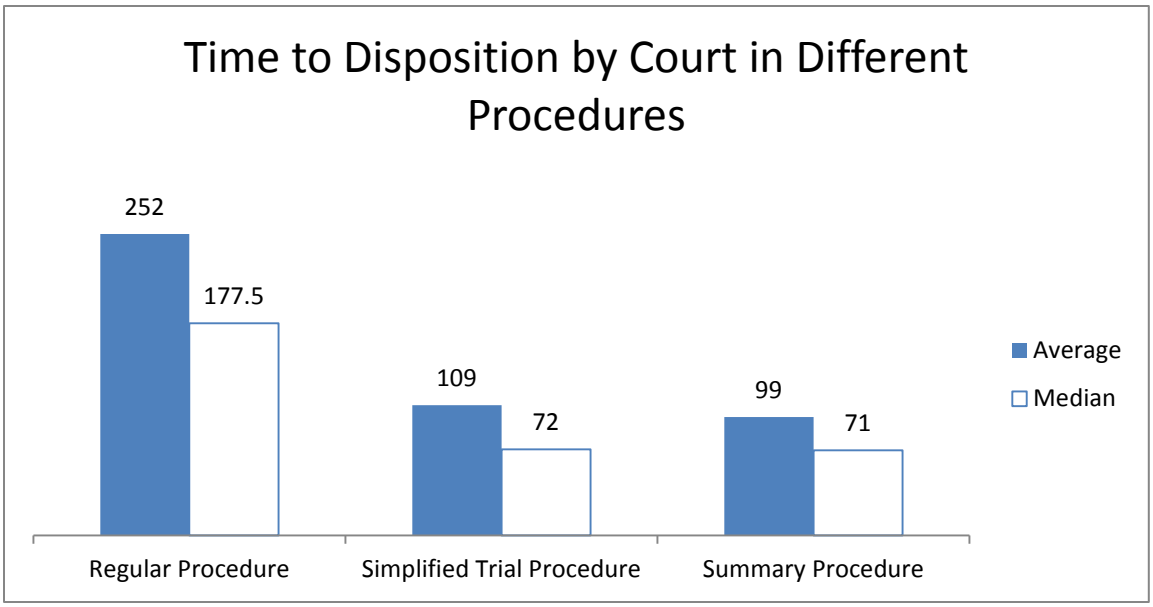

Figure VI.11 Averages and Medians of Time to Disposition by Court in Different Procedures

Unit: Days

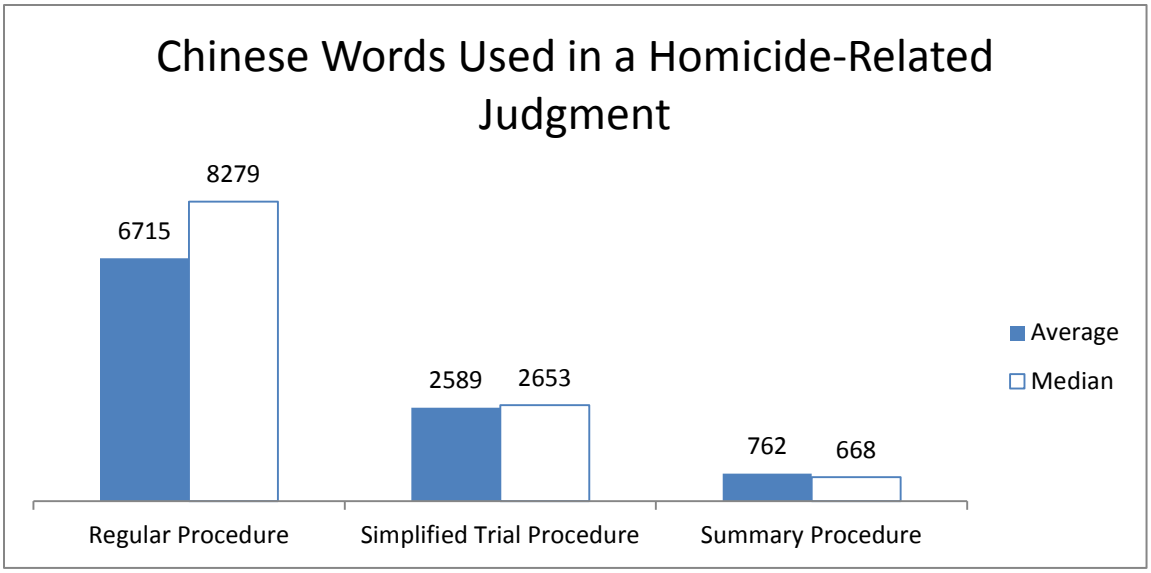

Figure VI.12 Averages and Medians of Numbers of Words Used in Judgments in Different Procedures

VII. Court Part Three: Agreement and Disagreement between Prosecutorial and Judicial Decisions

After introducing the general function of Taiwan's criminal court in chapter V and the court decisions data and analyses in Chapter VI, now this study further looks into another crucial issue: the comparison between court decisions and prosecutorial charges. Some essential empirical issues and findings can be addressed from the comparison, including:

(a) the degree of agreement or disagreement between prosecutorial charges and judicial convictions in determining homicide types;
(b) the impact of prosecutorial charges and judicial convictions in determining punishment for homicide;
(c) the effect of the minimum and maximum penalties stipulated for homicide on the distribution of punishments;
(d) the distribution of sentencing as a problem of distributive justice; and
(e) the characteristics of homicide cases where defendants were sentenced to death

Please note that all these issues grow out of the comparison between prosecutorial and judicial discretion in determining homicide types and punishment, and the comparison would only be possibly made by the longitudinal study which follows these homicide cases throughout the criminal justice system. Taiwan's prosecutorial and judicial authorities can only officially provide statistics by categories of charges and convictions in a general way, which lacks the narrative description and empirical texture of prosecutorial and judicial decisions for cases from beginning to end. For example, if the official statistics record that the prosecutor charged 300 defendants with intentional killing in 2006 and the court convicted 150 defendants of intentional killing in the same year, the numbers only provide us information as they are on the surface: 300 people were charged, and 150 were convicted. Note that the numbers do not mean 150 defendants **out of** the 300 charged were convicted, because some charges made in 2006 may be handled by court in 2007 and some convictions in 2006 may be from the charges made in 2003. That is to say, pure aggregate statistics are incapable of telling us the

empirical texture about charges and convictions in individual cases, such as their substances,[83] their tendencies[84], and the internal link, if any, between them.[85]

Instead, this study is able to provide answers to the empirical issues above by the longitudinal analysis of our homicide case sample. In the following sections, this study will begin from exploring the relationship between charges and convictions. That is, in which types of killings would the judge tend to agree or disagree with the prosecutorial charges? We will begin from four individual classes of killings (intentional killing, intentional attack resulting in unplanned death, occupational negligent killing, and simple negligent killing) and then use two complexes of them (by "seriousness" and "intentions of killings" respectively) to compare the charges and convictions. Next, punishment will be added into the discussion of correlation between charges and convictions. This study will discover how the three variables— charge, conviction, and punishment— interact with each other, oftentimes in a quite counterintuitive way, and discuss what these empirical findings tell us about Taiwan's criminal justice system.

A. Four Classes of Homicide Charges and Court Decisions

The criminal justice system at issue functions like a barrel rather than a filter. This study starts from the police homicide cases which included 377 suspects, to the prosecutor phase which dealt with 427 defendants, and to the court which only decided cases involving 192 defendants. From the defendant numbers, we find the prosecutorial discretion plays both roles of "collector" and "filter" simultaneously. On one hand, the prosecutor involves more defendants whom were not discovered by the police. On the other hand, the prosecutor exerts his discretionary power of deferred- or non-prosecution rulings so as to prevent more than 55% defendants from going into the court. As discribed previously, prosecutors have great discretionary power when making their rulings, and other legal actors have little chance to interfere. Nevertheless, once the prosecutor rules a prosecution, the court will instantly take over the power of decision.

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[83] For instance, why defendant A in the case X was charged or convicted and defendant B in the same case was not? Why defendant C was charged with and convicted of intentional killing but defendant D in the same case was charged with the same but convicted of another crime?

[84] For instance, why in certain kinds of killings the court more tended to agree with the prosecutor? Why the court tended to punish some classes of killings in a harsher way?

[85] For example, how many cases were convicted of the same offense as being charged? How many were convicted differently? Why and when the court imposed different levels punishment on the same convictions with different charges?

Despite its dominant authority, Taipei's court agreed with the prosecutors in their decisions to a substantial degree. Among the 192 defendants tried and decided by the court, about 60% were convicted of the same offenses as prosecutorial charges. On the other hand, among the 40% of defendants where the court disagreed with the prosecutor's charges, 22% were acquitted, 18% were convicted of a reduced charge, and only 1% (actually one case/defendant) was convicted of more of the initial charge. Generally speaking, the court still agreed with the prosecutor more than disagreed, and their disagreement in all but one case/defendant resulted from the court's more lenient decisions, either acquittal or conviction of reduced charges. Figure VII.1 below shows the general comparison between prosecutorial charges and court decisions.

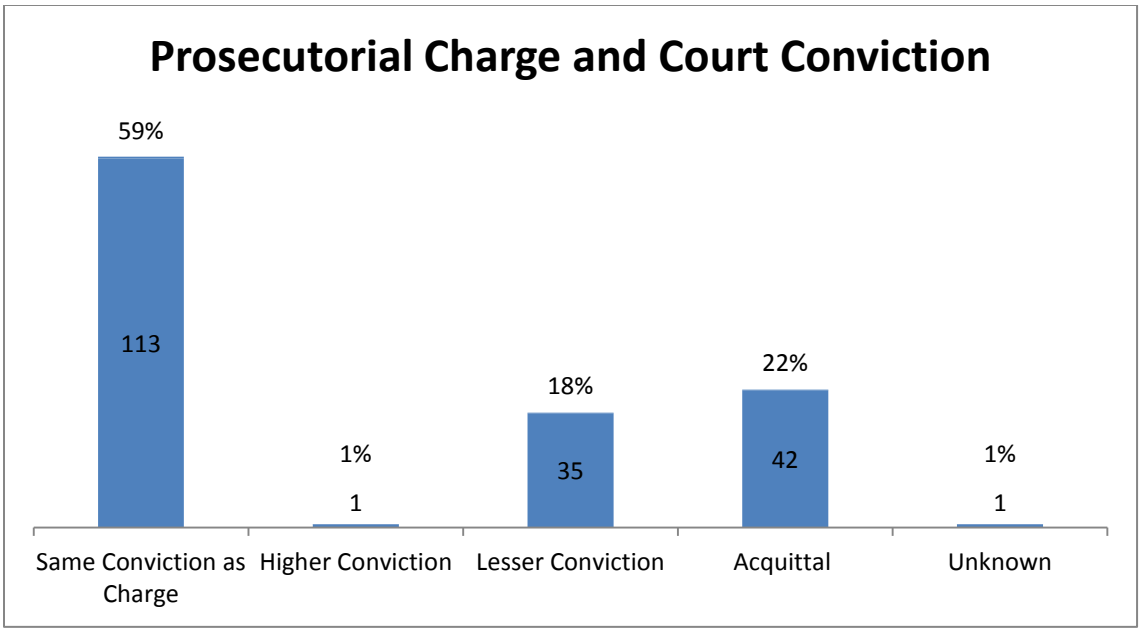

Figure VII.1 Court Agreed or Disagreed Prosecutorial Decisions of Offenses Charged

Note: Counts of Defendants Prosecuted by Prosecutor and Tried by Court and Their Percentages

Then, what determinant, if any, may shape the court's tendency to agree or disagree with the prosecutorial charges? We may explore it by separately considering four major classes of homicide charged by the prosecutor in our sample: intentional killing, intentional attack resulting in accidental death, occupational negligent killing, and simple negligent killing.

