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# GOTTI, MOB FUNERALS, AND THE CATHOLIC CHURCH

PATRICK J. GORDON†

## INTRODUCTION

The American mafia has had a long and scandalous history. Glorified in the movies and television, and with names such as “Sammy the Bull,” “Bugsy,” “Fat Tony,” and “Dapper Don” reaching household variety, the mafia history will seemingly live on forever. When John Gotti passed away from throat cancer in a prison hospital on June 10, 2002, one might have expected the scandal that trailed his storied life to have died along with him. His funeral procession, however, was proof to the contrary. It could have been the throngs of onlookers, the string of black Cadillacs, or the helicopters flying overhead. Or maybe it was the federal agents working surveillance out of the white van and the heavysset “companions” of John Gotti paying their respects.<sup>1</sup> Needless to say, John Gotti received more attention in death than he had in the last two years of his life, which he spent locked up in the United States Medical Center for Federal Prisoners in Springfield, Missouri. He was there serving a life sentence without parole on numerous charges, including racketeering, conspiracy to racketeer, murder in the aid of racketeering, operating an illegal gambling business, and witness tampering.<sup>2</sup>

While the funeral procession was certainly one typical of a former mob boss, there was something missing. John Gotti was

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<sup>1</sup> See Pete Hamill, *Gotti's Own Peculiar Innocence*, N.Y. DAILY NEWS, June 17, 2002, at 5 (finding that there was a “peculiar kind of innocence” about Gotti's funeral, career, and persona); see also Robert Ingrassia, *Mob Boss Laid to Rest in Queens*, N.Y. DAILY NEWS, June 16, 2002, at 2 (taking note of the floral tributes in the shape of a royal flush, a martini glass, and racehorses).

<sup>2</sup> See *United States v. Gotti*, 755 F. Supp. 1159, 1164–65 (E.D.N.Y. 1991); Selwyn Raab, *John Gotti Dies in Prison at 61: Mafia Boss Relinquished the Spotlight*, N.Y. TIMES, June 11, 2002, at A1.

interred alongside his son,<sup>3</sup> in the family mausoleum inside St. John's Cemetery,<sup>4</sup> as he had wished. However, his family was denied permission to hold a funeral Mass for the convicted killer.<sup>5</sup> The decision to deny Gotti this fundamental right<sup>6</sup> provided to all Catholics was handed down by Brooklyn Bishop Thomas Daily.<sup>7</sup> Although this is a rather unusual occurrence, John Gotti is not the first organized crime individual to have been denied a funeral Mass.<sup>8</sup> It has been done before and, on some occasions, the Church has gone as far as denying Catholic burials.<sup>9</sup> Although Bishop Daily denied Gotti an Ecclesiastic Mass, he compromised by allowing Gotti's Catholic burial.

Despite the compromise, this piece suggests that under the circumstances the Bishop—to borrow a term from appellate review—abused his discretion. While, according to the Code of Canon Law, Bishop Daily has the authority to deny an individual such a rite,<sup>10</sup> denial is reserved for extreme circumstances. Specifically, according to Canon 1184,<sup>11</sup> an individual may be deprived of “ecclesiastical funerals” if said person is a “manifest sinner[]” and a funeral Mass cannot be granted without “public

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<sup>3</sup> See Richard Stengel, *Two From the Neighborhood: The Crossed Paths of a Dapper Don and His Dogged Prosecutor*, TIME, Sept. 29, 1986, at 23–24 (“In 1979 a neighbor accidentally killed Gotti's twelve-year-old son when the boy rode a motorbike in front of his car. . . . A few months after the boy's death, the neighbor disappeared. Police suspect that he was stuffed into a car as it was about to be compacted.”).

<sup>4</sup> See Corky Siemaszko, *Gotti will Rest with Godfathers*, N.Y. DAILY NEWS, June 12, 2002, at 4 (acknowledging other mobsters are buried at St. John's, including Salvatore “Lucky” Luciano, Vito Genovese, Carlos Gambino, Carmine Galante, Salvatore Maranzano, and Wilfred Johnson, who was “gunned down after informing on Gotti”).

<sup>5</sup> See Corky Siemaszko, *No Funeral Mass for Gotti, Church Says*, N.Y. DAILY NEWS, June 13, 2002, at 3 (“Even in death, John Gotti keeps creating controversy.”).

<sup>6</sup> See Pedro Lombardía, *The Fundamental Rights of the Faithful*, 48 FUTURE CANON L. 81, 86 (1969) (“[Catholics have] a right to the spiritual riches of the Church and to all necessary aids to salvation, such as the sacraments . . .”).

<sup>7</sup> See KARL RAHNER, S.J., BISHOPS: THEIR STATUS AND FUNCTION 23 (Edward Quinn trans., 1964) (“[T]he college of bishops with the pope as its head possesses the supreme plenitude of authority in the Church . . .”).

<sup>8</sup> See discussion *infra* Part IV.

<sup>9</sup> See, e.g., Charles W. Bell, *Diocese Refusal is Rooted in Cannon Law*, N.Y. DAILY NEWS, June 13, 2002, at 2 (stating that Bishop Francis Mugavero denied a Catholic funeral to Frank De Cicco, a former Gotti follower, and Archbishop John Cardinal O'Connor denied a funeral to Paul Castellano who was murdered outside a Manhattan restaurant).

<sup>10</sup> CODEX IURIS CANONICI c.2, § 1984 (Canon Law Society of America trans., 1998) (1983) [hereinafter CIC-1983].

<sup>11</sup> *Id.*

scandal of the faithful.”<sup>12</sup> Still, deprivation can only occur if the person has not repented prior to death.<sup>13</sup> Indeed, the funeral of John Gotti might have brought about “public scandal,” therefore providing grounds for depriving a Mass; however, it seems highly unlikely that in all his time in prison John Gotti did not repent.<sup>14</sup> Supporting this theory are the concepts of “redemption” and “forgiveness.” These notions are so ingrained in Catholic beliefs as to create the inference that the Church wants individuals to achieve salvation and will do all it can to facilitate such. This is further supported by certain Church practices, which I contend assist in creating a presumption that Gotti did repent, thus rendering Canon 1184 inapplicable.<sup>15</sup>

Finally, in past scenarios where individuals were denied funeral rites the overwhelming trend was that they were individuals who had been murdered as a result of their connections with organized crime and presumably had not been allowed any opportunity to receive Penance.<sup>16</sup> Conversely, John Gotti died after a long battle with cancer, making him well aware of his fate, and giving him two years to contemplate his mistakes and to ask for God’s forgiveness.

Before addressing any of the issues set forth, it is important to be aware that this work neither condones the actions of John Gotti nor offers to hold him up as anything more than what he was—the head of a major New York crime family. He was a despicable individual, with the blood of many on his hands. However, according to the beliefs of the Church, and in line with its unification of law and theology,<sup>17</sup> there should have been a much different outcome than that which was reached in the case of John Gotti.

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<sup>12</sup> *Id.* § 1.

<sup>13</sup> *Id.*

<sup>14</sup> See Bell, *supra* note 9, at 2 (establishing that federal officials were silent as to whether or not Gotti received Last Rites or had met with a Catholic chaplain while in prison).

<sup>15</sup> But see Rev. Msgr. Joseph R. Punderson, *Hierarchical Recourse to the Holy See: Theory and Practice*, 62 CANON L. SOC. AM. PROC. 19, 22 (2000) (stating that an administrative act performed by the proper authority carries with it a presumption of validity).

<sup>16</sup> See discussion *infra* Part IV.

<sup>17</sup> See *infra* note 138 and accompanying text.

## I. THE MOBSTER

In evaluating John Gotti's situation, it is imperative to understand the kind of life that John Gotti lived. Although there is little reservation that Gotti fell within the "manifest sinner" category set forth in Canon 1184, it is necessary to look at the extent of his transgressions. Looking at Gotti's life, one can argue that his public notoriety affected Bishop Daily's decision. While Daily's decision was ostensibly based on canon law, Daily might have been more concerned with Gotti's career than he was with some of the more important issues surrounding his death.

