 Much Ado About That... Or Is It Which?

By Martha Faulk

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Introduction

Much of what we write in the legal profession requires refining, defining, and making meaning more exact. This constant qualifying of things—nouns, usually—leads us to the use, and sometimes overuse, of the word that. And any consideration of that naturally makes us think of which, that's cousin in the relative pronoun family. Which pronoun to use when is often the cause for confusion and, yes, occasionally the subject for argument between writers and their editors.

In the legal writing seminars which I conduct for practicing lawyers, participants always ask for some guidance about the use of these two words. Like many other issues in the legal profession, the answer to the usage question isn't simple, but with a basic understanding of sentence structure and a few matters of style, we'll be able to make logical and appropriate choices between these words.

Grammar Checker Alert!

We can begin by considering the advice of my computer's grammar checker. As I typed the first sentence in the paragraph above, I was alerted by the wavy green line under the words "semantics which I conduct for practicing lawyers." Let's take a look at the grammar assistant's advice: If the marked group of words is essential to the meaning of your sentence, use "that" to introduce the group of words. Do not use a comma. If these words are not essential to the meaning of your sentence, use "which" and separate the words with a comma.

Well, this is good advice that (which?) has stood the test of time, and the explanation of the distinction between restrictive and nonrestrictive clauses is quite workable. No doubt the grammar assistant was influenced by Strunk and White's popular little book about style in writing.¹

The Elements of Style

Strunk and White offer the same advice as my grammar assistant. They admit, however, that "the use of which for that is common in written and spoken language," but prefer the "convenience to all if these two pronouns were used with precision." An admonition to the reader follows: "The careful writer, watchful for small conveniences, goes which-hunting, removes the defining whiches, and by so doing improves his work."² Strunk and White would be happy, then, with the defining that in the first sentence of the paragraph just above this one which mentions "advice that." (I could have said, in the preceding sentence, "the paragraph just above this one that mentions 'advice that,'" but then I'd have quite a few thats in the sentence and the paragraph as well.)

Does this traditional preference for that mean that those of us who use which in both its nondefining (nonrestrictive) and defining (restrictive) sense are not careful writers? This is the basic question for writers who stop to consider the advice found in reference books and computer programs and, of course, the advice given by our editors, colleagues, and teachers.

Fowler's: Old and New

Let's turn to more modern authorities. We'll consult "the acknowledged authority on English usage" as proclaimed by the front cover of The New Fowler's Modern English Usage. Agreeing with the "old" Fowler's, the contemporary editor notes that the distinction between restrictive (that) and nonrestrictive (which) clauses is not always an absolute one.³ He goes so far as to quote directly from the "old" Fowler's: "If writers would agree to regard that as the defining relative pronoun, and which as the nondefining, there would be much gain both in lucidity and in ease: but it would be idle to pretend that it is the practice either of most or of the best writers."⁴ Thus we see that both Fowler's and Strunk and White evince a wishful preference for a more limiting practice than they actually observe.

² Id. at 59.
⁴ Id.
Webster's Dictionary of English Usage

We'll find a historical overview of the subject in Webster's Dictionary of English Usage. That and which, as relative pronouns, have had a rather checkered past as the English language has developed. From the 14th century Middle English period, that was used to introduce both restrictive and nonrestrictive clauses. Not until the early 20th century did grammarians seek to confine that to its restrictive clause function, and their recommendation was based only upon usage in edited prose. Grammarians felt also that it would be useful to confine which to introducing only nonrestrictive clauses, and thus achieve a kind of syntactical symmetry.

But English grammar doesn’t always proceed according to the wishes of commentators and grammarians. Writers say what they mean to say, and find themselves using the word that gives precision of meaning as well as stylistic variety.

If editors and reviewers could actually confine writers to their ideal rule of usage—that for restrictive clauses, which for nonrestrictive clauses—then their jobs would be simpler. But writers resist these stricturns, and with good reason.

Based on their review of the actual modern usage of these relative pronouns, the editors of Webster's Dictionary of English Usage render their opinion succinctly and definitively: “You can use either which or that to introduce a restrictive clause—the grounds for your choice should be stylistic—and which to introduce a nonrestrictive clause.”

The Comma Problem

Now that we carefully writers are free on stylistic grounds to use either word to introduce our relative clauses, we're faced with the problem of how to punctuate those clauses beginning with which. Consider the following sentence:

The exhibit which we introduced into evidence caused some jury members to avert their eyes.

We need to make a decision about comma placement. Should we enclose "which we introduced into evidence" within commas? If we mean to indicate to the reader that the clause is merely additional (unessential, nondefining) information about the exhibit, then we should use commas around the clause to relegate it to nonrestrictive status. The sentence punctuated in this fashion communicates a different meaning than the sentence without commas:

The exhibit, which we introduced into evidence, caused some jury members to avert their eyes.

Of course, we could change the which to that and avoid the comma decision altogether. Why not make that change and simplify matters for ourselves and our editors? To answer that question, we’ll respond to another editorial attempt from the grammar assistant.

Grammar Checker Alert II

My computer’s word-processing program is again unhappy about the use of which to introduce the restrictive clause in the sentence about the exhibit in the example above (the one without commas). My computer, like many people, prefers simplicity and symmetry in rules about writing. Unfortunately, however, my computer cannot consider the stylistic consequences of overloading a paragraph, a page, or even an entire document with too many thats.

When writers are able to use that in its restrictive sense, and which in either its restrictive or nonrestrictive sense, then the reader is not bored by the constant repetition of one word or the other.

Omission of That

Let’s say, for the sake of convenience and certainty, we (or our editors) decide to use only that to introduce restrictive clauses and our text is now that-heavy. Perhaps we can remedy this stylistic flaw just by eliminating some thus. Commentators are agreed that the omission of that either as a conjunction beginning a dependent clause or as a relative pronoun is a characteristic feature of both spoken and written English since the 13th century. We writers often construct sentences containing these omissions without much conscious thought about the practice.

For legal writers, the editing consideration should be one of possible misreading rather than stylistic preference. The misreading test should be applied by the writer right at that point in the sentence where the reader comes across the omission. For example, the reader sees the following words: “We believe the defendant . . . .” Now, as the reader...
scans these words, some ambiguity is present. Does the reader think the defendant was not lying? The reader must be able to suspend understanding of these words until the sentence continues in this fashion: “We believe the defendant was not present at the time of the battery.” Although the ambiguity here is only slight, and will be clarified for the reader by the end of the sentence, careful writers will help the reader avoid misdirection by inserting *that* after the word “believe.” By adding the conjunctive *that* to its rightful place at the beginning of the dependent clause, the reader’s attention is directed to the entire clause following the verb rather than the noun (defendant) following the verb. “We believe that the defendant was not present at the time of the battery.”

Omitting the relative pronoun *that* rarely causes a misreading. Compare these two versions of the same thought:

Here is the brief she wrote.

Here is the brief that she wrote.

Leaving out the relative pronoun seems less likely to cause reader misdirection than omission of the conjunction because of the position of the modified word immediately preceding the relative pronoun.

**Enough of That**

Each omission of *that* must be judged on its own merits, then, and the writer should consider carefully whether the reader has been misdirected. Omitting *that* will not solve the problem of repetition and consequent monotony in the text. Careful writers, equipped with sufficient understanding of the distinction between restrictive and nonrestrictive clauses, will be able to provide their readers with stylistic variety, and punctuate correctly, too.

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