

## The removal of Arturo: An immigration case nightmare

**Roger W. Shuy**

*Georgetown University*

Many scholars have argued that linguists ought to be missionaries, taking linguistic knowledge to other areas of daily life such as medical communication, criminal and civil law, diplomacy, advertising, negotiation, and therapy. The case described here, an immigration hearing, should make it clear that there is much work to be done by linguists in the real world of immigration procedures.

Recent research has made a strong case for the problems facing non-experts in administrative hearings and trials. For example, Garcia (1995) concludes that women are disadvantaged in the mediation process, because cooperation is the highest normative value in this process, and women, who are innately more cooperative than men and whose role is to facilitate communication, build consensus, and actively listen, are bound to bear the bias of the system. Likewise, Conley and O'Barr (1998), studying small claims courts, show how the demanded format of these courts exerts its power by transforming the claimants' disputes into new and unfamiliar thought processes, concepts, and words. Matoesian's recent work (1993) focuses on language features used by attorneys in rape trials to control witnesses, such as question forms, topic management, evaluative commentary, and challenges to the witness's capacity for knowledge.

The immigration case described here is a classic in the unfairness and bias that the court system can produce when it is not kept in check by linguistic analysis of the procedures followed by the courts. It is a real case, still active, and one that is an embarrassment to the legal system.

**Background.** In 1979, like many others from Mexico, a man we will call Arturo entered the United States illegally, or, as Immigration calls it, EWI (entered without inspection). Again like many others, he began to do agricultural work. He eventually married, began to raise a family, and lived a better life than he would have had in Mexico.

In 1988 he benefited from a special amnesty program that allowed undocumented persons like him, who could prove that they were in the country for a certain number of years and were doing agricultural work, to apply for green cards.

Content made available by  
Georgetown University Press,  
Digital Georgetown, and  
the Department of Languages and Linguistics.

Arturo did so and was approved. Things seemed to be going very well for him and his young family.

Then, one night in 1991, Arturo got drunk and broke a plate-glass store window in a small town in the state of Washington. He was arrested, spent the night in jail, and paid a fine. A few months later, in Medford, Oregon, Arturo applied for the second stage of the amnesty program, called “adjustment of status.” This involved filling out an application form, which included many questions such as, “Were you a member of the Nazi party in Germany between 1939 and 1945?” and “Are you a sexual deviant?” Among the questions was the following: “Have you ever been arrested or convicted of a crime?” This form was filled out for Arturo by what he later described as “an overworked person” in a Medford social services office. Possibly in an effort to be clear and to save time, this social services worker simplified the questions for Arturo. However it was read to him, he took the question to mean, “Are you in trouble with the police?” Since he’d already paid his fine, he assumed that he was not, so he answered “no.”

In 1995, for reasons that are still not clear, the Immigration and Naturalization Service (INS) discovered this crime of fraud and decided to rescind Arturo’s residency. He did not understand what had occurred. He had the right to appeal the recission, but did not since he did not understand it. He still had his green card, so he continued to work.

By 1997, Arturo really had his life together. By then he had three children, all born in the United States and, therefore, U.S. citizens. He had been working for a chain of Mexican restaurants and had been promoted several times. He was earning pretty good money. But then, disaster struck.

Arturo’s wife, Isabel, had a brother who was allegedly a drug dealer. The police, along with the INS, came looking for this brother at Arturo’s house. In a terrifying raid, they did not find the brother but violently arrested Arturo and Isabel while the children looked on. The oldest boy, about five at the time, soon began to have nightmares stemming from the raid and continues to have them to this day. Isabel, who was undocumented, was wrenched from her children and deported immediately to Mexico. Arturo was allowed out on bond but placed into deportation proceedings on the ground that he was unlawfully present in the United States.

Arturo went to see an advisor at his church, who told him that his wife should not try to come back from Mexico, and that Arturo should seek a procedure called “cancellation of removal.” This is a “remedy,” as INS calls it, available to certain undocumented people who can prove that they have been in the United States for at least ten years and have family members who will be harmed if the person is deported (“removed”).