John Gotti was born in the Bronx, the son of a construction worker.<sup>18</sup> While other kids were out playing stickball, Gotti became notorious for his street fighting.<sup>19</sup> At age twelve, after his family moved to Brownsville, near East New York, Gotti became involved with gangs.<sup>20</sup> By age fourteen he was taking part in robberies; at sixteen he was the leader of a gang of local teens;<sup>21</sup> and by seventeen, Gotti had become a henchman under Carmine and Danny Fatico—members of the well-known Gambino crime family.<sup>22</sup> In 1965, after being arrested several times, Gotti served a year in jail for attempted burglary and another three years, beginning in 1969, for hijacking a cargo truck from a warehouse at John F. Kennedy International Airport.<sup>23</sup>

By 1968 Gotti was working for Aniello Dellacroce, a Gambino family underboss<sup>24</sup> and a purported Mafia traditionalist whom Gotti emulated. In 1973, Gotti endeared himself to the Gambino family when he took part in the killing of an Irish gangster who had allegedly kidnapped and murdered Carlo

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<sup>18</sup> See Selwyn Raab, *Reputed Mafia Boss Acquitted of Assault*, ST. PETERSBURG TIMES, Feb. 10, 1990, at 1A (describing Gotti's background).

<sup>19</sup> See Stengel, *supra* note 3, at 23.

<sup>20</sup> *Id.* (describing it as "the grim neighborhood whose mean streets gave birth to Murder, Inc.").

<sup>21</sup> *Id.* (noting that though Gotti was a "clever student," he left school in eighth grade to start his career in crime).

<sup>22</sup> See Selwyn Raab, *John Gotti Running the Mob*, N.Y. TIMES MAG., Apr. 2, 1989, at 30, 42 (stating that Carmine was "a capo in a crime family headed by Albert Anastasia"); see also *Obituary of John Gotti*, DAILY TELEGRAPH (London), June 12, 2002, at 25 (stating that the "stocky, swaggering teenager" could not help but get caught up with the Fatico brothers).

<sup>23</sup> See Raab, *supra* note 22, at 42; Stengel, *supra* note 3, at 23.

<sup>24</sup> See Selwyn Raab, *How Gotti's No. 2 Gangster Turned his Coat*, N.Y. TIMES, Nov. 15, 1991, at B1 (acknowledging that the Dellacroce faction thrived on violent crimes, as opposed to the Castellano gang, which favored white-collar crime); Stengel, *supra* note 3, at 23.

Gambino's nephew.<sup>25</sup> Later that year, Gotti pleaded guilty to attempted manslaughter for the killing and served two years in prison.<sup>26</sup>

The year 1976 was a big year for the Gambino family as Paul Castellano was named the new family boss.<sup>27</sup> Gotti voiced much dismay, however, as it was his belief that Dellacroce, not Castellano, should have succeeded Carlo Gambino as the family boss.<sup>28</sup> "Gotti reportedly thought Castellano, who was Gambino's brother-in-law and had little in common with hard-core mobsters like Gotti, was unworthy of the high position."<sup>29</sup> Then, when Dellacroce died in 1985 and it appeared that Gotti was sure to become the new underboss, Castellano appointed his bodyguard, Thomas Bilotti, instead.<sup>30</sup> Castellano's plan, however, was short-lived. On their way to dinner in midtown Manhattan, Castellano and Bilotti were shot down in front of Spark's Steak House.<sup>31</sup> The FBI and police suspected that Gotti had ordered the hit, but authorities did not arrest him.<sup>32</sup> Afterward, as planned, Gotti took over as the head of the family.<sup>33</sup>

In 1986, one of Gotti's better-documented run-ins with the law—a situation where he showed his vast ability to evade it—

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<sup>25</sup> See Raab, *supra* note 22, at 30 (stating that three men posing as detectives, including Gotti, fatally shot McBratney in a Staten Island bar); see also Sarah Baxter, *New York Wiseguys Bury the Fantasy Don*, SUNDAY TIMES (London), June 16, 2002, at A4 (quoting Joseph McBratney, son of the Irish gangster, as saying "I feel bad for his children. I know what it's like to lose a father. [At least now though my father can] rest in peace.").

<sup>26</sup> See Raab, *supra* note 22, at 70 (noting that a grateful Gambino hired a prominent lawyer to defend Gotti, who was able to negotiate a "remarkable deal" in exchange for Gotti's guilty plea to attempted manslaughter, which carried a maximum term of four years).

<sup>27</sup> *Id.*

<sup>28</sup> See Ginia Bellafante, *Hoods Have Feelings Too: HBO'S Gotti—A Don as Dapper as He is Complex*, TIME, Aug. 19, 1996, at 70, 71 (commenting on HBO's focus on Gotti's disgust with Castellano, stating that "Gotti ruled by gut and fist, and he had little tolerance for the mahogany-paneled sedateness of dons like Carlo Gambino and Paul Castellano").

<sup>29</sup> See Stengel, *supra* note 3, at 23.

<sup>30</sup> See *id.*

<sup>31</sup> See *id.*; see also Richard Stengel, *Slaughter on 46th Street: A Mafia Boss is Brazenly Gunned Down in New York*, TIME, Dec. 30, 1985, at 17 (stating that three henchman with semiautomatic weapons "cut down" the unsuspecting victims outside of the restaurant).

<sup>32</sup> See Stengel, *supra* note 31, at 17 (noting incorrectly that "Though the intemperate Gotti is unlikely to rise to the top of the Mafia's largest family, the killings nevertheless may signal the ascent of a hungrier younger generation of mob leaders").

<sup>33</sup> See Stengel, *supra* note 3, at 23.

occurred when Gotti and some of his henchmen mugged Romual Piecyk.<sup>34</sup> Unaware of whom Gotti was, Piecyk filed charges with the Queens District Attorney's Office.<sup>35</sup> After receiving threatening telephone calls and finding the brakes on his van had been tampered with, "Piecyk . . . wish[ed] he had just forgotten about the whole episode."<sup>36</sup> When asked to testify against Gotti, Piecyk suddenly, and rather conveniently, was unable to recall the events of his mugging.<sup>37</sup> Naturally, the district attorney dropped the charges and Gotti began to live-up to his nickname as "The Teflon Don."

It was not until 1992, after being indicted on several occasions, that a conviction actually stuck. In December 1990, the government arraigned Gotti on an indictment, charging him, along with three others, with racketeering, murder, obstruction of justice, racketeering conspiracy, conspiracy to murder, illegal gambling, conspiracy to obstruct justice, and conspiracy to defraud the United States by obstructing the collection of Gotti's income taxes.<sup>38</sup> The trial commenced on January 29, 1992 and after extensive pretrial motions were made,<sup>39</sup> in an obvious attempt to stall the proceedings and perhaps influence jurors, which had been done in the past,<sup>40</sup> a verdict was rendered on

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<sup>34</sup> See John S. DeMott, *Trial and Terror: A Victim's Memory is Mugged*, TIME, Apr. 7, 1986, at 29.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*; see Gerald McKelvey, *Jailing of Gotti Upheld*, NEWSDAY, June 26, 1986, at 4 (stating that Piecyk was afraid of "Gotti's people").

<sup>37</sup> See DeMott, *supra* note 34, at 29 (quoting a prosecutor who said, "His memory is missing or dead").

<sup>38</sup> See *United States v. Gambino*, 59 F.3d 353 (2d Cir. 1995); see also *supra* note 2 and accompanying text.

<sup>39</sup> See, e.g., *In re Heimerle*, 788 F. Supp. 700 (E.D.N.Y. 1992) (motion to quash subpoena); *United States v. Gotti*, 784 F. Supp. 1017 (E.D.N.Y. 1992) (motion for bill of particulars); *United States v. Gotti*, 784 F. Supp. 1013 (E.D.N.Y. 1992) (motion to disclose names of jurors in two prior trials); *United States v. Gotti*, 784 F. Supp. 1011 (E.D.N.Y. 1992) (defendant's motion for writ of habeas corpus *ad testificandum* to compel production of prison inmate and participant in Witness Protection Program to testify); *United States v. Gotti*, 777 F. Supp. 224 (E.D.N.Y. 1992) (motion to empanel an anonymous and sequestered jury); *United States v. Gotti*, 776 F. Supp. 666 (E.D.N.Y. 1991) (motion to reconsider order of detention).