1. Class 1: Defendants Charged with Intentional Killing

The court disagreed with the prosecutor to a relatively high degree on charges of intentional killing. Among the 113 defendants charged by the prosecutor with intentional killing, less than half (56 defendants) were also convicted of intentional killing by the court. Among the other half (57 defendants) where the court disagreed with the prosecutorial charge, the court found 33 of them guilty of a reduced charge and announced acquittal of 24 defendants. Further, the 33 defendants found guilty of a reduced charge were all convicted of intentional attack resulting in accidental death. (Note that none of the defendants charged with intentional killing were convicted of simple or occupational negligent killing.) As for the intentional attacks with judicial reductions, 31 were assaultive, 1 was rape, and 1 was arson. **Figure VII.2** shows the percentages by different court decisions of defendants charged with intentional killing.

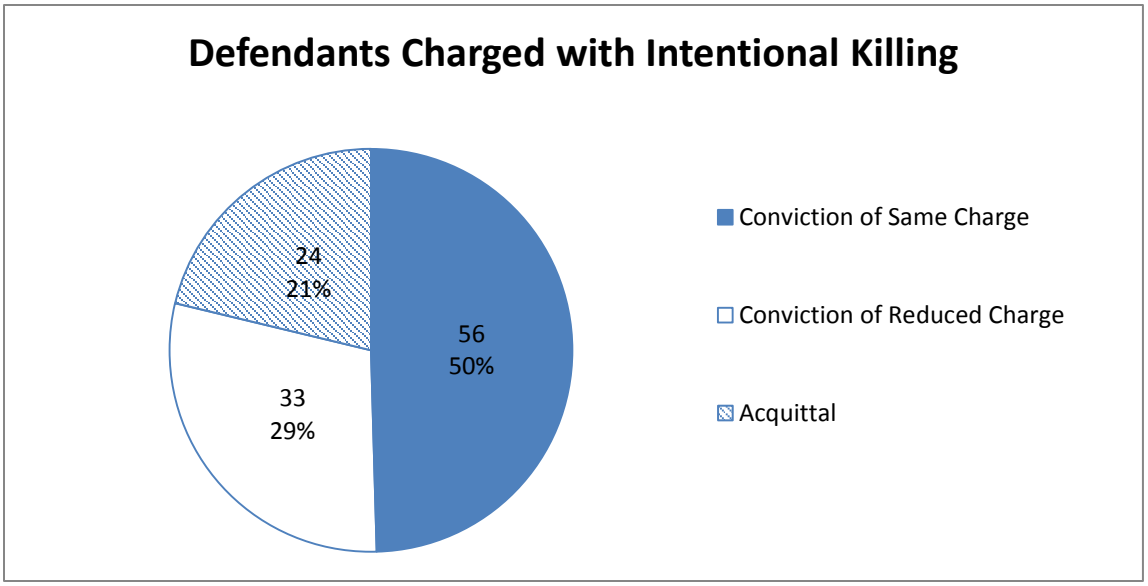

Figure VII.2 Court Agreed or Disagreed with Prosecutorial Decisions of Intentional Killing Charge

Note: Counts of Defendants Prosecuted by Prosecutor and Tried by Court and Their Percentages

2. Class 2: Defendants Charged with Intentional Attack Resulting in Accidental Death

If the initial charge by the prosecutor was intentional attack resulting in accidental death, the conviction rate for the top charge is apparently higher. Among the 28 defendants charged (27 with bodily harm resulting in death, 1 with gas leak resulting in death), the court found 18 defendants guilty of the same charge, 8 defendants were acquitted (including the defendant charged with gas leak resulting in death), and only 2

defendants were found guilty of a reduce charge, both of which were convicted of simple negligent killing. **Figure VII.3** below shows the percentages by court decisions.

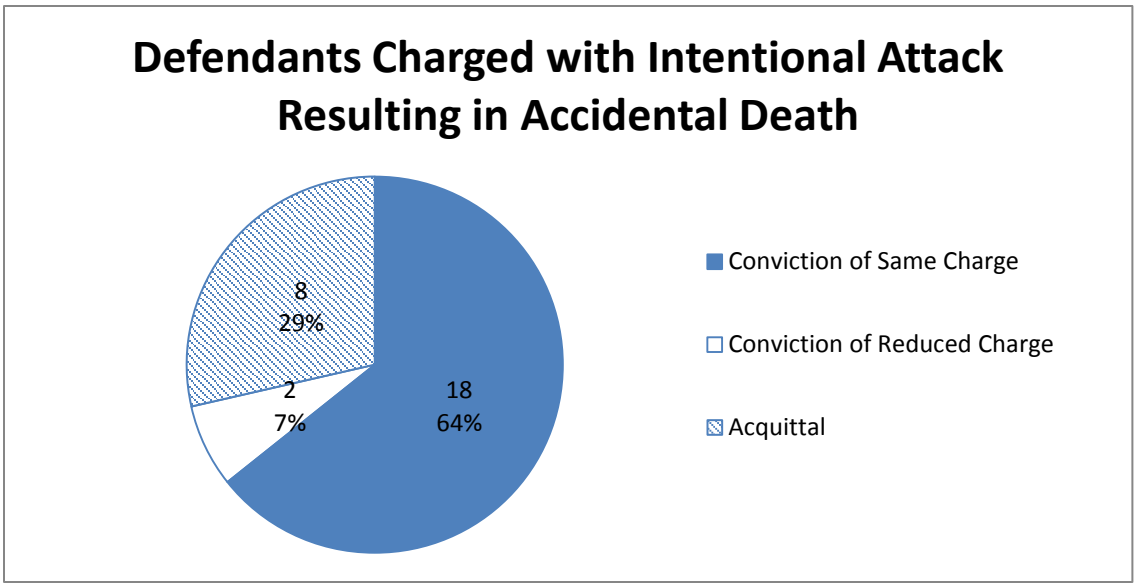

Figure VII.3 Court Decisions for Prosecutorial Charges of Intentional Attack Resulting in Accidental Death Charge

Note: Counts of Defendants Prosecuted by Prosecutor and Tried by Court and Their Percentages

3. Class 3: Defendants Charged with Occupational Negligent Killing

The rate of agreement between prosecutorial and judicial discretion is the highest in occupational negligent killing charges. Among 38 defendants charged, 32 of them were convicted of the same offense of occupational negligent killing, and the other 6 defendants were acquitted.[86] It is noteworthy that no defendants charged with occupational negligent killing were convicted of a reduced charge, i.e. simple negligent killing, while the court was allowed to do so. **Figure VII.4** below indicates the percentages of conviction and acquittal.

[86] A special case in which one defendant was charged with occupational negligent killing was not counted here. In the case No. 210, the defendant who was a military doctor working in a military hospital was charged by the military prosecutor as occupational negligent killing for his medical malpractice. However, since military prosecution and trial are both different from normal prosecution and trail, and the court decision of the case is unavailable, the defendant was not counted in the class here.

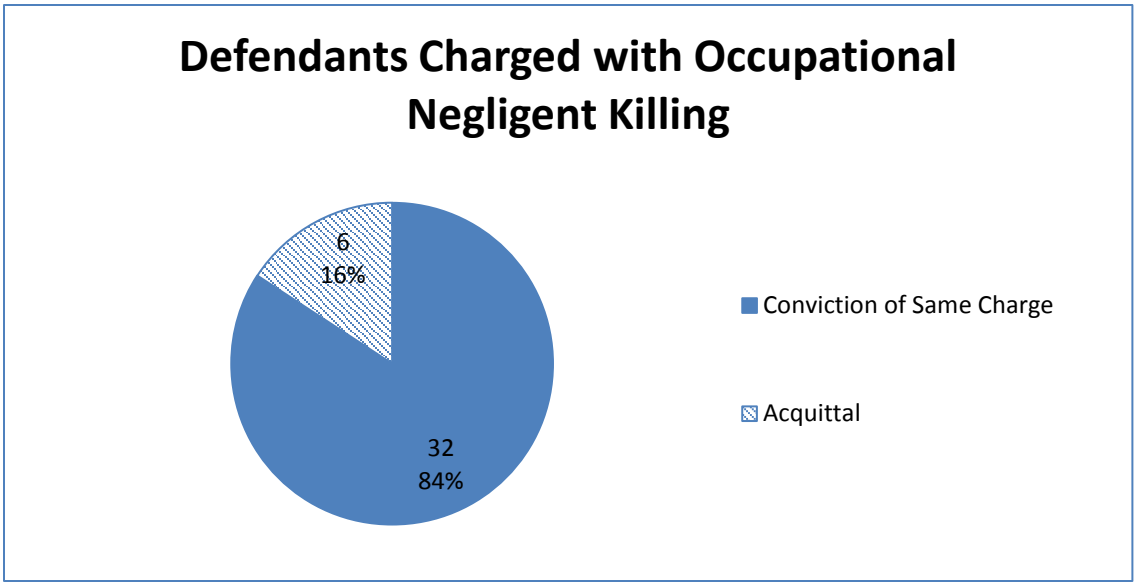

Figure VII.4 Court Agreed or Disagreed Prosecutorial Decisions of Occupational Negligent Killing Charge

Note: Counts of Defendants Prosecuted by Prosecutor and Tried by Court and Their Percentages

4. Class 4: Defendants Charged with Simple Negligent Killing

Simple negligent killing is the only class of homicide which carries an aggravated conviction. As shown in the figure below, all but three of those charged were convicted of simple negligent killing. Among the three, two defendants were acquitted by the court, and one was convicted of aggravated offense of occupational negligent killing. The aggravated conviction of the latter is meaningful: it shows the court did have the discretionary power to decide the negligence occupational or simple, but the court, in no cases in our sample, exerted the power to change the prosecutorial charges of occupational negligent killing to the conviction of simple one.

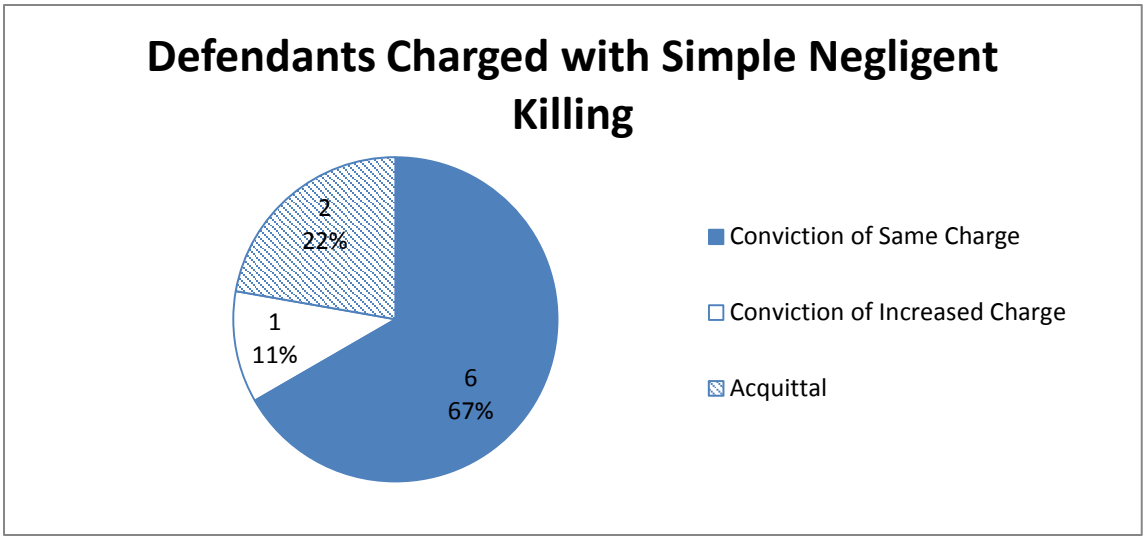

Figure VII.5 Court Agreed or Disagreed Prosecutorial Decisions of Simple Negligent Killing Charge

Note: Counts of Defendants Prosecuted by Prosecutor and Tried by Court and Their Percentages

B. Comparison between Homicides of Different Seriousness

The four classes of homicides above can be classified by their seriousness and intentions (of killing) and show us more information. Although all homicide cases are considered serious in nature because of the loss of human lives, some classes of killing are considered as more serious offenses than others from the perspectives of legislative intent, which sets distinct punishment and criminal procedure for different classes of killings. From this point of view, intentional killing and intentional attack resulting in accidental death are regarded as more serious homicides, and simple negligent killing and occupational negligent killing are close to each other as less serious ones.

