

Who is Gene Rotberg and what does he want?

by Heidi S. Fiske



“If one man can be held responsible for wresting the New York Stock Exchange into suggesting a \$150 million rate cut, that one man is Gene Rotberg.”

The securities industry found itself painfully annoyed this summer by a tall, 200-pound gadfly named Eugene H. Rotberg. The gadfly ultimately took a \$150 million bite out of its hide.

If one man can be held responsible for wresting the New York Stock Exchange into suggesting this sizable reduction in annual commission rates, Rotberg is that one man. As associate director, for regulation, of the SEC's Trading and Markets Division, his lawyers did the primary groundwork for the hearings. He chose the concerns that would be interrogated. And he did most of the questioning.

At the same time, Rotberg is probably the SEC's most effective spokesman for the minimum commission rate. This is as much territorial pride as benevolence towards the industry. Fixed minimum rates are, after all, not only the glue that holds the exchanges together but also one of the major items which the SEC has the

power to review or even alter.

While the results of the hearings may have seemed drastic enough to the industry, it ain't seen nothing yet, according to Rotberg. "The issues we covered were simplistic compared to what must be looked into to find a permanent rate structure," he says. These nonsimplistic issues involve the entire structure of the industry and its relationship to its rapidly diversifying institutional customers. These issues will be covered in an upcoming study of institutional trading patterns which will probably be on the order of magnitude of the Special Study. Though there is less than a 50-50 chance that Rotberg will run this study, his team is one of the two at the commission (the other is the Office of Policy Research, which covers economic questions, primarily) that knows the most about the issues. And Rotberg is probably the single staff member who has the deepest understanding of them. Consequently, he is a man institutions should know.

Who is Gene Rotberg?

Rotberg claims to be a cynic, but he is always on the verge of a joke. His typical facial expression, kind of a cross between oi vey and Cheerful Cherub, reflects the combination. He often looks as if he were waiting for you to finish talking because he has thought of a funny answer.

That is when he's not talking himself, which he often is, in an almost stream-of-consciousness patter. His stream of consciousness leaps rather than flows. "He has almost a shorthand way of speaking," a colleague notes. "He jumps the gun, going from Step One to Step Ten and assuming that you'll figure out what Two to Nine are."

Rotberg relishes debate. He's come to the right place. He has been involved in questioning witnesses, either in the courtroom or in public or private hearings, for the last 9 of his 11 years at the SEC.

And for the last 7 of those years, ever since the Special Study began, his various jobs have involved looking at specific cases only in terms of broad policy issues. Some areas on which he has done important work or over which he presently has jurisdiction are:

- ✦ over the counter trading;
- ✦ income and expense forms;
- ✦ hot issues;
- ✦ the training of security salesmen not examined and regulated by an exchange or the NASD;
- ✦ market regulation;
- ✦ fee setting.

He operates out of a long blue and green rectangle on the 4th floor of the new SEC building. His cluttered office, which looks out broad windows onto two rundown Capitol Hill hotels and the Senate Office Building, is a jumble of objects reflecting his interests, both on and off the job. It's kind of a home away from home. Abstract art covers the walls. Ten feet of books line the back of a table behind his desk, where the NASD manual rubs bindings with a pamphlet on Persian miniatures, and the rules of the Philadelphia Baltimore Stock Exchange are sandwiched between volume 3 of the major biography of Freud and a tattered copy of Finnegans Wake. He reads them all too, say friends. A large red button teeters on the edge of a box holding 12 inches of hearings transcripts. "Love conquers all," it reads. "Give up." Not everybody who came to hear the NYSE's Robert Bishop testify when Rotberg wore it on the first day of the hearings thought the pun was funny. One of the 3 phones on the same table is red, signifying that he is one of the half dozen or so staff members with a hot line to the chairman.

Rotberg has a certain civil service tinge to him. Now 38, he has spent all but a few months of his 11-year professional career at the SEC. Like many there, he is politically left of center. Intolerant of viewpoints he violently disagrees with, he is not an urbane or smooth man and it is hard to imagine him in the executive suite.