<sup>40</sup> See Robert W. Greene, *Man Who Got Gotti*, NEWSDAY (New York), Apr. 5, 1992, at 3 (quoting Bruce Mouw, FBI agent, stating "Gotti's people reached jurors at two, and possibly all three trials of Gotti's brother"); see also Pete Bowles, *Gotti In-law Tried to Bribe Juror*, NEWSDAY (New York), Oct. 31, 1991, at 25 (revealing that according to government documents the son-in-law of John Gotti offered a \$25,000 bribe to a juror during the 1989 drug trial of Gotti's younger brother). The bribed juror, Robert Edwards, was only an alternate, but he was told by Gotti's son-in-law

April 2, 1992 and the jury found Gotti guilty on all counts.<sup>41</sup> What made the conviction that much more painful was that the majority of the impeaching testimony against Gotti came from his former right-hand man, Salvatore "The Bull" Gravano.<sup>42</sup> Gotti received a sentence of life in prison with no chance of parole.<sup>43</sup>

As for the time Gotti spent in prison, many were under the misconception that Gotti commanded the same kind of respect in prison as he had on the streets and consequently the time he served was relatively easy.<sup>44</sup> Later facts reveal, however, that Gotti's time was marred by beatings, humiliation,<sup>45</sup> and, of course, his dwindling health. In September 1998, Gotti was diagnosed with throat cancer,<sup>46</sup> which eventually turned into the cancer of the head, neck, and throat that took his life. According to reports, the proud Gotti spent the last two years of his life

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that he would be seated the next day. Later that day a note concerning the trial was found tacked on one of the other juror's doors and that juror was dismissed. "Edwards, the first alternate, was substituted for the dismissed juror." *Id.*

<sup>41</sup> See *Gambino*, 59 F.3d at 353; see also *supra* note 2 and accompanying text.

<sup>42</sup> See Pete Bowles et al., *Gotti Convicted; Case Finally Sticks to the "Teflon Don"*, NEWSDAY (New York), Apr. 3, 1992, at 4 (noting that Gravano told the jury that he and Gotti watched over the assassination of Paul Castellano, an assassination that Gotti ordered); George E. Curry, *Gotti Verdict Hailed as Major Blow to Mob*, CHI. TRIB., Apr. 3, 1992, at C1 ("[Gravano] also told of how the mob collected millions of dollars each year by controlling illegal gambling, riverfront operations, the garment industry's trucking business, labor unions and other businesses.").

<sup>43</sup> See *United States v. Gotti*, No. CR-90-1015, 1992 U.S. Dist. LEXIS 11400 (E.D.N.Y. June 23, 1992), *aff'd sub nom.*, *United States v. Locascio*, 6 F.3d 924, 929 (2d Cir. 1993) (affirming the conviction of both Gotti and Frank Locascio based on violations of the Racketeer Influenced Corrupt Organizations Act); see also *supra* note 2 and accompanying text.

<sup>44</sup> See Jerry Capeci, *The Day Gotti Got Beat*, N.Y. DAILY NEWS, Oct. 7, 2002, at 3.

<sup>45</sup> See *id.* ("Gotti got the type of beating he routinely gave others as a young thug.").

<sup>46</sup> See Associated Press, *Surgery for Gotti: Lawyers Say Throat Cancer Treatable*, NEWSDAY (New York), Sept. 24, 1998, at A34.



bedridden, in extreme pain,<sup>47</sup> and plagued by excessive weight loss.<sup>48</sup>

While most would view Gotti's life as an exhibition of sin, Gotti did have his supporters. Besides his family, many of the people of Howard Beach and Maspeth seemed to look up to him, viewing him as a "folk hero"<sup>49</sup> or some kind of modern day "Robin Hood."<sup>50</sup> One of the main reasons for this outward respect of Gotti was that common criminals feared him and consequently stayed out of his neighborhood.<sup>51</sup> Furthermore, while the majority of law enforcement agents loathed Gotti,<sup>52</sup> some could not help but recognize a few of his alleged redeeming qualities. Most notably, Rudolph Giuliani, who once prosecuted Gotti, wrote that he "clearly understood some of the principles of leadership."<sup>53</sup>

## II. THE LAW

Some might be inclined to argue that denying Gotti a Catholic funeral Mass was rather insignificant, and that considering his criminal habits, he was fortunate to receive a Catholic burial.<sup>54</sup> Realistically, how important is a Catholic funeral Mass?

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<sup>47</sup> Greg B. Smith, *Gotti in Hospital After Cancer Bleeding*, N.Y. DAILY NEWS, Feb. 1, 2002, at 7 (noting Gotti's admission into a civilian hospital for bleeding lesions relating to his cancer, a reoccurring condition); Greg B. Smith, *Gotti Near Death, MDs Halt Chemo*, N.Y. DAILY NEWS, June 13, 2001, at 3 (quoting sources stating, "[Gotti's death is] a matter of weeks"); see also Russ Buettner, *The Truth About Gotti's Agony*, N.Y. DAILY NEWS, July 14, 2002, at 4 (noting that the Gotti family might seek legal action based on evidence that substandard medical care might have contributed to John Gotti's death).

<sup>48</sup> See Buettner, *supra* note 47, at 4 (stating that at the time of his death "the once barrel-chested Gotti weighed barely 100 pounds").

<sup>49</sup> Stengel, *supra* note 3, at 23.

<sup>50</sup> See Steve Dunleavy, *Honorable 'Hood' Gotti May be Gone, but his Style Lives Forever*, N.Y. POST, June 14, 2002, at 2; see also Gersh Kuntzman, *A Total Mob Scene*, NEWSWEEK WEB EXCLUSIVE, June 17, 2002, at <http://www.msnbc.msn.com/id/3668484/site/newsweek/> (quoting an onlooker at Gotti's procession who said "[w]e need men like John Gotti in this world to show the government that we won't be pushed around"), also available at 2002 WL 9211407.

<sup>51</sup> See Stengel, *supra* note 3, at 23 (noting that Howard Beach was not subject to the crime that exists in surrounding areas and attributing this to Gotti's presence).

<sup>52</sup> See *Interview with Bruce Cutler: He says His Gotti Connection, is Platonic*, NEWSDAY (New York, City ed.), May 3, 1990, at 73 (interviewing Cutler, John Gotti's former lawyer, about his belief that the Government tries to dissuade lawyers from representing people such as Gotti, who law enforcement "hates").

<sup>53</sup> David Saltonstall & Lisa L. Colangelo, *Rudy: It's Personal, Let Me Execute Bin Laden, Says Giuliani in New Book*, N.Y. DAILY NEWS, Sept. 29, 2002, at 8 (quoting from the former mayor's new book).

<sup>54</sup> See, e.g., Daniel Henninger, *Wonder Land: Mafia Dons And Bin Laden Look the Same*, WALL ST. J., June 21, 2002, at A8 ("John Gotti will be lucky if he's asked

According to Church officials, a Mass for the dead, which is performed after the burial service, was much more fitting in the case of John Gotti.<sup>55</sup> In conformity with Church doctrine, however, the Church funeral services are not a privilege, but rather a fundamental right, granted to members of the Church.<sup>56</sup> “The Mass, the memorial of Christ’s death and resurrection, is the principal celebration of the Christian funeral.”<sup>57</sup> It is a prayer for God’s mercy upon the deceased, as the Church does not presume a life of exemplary faith or virtue.<sup>58</sup> This presumption is exemplified by looking to the Catholic belief in purgatory,<sup>59</sup> from which it can be implied that perfection is not required for salvation.<sup>60</sup> Additionally, inherent in the funeral Mass is the comforting effect it provides for the family, as they too believe in the notion that the Mass is a prayer for mercy upon the soul of the departed.<sup>61</sup> By denying an individual the right to a Mass, the Church not only hurts the deceased and his or her family, but also ultimately defeats its own aim of allowing the community to express empathy for the dead.<sup>62</sup> All facts tend to point to the notion that the Church encourages the celebration of the Mass<sup>63</sup> and it is for this reason that the denial of a Mass to John Gotti was of extreme significance.

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to do less than about a half-million years in Purgatory . . . The Catholic Church, proving it can still get some things right, denied Gotti a last Mass, offering as a reason—his life.”)

<sup>55</sup> See Alan Feuer, *Diocese of Brooklyn Denies Funeral Mass for Gotti*, N.Y. TIMES, June 13, 2002, at B1 (quoting Frank DeRosa, the spokesman for the diocese, saying that the diocese feared that the crowds “would take away from the decorum”).

<sup>56</sup> See Guidelines for the Order of Christian Funerals in the Diocese of Spokane, at <http://mail.dioceseofspokane.org/intranet/Policy/BookIV/4.06.03.htm> (last visited Feb. 27, 2005).

