



## SECURITY LITIGATION

Security litigations include both the sins of omission, as well as the sins of commission. The adequacy and efficacy of security programs are defined *situationally*, on a case by case basis. Defining a reasonable standard of care is also situational, to be determined by the ambient threat environment. Because the ambient threat environment is dynamic in order to remain contemporary, periodic security assessments are a necessity. Security is also a dynamic discipline because the internal and external threat environments are subject to change, and course corrections must to be applied. For these reasons and others, periodic security assessments are a necessity. Finally, if security breaches do occur, pertinent corrective actions are essential. The general criteria to justify a claim of negligence is that the alleged breach was *reasonably foreseeable*.

A plurality of security lawsuits are premises liability claims. Typical claims include the assertion of inadequate security, including the efficacy of the security programs. Most commonly these cases are characterized as premises liability claims. It stands to reason that these litigations involve defendants that generally serve the public. Affected industries include healthcare facilities, sports venues, entertainment venues, shopping malls, educational institutions (including schools), and others. To a lesser degree, industries that may also be affected include the lodging industry, theme parks and gated communities.

Some security lawsuits may also fall under the general classification of intentional torts. Typically, these cases involve actions of security personnel, both proprietary and contracted. The more common claims are false arrest and/or the use of excessive use of force.

Every security program must be designed to address a unique security environment. In other words, there must be a reasonable predicate for the justification of the security program. The clinical Universal Precaution Model does not always apply to all security programs.



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Security is a situational discipline. Therefore, the ambient threat environment must be quantified. Additionally, security programs must always remain dynamic by adjusting to changes in the ambient threat environment. The security plan must continually adapt to variations of the threat environment, both external and internal. Therefore, periodic security reviews are recommended with the implementation of corrective actions.

Security litigations may also be categorized as intentional tort claims. These cases may include claims of false arrest, the excessive use of force, false imprisonment, and possibly, invasion of privacy.

Venues such as healthcare facilities, public schools and other institutions of higher learning all have *industry-specific standards of care*. Shopping malls, entertainment and sports venues are all expected to maintain effective security programs that reasonably protect their customers and clients. Hospitals and hotels are expected to provide reasonable and unique protections for their clients, visitors and employees. All are subject to security litigation. The common thread is all these industries all serve the general public.

Healthcare facilities are typically held to a high standard of care, partially because patients are generally deemed unable to protect themselves. *Premises litigation complaints* usually assert that the defendant knew, or should have known, of the potential threat. Additionally, when threats are noted, contemporary mitigation actions should follow. Healthcare facilities do not typically operate under the universal precaution model when it comes to security. Effective mitigation should include the conducting of periodic comprehensive security assessments.

Security lawsuits may also include intentional tort claims. These claims might include the excessive use of force, false arrest and false imprisonment. As alluded to previously, security, which is an anticipatory discipline, must be designed to address a unique threat environment. This also includes adjusting to dynamic changes and making course corrections when needed. Therefore, periodic security assessments should be considered.

SMSI has been retained as forensic security experts in over 30 states and Puerto Rico. These cases have generally been dominated by premises liability claims and, to a lesser degree, intentional torts claims, such as false imprisonment and excessive use of force. **Our case experience exceeds 300 cases**. Our team also is active in providing comprehensive security assessments intended to ensure that security programs are need-driven. Remember, security is an anticipatory discipline. If breaches occur, prompt corrective action is a must.

The mitigation of all categories of risk requires a periodic security assessment. ***The ambient threat environment is not static***. A defense against potential litigation is the use of security management data systems that can identify subtle changes and trends within the threat environment, followed by appropriate corrective actions.