Arturo qualified for this remedy because his children are U.S. citizens. Cancellation of removal is normally difficult to win because the 1996 law by which it operates places a very high standard on “hardship to a U.S. citizen.” For example, if

the deportee's child is seriously ill with a disease that cannot be treated in a developing country, the applicant sometimes has a chance of succeeding. The issue at court is normally just how bad the hardship is. In addition to having to prove "hardship to a U.S. citizen," the applicant must be deemed to be of good moral character.

Normally a hearing is set to investigate whether or not such hardships exist and whether or not the applicant is of good moral character. Immigration cases usually involve only the immigration judge, a lawyer for the INS who serves as prosecutor, and the person facing deportation, sometimes with a lawyer. Arturo was represented by a lawyer for his hearing on December 1, 1998, but there is little evidence from the hearing that this lawyer had done any research into the well-being of Arturo's children. There is little evidence, in fact, that he did any preparation at all.

It is common for the INS lawyer to ask hard questions and to assume guilt, much as prosecutors do in criminal cases. In Arturo's hearing, however, the INS lawyer said very little. Instead, almost all of the questioning was done by the judge, who focused almost entirely on one issue: whether Arturo had helped his wife return illegally from Mexico. Arturo denied this charge over and over again. There was no evidence that he had even encouraged Isabel to re-enter the country, much less that he had assisted her to do so. Nevertheless, the judge concluded that Arturo was lying, which enabled the judge to conclude that Arturo was not of good moral character. He was therefore determined to be not eligible for cancellation.

It should also be noted that often when persons face deportation/removal, they are first offered something called "voluntary departure." If the applicant agrees to this, it saves the INS the expense of sending them home, and such persons must leave within a specified number of days. Arturo was offered voluntary departure three times during the hearing. He rejected it the first two times it was suggested, but by the end of the hearing, broken and confused, he finally not only accepted it but also unknowingly waived his right to appeal.

In April 1999 I was asked by the law firm now representing Arturo to examine and analyze the tape-recorded deportation hearing in order to determine issues of clarity and fairness. This law firm has sent in a request to "reopen" the matter. The following reports some of the analysis I submitted in this case.

**Overview of the analysis.** I began by addressing the major question, asked repeatedly by the judge: whether or not Arturo had aided his wife to return to the U.S. illegally after her deportation. I also analyzed the judge's conversational strategies with Arturo during the hearing. In my declaration, I noted that the judge refused to accept Arturo's repeated statements that he did not assist his wife to reenter the United States, that the judge attacked Isabel's character, that he asked confusing questions, that he reframed Arturo's responses to mean something other than what Arturo said, and that he frequently interrupted Arturo while he attempted to frame his answers. The judge demonstrated his intolerance with Arturo's unfa-

miliarity with the mechanics of the hearing itself as well as with Arturo's cultural and linguistic difficulties in negotiating the judicial system. The judge also evinced inappropriate emotion, in this case anger, apparently provoked by Arturo's unwillingness to accept voluntary departure at the outset of the hearing.

I further noted that the contents of the hearing indicate that the judge had pre-judged the outcome. He had decided in advance to determine that Arturo was not of good moral character and he refused to consider any testimony to the contrary. In the process, the judge refused to hear any evidence of extreme hardship that would be suffered by Arturo's children.

**Did Arturo aid in his wife's illegal reentry into the United States?** Taking passages from the tape-recorded hearing, I isolated the following exchanges that show how the judge never gets Arturo to admit that he assisted, encouraged, or even knew that Isabel was returning to the United States illegally:

Judge: Did you tell her to come back to the United States?

Arturo: No, I don't tell her. I tell her to wait so I can see what I do here to bring back legally. I tried to do something you know.

Judge: So when you talked to your wife (by phone), you knew that your wife and that baby needed to be together?

Arturo: Yes, but I don't want to my kids go to Mexico 'cause there's too hard for them to be together.

Judge: What you're telling me is a bit contradictory. If you told your wife to wait in Mexico while you tried to figure it out, but you don't want your kids in Mexico.