He apparently shares that peculiar SEC trait of being largely impervious to the lure of the big money that the people he deals with every day are making. Some colleagues, taking note of his spacious house by a brook in suburban Maryland, of the abstract oils and graphics with which it is filled, and of the fact that he and his wife go to Europe on their vacation and make several theater-going weekend trips to New York in the winter, conclude that his apparent nonchalance about money comes because he's rich. Rotberg denies that he has any substantial income outside his job, however. "Public servants make more than people think," he says. Rotberg's \$27,000 salary is only \$2500 less than that of Chairman Cohen. And his wife, who has a PhD in psychology from Johns Hopkins, works part time.

Still, all that is a lot less than he could earn in Wall Street, whose inhabitants have offered him about one job every 6 months or so, he estimates. One thing that has undoubtedly kept him at the commission while dozens of his Special Study colleagues have moved into the Street is the power it gives him to help change the indus-

try. And he unabashedly loves the limelight that the hearings have put him in. At the same time that he's whittling a couple of million from the incomes of the investment men he stands across the table from, he says that it is important to him "to be respected by the professionals in the business." That he has chosen a job that puts him in an adversary position to these men indicates an interesting combination of antagonism and anxiousness to please.

How he came to be so important to the hearings

Instrumental in his role in the hearings was his grasp of how the industry works, which colleagues at the commission and close to the commission elsewhere say is the best at the SEC. And a close associate says that "It wasn't just the hearings. Gene was the one who moved things along the most in the last few years, and who kept nudging the Exchange until it came up with the \$150 million cut."

This probably understates the role of Irving M. Pollack, director of the division in which Rotberg works. When Pollack came to his job from the top enforcement post at the commission, his background was not in the policy areas the hearings have covered. But in the 3 years since, Pollack, regarded as one of the ablest men at the commission, has come to know the issues well, and would probably occupy Rotberg's gadfly role were the latter to leave the SEC. Together they presented the concept of the hearings to the commissioners and together they carried out the hearings.

The environment in which Pollack allows Rotberg to operate contributed to the latter's role in the hearings. "Irv lets Gene do pretty much what he wants," a lawyer in the division notes. "People here know Gene couldn't care less about the day-to-day administrative stuff and so they don't bother him with it."

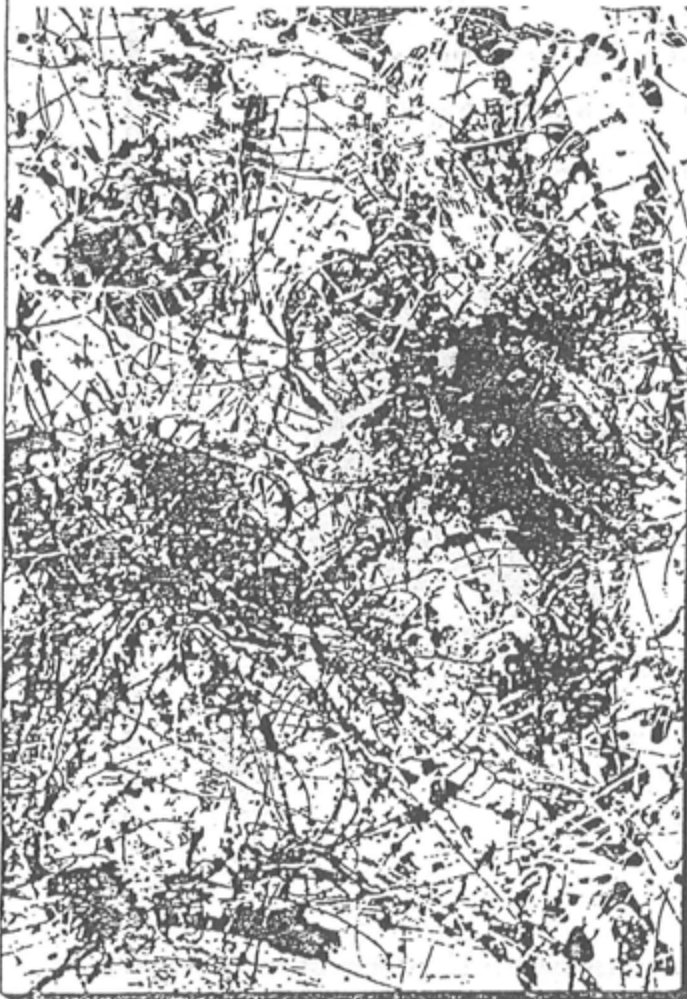
Fundamental to Rotberg's role was his good working relationship with the chairman. Cohen was the one to hire Rotberg when he came to the commission 11 years ago looking for a job, and Rotberg worked for him in the Corporation Finance Division for the following 4 years. The two have trouble getting across to others because they both have minds that move around like squash balls, but they do fine together. (Rotberg says that if Cohen were a painting, he'd be a painting by Jackson Pollock).