As to punishment, the two more serious homicides both carry a mandatory minimum sanction: intentional killing is subject to a minimum of 10-year prison term (and may up to life imprisonment or death penalty) and intentional attack causing accidental death is subject to a minimum of 7-year imprisonment (and may also up to life imprisonment).[87]

[87] Note that while TCC distinguishes punishment for intentional offenses causing "injury" from punishment for intentional offenses causing "serious injury", their stipulated punishment ends up the same (seven-year imprisonment or more, or life) once the (serious) injury accidentally causes death. In our sample, however, no cases involve intentional offense causing "serious injury".
See TCC Article 277: "(Section 1) A person who **causes injury** to another shall be sentenced to imprisonment for not more than three years, short-term imprisonment, or a fine of not more than one thousand yuan. (Section 2) If death results from the commission of an offense specified in the preceding

Instead, the two types of less serious homicides are both subject to a maximum sanction: 2-year imprisonment as a maximum for simple negligent killing (may also result in a fine with no custodial sentence), and 5-year term for occupational manslaughter as a maximum (may also result in a prison term of one day).[88]

As for court procedures, the two more serious homicides can only be tried with the regular procedure, whereas the other two classes of homicide in the latter group are possible to be handled by any of the four potential procedures introduced in Section 1 of this chapter. Due to the similarity in potential punishment and applicable court procedures, we may see the first two classes of homicides as relatively more serious types of killings and the last two are relatively less serious types in the eyes of legislators. **Figure VII.6** and **Figure VII.7** below compare the prosecutorial charges with court convictions of the two groups of killings with different seriousness.

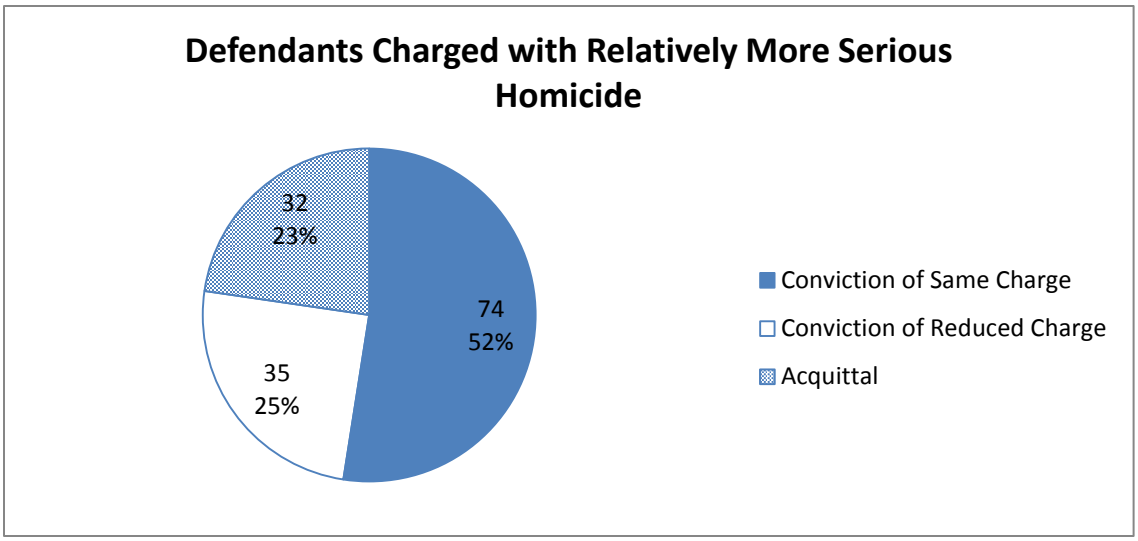

Figure VII.6 Court Agreed or Disagreed Prosecutorial Charges of Intentional Killing and Intentional Attack Resulting in Accidental Death

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paragraph, the offender shall be sentenced to life imprisonment or imprisonment for not less than seven years…."

TCC Article 278: "(Section 1) A person who **causes serious physical injury** to another shall be sentenced to imprisonment for not less than five years but not more than twelve years. (Section 2) If death results from the commission of an offense specified in the preceding paragraph, the offender shall be sentenced to life imprisonment or imprisonment for not less than seven years."

[88] Although we may also consider that simple negligent killing carries a minimum sentence of a fine ("of not more than two thousand yuan", or about $60-65 USD), and occupational negligent killing carries a minimum sentence of imprisonment, the both minimum sentences are apparently too minor to become major concerns of judges in conviction decisions.

Note: Counts of Defendants Prosecuted by Prosecutor and Tried by Court and Their Percentages

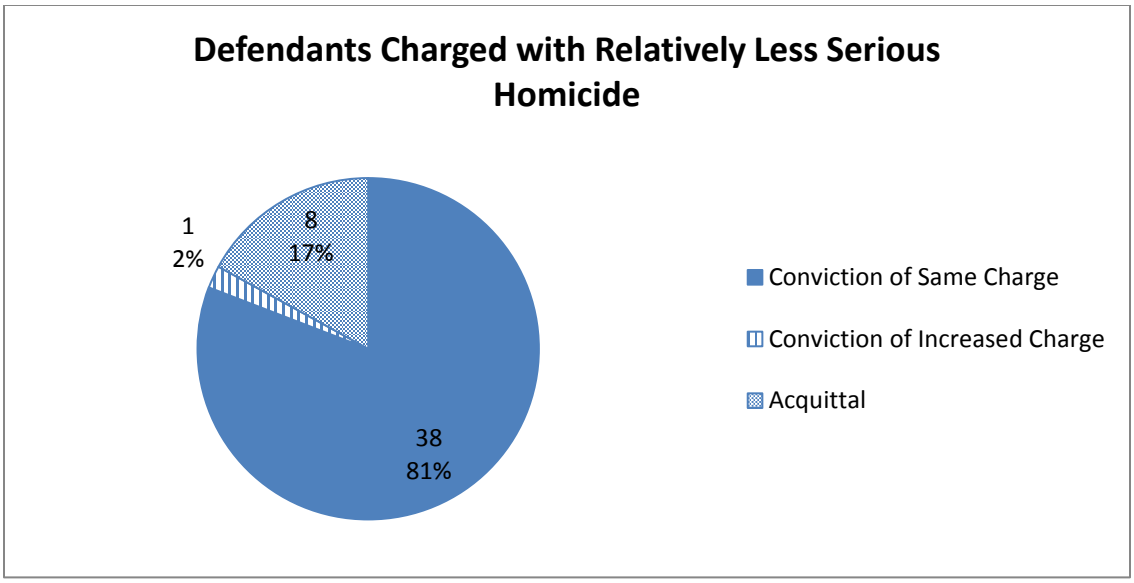


Figure VII.7 Court Agreed or Disagreed Prosecutorial Charges of Occupational Negligent Killing and Simple Negligent Killing

Note: Counts of Defendants Prosecuted by Prosecutor and Tried by Court and Their Percentages

Many intriguing empirical issues can be addressed from the comparison. First of all, it is noted that the rate of the same conviction is apparently lower in the group of more serious homicides. Only slightly more than half the defendants in the group received the same prosecutorial charges and court convictions. However, the less serious homicide group, in which defendants were charged with either simple or occupational negligent killings, has a high same conviction rate of more than 80%.

The second thing noted in the comparison is that the conviction of a reduced charge is apparently higher in the more serious group of killings. 25% of the defendants in the more serious group were convicted of a reduced charge. On the other hand, while it is legally possible to do so, none of the defendants charged with less serious homicides was convicted of a reduced charge (i.e. from charge of occupational to conviction of simple negligent killing). Instead, the court even convicted one defendant of an ***increased*** charge from simple negligent killing to occupational negligent killing.

The third empirical finding from the comparison is the general low acquittal rates of homicide defendants: The group of more serious charges has a relatively higher acquittal rate of 23%, and the group of less serious charges has an even lower rate of 17%

C. Comparison between Homicides Made with and without Intention to Kill

Other than their seriousness, another critical character of the four types of killings is the intention of the person who causes the death. As the names clearly show, “intentional killing” were acts where the defendant intended to kill, whereas the deaths in “simple negligent killing” and “occupational negligent killing” were made negligently and without intention to kill. The only class of killing where intent gets complicated is “intentional attack resulting in accidental death”. Since the deaths occurring in the offense are “accidental”, they were also unintentional deaths. But here, unlike the two lesser grades of killing, the offender intended to harm the victim. Thus, by with or without the intention to kill, we may assemble the intentional attack resulting in accidental death with simple and occupational negligent killings, and consider intentional killing alone. The comparison is displayed in **Figure VII.8**.

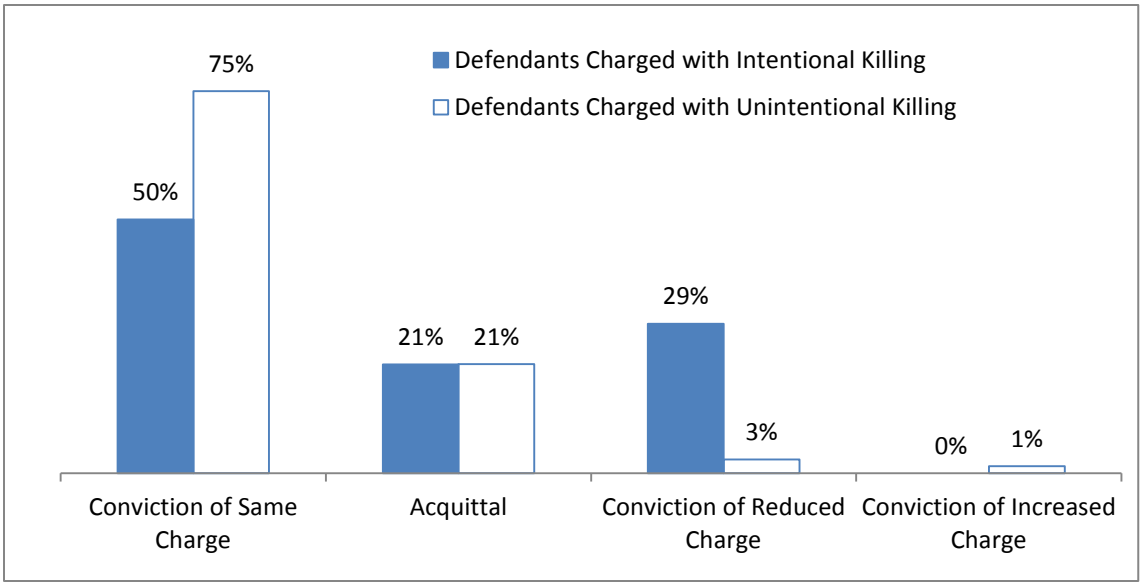


Figure VII.8 Court Agreed or Disagreed Prosecutorial Charges of Intentional Killing and Unintentional Killing

From the comparison between intentional and unintentional killings, we find an intriguing fact: Despite the same acquittal rates in both groups, the conviction rate on the top charge in unintentional killings was 1.5 times more than that in intentional killings. On the other hand, intentional killings generated reduced charges ten times more often than unintentional killings in terms of conviction of a reduced charge. Therefore, in

intentional killing, the court would only agree with the prosecutorial charges to half of the defendants. As for another half of defendants charged with intentional killing, the court would acquit 40% of them and convict 60% of the defendants with a reduced charge. Instead, as for defendants charged with unintentional killings, there would be 75% chance that the court would reach a conviction the same as prosecutorial charge. In the case that the court disagreed with prosecutors in deciding unintentional killing charges, the defendants would usually be acquitted. The different judicial decisions of killings with and without the offender's intention suggest that reduced charges are needed in the top two grades of homicide for the court to avoid long mandatory terms of imprisonment, and we will see more evidence of this perspective in the following sections discussing punishment in each type of killing.