As it turns out, Isabel's sudden deportation came at a time when she was breast feeding her baby. Arturo then sent all three children to his sister-in-law in San Francisco. The sister tried to feed the baby from a bottle but the baby would not take it. The judge, ignoring this hardship and realizing that he could not deport a child born in the United States, played on this issue to build what he called "circumstantial evidence" that Arturo was lying.

Judge: The babies need to be with their mother but you're saying you just told your wife, wait, I'll just try to figure something out.

Arturo: I was talking to my lawyer here.

Judge: You knew it could take a month, a week, six months, a long time to straighten out a deportation.

Arturo: Well I had no idea.

Judge: Well you had no idea but you had an idea that the baby needed to go with your wife, right?

Arturo: Well I tried to send it with my brother's wife.

Judge: But your brother's wife is not going to breast feed.

Arturo: I know, but they can give a bottle or something. I know there are other ways to survive, but the baby when they give it the bottle, her body doesn't take it.

Judge: So you knew that your wife and the baby had to be reunited, correct?

Arturo: Yeah.

The fact that it was in the best interest of the baby to be with her mother is indisputable here. But the judge disassociates this dilemma from any time frame. Arturo agrees that he knew that at some time they needed to be reunited. Since the judge does not specify the time, it could appear that Arturo admitted that he had encouraged his wife to reenter. The judge continues:

Judge: So you're telling me you didn't tell your wife that she should get together with the baby? You just told her to wait in Mexico?

Arturo: I tell her to wait a little bit so I can see what can I do myself here, like I told you.

Judge: That doesn't sound realistic. You'd been arrested and been placed in jail.

Arturo: Yeah, for nothing, that I didn't do nothing.

Judge: Well if you didn't do anything, how do you think you could get that straightened out in a few days or a few weeks even?

Arturo: I have not in mind but to get together in a few weeks here.

Judge: Okay then, the two things don't match up. What you're telling me doesn't match up. You told me you told your wife to wait because you're trying to take care of it. But you got two things. You don't want the children to go to Mexico, but you know that your wife and the children need to be together. Your plan to get your wife back into the U.S. you're saying was going to be legal but there was no time frame. You didn't know when that would happen, right?

Arturo: Yes, I don't know how to take it but I was with some lawyer and I tell everything, how it happened. They give me a phone number from a lawyer here that maybe can try to help me.

Judge: You're getting off the point because you're not getting anywhere closer to getting your wife back in.

Here the judge appears to be telling Arturo that his experience of being thrown in jail for doing nothing should tell him that his case is hopeless. Unfortunately, this may be true. The judge is building his case that there is conflict between the fact that Arturo told his wife to wait and that she needed to be with her children. It is a dilemma, but hardly a reason to accuse Arturo of influencing his wife's decision.

The oddest part of the judge's argument, however, is his statement that Arturo had "no time frame," meaning that Arturo did not know that immigration was a bureaucratic mess and would take much longer than Arturo might imagine. How this can be an argument that Arturo told his wife to reenter is seriously problematic. Finally, the judge accuses Arturo of wandering off topic, which is difficult to prove from what was actually said. One begins to suspect that "off topic" means only that Arturo did not say what the judge wanted him to say.

Finally, the judge changed his strategy somewhat, moving from what Arturo may have told his wife to what Arturo thought Isabel might do:

Judge: You say that she told you she crossed at Tijuana. Now you still maintain you didn't want her to cross, right?

Arturo: Yes.

Judge: She could just cross and say she's a citizen and get back? You didn't think that she could do that?

Arturo: I don't know that she can do that or not.

Judge: Did you think she might be able to?

Arturo: I don't know. I never know that she's going to Tijuana.

Judge: Okay, well would you want her to enter illegally in Tecate? Did you think that she might try to cross, since the children were in Tehachape?

Arturo: Well—

Judge: (interrupting) Didn't you think that she would try to cross to get together with her child who was about 150 to 180 miles away from Tecate? Don't you think that she was going to try to get there?

Arturo: Well I—

Judge: (interrupting) You did, didn't you?