<sup>57</sup> INTERNATIONAL COMMISSION ON ENGLISH IN THE LITURGY, ORDER OF CHRISTIAN FUNERALS (1989) ¶ 5 [hereinafter INTERNATIONAL COMMISSION].

<sup>58</sup> See *id.* ¶ 6.

<sup>59</sup> See CATECHISM OF THE CATHOLIC CHURCH ¶ 1031 (2d ed. 1997) (calling purgatory the “final purification of the elect”).

<sup>60</sup> See *id.* ¶¶ 1030–31.

<sup>61</sup> See INTERNATIONAL COMMISSION, *supra* note 57, ¶¶ 8–9.

<sup>62</sup> See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 59, ¶ 1687 (“Relatives and friends of the deceased are welcomed with a word of ‘consolation.’”).

<sup>63</sup> See *id.* ¶ 1684 (“The Christian funeral is a liturgical celebration of the Church. The ministry of the Church in this instance aims at expressing efficacious communion with the *deceased*, at the participation in that communion of *the community* gathered for the funeral, and at the proclamation of eternal life to the community.”); INTERNATIONAL COMMISSION, *supra* note 57, ¶ 46 (“When one of its members dies, the Church especially encourages the celebration of the Mass.”).

Despite the Church's promotion of the burial Mass within its teachings, it still refrained from providing Gotti and his family the very rite it deems so essential. In denying Gotti his Mass, the Church relied on Canon 1184 of the Code of Canon Law, which reads:

§ 1. Church funeral rites are to be denied to the following, unless they gave some signs of repentance before death:

1° notorious apostates, heretics, and schismatics;

2° those who for anti-Christian motives chose that their bodies be cremated;

3° other manifest sinners to whom a Church funeral could not be granted without public scandal to the faithful.

§ 2. If any doubt occurs, the local Ordinary is to be consulted and his judgment followed.<sup>64</sup>

The history of Canon 1184 can be traced all the way back to the Council of Trent.<sup>65</sup> It was during the meeting of the Council that clerics, desiring to deter the practice of dueling, enacted the canon as a punitive measure.<sup>66</sup> While individuals who survived duels were punished by excommunication, individuals who were not quite so fortunate were "permanently deprived of ecclesiastical burial."<sup>67</sup> Regardless, neither individual was able to receive Catholic funeral rites. The situation today is analogous to the Church's attempts to dissuade modern forms of "dueling," with the Mafia as one of its main targets.

Under the 1917 Code of Canon Law, the denial of ecclesiastical burials was embodied in Canon 1268.<sup>68</sup> The dueling provision was set forth in the previous Code as one of the subsections,<sup>69</sup> along with provisions depriving ecclesiastical burials to individuals who had been excommunicated<sup>70</sup> or had committed

<sup>64</sup> CIC-1983, *supra* note 10, c.1184, §§ 1-2.

<sup>65</sup> See 2 DECREES OF THE ECUMENICAL COUNCILS: TRENT TO VATICAN II 795 ch.19 (Norman P. Tanner ed., Sheed & Ward Ltd. 1990) (1972) (discussing the Council of Trent's views on dueling, stating that those who engage in or condone the practice are subject to excommunication and must be denied ecclesiastical burials).

<sup>66</sup> See *id.*

<sup>67</sup> *Id.*

<sup>68</sup> CODEX IURIS CANONICI c.1268 (Canon Law Society of America trans., 1917) [hereinafter CIC-1917].

<sup>69</sup> See *id.* c.1268, § 4 (denying Catholic burial to "persons who died in a duel or from wounds received in it").

<sup>70</sup> See *id.* c.1268, § 2 (denying Catholic burial to "persons excommunicated or interdicted by condemnatory or declaratory sentence").

suicide.<sup>71</sup> Within the commentary on Canon 1268, it is set forth that the denial of an ecclesiastical burial is such a severe punishment that whatever element the denial is being predicated upon must be found beyond a reasonable doubt.<sup>72</sup> Furthermore, since the practical effect of ordering such a severe punishment is to deny an individual a rite fundamental to his existence as a Catholic, judgment should typically favor "leniency and mercy."<sup>73</sup> This was especially the case in situations where individuals died suddenly and without warning, hence making them unable to repent.<sup>74</sup> This same commentary seems equally applicable to the 1983 Code, and it can be acknowledged that these notions of "fairness" carry over. As will later be seen, these "notions" assist in creating the presumption that Gotti did repent.<sup>75</sup>

As discussed, John Gotti's case falls within section one of Canon 1184, which deals with "manifest sinners" whose funeral would create "public scandal."<sup>76</sup> These are individuals who perform acts "against reason, truth, and right conscience."<sup>77</sup> This definition, however, offers little guidance as "sin" is a concept beyond the grasp of words. In a practical sense, "sin" is what sets the human person apart from God. It is that which is "diametrically opposed" to salvation.<sup>78</sup> While all persons are sinners, Gotti clearly was a notorious public sinner. He was convicted on several counts of murder—blatant violations of the Fifth Commandment.<sup>79</sup>

As for the "public scandal" aspect of Canon 1184, by allowing "scandal" the Church essentially promotes sin. It is the Church's

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<sup>71</sup> See *id.* c.1268, § 3 (denying Catholic burial to "persons guilty of deliberate suicide").

<sup>72</sup> See REV. STANISLAUS WOYWOD, A PRACTICAL COMMENTARY ON THE CODE OF CANON LAW 53 (1952) (stating that "[i]f any reasonable doubt exists as to the culpability of the person, . . . publicity of his offense, or any other material point, the pastor is ordered . . . to consult his Ordinary").

<sup>73</sup> See *id.* at 53–54.

<sup>74</sup> See *id.*

<sup>75</sup> See discussion *infra* text accompanying notes 135–36.

<sup>76</sup> CIC-1983, *supra* note 10, c.1184, § 1.

<sup>77</sup> CATECHISM OF THE CATHOLIC CHURCH, *supra* note 59, ¶ 1849 ("[Sin is] an utterance, a deed, or a desire contrary to the eternal law.") (quoting ST. AUGUSTINE, CONTRA FAUSTUM 22: PL 42, 418).

<sup>78</sup> *Id.* ¶ 1850 ("Sin is thus 'love of oneself even to contempt of God'" (quoting ST. AUGUSTINE, DE CIV. DEI 14, 28: PL 41, 436)).

<sup>79</sup> *Exodus* 20:13 (New American) ("You shall not kill."); see *Genesis* 4:10 (establishing that direct and intentional killing is gravely sinful and that it is a sin that "cries out to me from the soil").

duty to avoid this that lies behind the strict standard.<sup>80</sup> Bishop Daily obviously concluded that Gotti's life had fallen so far outside the Church's teaching that commiserating his life in a Mass would be detrimental to the faithful. According to one commentator, "the decision to limit the funeral services is the [C]hurch's way of differentiating between common criminals and those who are notorious."<sup>81</sup>

The analysis is not complete, however, because as section one established, individuals are only denied these rights if they have not repented prior to death.<sup>82</sup> To give a little background, according to ancient Catholic belief, affirmed in the *Lumen Gentium*, the sacrament of Penance is a way of healing and obtaining pardon from God, while at the same time reunifying oneself with the Church.<sup>83</sup> The sacrament goes by different names, based on the Church's belief that its sanctifying effects occur on many different levels. For instance it is called the sacrament of Penance,<sup>84</sup> confession,<sup>85</sup> forgiveness,<sup>86</sup> and Reconciliation.<sup>87</sup> For the majority of Catholics, the sacrament is celebrated within a church oratory or confessional, quite often in total anonymity. Though the Church has recognized that Penance can occur in

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<sup>80</sup> See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 59, ¶ 2489 ("The good and safety of others, respect for privacy, and the common good are sufficient reasons for being silent about what ought not be known or for making use of a discreet language.").

<sup>81</sup> Evan Osnos, *Letter From New York: Goodbye to Gotti, with Grandeur*, CHI. TRIB., June 20, 2002, at 10 (quoting Lawrence Cunningham, professor of theology at Notre Dame University, further stating, "[there is a fear] that the mass would be turned into some kind of mob solidarity show").

<sup>82</sup> CIC-1983, *supra* note 10, c.1184, § 1.