D. Summary of Agreement or Disagreement

In sum, we have five major empirical findings drawn from different types of comparisons above:

(1) Greater Agreement between Prosecutorial Charge and Court Conviction in Less Serious Homicides:
Much greater agreement with initial charge in the two lesser grades of killings (simple or occupational negligent killings, 81%) and less agreement in the two grades of more serious killings (intentional killings or intentional attack resulting in death, 52%)

(2) Serious Charges Generate Larger Chance of Reduced Charge (i.e. more lenient conviction than prosecutorial charge):
25% in more serious group of homicide and 0% in less serious group

(3) Chance of Acquittal:
Generally low, 23% in more serious homicide charges and 17% in less serious ones

(4) Agreement between Prosecutorial and Judicial Decisions by the Offender's Intention:
Greater agreement with initial charge in unintentional killings (75%) and less agreement in intentional killings (50%)

(5) Judicial Decisions in Disagreement with Prosecutorial Charge:
In unintentional killing, the court acquitted almost all defendants when it disagreed with prosecutorial charges; in intentional killing, 60% of defendants received a reduced conviction and 40% were acquitted.

E. Punishment

In this section, punishment imposed by the court will be added as a variable to exam the relationship between prosecutorial and conviction decisions. This study will discover the extent and impact of prosecutorial and judicial discretion in determining punishment for homicide.

1. Punishment on Defendants Charged with Intentional Killing

Among all defendants charged with intentional killing, the court convicted 89 defendants and acquitted 24. Among the 89 convictions, except for one conviction of arson (in which case the unintentional killing was a lesser included offense and without specific punishment imposed on the killing), 88 defendants were convicted of one out of the three crimes: intentional killing, bodily harm resulting in death, or rape resulting in death, and punished by the court. **Figure VII.9** reveals the numbers of defendants charged with intentional killing by their conviction and compare the types of punishment imposed.

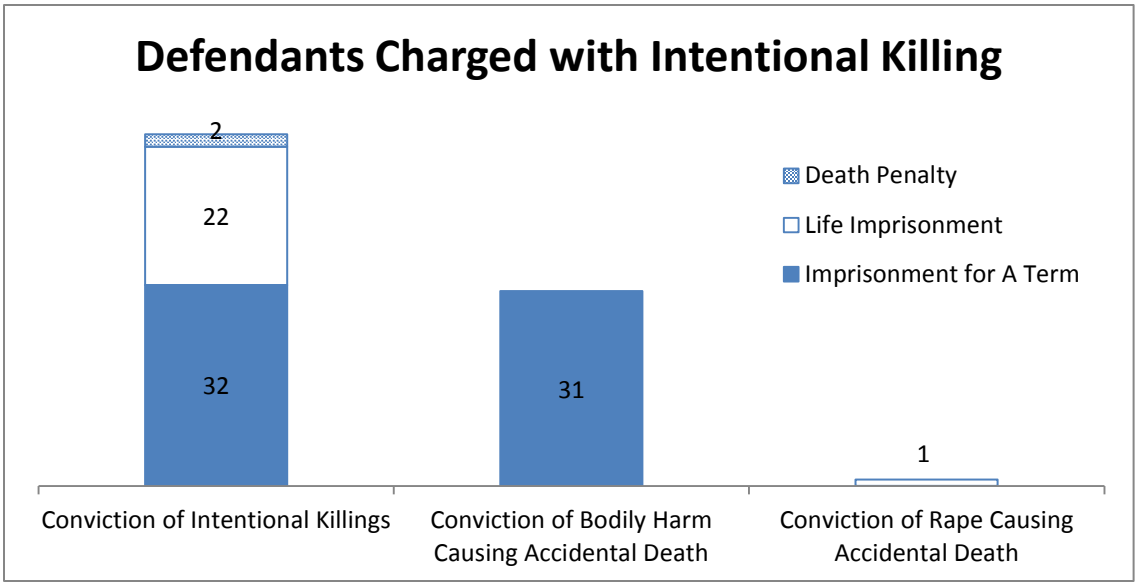


Figure VII.9 Court Decisions When Prosecutor Charged Defendants with Intentional Killing

Note: Counts of Defendants Prosecuted by Prosecutor and Tried by Court

(a) Defendants Convicted of Intentional Killing and Two Death Penalty Cases

Among the people charged with and convicted of intentional killing, 2 were sentenced to death, 22 to life imprisonment, and 32 to imprisonment for a fixed term. The average of imprisonment terms was 152 months, from a low of 36 months to a high of 240 months. Note that while intentional killing carries a minimum 10-year imprisonment provided in the criminal code, 6 defendants in our sample actually received a term shorter than 10 years due to various "mitigating circumstances" provided by law, including voluntary self-incrimination, insanity defense, self-defense, etc. The distribution of prison terms imposed on the defendants charged with and convicted of intentional killing is displayed in **Figure VII.10**.

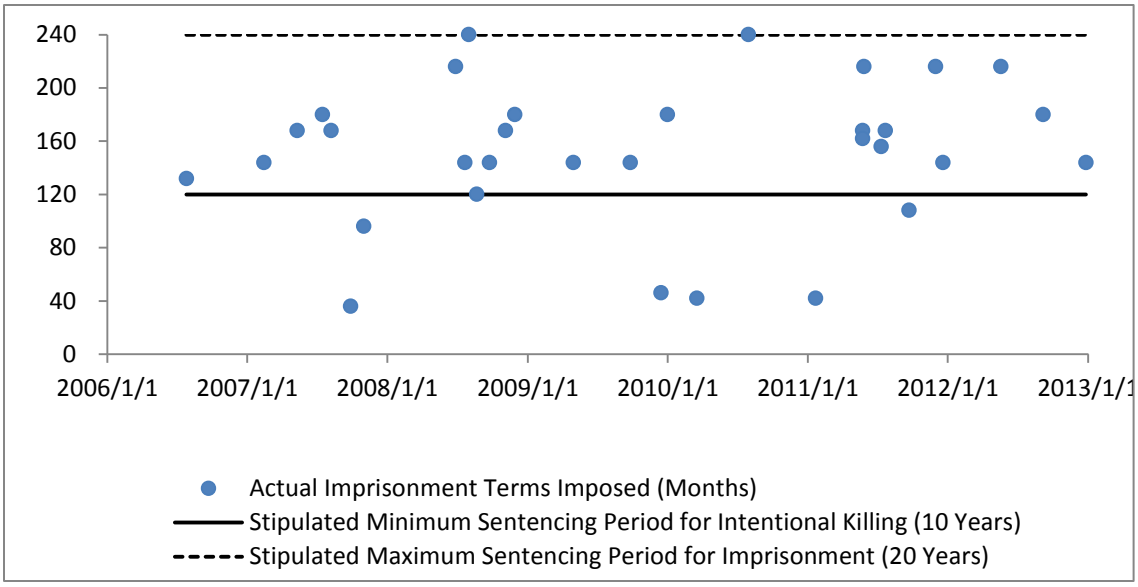


Figure VII.10 Actual and Stipulated Terms of Imprisonment Imposed on Defendants Convicted of Intentional Killing

Note 1: All the defendants were charged with intentional killing by the prosecutor.

Note 2: The dot line on the top shows the maximum of 20 years for all kinds of fixed-termed imprisonment.

As for the two defendants condemned to death at trial of district court, they occupy in our sample mere 1% of all homicide convictions and only 3.5% of all convictions for intentional killing, the only offense carrying death penalty. While some might suspect the small number as too small to support a rigorous investigation of the circumstances that lead to the death penalty, we have to clarify that the two defendants sentenced to death in our sample are actually representative of the death penalty outcomes. In fact, as far as entire Taiwan is concerned, the number of defendants receiving death sentences from the district court for intentional killing was only in single digits in the past 10 years. The **Table VII.1** shows the number of defendants sentenced to death and its percentage of the total defendants convicted of and sentenced for intentional killing.

Year	Total Number of Defendants Convicted of Intentional Killing and Punished by Sentences in Taiwan	Number of Defendants Sentenced to Death in Taiwan	Percentage of Defendants Sentenced to Death among All Sentenced

2005	203	7	3%
2006	204	3	1%
2007	225	5	2%
2008	178	3	2%
2009	167	2	1%
2010	139	2	1%
2011	133	4	3%
2012	123	3	2%
2013	107	5	5%
2014	98	1	1%

Table VII.1 The Number of Defendants Sentenced to Death and Its Percentage of the Total Defendants Convicted of and Sentenced for Intentional Killing

Source: Judicial Yuan Official Statistics, Taiwan

Thus, given that the percentage of defendants sentenced to death in Taiwan each year is only 1% to 5%, the 3.5% of defendants sentenced to death in our sample can be considered representative and worth a deeper investigation to show the relation between the law of homicide and the death penalty in Taiwan.

The first death penalty case among the two is No. 9, in which a 54-year-old man killed his wife. The case and the offenders are both peculiar in a way: the offender was a pimp, and the prostitute he got customers for was his wife, who was also the victim. Before the killing occurred, the offender was well-known as “Five-Star General” in the local area, because he often wore a colorful jacket and a hat both with five golden stars attached. In addition, the offender had a baby with his wife-victim, and he oftentimes pushed the stroller with their baby sitting on it while getting customers for his wife. Despite the illegality of their prostitution, the couple and their bizarre behavior were noted and had been reported by the press.

The provocation for the killing was a dispute about money. The husband asked the income from his wife after a sexual transaction, and they argued with each other. When the wife ignored the husband, held their baby and left, the husband took out a fruit knife (7.5 inches long) with him and stabbed into the wife’s breasts and belly to death. The offender had a history of one conviction for intentional killing and the other one for fraud. For the prior intentional killing, the offender killed his cohabiting partner and was first

sentenced to death in the district court, but the death sentence was switched to life imprisonment by the higher and highest courts. After two rounds of Taiwan's nationwide commutation policy, the life sentence was reduced to ten-year term imprisonment. It is noteworthy that history seems to repeat itself: while the offender was sentenced to death by the district court for the intentional killing in our sample, this sentence was reduced to life sentence again by higher and highest court in the end.

The second death penalty case in our sample is No. 64, in which a 35-year-old man killed his two friends in a dispute over gambling debts. The offender formed a partnership with a friend for gambling but the two disagreed with each other about their debts afterwards. The offender then sought a mutual friend (also a killed victim) to mediate. However, the mediation failed, and the offender considered the two friends were against him jointly. Thus, he used a modified handgun with him to kill the two friends. Moreover, the offender also attempted to kill the brother of his friend-victim but only inflicted serious injury. It deserves special mention that the offender had no history of arrests or convictions. While the offender appealed to higher and highest court, the highest court in the end convicted the defendant of two intentional killing offenses and punished him by two death sentences in September 2010. The defendant is currently on death row.

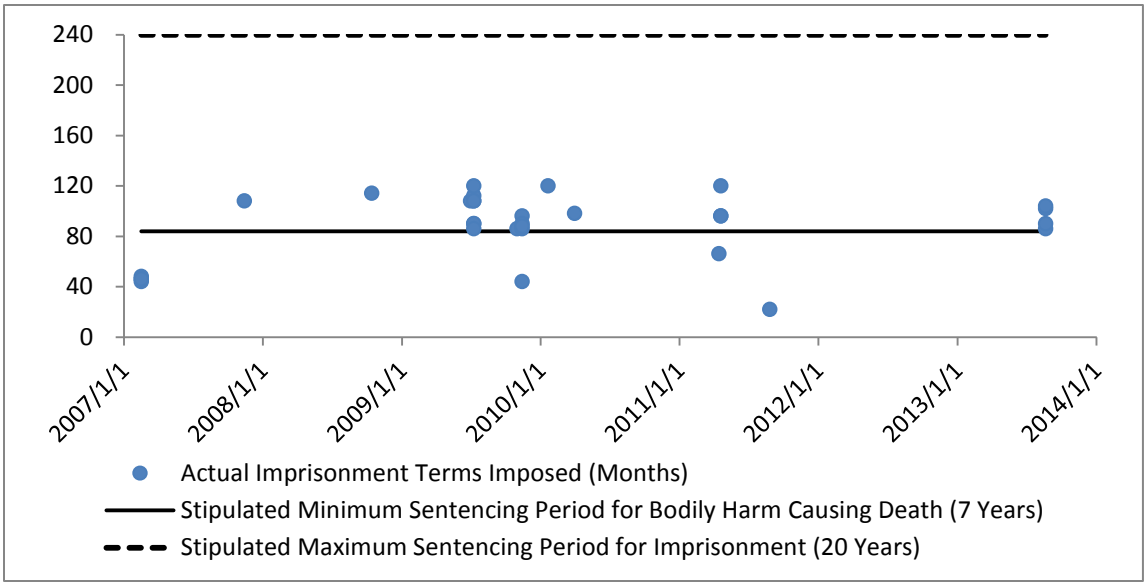
Through comparing the two death sentences cases above, we may find more disparity than similarity: their weapons differed (knife v. handgun), the offender-victim relationship differed (family v. friend), criminal records differed (with v. without) and the final punishment differed (life imprisonment v. death); on the other hand, the similarity exits in their gender (male), the single offender, and the number of victims that they had ever killed. It is apparent that the gender and number of offender are impossible to have substantial effect on their decisions of death sentences, but the number of victims is worth more discussion. In the case No. 9, despite the single victim killed in the case, the offender had killed another domestic partner 22 years ago, whereas the offender of case No. 64 killed two victims (and attempted to kill the third but failed) on the spot. Would the number of victims killed be an influential factor when the court was deciding an intentional killing case?