Arturo: I never think she would do it.

Judge: A sick little child and that your family desired to be together. You didn't think that she was going to try that?

Arturo: Yeah, well uh—

Judge: (interrupting) So it wasn't important enough to her then. The mother wouldn't try to get together with her children. I'm starting not to believe you.

The judge here manages to ignore the fact that Arturo's not knowing whether or not his wife planned to reenter is actually consistent with his earlier statements that he did not tell her to reenter. If Arturo had told her this, he might also have told her how and where to do it. And if he had told her this, he would also think that she might do it.

Whether or not Arturo thought or believed Isabel might try to reenter, of course, is not an issue that bears on his good moral character. The judge does not accept Arturo's answers about what he thought any more than he accepted Arturo's answers about what he did. He stopped at this point, pointing out that he now had enough "circumstantial evidence" that Arturo "arranged for her to come in at Tehachape."

**The judge's interviewing strategies.** The judge's interviewing strategies framed the second prong of my analysis. It is understood that the requirement of a judge's discourse is that it be fair and impartial. Five of the judge's discourse strategies formed a stark contrast to this understanding:

- his insulting and shaming of both Arturo and the absent Isabel,
- his frequent interruptions of Arturo as he tried to respond,
- his attacking Arturo's responses as off-point,
- his taking advantage of Arturo's lack of skill in the legal register, and
- his venting anger at Arturo.

Some of the earlier quotes have shown how the judge shamed Arturo when he accused him of neglecting his wife by letting her stay in Mexico while her babies badly needed her. The judge took this shaming even a step further, however, as follows:

*Insulting and shaming Arturo and his wife.*

Judge: Now you think Tijuana is a dangerous place for a young woman to be?

Arturo: Yes.

Judge: Were you worried about your wife, sir?

Arturo: Of course.

Judge: But you didn't make any arrangements for her. You just let her go on her own. Whoever wanted to take advantage of her. You're the kind of husband that, she can take care of herself. Would you be worried about your wife, whether these kind of people might do something to her?

Arturo: Yes.

Judge: But you never discussed trying to help her then. The mother wouldn't try to get together with her children.

To this point, Arturo has denied encouraging, helping, or even believing that his wife would reenter. The judge's next ploy was to get Arturo to say that he *thought* she might try to reenter. This failed also. Now the judge resorts to shaming Arturo for not being man enough to care about his wife's well being and he shames Isabel by insinuating that by going through Tijuana, she is now a fallen or

tarnished woman. Curiously enough, the judge's argument seems to be that Arturo was wrong *not* to tell Isabel to reenter the country.

*Interrupting Arturo.* In the passages cited above it has already been shown how the judge interrupts Arturo when he tries to respond to questions. The following example illustrates how the judge has no patience with Arturo's effort to answer, interrupting him constantly:

Judge: So did you talk to your wife about taking the baby down to Mexico with her?

Arturo: When she was in Mexico, I tell her I'm going to try to do something here to see because I never have idea—

Judge: (interrupting) You're not answering my question. You told me that already. My question is, you have a six-month-old baby who is breast feeding.

The judge was quite aware that Isabel had been deported immediately after the raid on Arturo's house, while Arturo was taken to jail. Since there was no time for the couple to have discussed anything, his question to Arturo was confusing at best. Arturo appears to have taken "did you talk to your wife" to mean on the telephone, so he starts to give the judge his answer once again. The judge will have none of this and then, amazingly enough, interrupts and restates his question in a form that is not only different from his original question but grammatically meaningless, not a question at all.

*Attacking Arturo's answers as off-point.* As noted in the previous exchange, a common theme of the judge's questions included the accusation that Arturo was off point in his answers. Such a strategy is likely to confuse anyone, but especially a person unfamiliar with the rigid format of the judicial process and whose culture and language are different from it. The judge continues this practice, as the following examples show:

Judge: On the other hand, your plan to get your wife back into the U.S., you're saying was going to be legal. There was no time frame. You didn't know when that would happen, right?

