

The Masters of 'Non-Speak'

In Their Confirmation Hearings, Gates and Thomas Showed an Ability to Say Nothing at Great Length

By Guy Gugliotta
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Grilled relentlessly by more than a dozen senators, Robert M. Gates and Clarence Thomas have survived, and perhaps prospered, by humbly but persistently ducking the tough ones with a repertoire of polite rejoinders: I don't recall; I didn't know; that's not what I meant; that's none of my business.

Gates, trying to convince the Senate Select Committee on Intelligence that he should be confirmed as CIA director, and Thomas, looking for the Senate Judiciary Committee to approve his nomination to the Supreme Court, have shown themselves to be masters of confirmation "non-speak"—the art of saying nothing at great length.

Both men are carrying considerable baggage: Gates, for having served as deputy director of the CIA during the Iran-contra affair; Thomas, for his past views on highly controversial legal and social matters. Both have decided to stake out a few high-ground positions and refuse to budge from them, apparently believing that confirmation is theirs as long as they avoid shooting themselves rhetorically in the foot.

"There's always a sense of frustration when you know the facts aren't as important as the politics," said Sen. Howard M. Metzenbaum (D-Ohio), after bouncing an hour's worth of Iran-contra questions off Gates Tuesday. "In both cases [Gates and Thomas], the president has made his wishes known, and you can tell by the lack of interest on the other side [among Republicans] that some minds are made up."

It was Metzenbaum, one of only two senators who have seats on both confirmation committees, who noted the similarity between Thomas, "who takes the position that what he said in yesteryear is not his view as of today," and Gates, whose remarks on Iran-contra suggested "that if you had it to do over again, it could have been done differently." The Gates position, he added, was "different from Judge Thomas, but in a sense it was . . . almost a 'confirmation conversion,'"—meaning that both nominees had backtracked to promote their respective causes.

Frustrating or not, non-speak has resonance, not least among Senate members who have spent their careers responding non-committally to irritating questions put to them by constituents and by reporters.

Sen. Dennis DeConcini (D-Ariz.) was sympathetic to Thomas's statements that

many of his controversial positions were taken "as an advocate" working in the Reagan administration as chairman of the Equal Employment Opportunity Commission and in no way reflected his views as a judge on the federal bench.

"I think he wanted to please his boss," DeConcini said. "That may not be altogether intellectually honest, but it's understandable, and it doesn't offend me."

And even Metzenbaum, who by his questioning appears to be the senator least impressed with the two nominees, approved of the way Gates owned up to past shortcomings: "I think that is an intelligent thing for him to do," he told reporters late Monday. "It certainly takes the sting out of some of the failures of yesteryear."

Gates, who foundered once in a 1987 bid to win confirmation as CIA director, set up his defense before the hearings, submitting a long list of answers to questions posed by the senators, and then reading an opening statement that addressed Iran-contra.

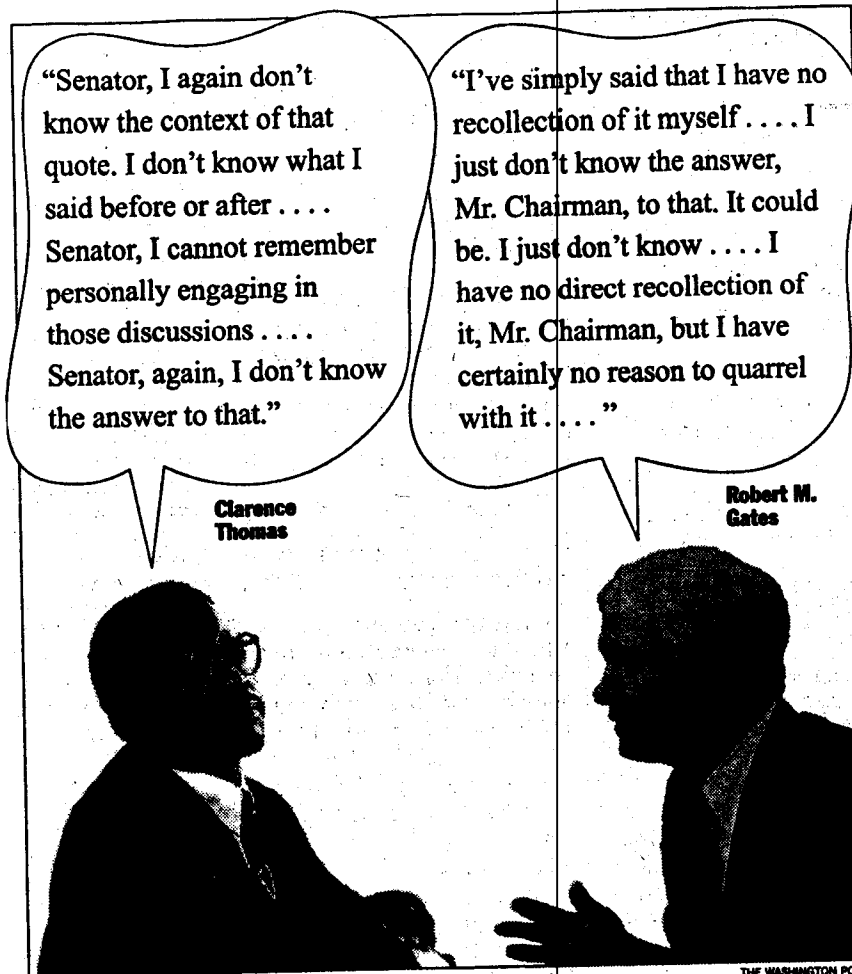
He has weathered the storm comfortably since then, usually choosing as his answer a variation on one of three themes:

- I don't recall. Metzenbaum on Monday said Gates in "no less than 33 instances" used this response in providing the written answers to the committee's written questions. "I hope your memory improves during the course of these hearings," the senator complained.

- I didn't know. This was used, according to Metzenbaum, more than 40 times in response to the written questions. Metzenbaum in questioning Tuesday also asserted that Gates "didn't want to know," particularly about civilian involvement with the contras, and at one point compared Gates to the three monkeys: "Hear no evil, see no evil, speak no evil."

- I made mistakes. In an addendum to his opening statement, Gates spoke at length of "the misjudgments I made and the lessons I learned" as a result of Iran-contra. He brought attention to the reforms he oversaw first as acting CIA director and as deputy director under William H. Webster, noting that "there was not a single crisis of confidence between CIA and the Congress."

Thomas, although seconded by a corps of advisers and friends deputized to see him through the confirmation ordeal, seemed to need a day to get his bearings, but once in gear, he too handily parried one assault after another. Like Gates, he sounded three themes:



"Senator, I again don't know the context of that quote. I don't know what I said before or after
 Senator, I cannot remember personally engaging in those discussions
 Senator, again, I don't know the answer to that."

Clarence Thomas

"I've simply said that I have no recollection of it myself I just don't know the answer, Mr. Chairman, to that. It could be. I just don't know I have no direct recollection of it, Mr. Chairman, but I have certainly no reason to quarrel with it"

Robert M. Gates

■ Never mind. Under sharp questioning by committee Chairman Joseph R. Biden Jr. (D-Del.) about statements he had made about the place of natural law in public affairs, Thomas dismissed these as the musings of a "part-time political theorist." He assured the committee he had no intention of using natural law as a basis for constitutional adjudication.

He also retreated from numerous stances he had taken as EEOC chairman, including derogatory statements about Congress, criticisms of civil rights leaders and seeming opposition to the right of Congress to appoint special prosecutors. In the EEOC, he said, "I advocated as an advocate," while today, "I rule as a judge."

■ I have no quarrel with that. So cautious was Thomas in responding to questions about cases and legal issues that rather than allow himself to be pinned down, he answered positively but inconclusively.

"When you say you have no quarrel, you mean that you agree with it?" asked DeConcini, a relatively sympathetic questioner inquiring about a provision of the Voting Rights Act. "Is that—is that fair to say?"

"I mean, I don't disagree with it, I don't have a basis to disagree with it and haven't raised any objections about it."

"Okay. Fine," DeConcini said. "I don't mean to quarrel with you, Judge. It's just a lot easier to say, 'Yeah, I agree.'"

■ That's none of my business. By the count of Sen. Orrin G. Hatch (R-Utah), the committee asked Thomas about his views on abortion more than 70 times and in a variety of ways. To all of these inquiries, Thomas used the same tactic that served Justice David H. Souter in his confirmation hearings last year: He had no opinion on abortion, and talking about it "would really undermine my ability to be impartial in those cases."

Most senators appeared to share the view that because they accepted this stance from Souter, they should do the same for Thomas. But Sen. Patrick J. Leahy (D-Vt.), who had vowed to get to an answer to the question, said Tuesday he would go home to Vermont and ponder the testimony.

"He knew I was going to make my decision [on his nomination] on that basis, and he made his decision on how to respond," Leahy said. "Now I'll make mine."

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