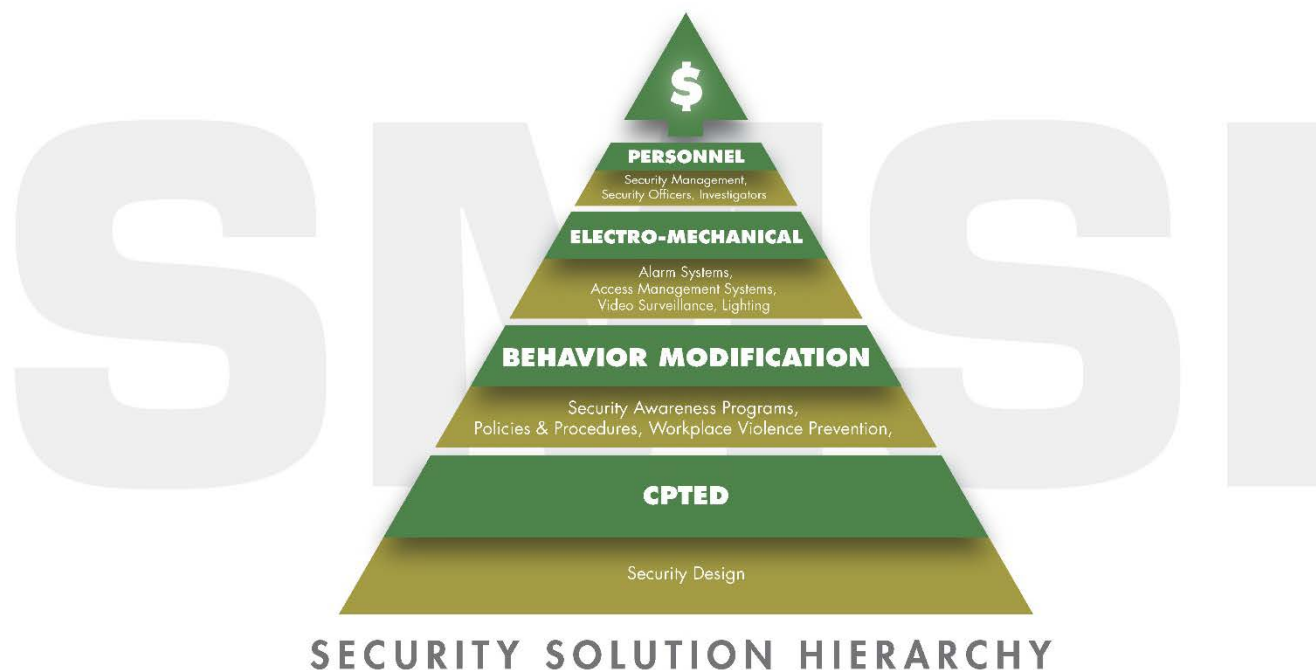
Security assessments should be conducted with regularity, especially when there is evidence of changes ambient to the milieu. The **SMSI Security Solution Hierarchy** provides a rational construct for a need-driven security program. The Hierarchy also provides a model for the





development of a cost-efficient security plan. However, it is important to note that security programs must also continue to adjust and modify to nuisance changes in the threat environment. Security programs are never static.

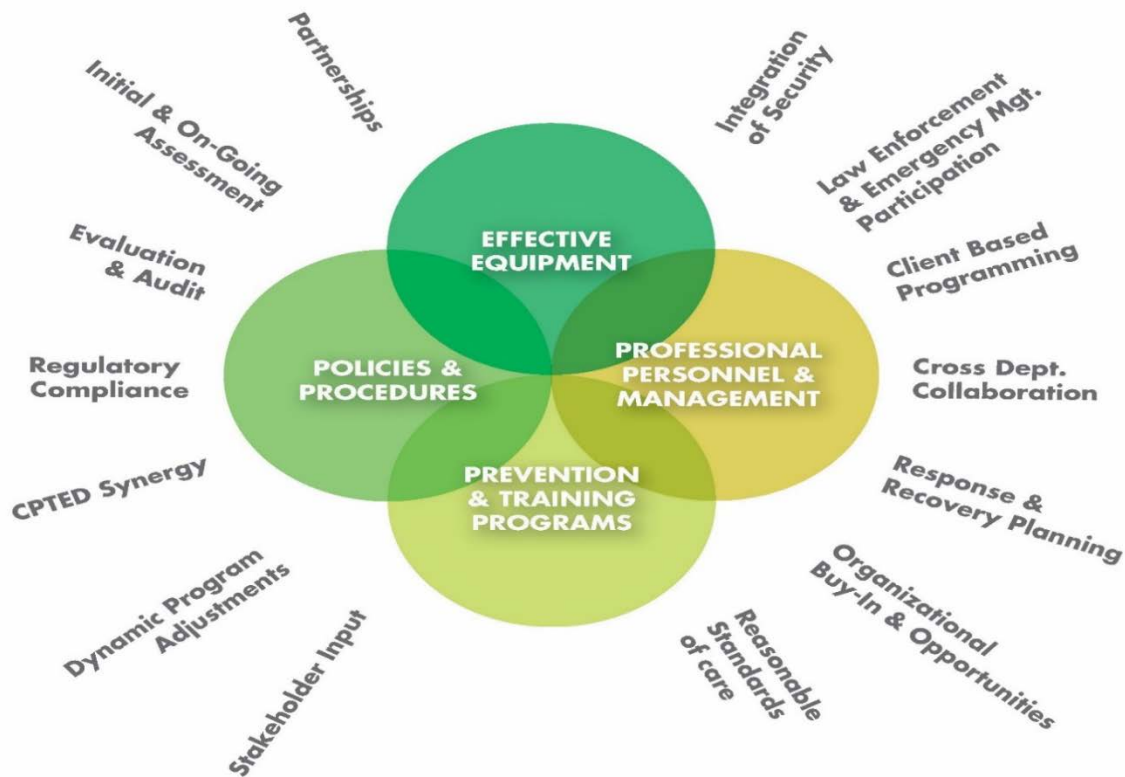
**The Security Solution Hierarchy provides a cost-efficient foundational construct for the prioritization of security solutions. Obviously, the application of security officers is the costliest, in part because of reoccurring payroll burden.**



