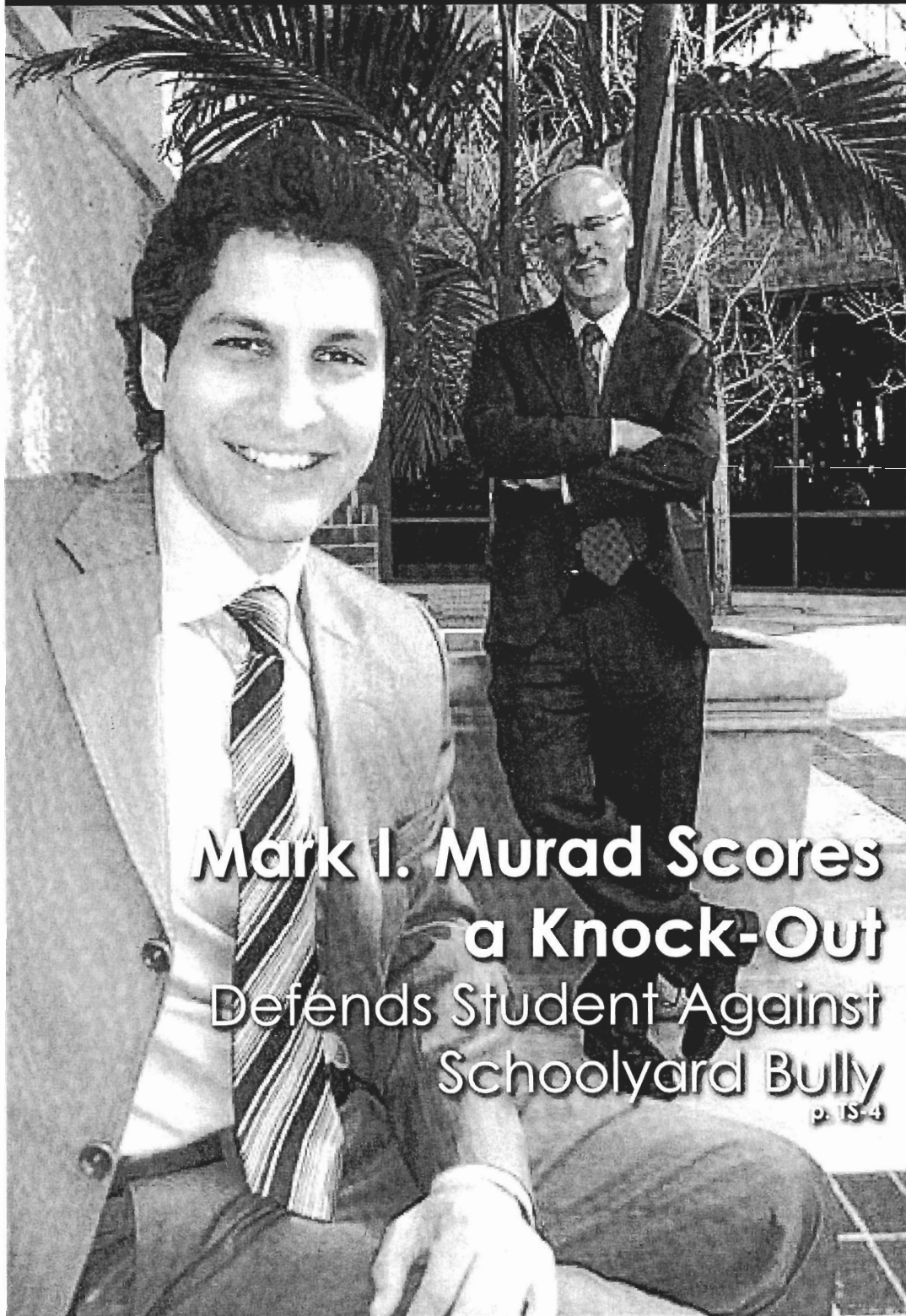


# Trial Style

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a Knock-Out**  
Defends Student Against  
Schoolyard Bully

