lutely unprotected, seditious speech and seditious libel, fighting words, defamation, and obscenity, a march now deflected by a shift in position with respect to obscenity and the creation of a new category, of non-obscene child pornography. But in the course of this movement, differences surfaced among the Justices on the permissibility of regulation based on content and the interrelated issue of a hierarchy of speech values, according to which some forms of expression, while protected, may be more readily subject to official regulation and perhaps suppression than other protected expression. These differences were compounded by confrontations with cases in which First Amendment expression values came into conflict with other values, either constitutionally protected values such as the right to fair trials in criminal cases or societally valued interests such as those in privacy, reputation, and the protection from disclosure of certain kinds of information.

Attempts to work out these differences are elaborated in the following pages, but the effort to formulate a doctrine of permissible content regulation within categories of protected expression necessitates a brief treatment. It has been, and remains, standard doctrine that it is impermissible to posit regulation of protected expression upon its content.[3] But in recent Terms, Justice Stevens has articulated a theory under which he would permit some governmental restraint based upon content; in his view, there is a hierarchy of speech which the judiciary may define and the appropriate level of protection under the First Amendment depends on where the kind of speech at issue fits into that hierarchy. The place on the continuum of any class of speech is basically settled by reference to *Chaplinsky's* formulation of whether it is "an essential part of any exposition of ideas" and what its "social value as a step to truth" is.[4] Thus, offensive words and portrayals dealing with sex and excretion may be regulated, even though nonobscene, when the expression plays no role or a minimal role in the exposition of ideas.[5] "Whether political oratory or philosophical discussion

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[3] *Police Dept.* v. *Mosley*, 408 U.S. 92, 95 (1972); *Erznoznik* v. *City of Jacksonville*, 422 U.S. 205, 208-212 (1975); *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765 (1978); *Carey* v. *Brown*, 447 U.S. 455 (1980); *Metromedia* v. *City of San Diego*, 453 U.S. 490 (1981) (plurality opinion); *Widmar* v. *Vincent*, 454 U.S. 263 (1981).

[4] *Chaplinsky* v. *New Hampshire*, 315 U.S. 568, 572 (1942).

[5] *Young* v. *American Mini Theatres*, 427 U.S. 50, 63-73 (1976) (plurality opinion); *Smith* v. *United States*, 431 U.S. 291, 317-319 (1977) (Justice Stevens dissenting); *Carey* v. *Population Services Int.*, 431 U.S. 678, 716 (1977) (Justice Stevens concurring in part and concurring in the judgment); *FCC* v. *Pacifica Foundation*, 438 U.S. 726, 744-748 (1978) (plurality opinion); *Schad* v. *Borough of Mount Ephraim*, 452 U.S. 61, 80, 83 (1981) (Justice Stevens concurring in judgment); *New York* v. *Ferber*, 458 U.S. 747, 781 (1982) (Justice Stevens concurring in judgment).