Arturo: Yes, I don't know how to take it but I was with some lawyer and I tell everything, how it happened. And they give me a phone number from a lawyer here that maybe can help me.

Judge: You're getting off the point because you're not getting anywhere closer to getting your wife back in.

Again the judge accuses Arturo of being ignorant about the slow nature of immigration procedures. In this, he is probably quite right. But when Arturo tries to explain what he tried to do about his ignorance of this process (getting a lawyer to help him), the judge claims that he is "off the point." One can speculate that this impatient judge was not happy that Arturo went to a lawyer and would prefer that immigrants simply obey his suggestion to accept voluntary departure and not to take up valuable court time and expense. There is no need to even speculate, however, about the judge's impatience in the following example:

Judge: But you didn't make any arrangements for her. You just let her go on her own. Whoever wanted to take advantage of her, you're the kind of husband that, she can take care of herself, is that what you did?

Arturo: We never discussed—

Judge: (interrupting) I asked you a question. I didn't ask what you discussed.

Apparently the only acceptable answer to the judge's question is for Arturo to admit that he is "that kind of husband." But this was not clear to Arturo, who attempted to begin an answer, which from his previous responses was heading in the direction of explaining that he and his wife never made any arrangements at all about her return to the United States. This interrupted, three-word effort receives the insulting response, "I asked you a question," as though Arturo was not aware of what a question actually is.

*Taking advantage of Arturo's lack of skill in the legal register.* Like many people, immigrant or not, Arturo does not have the skill required by the courts involving reporting exact time issues. Not surprisingly, he had spoken to his wife by telephone several times while she was in Mexico. Now, months later, he found it difficult to recall exactly how many times they spoke and what they said to each other in each call. Most of us, including the judge, would have the same problem.

Judge: So they were in Tehachape four days and then your wife got there, correct?

Arturo: Well, something like that. I don't have—

Judge: (interrupting) Not something like that. It was that. You decided this way, sir. You rejected my advice and we're going this way. Don't talk while I'm talking. We may go on a long time.

Throughout the hearing, Arturo evidences difficulty recalling exact details, especially concerning time. He often punctuates his answers with hedges, such as "I think," "I wanted to do something," "I don't know how," "I believe it was. . .," and "I was thinking to." Such hedging is to be expected of non-experts in the face of hostile questioning such as is often found in immigration hearings. It is only natural to protect oneself against the accusation of mis-speaking by hedging in this way. Although Arturo may speak this way normally, when the stakes are as high as they were here, the need to hedge was amplified considerably.

*Venting his anger at Arturo.* The judge is obviously angry at this point. Arturo had rejected the judge's advice to take voluntary departure, causing this whole hearing to take place. Arturo is not precise on his reporting of times. This infuriates the judge while providing him, at the same time, with small bits that he can eventually reassemble as evidence of Arturo's alleged lying. The judge continues this approach, as follows:

Judge: And the second discussion, what did you talk about then?

Arturo: I tell her the kids were in San Francisco with her cousins.

Judge: The second time you told me that you told her they were already in Tehachape.

Arturo: Sir, I tell you that they arrive in San Francisco.

Judge: That was the first time. You said previously, that you told her they were in Tehachape. Now maybe it was the third time.

Arturo: When I tell the kids were in San Francisco, it was on the second time we called each other.

Judge: You're changing your testimony.

Arturo: We talk to each other a few times. I don't remember exactly how many times. But I never tell her to come back because I know, do you imagine, I know—

Judge: (interrupting) This is not your show. It's mine. You're going to answer my questions the way that I ask them. Now you didn't answer that question. You wanted to go on to something else. I find you're evasive of my questions. Now when did you tell your wife that your children were in Tehachape? That's the question. You remember that you didn't tell her to come back. You remember that she was in Tecate. You remember quite a bit when it serves you to remember it.