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# FEATURED

## Total Knock-Out

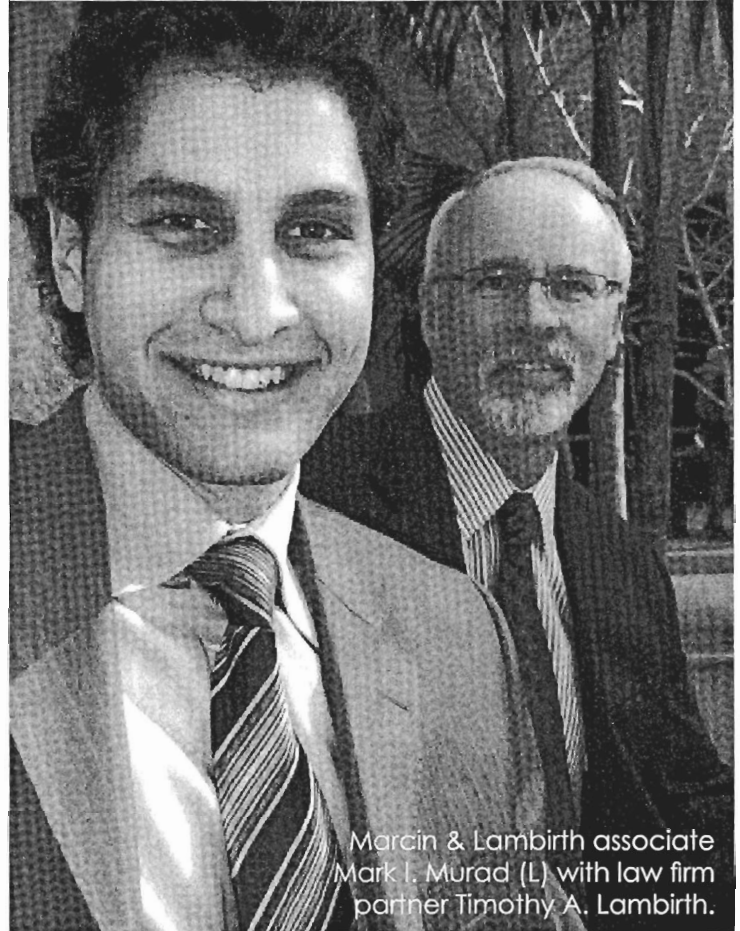
Mark I. Murad Defends  
Battery Suit  
By Staff Reports

Schools are supposed to be an environment for learning, building friendships, and practicing sports; not litigation. Unfortunately, for some children, school can be the source of unwanted legal exposure. This was the case for Jorge and Julio, the two tenth graders involved in the matter:

On November 5, 2004, a simple schoolyard fist-fight between two teenagers set events in motion that would result in a three-year legal battle ending in an eight-day jury trial. The two boys clashed in an event that would change both their lives, and the lives of their families, forever.

"I could see some problems with my case the minute I opened the file," Mr. Murad says. "The plaintiff had some extensive evidence on his side."

Plaintiff's counsel Anita Brenner did not respond to request for comment for this story.



Marcin & Lambirth associate Mark I. Murad (L) with law firm partner Timothy A. Lambirth.

Julio fell to the ground and,  
fearing that Julio was going for a knife,  
Jorge kicked him.

Jorge and Julio, both high-school students at the time, had a long history of an uneasy relationship. Jorge, a 15-year-old tenth grader, was an honor student and star soccer athlete at the high school. He had no history of disciplinary actions against him.

"Julio was a different story," Mr. Murad, who graduated from the Loyola Law School in 2005, says. "Julio had a history of difficulties with other students. I think he might have been seeking acceptance from his peers through intimidation and harassment."

Like many other high school animosities, these boys had issues over a pretty girl. Julio's ex-girlfriend was close friends with Jorge; they had numerous classes together and Jorge helped this girl with homework, as a tutor. But Julio was not happy with this arrangement.

"The boys had numerous non-physical confrontations, culminating in the physical fight," Mr. Murad says. "But I'm sure neither boy ever imagined that their actions would lead to an extended legal struggle."

On November 5, 2004, just before the fight, Jorge was walking between classes with a friend. Jorge says that Julio approached him in a threatening manner on the campus grounds. Julio threatened Jorge and Jorge told his female friend to leave for her own safety. A fist-fight began between the two boys. Julio fell to the ground and, fearing that Julio was going for a knife, Jorge kicked him. Julio went to the hospital, where he remained for two nights.