<sup>83</sup> See 1 *John* 1:9 ("If we acknowledge our sins, he is faithful and just and will forgive our sins and cleanse us from every wrongdoing."); DOGMATIC CONSTITUTION ON THE CHURCH *LUMEN GENTIUM* c.1, § 11 (1964) ("Those who approach the sacrament of Penance obtain pardon from the mercy of God for the offence committed against Him and are at the same time reconciled with the Church, which they have wounded by their sins, and which by charity, example, and prayer seeks their conversion."); see also NICHOLAS HALLIGAN, *THE ADMINISTRATION OF THE SACRAMENTS* 171 (1963) ("Penance is a supernatural virtue inclining a sinner to detest and to grieve over his own sin, inasmuch as it is an injury and an offense to God, and firmly to resolve correction and satisfaction.").

<sup>84</sup> See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 59, ¶ 1423 ("It is called the *sacrament of Penance*, since it consecrates the Christian sinner's personal and ecclesial steps of conversion, penance, and satisfaction.").

<sup>85</sup> See *id.* ¶ 1424 (noting that disclosure of sins to a priest "is an essential element of this sacrament").

<sup>86</sup> See *id.* (establishing that God grants the penitent "pardon and peace").

<sup>87</sup> See 2 *Corinthians* 5:20 ("be reconciled to God").

many different ways,<sup>88</sup> since at least the Council of Trent, it has taught that confession to a priest is practically necessary for the forgiveness of serious sin.<sup>89</sup> Still, as the sacrament involves interior conversion and external Penance,<sup>90</sup> outward expressions of contrition, such as fastings, are not requirements.<sup>91</sup> And, while some might think that certain individuals' transgressions are beyond forgiveness, the Church firmly believes that Penance is capable of abolishing all sins.<sup>92</sup>

It is likely that under the circumstances, Gotti, being bed-ridden for most of his last two years in prison, would have received his Penance in the form of Last Rights or Anointing of the Sick,<sup>93</sup> as these sacraments are often connected.<sup>94</sup> Although these sacraments are not solely reserved for the dying, it is particularly appropriate *in periculo mortis*.<sup>95</sup> According to Church doctrine, "A dying person . . . *must* be absolved *absolutely* when he is certainly disposed and has manifested this in some way himself or by the testimony of those about him, at least before becoming unconscious."<sup>96</sup> Still, an individual who led a sinful life

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<sup>88</sup> See NATHAN MITCHELL, *THE MANY WAYS TO RECONCILIATION: AN HISTORICAL SYNOPSIS OF CHRISTIAN PENANCE* 36 (1978) ("History shows clearly that Christians have found reconciliation in many different ways. There is no single, magical way of doing penance which satisfies the needs of everyone, everywhere, at all times.").

<sup>89</sup> See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 59, ¶ 1456 ("All mortal sins of which penitents . . . are conscious must be recounted by them in confession.") (quoting Council of Trent (1551)).

<sup>90</sup> See John W. Robertson, *Liturgical and Canonical Issues of Sacramental Celebration, Especially Reconciliation, Anointing of the Sick, and Others*, 55 CANON L. SOC. AM. PROC. 192, 196–97 (1993) (noting that individuals must show contrition as it is a "sign of *metanoia*, the desire to change one's whole being in response to the love of God").

<sup>91</sup> See MITCHELL, *supra* note 88, at 88 ("[Jesus] does not aim first at outward works, sackcloth and ashes, fasting and mortification, but at the conversion of the heart, interior conversion. Without this, such penance remains sterile and false.").

<sup>92</sup> See HALLIGAN, *supra* note 83, at 172 (noting that "perfect penance" is capable of taking away all sins).

<sup>93</sup> See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 59, ¶¶ 1511–12 (observing that over time the Anointing of the Sick was conferred more and more on those in danger of death and it was for this reason that it received the name of "Extreme Unction").

<sup>94</sup> See Sr. Susan K. Woods, S.C.L., *Anointing the Sick: Theological Issues*, 63 CANON L. SOC. AM. PROC. 233, 234 (2001) ("The connection of the sacrament of the sick with penance has a long history. It connects physical healing with spiritual healing.").

<sup>95</sup> See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 59, ¶¶ 1514–15 (noting that a sick person can receive the sacrament, recover, and then receive it again).

<sup>96</sup> HALLIGAN, *supra* note 83, at 255.

may be absolved conditionally, even if dying in the midst of sinning, based on the assumption that an individual baptized as a Catholic would wish to die with the sacraments.<sup>97</sup> This is supported by the Catholic belief that God is the ultimate "judge" of who deserves salvation.<sup>98</sup> Thus, *in pericular mortis* anyone can be absolved of any sin, by any priest, even a priest who has been excommunicated.<sup>99</sup>

The beliefs behind the sacrament of Reconciliation support the contention that the Church wants to forgive Catholics and will go to extreme measures to make possible the forgiveness of sins. This supports the presumption that John Gotti did, in fact, repent and thus was entitled to a funeral Mass.

### III. THE CHURCH WANTS FORGIVENESS

The influence of the Catholic Church is often thought to be a product of its ability to govern and command, but beyond this, the Church's greatest powers are undoubtedly a product of its ability to grant mercy.<sup>100</sup> This is best demonstrated through the canons, which seem to be a rather stringent body of law, but tend to waiver when individual entitlement to salvation<sup>101</sup> and redemption<sup>102</sup> are at issue. This tendency is a manifestation of the Church's desire to forgive all Catholics, and in furtherance of this objective, the Church takes affirmative steps to entitle all Catholics to God's grace.

Examples of the Church facilitating forgiveness can be observed within some of the exceptions it makes when dealing with dying individuals. According to the Code of Canon Law, only a priest granted the ability by law or authorized by the local Ordinary can administer the sacrament of Penance.<sup>103</sup> The exception

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<sup>97</sup> See *id.*

<sup>98</sup> See *id.*

<sup>99</sup> See CIC-1983, *supra* note 10, c.976 ("Any priest, even though he lacks the faculty to hear confessions, can validly and lawfully absolve any penitents who are in danger of death, from any censures and sins, even if an approved priest is present.").

<sup>100</sup> See Ladislav Orsy, S.J., *The Theological Tasks of Canon Law*, 58 CANON L. SOC. AM. PROC. 1, 13 (1996) ("[T]he highest order that the church has received is that of mercy.").

<sup>101</sup> See Woods, *supra* note 94, at 236 (describing "[s]alvation" as a "medicinal metaphor," as the etymology provides it is to be "made whole or healthy").

<sup>102</sup> See *id.* at 237 (describing "[r]edemption" as an "economic metaphor" as it is able to bring us back from "being under the power of a captor").

<sup>103</sup> See CIC-1983, *supra* note 10, c.965 ("Only a priest is the minister of the sacrament of penance."); *id.* c.966, § 1 ("For the valid absolution of sins, it is required

under the canons, however, allows for every priest to hear confession when an individual is dangerously close to or on the brink of death.<sup>104</sup> Furthermore, while particularly grave sins, which are punishable by excommunication, can be absolved only by the Pope, bishops, or priests granted the authority,<sup>105</sup> any priest can absolve an individual in danger of death "from every sin and excommunication."<sup>106</sup> This exception is not limited to allowing only priests not yet approved, but also extends to priests who have themselves been excommunicated.<sup>107</sup> Since Gotti had been in the midst of dying for a two-year period, any Catholic priest could have administered Penance to him during that time.

Another demonstration of the Church's care for the salvation of souls is evident in the rules for *communicatio in sacris*, allowing for the participation in the sacraments by Christians who are not in full communion with the Catholic Church.<sup>108</sup> According to section one of Canon 844, Catholics may only receive Penance from Catholic ministers and likewise, Catholic ministers can only grant Penance to Catholics.<sup>109</sup> Notwithstanding this rule, the Church makes specific exceptions allowing *communicatio in sacris*, where doing so is required for the salvation of souls. For example, under the exception, a non-Catholic minister can give Penance to a Catholic individual when that individual is close to death.<sup>110</sup> Additionally, the Church goes even further in allowing

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that . . . the minister has the faculty to exercise that power in respect of the faithful . . . ); *id.* c.966, § 2 ("A priest can be given this faculty either by law itself, or by a concession issued by the competent authority in accordance with can. 969."); *id.* c.969, § 1 ("Only the local Ordinary is competent to give to any priests whomsoever the faculty to hear the confessions of any whomsoever of the faithful.").

<sup>104</sup> See *id.* c.976.

<sup>105</sup> See *id.* c.1331; CATECHISM OF THE CATHOLIC CHURCH, *supra* note 59, ¶ 1463.