Most colleagues describe the relationship between them as one of "grudging mutual respect." One man makes it sound more like an Italian marriage. "It's kind of a love-hate thing," he says. "They always yell and scream at each other. But they manage in the process to be frank and to get their ideas across."

As far as the hearings go, they have played

"No. 12" by Jackson Pollock. Courtesy Museum of Modern Art.

"Rotberg says that if Cohen were a painting, he'd be a painting by Jackson Pollock."



complementary roles, given the nature of their goals. On the one hand, Cohen gave Rotberg a chance to engage publicly in the debate he enjoys, to display his knowledge of the industry, and to be a force for major and publicly recognized change in the securities business. (Rotberg notes with pride that these are the first major public investigatory hearings involving a structural problem in the industry that the agency has ever conducted.) In turn, by doing all this well, Rotberg immortalized Cohen's commission by helping it make a \$150 million mark on business.

Where does he think the commission should look next?

Rotberg has very definite ideas about what the commission should do next about the commission rates. "The major questions haven't been asked yet, let alone answered," he says. "Before it makes sense to concern yourself with the level of profits, you have to ask the broad policy questions: What do you want the industry to look like? What kinds of firms doing what kind of business do you want? What do you want the business to look like west of the Mississippi, say?"

This sort of statement chills the blood of the Wall Street manager, of course, since it conjures up a vision of a government agency actively destroying or promoting certain competitors. Many would say that it's none of the SEC's business to structure the industry.

Rotberg disagrees, for, he says, in that case there is no justification for minimum commissions. "The argument for them is, after all, that they make it possible to provide valuable services other than the execution, while negotiated rates would cut margins too low for that. If this is true then the level of commissions determines what services you can offer, and hence determines what kinds of firms stay in business.