Soon after the fight, Julio filed a civil complaint against Jorge alleging that Jorge attacked him. Jorge, whose family did not have the financial resources to hire an attorney, was desperate. Coincidentally, Jorge and Marcin Lambirth name partner Tim Lambirth's son played on the same soccer team, so Jorge's father, Martin, approached Mr. Lambirth for help.

Mr. Lambirth took the case pro bono. Mr. Lambirth believed that Julio consented to the fight and that Jorge was acting in reasonable self-defense.

# ● M A T T E R

Unfortunately for both parties, the two boys then embarked on a grueling course of litigation lasting three years. Plaintiff's counsel took numerous depositions and filed numerous motions. Trial was continued several times, due to the unavailability of Julio, who had entered the Marine Corps.

Ultimately, the case went to trial before the Honorable Judge Holly Kendig at the Chatsworth Courthouse of the Los Angeles Superior Court in January 2008.

Mr. Murad was eager to take the case to trial. Mr. Murad, whose expertise involved business litigation and employment law, felt that this would be a great opportunity to try a case that was much more than an assault and battery issue.

"I saw this case as a chance to help a young adult move on with his life," Mr. Murad says. "I truly believed in my client and we needed to win this case for him and his family."

The Marcin Lambirth law firm has a cutting-edge trial practice program that trains associates for trial work. The in-house program includes intensive evidentiary, cross-examination, and oral presentation training.

As part of this program, Mr. Murad was supervised by a partner and an experienced fourteen-year attorney, so that by the time of trial, he had the confidence and backing to present the best case possible. According to Mr. Murad, that confidence, based on the training and constant trial supervision, allowed him to prevail.

Mr. Murad, with help of the entire law firm, devised a strategy to streamline the case. The first trial tactic was to preclude certain unfounded evidence claimed by the plaintiff. The defense team was able to preclude a potentially damaging e-mail transmission, allegedly sent by Jorge to Julio, based on lack of foundation and failure of authentication. Mr. Murad precluded Julio's claim of future economic damages on the ground that this claim was too speculative. Lastly, Mr. Murad successfully opposed plaintiff's counsel's motion to preclude witnesses to support Jorge's state of mind at the time of the fight, establishing that Jorge acted reasonably to defend himself. These witnesses were essential in supporting the reasonableness of Jorge's claim that he had an apprehension that Julio posed an imminent threat to him. If Mr. Murad could convince the jury of this, Jorge kicking Julio in self-defense would be justified under the circumstances.

"One of the most important tactics I used was to get the court to accept the 'consent' jury instruction from B.A.J.I., and to abandon the C.A.C.I. instruction," Mr. Murad says.

The B.A.J.I. instruction states that: "Apparent consent exists when a person's acts or words, silence or inaction, would be understood by a reasonable person as intended to indicate consent, and are in fact so understood by the person doing the act resulting in contact."

"I wanted this instruction because it was essential for the jury to understand what 'consent' meant, and these instructions, rather than C.A.C.I., made it clearer to the jury." Mr. Murad says. "Once the Judge accepted this instruction, I knew we had a good chance of winning this case."

During the emotional trial, Jorge's defense team was able to exclude two of plaintiff's expert witnesses in their entirety, a psychotherapist and a neurologist, based on lack of expertise and cumulative testimony. Mr. Murad limited the effect of plaintiff's treating neurologist's testimony through cross-examination with respect to plaintiff's claim of permanent neurological brain injury.

After an eight-day trial, the jury deliberated for only one hour before bringing back a defense verdict.

"This was the most rewarding and fulfilling experience of my career," Mr. Murad says. "When I heard the defense verdict, I saw Jorge's relief. I was so happy for him and his family."

Law firm partner Mr. Lambirth says that this case is far from typical of his firm's focus. The firm's practice covers a wide range of business, corporate, and individual legal services. Specialties include business litigation, banking and financial institution litigation, employment and wrongful termination litigation, public school defense litigation, real estate litigation, corporate and partnership dispute litigation, and wrongful death litigation.

"Justice was served," Mr. Lambirth says. "The case was handled appropriately. We achieved a just result."



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