Given our sample of intentional killing cases and convicts executed in Taiwan in the past ten years, we find that the numbers of victims killed may play an important role in both death sentences and executions, while it may not be a decisive factor. Among our sample, No. 64 was the only case in which more than one victim was intentionally killed.

On the other hand, among the 32 executed in Taiwan from 2010 to 2015,[89] more than 70% (23 executed) killed two or more victims. Among the rest 9 people who killed one person but were still executed, all but one involved other serious crimes such as kidnapping for ransom, rape, and robbery. The only exception is a case in which the offender killed his ex-girlfriend's father and attempted to kill the girlfriend's mother but only inflicted serious bodily injury in the end.

(b) Defendants Convicted of Bodily Harm Resulting in Accidental Death

On the other hand, all the 31 defendants charged with intentional killing but convicted of bodily harm resulting in accidental death were punished by imprisonment for a fixed term. While life imprisonment is the potential maximum sanction for this crime, no defendants in our sample convicted of this charge were sentenced to life imprisonment. Instead, all the 31 defendants were sentenced by the court from a low of 22 months to a high of 120 months, and the average term sentenced was 88 months. The figure below shows how the terms of imprisonment imposed on each defendant distribute. Similarly, despite the mandatory minimum sentence of 84-month imprisonment provided by the criminal code, 7 out of the 31 defendants were sentenced to the terms less than 7 years for some mitigating circumstances, including voluntary self-incrimination, insanity defense, self-defense, suspect-turned-prosecution-witness, and so forth.



[89] Taiwan government had not executed convicts from 2006 to 2009. Since 2010, executions have been made once each year. Thus, the data of executions are from April 30th 2010 to June 5th 2015.

Figure VII.11 Actual and Stipulated Terms of Imprisonment Imposed on Defendants Convicted of Bodily Harm Resulting in Accidental Death

Note 1: All the defendants were charged with intentional killing by the prosecutor.

Note 2: The dot line on the top shows the maximum of 20 years for all kinds of fixed-termed imprisonment.

By comparing the sentencing terms shown in **Figure VII.10** and **Figure VII.11**, we can find the court had distinct attitudes toward intentional killing and bodily harm resulting in accidental deaths in terms of punishment distribution. While both were charged by the prosecutor as intentional killing, the court tended to impose more severe sanction on the convicts of intentional killing and more lenient sentences on convicts of bodily harm resulting in accidental death.

It deserves special mention that the sentencing tendency above can't be simply explained because intentional killing is in nature a more serious offense than unintentional killing. Given their respective ranges of mandatory imprisonment terms, the court apparently punished the convicts of intentional killing in a harsher way. Among the mandatory sentencing range from 120 months to 240 months, the court imposed an average of 152 months on convicts of intentional killing, whereas defendants convicted of bodily harm causing death received average incarceration time of 88 months, which was only slightly higher than its mandatory minimum imprisonment term of 84 months and far from the potential maximum of 240 months. Furthermore, please note that we were simply comparing the two classes of killings by the punishment of imprisonment. If additionally considering the facts that more than 40% of defendants (24 out of 56) charged with and convicted of intentional killing were sentenced to death or life imprisonment, whereas none of the defendants of bodily harm resulting in death was sentenced to life imprisonment, the punishment on intentional killing would appear even more severe.

(c) Intriguing Distribution of Punishment: Supplement of Nationwide Data

The higher severity of punishment imposed on intentional killing does not only occur in Taipei from 2006 to 2012, where and when our sample was collected from. In fact, it is apparently a nationwide and more long-term phenomenon in Taiwan. It might be useful to compare the distribution of punishment in our sample with the national statistics publicly provided by the Judicial Yuan (the highest judicial organ in Taiwan).

While the Judicial Yuan can only provide the sentencing data in wide scales of imprisonment terms (so the data provided is not as precise as our sample is),[90] the nationwide data still project the regular sentencing tendencies for the two types of convictions in Taiwan.

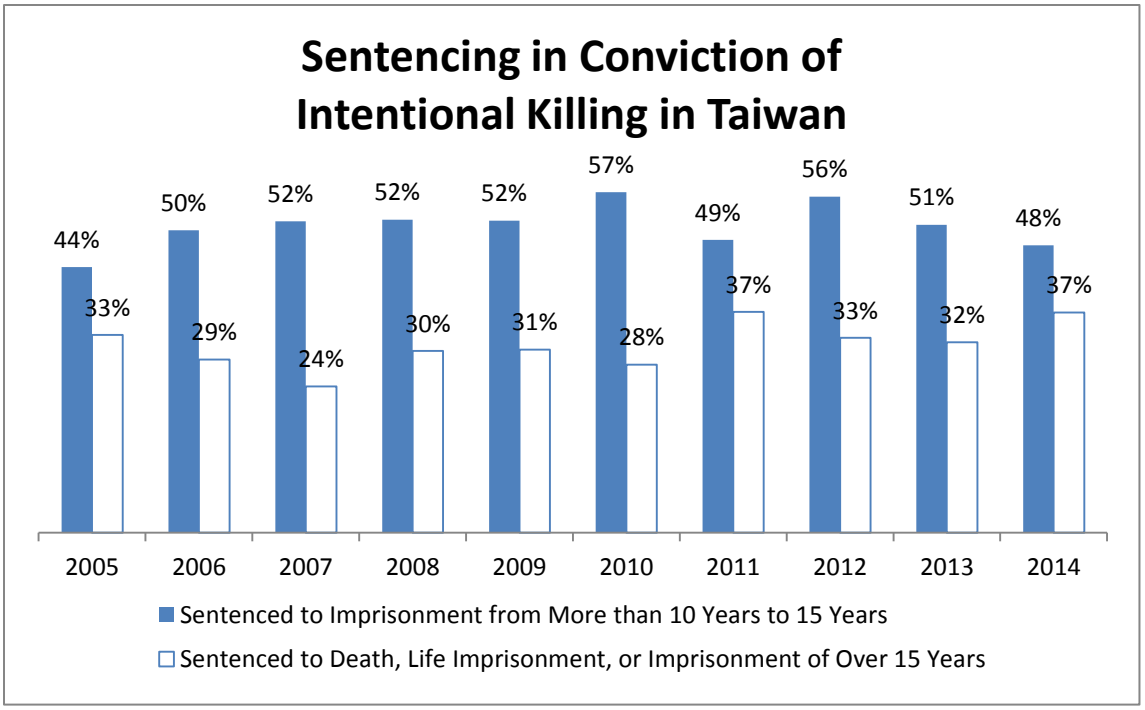


Figure VII.12 Percentages of Defendants Convicted of Intentional Killing Sentenced to Minimum Stipulated Punishment and Higher Levels

Note: The minimum stipulated punishment for intentional killing is 10-year imprisonment, but the available closest scale provided by the Judicial Yuan is from more than 10 years to 15 years.

Figure VII.12 shows the two levels of sentencing to defendants convicted of intentional killing in each year. During the past decade, according to the nationwide data, average 51% of defendants convicted of simple intentional killing were sentenced to imprisonment from over 10 years to 15 years (note that 10 years are the minimum punishment for simple intentional killing),[91] and 31% of convicts were sentenced to

[90] The terms of imprisonment imposed are collected by the Judicial Yuan and classified into the scales from "Under 2 years", "Over 2 years and under 3 years", "Over 3 years and under 5 years", "Over 5 years and under 7 years", "Over 7 years and under 10 years", "Over 10 years and under 15 years" to the highest class of "Over 15 years".

[91] Here, "simple intentional killing" means the crime provided in the TCC Article 271, Section 1: "A person who takes the life of another shall be sentenced to death or life imprisonment or imprisonment for not less than ten years."

more severe levels of punishment, from over 15 years of imprisonment, to life imprisonment or death penalty.

On the contrary, the distribution of punishment for bodily harm resulting in death is quite different. As shown in the figure below, on average 57% of defendants convicted of bodily harm resulting in death were sentenced to imprisonment of from over 7 years to 10 years (note that 7 years are the minimum punishment for the offense), whereas only less than 10% of convicts were sentenced to any higher levels of punishment.

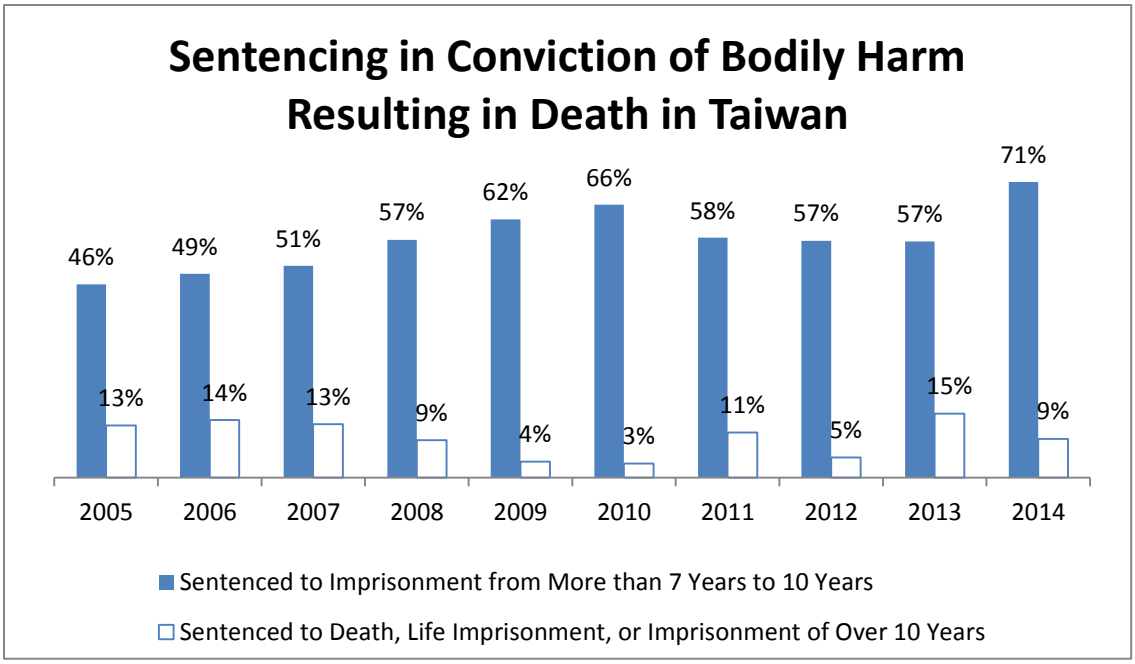


Figure VII.13 Percentages of Defendants Convicted of Bodily Harm Resulting in Death Sentenced to Minimum Stipulated Punishment and Higher Levels

Note: The minimum stipulated punishment for bodily harm resulting in death is 7-year imprisonment, but the available closest scale provided by the Judicial Yuan is from more than 7 years to 10 years.

Thus, the punishment distribution of the two classes of killings throughout Taiwan's courts in the past decade is very similar to the empirical findings drawn from our sample:

There are five other crimes provided in the TCC which combine intentional killing as well as other offenses or special situation that make the stipulated punishment harsher. They are:
"Intentional killing in addition to rape or forced obscene act" (Article 226-1, Section 1), "Intentional killing of one's lineal blood ascendant (Article 272, Section 1),
"Intentional killing in addition to robbery" (Article 332, Section 1),
"Intentional killing in addition to piracy" (Article 334, Section 1),
"Intentional killing in addition to kidnapping for ransom" (Article 348, Section 1)
All of the above more serious offenses shall be punished by either life imprisonment or death penalty.

