**Citation:**

Melanie D. Wilson, *The Return of Reasonableness: Saving the Fourth Amendment from the Supreme Court*, 59 CASE W. RES. L. REV. 1 (2008).

**Other Sources:**

[http://ssrn.com/abstract=1107277](http://ssrn.com/abstract%3D1107277)

**Key Words:**

fourth amendment, reasonableness, mixed issues

**Abstract:**

The Supreme Court's Fourth Amendment jurisprudence has been oft criticized. The criticism is not surprising or undeserved. After all, the express language of the Fourth Amendment requires that the government act reasonably whenever it intrudes on a person's privacy, liberty or dignity by conducting a search or seizure. But the Court's Fourth Amendment opinions have authorized conduct that looks anything but reasonable.

This Article contends that the unreasonableness of the Court's Fourth Amendment decisions is advanced by the Court's poor allocation of mixed issues - those asking someone to determine whether the historical facts in the case satisfy the constitutional standard of reasonableness - between fact finders (a trial judge or jury) and law declarers (appellate judges or Supreme Court Justices).

This article proposes a fresh approach to return reasonableness to the Court's Fourth Amendment jurisprudence. Specifically, the article urges the Court to adopt three distinct models of Fourth Amendment reasonableness and assign whole categories of issues to the different models, depending on the characteristics of the issues as fact-laden, law-laden or mixed. Furthermore, mixed issues will be further divided into at least two sub-groups - a government subset and a citizen subset. The government subset will be left for de novo review by the Supreme Court, but the citizen subset will be decided by local judges or juries and subject only to clear-error review on appeal.