The **Security Solution Hierarchy** also provides a sequential construct for the design of a need-driven security program. Within the hierarchy, **CPTED** (the most cost-efficient remedy) is often overlooked. Yet **CPTED** (Crime Prevention Through Environmental Design) is one of the most cost-beneficial strategies that one can apply, in order ensure that every program is sufficient. Effective **CPTED** design will help to mitigate the assertion of insufficient security. **CPTED ensures that the whole is greater than the sum of its parts.** The application of **CPTED** concepts can be a positive factor in security litigation. Conversely, the lack of **CPTED** may increase the probability of security-driven litigation. Not every security breach is the result of negligence. The Security Solution Hierarchy is a useful model when determining Security budgets.

The following graphic depicts some of the potential security options. All the methodologies discussed herein are intended to bring awareness to the fact that there are numerous options, and that one size does not fit all. Remember, security is a situational discipline.



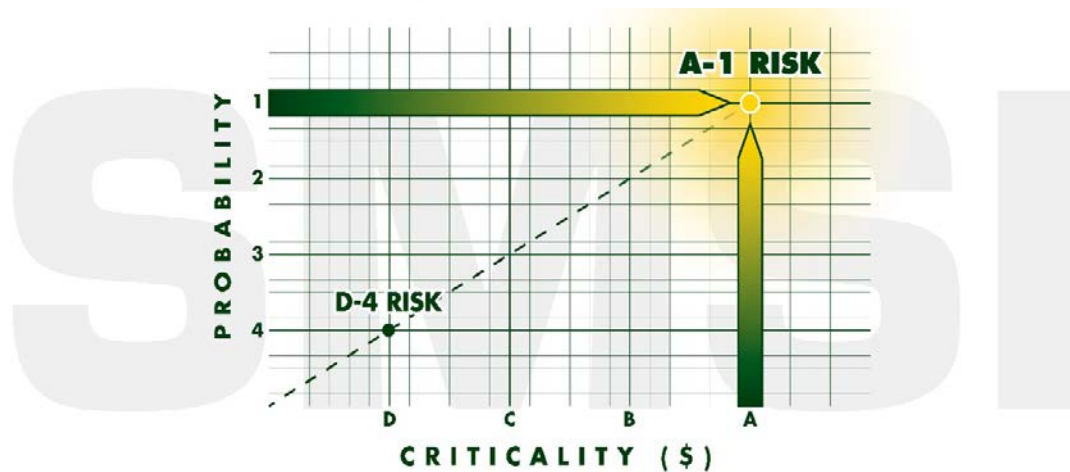


As court-certified security experts, SMSI Inc. has served several vertices over the last 30 years, covering at least 30 states. We have been retained for cases involving, but not limited to:

- Public and Private Schools and Universities
- Healthcare Facilities
- Shopping Malls
- The Lodging Industry
- Nightclubs and Bars
- Public and Private Residential Complexes
- Public Offices and Buildings
- Parking Lots and Structures
- False Imprisonment Claims
- Parking lots and structures
- Residential HOAs
- Sports and Entertainment Venues
- Excessive Use of Force and False Imprisonment
- Amusement Parks



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## VULNERABILITY ASSESSMENT MATRIX

The **Vulnerability Assessment Matrix** model provides a cost-effective roadmap for a two-dimensional quantification of risk. Risk factors should be quantified on probability of occurrence, coupled with the cost of occurrence, both direct and indirect. Security programs should be need driven and quantified by real data. Clearly, periodic Security Assessments are an effective exercise for the mitigation of inadequate security lawsuits.

***SMSI is always open to a candid discussion of pending cases prior to being retained.***

SMSI Inc. has been retained in numerous cases on behalf of both plaintiffs and defendants. SMSI has been retained for cases in over 30 states, Puerto Rico and St. Croix. Those cases include, but are not limited to, public schools and universities, hospitals and extended care facilities, shopping malls, nightclubs, entertainment venues (including sports venues, and residential complexes). These cases have also included intentional tort cases. Our experience exceeds 30 years.

If your Law Firm is *contemplating* a security case, please do not hesitate to call. We welcome a candid conversation. Remember, the efficacy and appropriateness of every security program should be determined by the quantification of internal and external threats and the remedies applicable. To reiterate: **Security is a situational discipline. Every industry has a unique threat environment, commensurate with an array of proactive solutions.**

**Ours cases have included, but are not limited to: Healthcare Facilities, Entertainment Venues, Shopping Malls, Office Building, Residential Complexes, Educational Complexes, Bars, Theme Parks and Night Clubs.**