The court tended to punish intentional killing harsher by much higher levels of sentences but was reluctant to do so for bodily harm resulting in death. Why then the court has the particular sentencing tendencies? We will provide a plausible presumption to explain it after introducing another part of punishment of bodily harm resulting in death in our sample.

2. Punishment on Defendants Charged with Bodily Harm Resulting in Accidental Death

In our sample, the conviction of bodily harm resulting in death could grow out of either of the two kinds of charges: charge of intentional killing, and charge of bodily harm resulting in death itself. For the later charge, there were 27 defendants in total, among which there were 17 defendants convicted of the same offense as the charge, 2 convicted of simple negligent killing, and 8 acquitted. Regardless of the different charges, the 17 defendants were punished in a way similar to the 31 defendants charged with intentional killing and also convicted of bodily harm resulting in death. **Figure VII.14** below shows the distribution of imprisonment terms imposed on defendants charged with and convicted of bodily harm causing accidental death, and **Figure VII.15** compares the defendants convicted of bodily harm causing death but charged with distinct classes of killings.

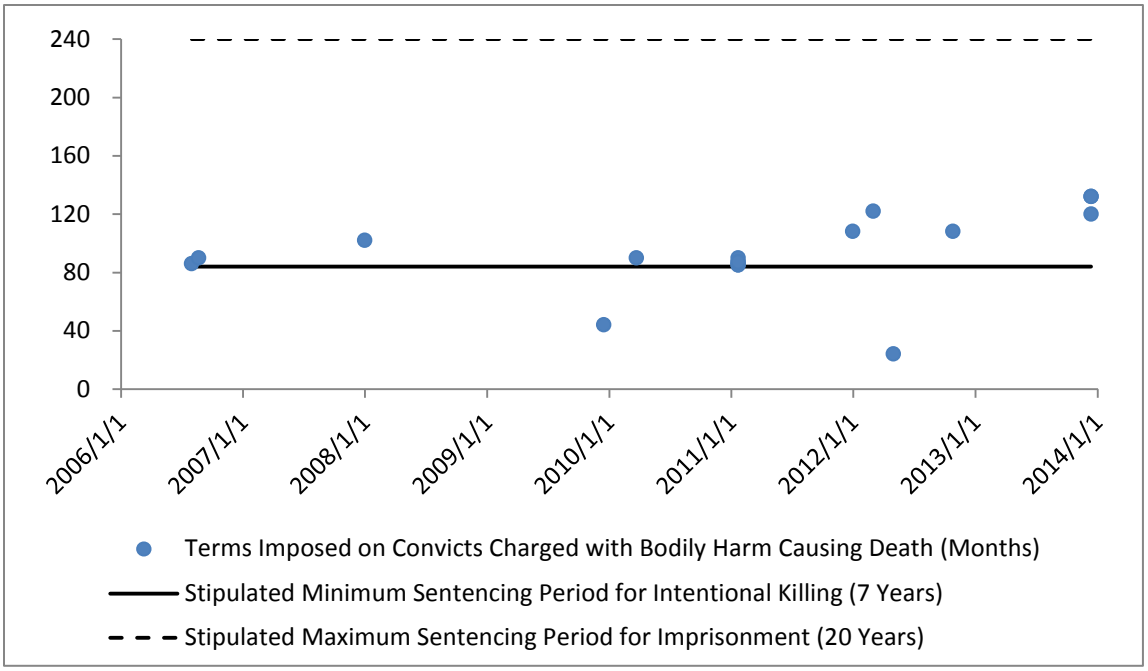


Figure VII.14 Actual and Stipulated Terms of Imprisonment Imposed on Defendants Convicted of Bodily Harm Resulting in Accidental Death

Note 1: All the defendants were charged with bodily harm resulting in accidental death by the prosecutor.

Note 2: The dot line on the top shows the maximum of 20 years for all kinds of fixed-termed imprisonment.

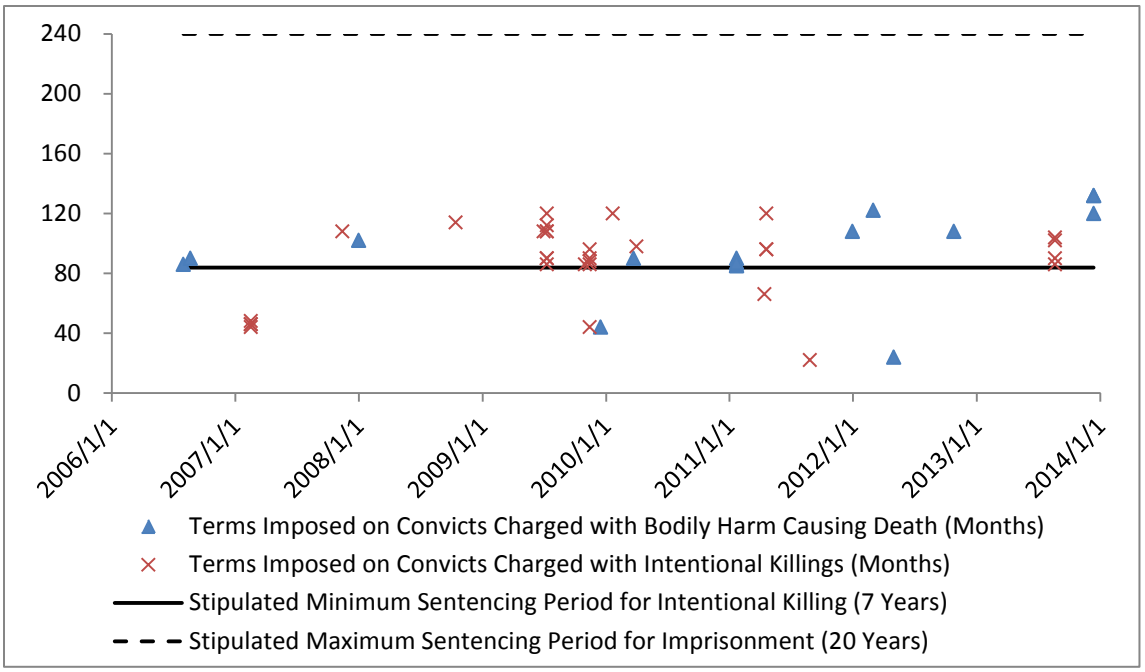


Figure VII.15 Comparison of Imprisonment Terms Distribution between Defendants Convicted of Bodily Harm Resulting in Death with Different Prosecutorial Charges

Note: The dot line on the top shows the maximum of 20 years for all kinds of fixed-termed imprisonment.

(a) A Mystery of Harsher Punishment for Less Serious Initial Charge

Clearly displayed in **Figure VII.15**, despite different initial charges by the prosecutor, the punishment distributions of the conviction of bodily harm resulting in death are very similar in a few aspects. First, the ranges of prison terms imposed are similar: defendants charged with intentional killing were imposed prison terms from a low of 22 to a high 120 months, whereas those initially charged with bodily harm causing death were imposed from a low of 24 to a high of 132 months. Second, the sentencing tendencies are similar: Prison terms imposed on defendants of both charges were quite close to the minimum stipulated term (84 months) and far from the maximum (240 months or life imprisonment). Third, even when the court decided to punish defendants leniently and sentenced them to the level under the minimum term provided in the criminal code, the punishment distributions of the two groups with distinct charges were still quite similar.

Despite the similarities, however, it is noteworthy that defendants charged with bodily harm resulting in death received longer prison terms than defendants charged with intentional killing by up to 6 months (94 v. 88) on average. The phenomenon is mysterious: while defendants of both charges ended up with the same conviction, the defendants charged with intentional killing were supposed to be more culpable than those charged with bodily harm resulting in death, at least from the perspective of the prosecutor. Why then the defendants charged with more serious offense of intentional killing turned out to be sentenced **less** harsh than those charged with less serious offense of bodily harm resulting in death?

Given the limited number of cases in our sample,[92] it is hard to support a rigorous test of the notion that the six-month disparity is a meaningful distinction resulting from different prosecutorial charges. Neither is there any existing statistics or literature which has been published applicable for interpreting how different prosecutorial charges may affect the punishment, even when they end up with the same conviction.

(b) How Different Charges May Affect Punishment for Same Conviction: A Presumption

Nevertheless, from the perspective of mental function, this study would like to make a presumption that judges' mindset may be affected by the initial charges of the prosecutor when sentencing decisions are made. The presumption of the mental function is like this: When a judge decides to reduce the initial charge from intentional killing to the conviction of bodily harm resulting in death, he has to have convincing rationale to justify his decision against the prosecutor's charge. The reasons of the court decisions are important in both formal and practical aspects. Formally, as provided in Taiwan's code of criminal procedure, reasons of the court decision should be recorded in the written judgment.[93] Practically, the reasons recorded would become crucial grounds for the prosecutor and/or defendants to appeal, as well as for the appeal court to review the decision of the trial court. Thus, when a judge decides to reduce the charge, he is writing the judgement with the mindset strongly convincing him that the defendant deserves a

[92] We have in our sample 31 defendants charged with intentional killing and convicted of bodily harm causing death, and 17 defendants both charged with and convicted of bodily harm causing death.
[93] TCCP Article 308: "A written judgment shall separately set forth a syllabus of **the decision and reasons**; a written judgment of "Guilty" shall set forth the facts." (emphasis added)

reduced charge. Otherwise, the judge could not convince the parties and the appeal court that his decision is legitimate. Therefore, this study would like to suggest that the judge's mindset of reducing culpability does not only have essential effects on the conviction but also influence his sanction decisions, because both the conviction and sanction are dictated by the same court in Taiwan and are announced in a judgment at the same time.

(c) How Disagreement between Charges and Convictions Affects Punishment: Application of the Presumption

This presumption is also applicable for explaining why the court tended to impose much harsher punishment on intentional killing than on bodily harm resulting in accidental death, as pointed out in the last section.

That is, when prosecutors and judges agree with each other that the defendant committed intentional killing, the judge consciously agreed with the prosecutor's charge and may simultaneously consciously or unconsciously acknowledge that the defendant had higher culpability and deserved more severe sanction. Here, the "higher" culpability and "more severe" sanction are not from the general nature of intentional killing (which has been considered by the legislators and resulted in a more serious mandatory punishment stipulated in the criminal code), but are very likely from the judge's mindset that is **with** the prosecutor's decision.

In addition, conviction of intentional killing itself is a very serious decision to make, and, in practice, defendants convicted are very likely to appeal against the court decision. Thus, the judge also needs to convince himself in the first place that the defendant **does** deserve the charge, which mental function also intensifies the judge's belief in the defendant's higher culpability and affects the sentencing decision accordingly. In this way, the punishment imposed on defendants convicted of serious crime may end up even higher, if it is not overrated.

On the other hand, when the court convicted defendants of a reduced charge, the judge would experience a reverse mind process. As described above, the judge was aware of the tension between himself and the prosecutor, when he was going to make a reduced conviction **against** the prosecutor's charge. In this case, the court had to justify his decision by strong evidence and rationale which contributed to the reduced culpability of the defendant. The belief of the court that the defendant had lesser culpability and

deserved a reduced charge also brought about the mindset that the defendant could be punished more leniently. Eventually, the judge's mindset resulted in the phenomenon that the court was reluctant to sentence the defendant in a harsh way but, instead, simply stayed with the level of mandatory minimum punishment.

(d) Extra Leniency of Court: Proportionality of Culpability and Punishment

Another confusing empirical finding from the punishment of bodily harm resulting in death is that some convicts were sentenced to a prison term much less than 7 years, the mandatory minimum term provided in the criminal code. For example, a defendant in the case No. 311 was sentenced to 22 months, another defendant in the case No. 226 was sentenced to 24 months, and another 6 defendants in other cases were sentenced to a term less than 50 months.