<sup>106</sup> See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 59, ¶ 1463.

<sup>107</sup> See *id.*

<sup>108</sup> See generally Rev. Aidan McGrath, *Communication in Sacris: An Effort to Express the Unity of Christians or Simply an Exercise in Politeness?*, 63 CANON L. SOC. AM. PROC. 173 (2001); see also CIC-1983, *supra* note 10, c.1365 (stating the English translation as "participation in religious rites").

<sup>109</sup> CIC-1983, *supra* note 10, c.844, § 1.

<sup>110</sup> *Id.* c.844, § 2. Moreover, the canon states:

Whenever necessity requires or a genuine spiritual advantage commends it, and provided the danger of error or indifferentism is avoided, Christ's faithful for whom it is physically or morally impossible to approach a Catholic minister, may lawfully receive the sacraments of penance, the Eucharist and anointing of the sick from non-Catholic ministers in whose Churches these sacraments are valid.

*Id.*; see Pontifical Council for Promoting Christian Unity, *The 1993 Directory for Ecumenism*, 23 ORIGINS 129, 147 para.123 (1993) [hereinafter Pontifical Counsel]



Catholic ministers to administer the sacrament of Penance to individuals from eastern churches not in "full communion" with the Catholic Church.<sup>111</sup> Section four of Canon 844 expands upon the notion set forth in section three by allowing for Catholic ministers to administer sacraments to "other Christians" when in danger of death.<sup>112</sup> In these scenarios, the only true condition upon such an act is that the priest attempt "to awaken or to assist in [the "other Christians"] acts of faith, hope, love and contrition and to desire at least that the will of God be fulfilled in their behalf."<sup>113</sup> This exception goes so far as to conditionally absolve unconscious schismatics in danger of death<sup>114</sup> and in some

("Whenever necessity requires or a genuine spiritual advantage suggests . . . it is lawful for any Catholic . . . to receive the sacraments of penance, Eucharist and anointing the sick from a minister of an Eastern church.")

<sup>111</sup> CIC-1983, *supra* note 10, c.844, § 3. Specifically, the canon states:

Catholic ministers may lawfully administer the sacraments of penance, the Eucharist, and anointing of the sick to members of the Eastern Churches not in full communion with the Catholic Church, if they spontaneously ask for them and are properly disposed. The same applies to members of other Churches which the Apostolic See judges to be in the same position as the aforesaid Eastern Churches so far as the sacraments are concerned.

*Id.*; see also CATECHISM OF THE CATHOLIC CHURCH, *supra* note 59, ¶ 1399 (noting that given proper circumstances the ability to grant sacraments to individuals from the Eastern Churches "is not merely possible but is encouraged"); Pontifical Council, *supra* note 110, 148 para.131. The Pontifical Council for Promoting Christian Unity specifically states:

[C]onditions under which a Catholic minister may administer the sacraments . . . to a baptized [non-Catholic] . . . are that the person be unable to have recourse for the sacrament desired to a minister of his or her own church . . . ask, for the sacrament of his or her own initiative, manifest Catholic faith in this sacrament and be properly disposed.

Pontifical Council, *supra* note 110, 148 para.131.

<sup>112</sup>

If there is a danger of death or if, in the judgment of the diocesan Bishop or of the Bishops' Conference, there is some other grave and pressing need, Catholic ministers may lawfully administer these same sacraments to other Christians not in full communion with the Catholic Church, who cannot approach a minister of their own community and who spontaneously ask for them, provided that they demonstrate the Catholic faith in respect of these sacraments and are properly disposed.

CIC-1983, *supra* note 10, c.844, § 4.

<sup>113</sup> HALLIGAN, *supra* note 83, at 256.

<sup>114</sup> See REV. IGNATIUS J. SZAL, THE COMMUNICATION OF CATHOLICS WITH SCHISMATICS 152 (1948) (published dissertation for School of Canon Law of the Catholic University of America). "[A] schismatic is defined as one who, having received baptism and still retaining the name of a Christian, nevertheless refuses obedience to the Supreme Pontiff or refuses to communicate with those members of the Church who are subject to him." *Id.* at 1-2. Schismatics may be absolved especially if there are grounds for supposing that they have renounced at least implicitly their

situations it may be administered to heretics.<sup>115</sup> Further, although it might already be assumed, canon law specifically sets forth that priests are obligated to hear the confession of "Christ's faithful" when these individuals are in danger of death.<sup>116</sup>

Yet another example of the Church's concern for salvation is the allowance of general absolution. According to normal Church procedure, absolution must be given individually and "cannot be given to a number of penitents together."<sup>117</sup> Despite this general rule, there are exceptions, including when individuals are in danger of death.<sup>118</sup> In this situation, according to Church belief, in order for the absolution to be valid, the individuals must have the intention of subsequently confessing their sins should they live.<sup>119</sup> Furthermore, this exception is not meant to serve as an excuse for allowing general absolution during Church gatherings on feast days.<sup>120</sup>

Yet another example of where absolution is invalid except when death is imminent is in cases involving the Sixth Commandment.<sup>121</sup> Canon 977 sets forth that "absolution of a partner in a sin against the sixth commandment of the Decalogue is invalid, except in danger of death."<sup>122</sup> This means that if a priest were to take part in adultery and then absolve the adulteress, in the absence of danger of death, there would be grounds for excommunication.<sup>123</sup> But once again, the Church focuses on the need for forgiveness, and thus allows these individuals to receive Penance, despite the extent of their indiscretions.<sup>124</sup>

It should be noted that there also exists a "danger of death" exception with regard to the administration of Baptism and that this exception further avers the Church's desire that forgiveness

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errors; scandal is avoided by a presumption that at the last moment the dying person has returned to unity with the Church. *Id.* at 161, 187-89.

<sup>115</sup> See *id.* at 152 (noting that some hold that unconscious heretics may be treated as unconscious schismatics might, but only in limited situations).

<sup>116</sup> CIC-1983, *supra* note 10, c.986, § 2.

<sup>117</sup> *Id.* c.961, § 1.

<sup>118</sup> *Id.* (declaring that group Penance is possible if "danger of death threatens and there is not time for the priest or priests to hear the confessions of the individual penitents").

<sup>119</sup> See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 59, ¶ 1483.

<sup>120</sup> See *id.*

<sup>121</sup> See *Exodus* 20:14 (New American) ("You shall not commit adultery.").

<sup>122</sup> CIC-1983, *supra* note 10, c.977.

<sup>123</sup> See *generally id.* (discussing the invalidity of the absolution of a partner in sin except in danger of death).

<sup>124</sup> See *id.*

be extended to all.<sup>125</sup> The Church has always recognized that Penance and Baptism are analogous, and while Baptism is the title reserved for our first act of conversion, Penance enables Catholics to obtain forgiveness even with regard to sin committed subsequent to Baptism.<sup>126</sup> The initial redemptive quality of Baptism is so important that canon law permits its administration in virtually any circumstance, by any priest. One such example is expressed in Canon 865, whereby an adult in danger of death may be baptized, with limited knowledge of the religion, so long as he adheres to the requirements of the Church.<sup>127</sup> In the case of infants the Church will go so far as to baptize an infant, whether of Catholic parents or not, even without the parents' consent, so long as the child is in danger of death.<sup>128</sup> This is certainly one of the more controversial enactments, but it highlights the extent to which the Church is willing to go in furtherance of the belief that all individuals should have an opportunity for salvation.<sup>129</sup>

Regarding those who have already passed away, the Church allows the unbaptized to be buried in Catholic cemeteries, despite the fact that these individuals have not been absolved of their original sin.<sup>130</sup> This practice is founded in the concept that the Church maintains hope that there is salvation for the unbaptized and the denial of funeral rites would seemingly impede on that belief.<sup>131</sup> The Church has gone further than to just allow

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<sup>125</sup> See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 59, ¶ 977 ("Baptism is the first and chief sacrament of forgiveness of sins because it unites us with Christ, who died for our sins and rose for our justification, so that 'we too might walk in newness of life.'") (quoting *Romans* 6:4).

<sup>126</sup> See *id.* ¶ 980 ("Penance has rightfully been called . . . 'a laborious kind of baptism' [and it] is necessary for salvation for those who have fallen after Baptism.") (quoting Council of Trent (1551)).

<sup>127</sup> CIC-1983, *supra* note 10, c.865, § 2.

<sup>128</sup> *Id.* c.868, § 2.

