vamen of the tort," is insufficient "in the area of public debate about public figures." Additional proof that the publication contained a false statement of fact made with actual malice was necessary, the Court concluded, in order "to give adequate 'breathing space' to the freedoms protected by the First Amendment." [1287]

The Court next considered whether an intentional infliction of emotional distress action could be brought by a father against public protestors who picketed the military funeral of his son, where the plaintiff was neither a public official nor a public figure. Based on the reasoning of *Hustler Magazine*, one might presume that the *Times* privilege would not extend to the intentional infliction of emotional distress upon a private citizen. However, in *Snyder v. Phelps*,[1288] the Court avoided addressing this issue, finding that where public protesters are addressing issues of public concern, the fact that such protests occurred in a setting likely to upset private individuals did not reduce the First Amendment protection of that speech. In *Phelps*, the congregation of the Westboro Baptist Church, based on the belief that God punishes the United States for its tolerance of homosexuality, particularly in America's armed forces, had engaged in nearly 600 protests at funerals, mostly military. While it was admitted that the plaintiff had suffered emotional distress after a protest at his son's funeral, the Court declined to characterize the protests as directed at the father personally.[1289] Rather, considering the "content, form, and context" of that speech,[1290] the Court found that the dominant themes of the protest went to public concerns, and thus could not serve as the basis for a tort suit.[1291]

"Right of Publicity" Tort Actions.—In *Zacchini v. Scripps-Howard Broadcasting Co.*,[1292] the Court held unprotected by the First Amendment a broadcast of a video tape of the "entire act" of a "hu-

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[1287] 485 U.S. at 53, 56.

[1288] 562 U.S. ___, No. 09–751, slip op. (March 2, 2011).

[1289] Signs displayed at the protest included the phrases "God Hates the USA/Thank God for 9/11," "America is Doomed," "Don't Pray for the USA," "Thank God for IEDs," "Thank God for Dead Soldiers," "Pope in Hell," "Priests Rape Boys," "God Hates Fags," "You're Going to Hell," and "God Hates You." , 562 U.S. ___, No. 09–751, slip op. at 2.

[1290] 562 U.S. ___, No. 09–751, slip op. at 8 (citations omitted).

[1291] Justice Alito, in dissent, argued that statements made by the defendants on signs and on a website could have been reasonably interpreted as directed at the plaintiffs, and that even if public themes were a dominant theme at the protest, that this should not prevent a suit from being brought on those statements arguably directed at private individuals. Slip op. at 9–11 (Alito, J., dissenting).

[1292] 433 U.S. 562 (1977). The "right of publicity" tort is conceptually related to one of the privacy strands: "appropriation" of one's name or likeness for commercial purposes. Id. at 569–72. Justices Powell, Brennan, and Marshall dissented, finding the broadcast protected, id. at 579, and Justice Stevens dissented on other grounds. Id. at 582.