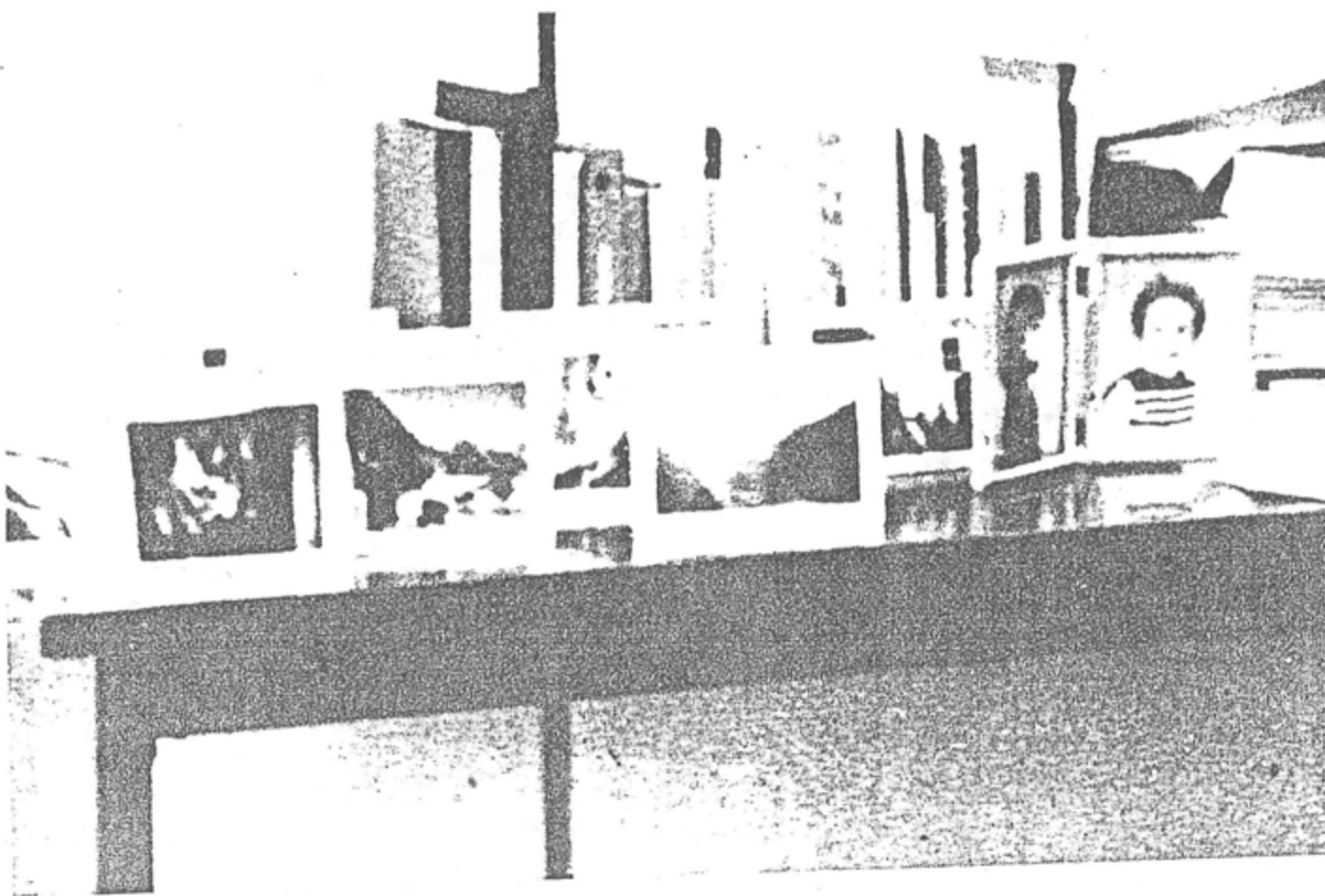
"I think it is a less onerous and more responsible decision if the SEC sets commissions with a goal for the shape of the industry in mind than if it just decides in a vacuum what is a meaningless question, namely: How much money should people make? Besides, if we abdicate our role in this area — and the statute prevents us from doing so — obviously the industry's antitrust immunity goes out the window."

It could be argued that the \$150 million commission cut was precisely an answer to the question Rotberg finds "meaningless." He again disagrees.

"You can know that something is unreasonable and that you can make changes in it that go in the right direction but that are not so extreme that they will restructure things. These changes will not alter the relationship between people on

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and off the floor or between big and small firms, nor will they alter the flow or size of orders or the ability to block position." There are those in the industry who would take strong issue with this.

The institutional "problem"

Ultimately, Rotberg feels, changes in the structure of the securities business and the businesses of its institutional customers are going to have a far greater effect on the profitability of the industry than any changes in the commission rate structure. As a corollary, he feels that the commission must take these other changes into account before it can decide what a fair rate structure is, or even how a given rate structure is going to affect the industry.

"If there are 100,000 securities salesmen now, there are going to be 200,000 knocking on the same doors tomorrow when insurance companies have really gotten into variable annuities and mutual funds. No rate structure could have that kind of effect on brokerage firm profits. And schemes for automating the trading function or communications facilities could change the face of the auction and the over-the-counter markets.