<sup>129</sup> See, e.g., *id.* c.870 (providing for the Baptism of abandoned infants); *id.* c.871 (granting the ability to baptize the fetuses of attempted abortions).

<sup>130</sup> *Id.* c.1183, § 2 ("The local ordinary can permit children to be given ecclesiastical funeral rites if their parents intended to baptize them but they died before their baptism.").

<sup>131</sup> See CATECHISM OF THE CATHOLIC CHURCH, *supra* note 59, ¶ 1261. Moreover, [T]he Church can only entrust them to the mercy of God . . . [T]he great mercy of God . . . desires that all men should be saved, and Jesus' tenderness toward children . . . allow us to hope that there is a way of salvation for children who have died without Baptism.

*Id.* But see RICHARD RUTHERFORD, *THE DEATH OF A CHRISTIAN: THE RITE OF FUNERALS* 86-87 (1980) (noting that the Christian burial of unbaptized children

this for unbaptized children, as it has also provided funeral rites to catechumens.<sup>132</sup> It is because of the sheer desire of these individuals to be baptized that they are able to receive a funeral, as their desire constitutes an inherent renunciation of their sins.<sup>133</sup> Moreover, the Church has been known to allow baptized non-Catholics to receive ecclesiastical funeral rites.<sup>134</sup>

This brief and non-exhaustive discussion of the cases in which the canons facilitate forgiveness demonstrates that the Church will do what it can to provide each individual, even non-Catholics, the opportunity for salvation. If the Church is willing to provide funeral rites to the unbaptized, Penance for non-Catholics or Penance by non-Catholics to Catholics, and deathbed forgiveness of excommunicable sins, then what about John Gotti? Granted, he led a life of sin, but John Gotti spent the last year of his life in a federal prison hospital, fairly cognizant of the fact that he would die there.<sup>135</sup> The various canonical provisions for assisting a person in danger of death all elicit a greater leniency in the case of Gotti. Even further, they arguably create a presumption that John Gotti repented on his deathbed. It remains true that prison officials would not confirm Gotti's repentance,<sup>136</sup> and a priest, having granted Penance, cannot speak of the act.<sup>137</sup> However, what greater prophetic witness could the Church have provided to the public about the possibilities of forgiveness than to presume Gotti's repentance and thus allow for full rites of Christian burial?

It is necessary to note that in making his decision Bishop Daily should have been guided by the "unity of [l]aw and

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was not always the custom of the Church and that before the Council of Trent the children would often be buried at night, outside of the cemetery, with no prayer or consolation).

<sup>132</sup> CIC-1983, *supra* note 10, c.1183, § 1 ("As regards funeral rites catechumens are to be considered members of the Christian faithful."); *see also id.* c.1183 cmt. (defining a Catechumen as a person preparing for Baptism).

<sup>133</sup> *See* CATECHISM OF THE CATHOLIC CHURCH, *supra* note 59, ¶ 1259.

<sup>134</sup> *See* CIC-1983, *supra* note 10, c.1183, § 3.

<sup>135</sup> *See* Murray Weiss, *Ailing Gotti Gets More Chemo*, N.Y. POST, Nov. 22, 2000, at 16 (stating that Gotti had made it through the first year without recurrence of his cancer but a later biopsy revealed that the cancer had returned).

<sup>136</sup> *See* Corky Siemaszko, *Gotti Will Rest with Godfathers*, N.Y. DAILY NEWS, June 12, 2002, at 4 (maintaining that federal prison officials would not say whether John Gotti had received last rites).

<sup>137</sup> CIC-1983, *supra* note 10, c.983, § 1 ("The sacramental seal is inviolable; [thus] it is a crime for a confessor in any way to betray a penitent by word or in any other manner or for any reason.").

[t]heology” that is recognized by the Church.<sup>138</sup> All systems of law are grounded in “certain foundational assumptions about what it means to be human.”<sup>139</sup> Naturally, one of the Catholic Church’s “foundational assumptions” about humanity is that it is fallible.<sup>140</sup> The belief in forgiveness is a dimension of this, but at the same time forgiveness “requires respect for justice.”<sup>141</sup> It is for these reasons that canon law is riddled with exceptions, as notions of “dispensation, sanation, equity, and *epiekeia*” do blend with justice.<sup>142</sup> Canon law is a demonstration of this belief and according to Pope Paul VI:

[C]anon law is “a norm that tends for the most part to interpret two laws—a higher divine law and an internal, moral one of conscience.” It provides balance between rights and corresponding duties, between liberty and responsibility, between the dignity of the individual and the sovereign requirements of the common good.<sup>143</sup>

Accordingly, although justice is a necessity, the Church must evaluate its decisions based on what will advance the rights of individuals and promote the “common good.”<sup>144</sup> What would have served the “common good” in John Gotti’s case? These arguments, riddled with examples, weigh heavy upon the

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<sup>138</sup> See generally Rev. John J. Coughlin, O.F.M., *Law and Theology: Reflections on What it Means to be Human from a Franciscan Perspective*, 74 ST. JOHN’S L. REV. 609 (2000).

<sup>139</sup> *Id.* at 610 (discussing liberal theory and how justice operates differently in certain legal cultures).

<sup>140</sup> See Ladislav Ory, S.J., *The Theological Task of Canon Law*, 58 CANON L. SOC. AM. PROC. 1, 14–15 (1996) (noting that the awareness of fallibility and humanity is an “integral part of [the Catholic] church”).

<sup>141</sup> James H. Provost, *Rights in Canon Law: Real, Ideal, or Fluff*, 61 CANON L. SOC. AM. PROC. 317, 319 (1999) (“Without justice, there is no respect for the good of another; without justice, we cannot do something for the genuine good of another. So charity requires, and builds on justice.”).

<sup>142</sup> Ory, *supra* note 140, at 16–17 (“Such interventions can serve as correctives to the impersonal character of the law: they demonstrate that in the church the healing power of Christ can reach a wound that no law can cure.”).

<sup>143</sup> JORDAN F. HITE ET AL., READINGS CASES MATERIALS IN CANON LAW 25 (1980) (internal citations omitted); see also ANDREW J. CUSCHIERI, O.F.M., INTRODUCTORY READINGS IN CANON LAW 419 (1988) (“[The place] of canon law in the restoration of Christian unity is to guide the dialogue in a manner faithful to the mind of the Church. It is there to help and facilitate a cautious and effective process towards Christian unity.”).

<sup>144</sup> See JOHN PAUL II, ENCYCLICAL LETTER *CENTESIMUS ANNUS* ¶ 47 (1991) [hereinafter *CENTESIMUS ANNUS*] (“[Common good] is not simply the sum total of particular interests.”); Provost, *supra* note 141, at 322 (noting that the “common good looks to promote the rights of the person”).

notion that the "common good" would have best been served by allowing Gotti's funeral Mass.

#### IV. OTHER DENIALS

As stated earlier, John Gotti was not the first mafia individual to have been denied a funeral Mass based on Canon 1184. Looking at past instances however, the common trend was that these mobsters' deaths came as a result of assassinations where, consequently, they did not have the opportunity to repent.<sup>145</sup> That fact alone distinguishes Gotti's case from those of former mafia individuals, as his death was not the result of a sudden "hit," but rather was anticipated in light of his condition.

What transpired after Paul Castellano and Thomas Billotti's murder serves as an excellent example of this distinction. As mentioned previously, Castellano and Billotti were murdered during a hit orchestrated by John Gotti.<sup>146</sup> As with Gotti, both Castellano and Billotti's families were denied a public burial Mass by John Cardinal O'Connor.<sup>147</sup> In the case of Castellano, the family was said to have pleaded for a funeral Mass, but obviously to no avail.<sup>148</sup> In ruling out a funeral Mass, Cardinal O'Connor's main concern was the notoriety of their deaths, as it was well publicized throughout New York and the rest of the country.<sup>149</sup> These deaths are distinguishable as Castellano and Billotti died as a result of their sin in a very public manner, unlike Gotti, who died in a prison hospital after a long battle with cancer.

The deaths of Anthony Spilotro and his brother Michael serve as an additional example of individuals with mafia ties being denied full funeral rites.<sup>150</sup> Anthony Spilotro was notorious

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<sup>145</sup> See *supra* notes 16–17 and accompanying text.

<sup>146</sup> See *supra* text accompanying notes 31–33 (discussing the "hit" on Castellano and Billotti).