It is difficult to describe the judge's meandering thoughts at this point. Again he claims that the question was really one thing while it was clearly something else. He interrupts Arturo's attempts to answer. He accuses Arturo of being deliberately evasive and changing his testimony when Arturo was desperately trying to recall exact times and conversations. Meanwhile, it had become obvious to Arturo that the central issue was whether or not he had assisted or encouraged his wife to re-enter the country illegally, or had even imagined that she might. So he tries to direct his answers along this line. This is considered evasive by the judge, who becomes furious again:

Judge: Okay, I've had enough. I'm going to find circumstantially. One, circumstances don't lie; people lie. We can't always draw conclusions from circumstances but I'm going to draw the conclusion that you sent your children to Tehachape and you arranged for your wife, and that's the end of this case. And you decided to blow off your opportunity to keep your record clean enough so that you could get a visa in the future. So you'll have to fight with this now.

Arturo: Like I told you, your honor—

Judge: (interrupting) I didn't ask you to speak.

Arturo: I will not speak.

Judge: I find that you're eligible based on the children, but not eligible because you don't possess good moral character.

**Conclusions.** As noted earlier, the two issues that might mitigate a deportation of this type are (1) the hardship such a removal might place on U.S. citizens, in this case Arturo's children, and (2) the good moral character of the applicant. The judge could not find reason to reject the matter of hardship to the

children so he constructed, by his confusing questions, his insulting and shaming remarks, and his reframing Arturo's words to appear to mean something else, a scenario by which he could follow his prejudged conclusion that Arturo was lying. Then, if it is true that Arturo was lying, he must have assisted, encouraged, or believed that his wife would reenter the United States illegally, leading to the inevitable conclusion that he obviously was not of good moral character.

In his book *The Language of Judges*, Solan (1993) describes the teachings of the late U.S. Supreme Court justice Benjamin Cardozo. Solan points out that it is rare, indeed, for judges to write about the problems of judging, at least not while they are still on the bench. Solan reports that Cardozo described the tension between the need for the law to be both sufficiently flexible to accommodate new cases as they arise and sufficiently rigid to maintain its predictive power: "If the law is not flexible enough, then it is doomed to irrelevance and to becoming the source of injustice. If the law is too flexible, then it becomes so unstable that it fails to define with any reliability people's rights and obligations" (Solan 1993: 12).

The judge in this case seems to illustrate neither of these tensions. For this judge, there is no flexibility in the courtroom exchange. Nor is there any flexibility in terms of bending the rigid register and format of proceedings involving a non-native speaker of English. Likewise, there is no flexibility in judging, with no outward evidence, the falsehood of the statements made by Arturo at this hearing. There is no flexibility of letting Arturo, unfamiliar with the rigid question-answer format of a hearing, to tell his story in his own way. Conley and O'Barr (1998) point out the inequalities of courtroom procedures caused by the asymmetries of power and patriarchy of judges. Although their research focused on the language of women in the courtroom, the failure to be assertive and rational rather than uncertain, deferential, and relational obtain in the immigration hearing, regardless of the gender of the applicant.

The judge's handling of this immigration hearing is not simply unfair and partial; it is truly outrageous. There is no reasonable excuse for the judge to vent his anger at Arturo for not accepting his earlier advice to him to take voluntary departure. There is no reasonable excuse for the judge to accuse Arturo of not caring about the welfare of his children and his wife. There is no reasonable excuse for the judge to have suggested that since Isabel was allegedly in Tijuana by herself, she must now be a tarnished woman. Finally, there is no reasonable excuse for the judge to reject Arturo's many consistent statements that he did not encourage his wife to reenter the United States illegally. That the judge could conclude that a man is lying based on the content of this hearing is an embarrassment to the judicial system. This case also should be instructive to linguists as a way for us to become involved in the uses and misuses of language in immigration cases.

**REFERENCES**

- Conley, John, and William O'Barr. 1998. *Just words*. Chicago: University of Chicago Press.
- Garcia, Angela. 1995. The problematics of representation in community mediation hearings: Implications for mediation practice. *Journal of Sociology and Social Welfare* 56: 818–835.
- Matoesian, Gregory. 1993. *Reproducing rape*. Chicago: University of Chicago Press.
- Solan, Lawrence. 1993. *The language of judges*. Chicago: University of Chicago Press.