"The ironic thing," he continues, "is that even

if the commission is inactive and makes no decisions about the priority of these changes, it will have an effect. If institutions want access to exchanges and the commission says nothing, for instance."

These are the kinds of issues that the upcoming institutional trading study will concern itself with. The questions are so complex, in Rotberg's opinion, that there will be a temptation for the study not to pose the real ones at all.

"An agency must be careful to state what the problems really are, even though the solutions may not be clear. But in this case the solutions may be so far reaching that it would be out of place for the SEC to suggest them." He elaborates at length.

"When anybody talks about institutions and trading, he talks about problems. Problems of inside information. Problems of market impact. Problems of debt/equity balances. There are a lot of solutions to these sorts of problems, such as controlling the speed with which an institution can reverse an investment decision by your tax policy; deciding what the maximum percentage of assets in equities can be for different institutions; defining the role of the agency in deciding what sort of vehicle a given kind of



institution may sell; deciding how much of the trading in a stock an institution will be allowed to account for, and so forth.

"I think the study will bring up problems to which somebody will suggest these kinds of answers, which are much too far-reaching for any single government agency. They probably should be decided by Congress. The gut issue of the study will be the way savings are allocated. This involves at least the Fed and the Council of Economic Advisors. Perhaps a new agency will be needed to coordinate their efforts."

Clearly, these are issues to which he has given a lot of thought. He probably knows as much about them as any staff member at the SEC. Still, it is unlikely that he will be chosen to run the study. At this writing the commission was looking for an economist. Since an understanding of how the market place works will be essential in formulating the commission's position, however, it is highly likely that the Trading and Markets Division in general and the Regulation group in particular will provide important directions to the study.

Whither Rotberg?

Whether Rotberg will still be at the head of that

Regulation group is another question. His close relationship with Cohen leads some of his colleagues to speculate that, if the Ides of January should carry the chairman out of office, Rotberg might choose to leave the commission also.

The industry would probably breathe easier if Rotberg left the commission but it should bear in mind that at the same time his departure would rob it of its most effective SEC spokesman for the minimum commission rate when the Justice Department comes calling.

Actually, Rotberg thinks the industry, left to its own devices, may abolish the minimum commission rate itself. At quarter of five on Friday of the 7th week of the hearings, a weary staff received letters from a number of regional exchanges arguing for their access to the national exchanges. Rotberg exploded. "Don't they know what they're doing? If their members have access to the New York Stock Exchange and institutions are among their members, there goes the minimum commission rate. They'll destroy the industry!"

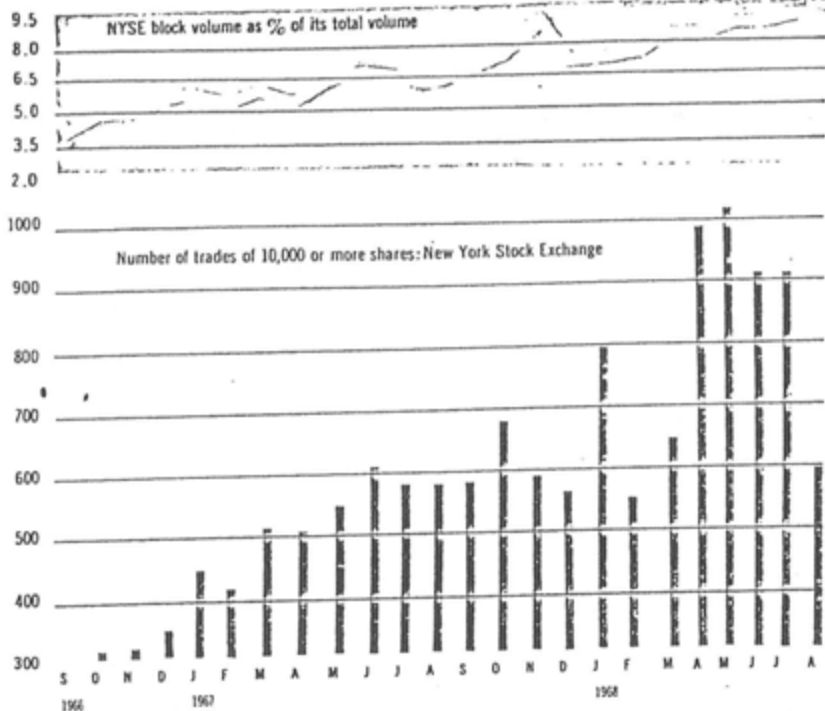
Just where he'll be in the industry when it happens — or doesn't — is hard to say. One thing that has probably kept him at the SEC is that his basic approach to the world is analytical.