<sup>147</sup> See Michael D'Antonio, *An Expression of Disapproval*, NEWSDAY (New York), Dec. 20, 1985, at 19 (acknowledging that O'Connor sought to show "that how a life is spent on Earth matters" and that the Church opposes any kind of criminal connections).

<sup>148</sup> See *Castellano's Kin Asked to Forgive*, RECORD (New Jersey), Dec. 22, 1985, at 3 (stating that Castellano's nineteen year-old grandson begged the bishop to allow for a funeral Mass for Castellano).

<sup>149</sup> See Michael Arena, *Cardinal Denies Mob Boss Funeral Rites of Church*, NEWSDAY (New York), Dec. 20, 1985, at 3 (noting that Cardinal O'Connor feared granting a funeral Mass would appear to condone organized crime).

<sup>150</sup> See Jack Houston & Ronald Koziol, *Spilotros Denied Church Funeral*, CHI. TRIB., June 25, 1986, at C1.

as being the head of the Chicago mob's west coast syndicate.<sup>151</sup> His brother Michael, however, was not a well-known criminal.<sup>152</sup> Their bodies were found buried, after having been beaten to death, in a cornfield outside of Chicago.<sup>153</sup> It was then Vice Chancellor, Reverend Thomas Paprocki, who made the decision to deny both brothers a funeral.<sup>154</sup> While the decision seemed relatively easy regarding Anthony Spilotro, who had been connected to at least seven murders, but possibly as many as twenty-five, the denial of Michael Spilotro was much more controversial considering he was a "minor hoodlum" at worst.<sup>155</sup> Once again, much like Castellano and Billotro, these were two sudden deaths that very much took place in the "public eye." Further, the contrast between Anthony and Michael helps prove that the facts surrounding the death are a determining factor in deciding whether the decedent should receive an ecclesiastical burial. Anthony Spilotro was certainly deserving of his deprivation; however, as stated in newspaper reports, Michael's death seemed to be a case of being in the wrong place "at the wrong time."<sup>156</sup> Despite this and his relatively crime-free lifestyle, the Church still felt the need to treat him as it did his brother. This directly supports the contention that it is the matter in which the individual died that governs, not the life he lived.

In April of 1986, yet another "acquaintance" of Gotti was denied a funeral Mass. Frank De Cicco, who was connected to the murder of Paul Castellano, was killed in a car bombing.<sup>157</sup> A diocesan spokesperson acknowledged that the suddenness of De Cicco's death certainly played a part in John Cardinal O'Connor's decision, and that it was consistent with church policy regarding mafia individuals "who die violent deaths."<sup>158</sup>

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<sup>151</sup> See *id.*

<sup>152</sup> See *id.*

<sup>153</sup> *Id.*

<sup>154</sup> See *id.*

<sup>155</sup> *Id.* ("The church has been scandalized by not having a funeral. He (Michael) was a good neighbor.") (quoting a priest in the diocese).

<sup>156</sup> See *id.*

<sup>157</sup> See *Feds, Friends at Funeral of De Cicco*, NEWSDAY (New York), Apr. 18, 1986, at 2.

<sup>158</sup> See Mike McAlary, *No Mass at Funeral for Reputed Mobster*, NEWSDAY (New York), Apr. 17, 1986, at 7. "If a man dies of natural causes, you have to believe he [made] peace with God. . . . We leave it up to God to judge De Cicco's soul." *Id.* (quoting Frank DeRosa, a diocesan spokesman).

This list is far from comprehensive as other mobsters such as Carmine Galante and Albert Anastasia were also denied funeral Masses after dying violent deaths. More importantly, however, their deaths stand for the same assertion—that a sudden violent death connected to a sinful lifestyle establishes the foundation for denying a funeral Mass. This contention is further established by looking at some of the former organized crime figures who were granted funeral Masses.

Carlo Gambino was one of the more notorious mafia individuals in history, yet even he was able to receive the rite denied to Gotti.<sup>159</sup> Gambino, who was the head of the New York mafia prior to Castellano, was linked to dozens of “hits.” Nevertheless, when he died of a heart attack in 1976,<sup>160</sup> still very active within organized crime, the Church raised no protest regarding his funeral.<sup>161</sup> Aniello Dellacroce, who was reputed to be one of the most powerful mobsters in the country, was also granted a funeral Mass<sup>162</sup> when he died from natural causes in a New York hospital.<sup>163</sup> The Church also deemed Joseph Bonanno, known to some as “Joe Bananas,”<sup>164</sup> deserving of a funeral Mass when he passed away of natural causes in May of 2002.<sup>165</sup> Bonanno had been credited with being a creator of the American mafia and all evidence seems to point toward him being responsible for dozens of killings.<sup>166</sup> There is little doubt that Gotti was in a similar situation as Bonanno, both aware of his fate and having been removed from the criminal element for quite some time.

The obvious difference between a Paul Castellano and a Carlo Gambino is not the way in which they lived their life, but how they died. Based on this “precedent,” it appears that the

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<sup>159</sup> See Michael Arena, *Cardinal Denies Mob Boss Funeral Rites of Church*, NEWSDAY (New York), Dec. 20, 1985, at 3.

<sup>160</sup> See Anthony M. Destefano, *Aiming for Last Big Crime Don*, NEWSDAY (New York), May 23, 2004, at A05.

<sup>161</sup> See Arena, *supra* note 159, at 3.

<sup>162</sup> See Gerald McKelvey, *Reputed Mob Boss Dellacroce Dies*, NEWSDAY (New York), Dec. 4, 1985, at 11 (stating Dellacroce essentially ran the Manhattan faction of the Cosa Nostra, while Castellano ran the rest).

<sup>163</sup> See *id.* (establishing that Dellacroce entered a hospital under the alias of “O’Neil” as he feared his whereabouts being disclosed).

<sup>164</sup> See *Obituaries*, CHI. TRIB., May 19, 2002, at A6.

<sup>165</sup> See *id.* (noting that he described himself as a “venture capitalist”); see also C.T. Revere, *Strong Feelings Expressed at Bonanno’s Wake*, TUCSON CITIZEN, May 18, 2002, at 1B.

<sup>166</sup> See *Godfather of New York Mafia and ‘Man of Honour’*, IRISH TIMES, May 18, 2002, at *Obituaries*.



Church believes that a public death leads to “public scandal,” and accordingly, a funeral Mass should be denied. Naturally, after comparing Gotti with these other individuals, one is left with the impression that Gotti’s situation is similar to that of Gambino, Bonnano, and Dellacroce, rather than that of Castellano, De Cicco and the Spilotros. Based on this line of reasoning, it is asserted that John Gotti, having died in a hospital, in a very non-public manner, deserved full funeral rites.<sup>167</sup>

### CONCLUSION

This Note has argued that Canon 1184 was misapplied in the case of John Gotti, not that the law itself is unjust. The Church’s belief in forgiveness is ingrained in all of its actions, yet it was seemingly eschewed in this situation. While the Church is willing to take all possible steps to aid individuals from other religions, the unbaptized and the excommunicated, the Catholic Church was not willing to make that same effort in the case of John Gotti. Further, the precedent set by previous mafia deaths supports Gotti falling within the “exception.” Based on these arguments, there seems to be little doubt that John Gotti should have received all the rights intrinsic to his being baptized. Finally, in the midst of the Church’s current challenges,<sup>168</sup> the decision to permit the funeral Mass for Gotti was the ideal opportunity for the Church to display one of its most fundamental tenets, forgiveness.

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<sup>167</sup> See generally Rik Torfs, *Rights in Canon Law: Real, Ideal or Fluff?*, 61 CANON L. SOC. AM. PROC. 343 (1999) (arguing the Church should remain consistent in its application of its own teachings on rights within the Church).

<sup>168</sup> See Ron Howell, *Three Priests Ordained*, NEWSDAY (New York), June 30, 2002, at A30 (noting the “fraternity of the priesthood” is facing a shortage of priests); Dick Ryan, *Bishops Can’t Ignore Laity’s Cries for Change*, NEWSDAY (New York), June 20, 2002, at A39 (stating that, in light of public pressure, “major changes must come to a hierarchical structure that, steeped in secrecy . . . is essentially a closed, private club that thrives on the pomp and privilege that the gospels only associated with the pharisees”); Stephanie Saul, *Bishop Has New Info on Sex Charges*, NEWSDAY (New York), July 23, 2002, at A15 (addressing sexual abuse allegations within the Church).