More interestingly, the phenomenon does not only exist in our sample. Rather, it is nationwide. According to nationwide statistics by the Judicial Yuan, an average 33% of convicts of bodily harm causing death were sentenced to imprisonment lower than the stipulated 7-year minimum term in the past decade. However, only 17% of convicts of intentional killing were sentenced lower than the mandatory 10-year minimum term at the same period. That is, in the case which the court was willing to impose a particularly lenient sanction on convicts to the level lower than the mandatory minimum prison terms, the chances of bodily harm resulting in death were twice greater than of intentional killing. **Figure VII.16** and **Figure VII.17** show the punishment imposed to and under the level of mandatory minimum terms for the two classes of homicide each year in the past decade.

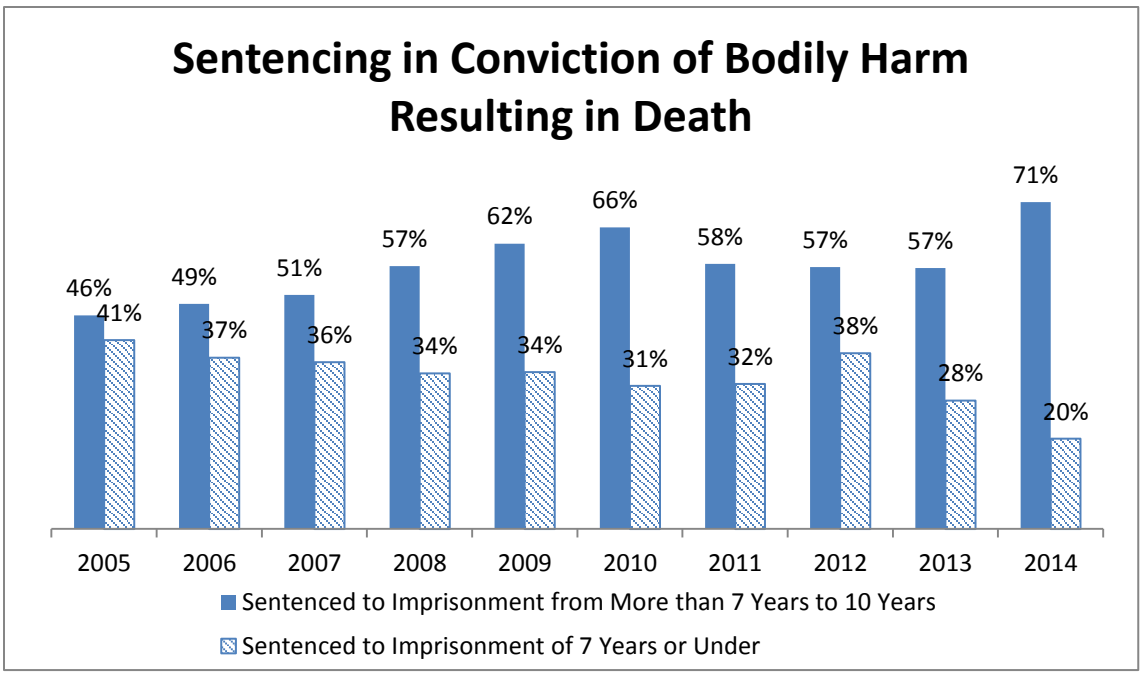


Figure VII.16 Percentages of Defendants Convicted of Bodily Harm Resulting in Death Sentenced to Minimum Stipulated Punishment and Lower Levels

Note: The minimum stipulated punishment for bodily harm resulting in death is 7-year imprisonment, but the available closest scale provided by the Judicial Yuan is from more than 7 years to 10 years.

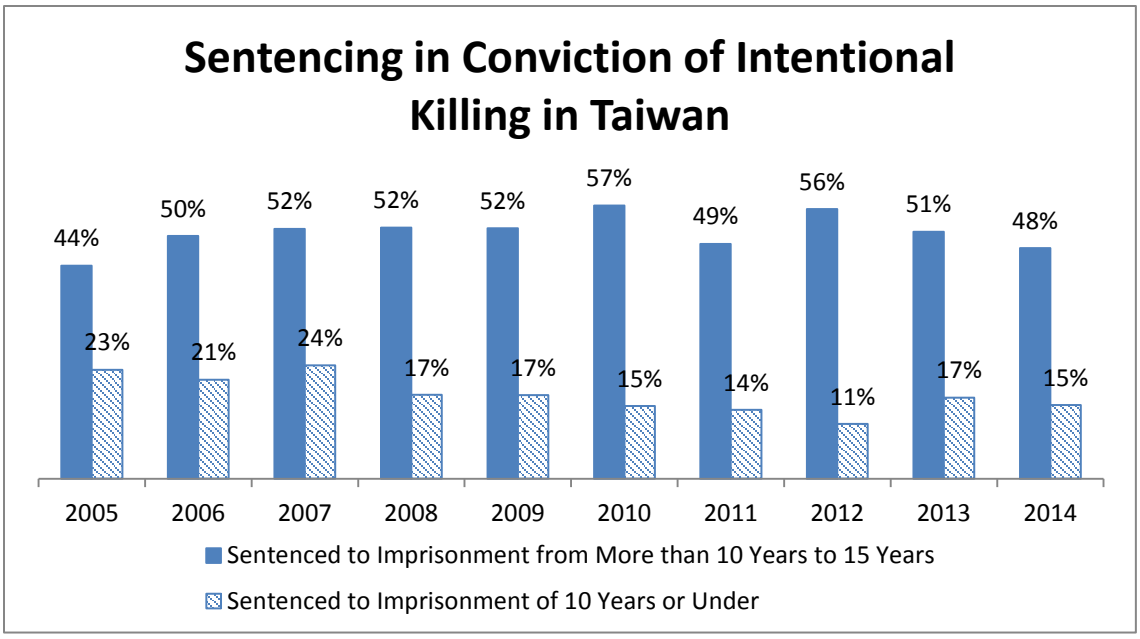


Figure VII.17 Percentages of Defendants Convicted of Intentional Killing Sentenced to Minimum Stipulated Punishment and Lower Levels

Note: The minimum stipulated punishment for intentional killing is 10-year imprisonment, but the available closest scale provided by the Judicial Yuan is from more than 10 years to 15 years.

While the court is allowed, under certain mitigating circumstances provided by the law, to decrease the punishment to the degree even lower than the mandatory minimum sentences, it is still staggering that up to one third of defendants convicted of bodily harm causing death were punished so leniently. Why then is the court so particularly lenient in the sentencing of bodily harm resulting in death?

Apparently, it is implausible to say that so many defendants received lenient terms lower than the mandatory just by chance or on the individual basis. Instead, the phenomenon may be a indicator for us to perceive that the court may not appreciate the mandatory punishment as the legislators may expect. Nevertheless, it is not easy to detect if the phenomenon resulted from the judges' dissatisfaction with the mandatory punishment, and judges decide to "find their own way out" by their discretionary power in punishment. Since the criminal code provides many situations for the court to increase or/and decrease the punishment, and the aggravating and mitigating circumstances could apply to a case simultaneously, the judge has little chance and necessity showing if the court does consider the mandatory punishment improper.

Fortunately, a case collected in our sample reveals how the judge may think of that. The case No. 226, in which a taxi driver was accidentally killed by his passenger because they argued and fought with each other over routes and fares, is a rare (in fact, the only one) case with almost no mitigating circumstances (such as self-defense, voluntary self-incrimination, insanity defense, etc.) applicable. Under the situation, since the judge still thought the mandatory minimum punishment was too harsh to impose on the defendant, the judge explained why the stipulation could be too severe for this case. The judge explained in his judgment:

"*In addition, the CCP Article 277, Section 2, provides bodily harm causing death as a serious crime carrying a stipulated punishment of "Life imprisonment or imprisonment of 7 years or more." However, in the situation that offenders intentionally harm others' body and result in a death, the offenders' motives, means, and other circumstances may vary, so their culpability may also vary accordingly.* ***Nevertheless, while dealing with these various offenses, the law stipulates uniformly that they all shall be punished by "Life imprisonment or imprisonment of 7 years or more", which can't be said not a harsh punishment.*** *Thus, if the offense can be punished simply by a matched sentence, which is sufficient to punish the offender as well as protect the society, we may consider*

the entire subject and object situations and see if the defendant deserves compassion. Then we may apply the CCP Article 59 to reduce the punishment,[94] ***so that the sentencing can match the practical situation in the individual case and satisfy the principle of proportionality.***"[95] (Emphasis added)

From the rationale provided by the judge in the case No.226, two reasons are essential to understand why the defendant convicted bodily harm resulting in death may be punished extra-leniently. First, the severity of this type of homicide may vary, and it could be unjust if the minimum 7-year is applied to every case. Second, comparing with obeying the stipulated punishment provided by the criminal code, the court may care more about the proportionality, i.e. the relationship between culpability and punishment. Given that 33% of convicts of bodily harm resulting in death were sentenced extra-leniently to the level lower than the stipulated minimum, it is clear that some mutual consideration had been taken from different judges for this type of homicide. While the reasons above were only clearly addressed in an individual case, they may also be plausible and applicable to many other cases of the same conviction.

3. Punishment on Defendants Charged with Other Intentional Attack Resulting in Accidental Death

In our sample, there is only a single defendant charged with intentional attack, other than bodily harm, which resulted in death. The charge is intentional gas leaking resulting in death, which carries a potential punishment of life imprisonment or imprisonment no less than 7 years, the same as bodily harm causing death.[96] In the end, the defendant was convicted of simple negligent killing (the court didn't consider the defendant leaked gas intentionally) and sentenced to 12 months.

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[94] CCP Article 59: "A punishment may be reduced at discretion if the circumstances of the commission of the offense are so pitiable that even the minimum punishment is considered too severe."

[95] Note that while the judge applied the CCP Article 59 to reduce the punishment, the Article 59 itself is not a "cause" of reducing punishment, but a "result" of the reduction. That is, whenever the judge would like to reduce the punishment to the degree lower than the stipulated minimum, the judge has to apply the Article 59 with all the legal conditions which cause the reduction of punishment, such as voluntary self-incrimination.

[96] TCC Article 177:
"(Section 1) A person who endangers public safety by causing to escape or by obstructing the flow of steam, electricity, gas or another gaseous substance shall be sentenced to imprisonment for not more than three years, short-term imprisonment, or a fine of not more than three hundred yuan.
(Section 2) If the offense results in death, the offender shall be sentenced to **life imprisonment** or **imprisonment for not less than seven years**…" (emphasis added)

4. Punishment on Defendants Charged with Occupational Negligent Killing

Among 39 defendants charged with occupational negligent killing, except for 6 people were acquitted and 1 defendant was charged by the military prosecutor and without court record available, the rest (32 people) were all convicted as being charged and sentenced to imprisonment for a certain term. The distribution of the 32 defendants' prison terms as shown in **Figure VII.18** below.

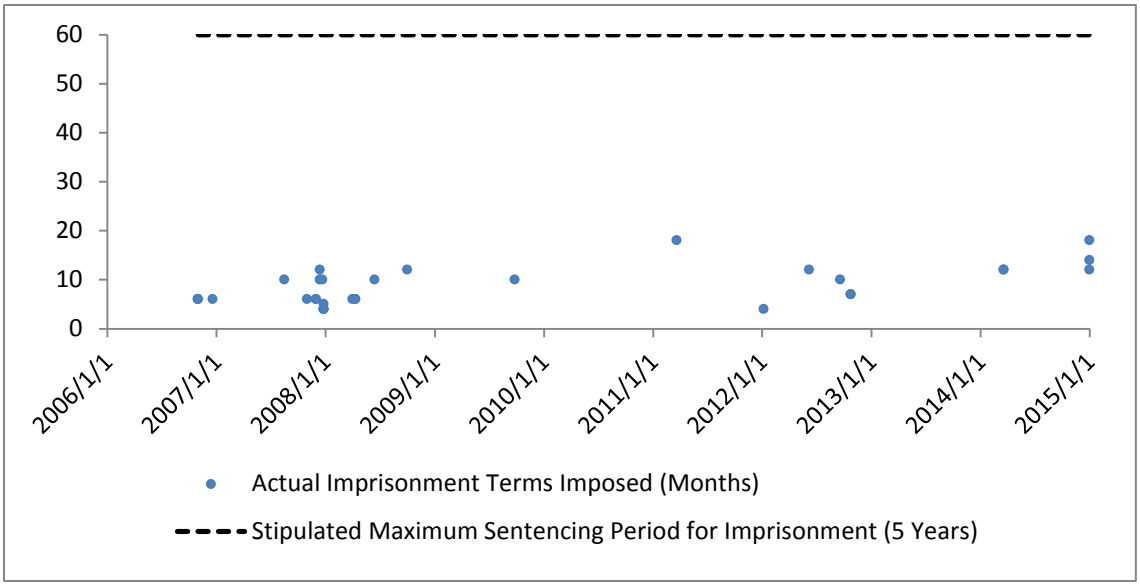

Figure VII.18 Actual and Stipulated Terms of Imprisonment Imposed on Defendants Convicted of Occupational Negligent Killing

Note: All the defendants were charged with occupational negligent killing by the prosecutor.