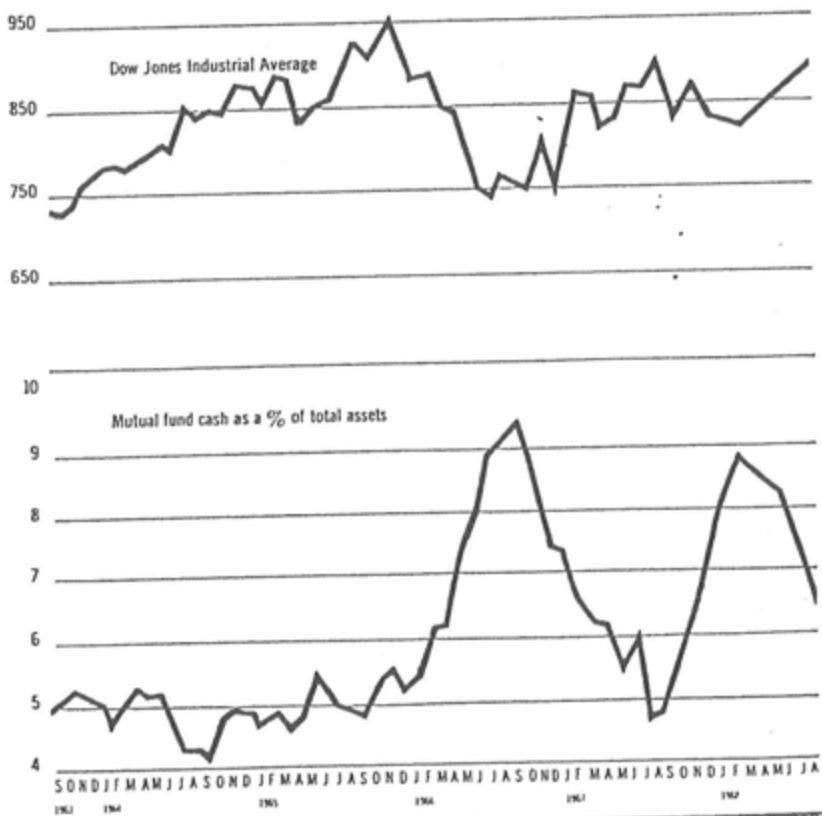
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GENE ROTBERG
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blocks



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One can more easily imagine him unraveling a complex give-up arrangement than spending the same energy putting together a deal, for instance. He said once, apropos of going to work in the Street, that "there are some people who build things up, and other people who tear things down. I don't think I'm one of the builders."

He doesn't want this statement to stand alone, though. "There are some kinds of tearing down that are constructive, I think. What I would like to do is break mental sets. By mental sets I mean the fictions and labels in terms of which people consider things; I can't stand them. At these hearings a lot of people were hung up on the profits-are-too-high mental set, for instance."

This gets into the question of his most profound goals. "The kind of person who I think is really intelligent and responsible is the kind who can break the mental sets. It's not just a question of changing your mind in the face of evidence; most people can do that. It's a question of changing the frame of reference."

"The first Impressionist painters who began to realize that the eye doesn't really see things like a photograph and who were able to reproduce the impression — that's it. Keynes did it in economics."

"I'm not bright enough to do it but that's what I think it's important to do."