

SUPREME PERFORMANCE
A Boston Lawyer Goes to Washington
By David S. Bernstein

BOSTON CRIMINAL-DEFENSE attorney Rosemary Scapicchio runs her Longfellow Place office as a solo practice, so things can get a little hectic. She just filed a motion for one case in Massachusetts Appeals Court last week, and starts a murder trial in Suffolk Superior Court a week from now. And this Monday, she had to squeeze in time to argue the most important national case of the year in front of the Supreme Court.

"It's a huge deal," Scapicchio said last week, as she prepared to fly down to Washington, DC. That sense of awe still seemed with her this Tuesday as she waited to board her return flight, with the experience behind her. "It was a very amazing opportunity," she said.

Other local attorneys agree. "People's breath goes out of the room when someone says, 'I'm going to appear before the Supreme Court,'" says Stephanie Page, a public defender with the Committee for Public Counsel Services, in Boston.

Scapicchio's case, *US v. Dacan Fanfan*, is one of two being used to test the constitutionality of the federal sentencing guidelines - an enormously important issue. The New York Times, in a front-page story Monday, said "the sentencing cases alone ... would mark this as an unusually important term for criminal law."

Fanfan, a Somerville man convicted of possessing a large quantity of cocaine, should have been sentenced to at least 188 months in prison under the federal guidelines. But a recent Supreme Court case brought into question the constitutionality of some aspects of those rules, so the judge gave him a mere 78 months.

When Scapicchio was hired in early July to handle Fanfan's case, it didn't seem like anything out of the ordinary. She was on vacation a few weeks later when she found out that the US solicitor general had recommended Fanfan as one of two cases, along with *US v. Booker*, to resolve the sentencing issue. She says she was stunned that her case was selected from all the available ones nationwide, but didn't believe the Supreme Court would actually agree to hear it. On August 2, the Supreme Court did. The justices scheduled oral arguments for both cases on the very first day of their new session: the first Monday in October.

Scapicchio is no stranger to high-profile cases, at least on the local level: she represented Shawn Drumgold in his successful bid to overturn his murder conviction, in 2003. But she had never argued in front of the Supreme Court, or expected to - and certainly not on two months' notice, for a case she had just received. Attorneys locally and in Washington offered to help her, and she was able to do three "moot courts" for practice. "The moots were very, very helpful," Scapicchio said on Tuesday. "Some of the questions in the moots were the same questions the justices asked."

In the Supreme Court, Scapicchio took the podium for 30 minutes, "batting clean-up," as she puts it, after the government and the Booker attorneys. Her nervousness from the night before had abated, she says, despite the looming presence of the famous justices and the packed courtroom. "There's a calmness that comes over you when you do a job that you have prepared really well to

do," she says. The questioning was more conversational than she expected: "I thought it would be much more rigid and controlled." She admits to getting a little tripped up once, under questioning from Justice Stephen Breyer. As a Massachusetts jurist, Breyer served on the commission that wrote the federal sentencing guidelines in 1987, so Scapicchio was trying to convince him of flaws in his own handiwork.

Those who know Scapicchio had no doubt she could hold her own. "She's smart and tough, and has more balls than any man in the defense bar that I know," says Benjamin Entine, a Boston attorney. "Rosemary is the kind of lawyer who doesn't come to court to make friends. She comes to court to win."

Scapicchio, 40, entered the bar out of Suffolk University Law School in 1991, and immediately set up her own practice. "She came in as a very young lawyer with long hair, full of spit and fire, fighting for justice to be done," recalls Page. "When she takes something on, she takes it on all the way."

She has now taken on the highest court in the country. She won't know if she's won for a while - perhaps one to three months, speculates District Court judge Nathaniel Groton. Scapicchio feels that the justices seemed favorably inclined toward at least some of her argument. Reports in the New York Times and Wall Street Journal have suggested the same. Meanwhile, it's back to Massachusetts Appeals Court and Suffolk Superior for Scapicchio.

Issue Date: October 8 - 14, 2004