Against the background that the mandatory range of punishment for occupational negligent killing is from the minimum one-day to the maximum 5-year imprisonment, the practical terms imposed (from a low of 4 months to a high of 18 months, with the average of 9 months) are apparently low. The highest sentencing term actually imposed by the court (18 months) is only 30% of the mandatory maximum punishment (60 months), and the average imposed term (9 months) is only 15%. That is to say, the judicature simply used 30% or under of the sentencing period authorized by the legislature. Why then the court tended to punish the offense of occupational negligent killing so leniently? To answer the inquiry, we may compare it with the sentencing of simple negligent killing.

5. Punishment on Defendants Charged with Simple Negligent Killing

From the perspective of the legislature, occupational negligent killing is apparently more serious than simple negligent killing. As a result, the former offense is subject to an imprisonment of 5 years or under, whereas the latter is only subject to an imprisonment of 2 years or under, or even a fine. However, in the eyes of the court, the two types of killings may be very similar, given the actual prison terms imposed for them by the court. **Figure VII.19** below shows the comparison between mandatory and real prison terms imposed by the court. It is clear that the actual punishment imposed on defendants of simple and occupational negligent killings were similar in every aspect,[97] despite the mandatory maximum term of imprisonment for occupational negligent killing is 2.5 times greater than for simple negligent killing.

[97] Except for 2 defendants acquitted, 1 was convicted of an increased charge (from simple to occupational negligent killing) and sentenced to 10-month imprisonment, there were 6 defendants charged with and also convicted of simple negligent killing. The prison terms imposed on them were from a low of 3 months to a high of 14 months, and the average term was 7 months. One defendant charged with simple negligent killing was convicted of drug trafficking, which is considered by the court as cumulative charges for a single act with simple manslaughter. Since drug trafficking is a more serious offense, the relatively minor offense of simple negligent killing was not sentenced specifically. Thus, only 5 defendants in our sample cases were charged with and also convicted of simple negligent killing and had specific punishment for the killing. However, 2 additional defendants were charged with bodily harm causing death but convicted of simple negligent killing. They were separately sentenced to 7- and 9-month imprisonment. Hence, even if the 2 defendants' prison terms were added with the previous 5 defendants, the average term of imprisonment actually imposed for simple negligent killing would still be 7 months.

Regarding the notion of cumulative charges in the criminal law system of Germany, from which nation Taiwan has inherited the criminal law system, please see Hanna Kuczyńska, "*The Accusation Model Before the International Criminal Court: Study of Convergence of Criminal Justice Systems*", p.p.131, published by Springer, 2015.

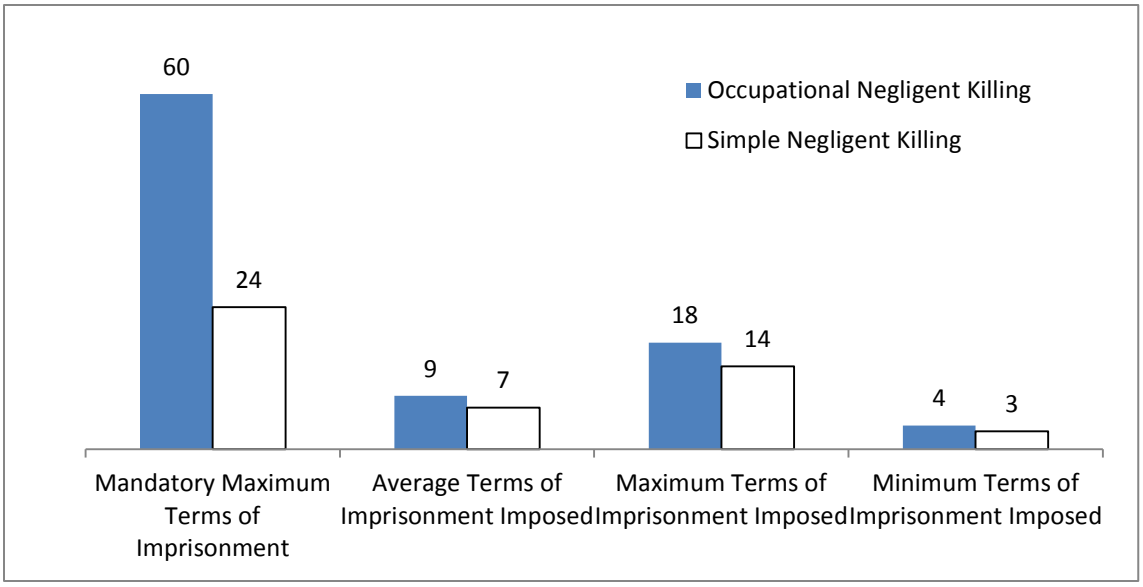

Figure VII.19 Comparison of Mandatory and Imposed Imprisonment Terms between Defendants Convicted of Occupational Negligent Killing and Simple Negligent Killing

(Unit: Months)

Again, the extra-lenient punishment for occupational negligent killing is not limited in our sample but a nationwide and long-term phenomenon. As **Figure VII.20** provides below, almost all the defendants convicted of occupational negligent killing in the past decade were sentenced to a prison term equal to or less than two years, which is actually the maximum punishment of **simple** negligent killing, despite the maximum term for the **occupational** negligent killing is 5 years.

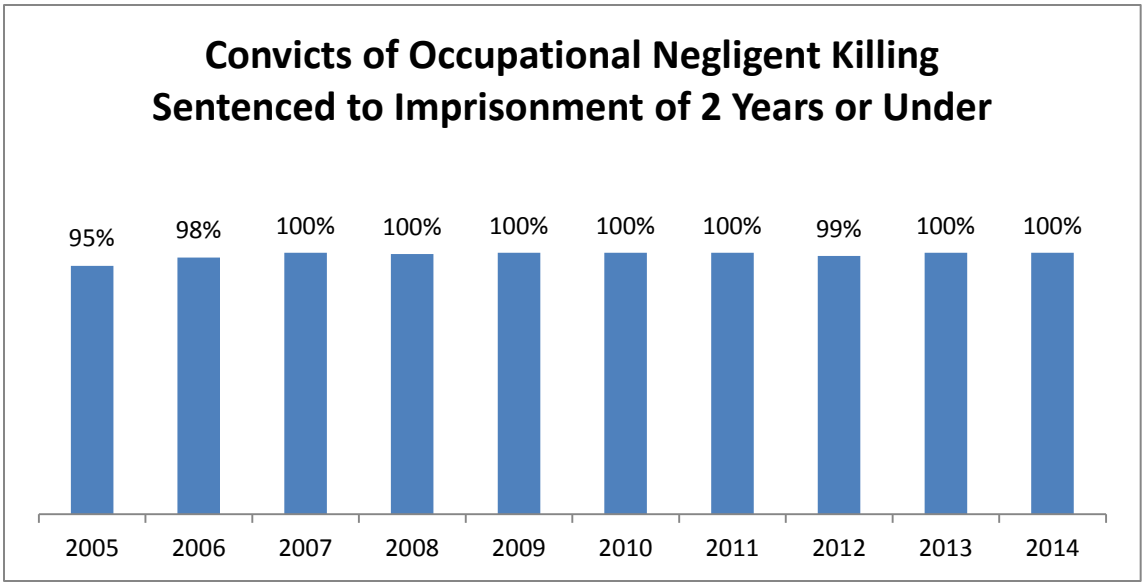

Figure VII.20 Percentages of Defendants Convicted of Occupational Negligent Killing Sentenced to Maximum Stipulated Punishment of Simple Negligent Killing or Under

Note: 2-year is the minimum stipulated punishment for simple negligent killing instead of occupational negligent killing

In addition to the extra-lenient punishment for bodily harm resulting in death, occupational negligent killing is additional evidence that the court would seek its own virtue, proportionality between culpability and punishment, when the court considers the mandatory punishment provided by the legislature improper. The practices of the court in the sanction for occupational negligent killing may be interesting and inspirational for Taiwan's lawyers and scholars to know: While Taiwan's lawyers and scholars have enthusiastically discussed how to clearly distinguish occupational negligence from simple negligence for a long time, the court has found its own way to practically solve the dispute.

VIII. Conclusion

As stated earlier, this is the first ever longitudinal study of Taiwan's criminal justice system in regard to homicide cases. In fact, this study is also "the first" in other dimensions: this is the first study which is officially approved and supported by the commissioner of the CIB, the highest authority for criminal investigation in Taiwan; this is also the first homicide study approved and supported by the mayor of Taipei City, and therefore had access to unpublished statistics from the Taipei City.

Furthermore, I want to highlight that longitudinal studies are also a new approach to studying criminal procedure in Taiwan. Previous research on criminal procedure relied on studies of a specific issue in a specific legal process, and most of them were theoretical studies. For example, whether the right to self-representation can be applied to prosecutorial process, or what the fundamentals of post-conviction remedies should be. Some were empirical ones. For instance, how the hearsay rule and its exceptions have practically functioned in Taiwan's courts, or in practice how often police would dissuade suspects from calling their counsels. However, there have been few, if any, legal studies of criminal procedure, even empirical ones, which can collect case sample and follow them throughout the whole criminal justice system, as this study does. The meaning of this new approach is to provide a more complete picture of Taiwan's criminal procedure, by studying how the actions of each legal agency may affect the others.

The findings of this study demonstrate that the new approach is worthwhile and necessary. For example, without combing police data with prosecutor's, we will not be able to find that police are not laymen but, instead, a "signal system" to prosecutor's decisions; without comparing prosecutor's initial charge and court decisions, we will not know that court tends to convict leniently when prosecutor charges severely, and court conviction agrees more with prosecutor's charges if the charges are less serious; without putting police, prosecutor, and court data all together, we will not know how many cases and suspects have been excluded halfway from the justice system, and what these cases are.

The empirical findings in this study generally suggest (and prove an initial assumption of mine) that criminal justice system is an organism, each individual part of which performs its own duty but has impacts on the others. Therefore, if scholars argue to reform some prosecutorial rules, for example, they must bear in mind that these changes

may affect police and court behavior as well. If the legislator wants to raise the maximum punishment for occupational manslaughter to avoid offenses, they'd better learn in advance that prosecutors tend not to prosecute some types of occupational manslaughter, so a large portion of cases will never get into court, and court usually treats occupational manslaughter the same as simple manslaughter, so the heightened maximum penalty may not work as legislators intend. If I were only allowed to use one sentence to describe the major finding of this study, I would say: what happens to each legal agency affects the whole. As the Chinese proverb goes, "Pull one hair and you move the whole body".

An implication of this finding is that studies of specific criminal procedures should be broadened to include factors previously deemed irrelevant. The study of criminal procedure, of course, comprises study of single issue in a certain legal phase, and this type of study is important to provide profound details for individual concept of our proceedings. However, the study of criminal procedure should not be limited in the study of single issue or single phase. Instead, it should also include an analysis of how different legal agencies may deal with the same or similar cases, and how the action of one agency may influence the others.

In this way, we can better understand our criminal procedures, and this understanding is of great importance to efforts at legal reform and to legal interpretation. This new approach to studying criminal procedure may also help us to learn how the legal system may also be affected by another even larger system: the society. The complex relationship and mutual influence between law and society has aroused popular discussions in mainstream legal scholarship around the world, but Taiwan has had very few studies of it. In this sense, this study may also be considered, I hope, as a humble effort to connect Taiwan with approaches used for legal scholarship in the rest of the world.

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