

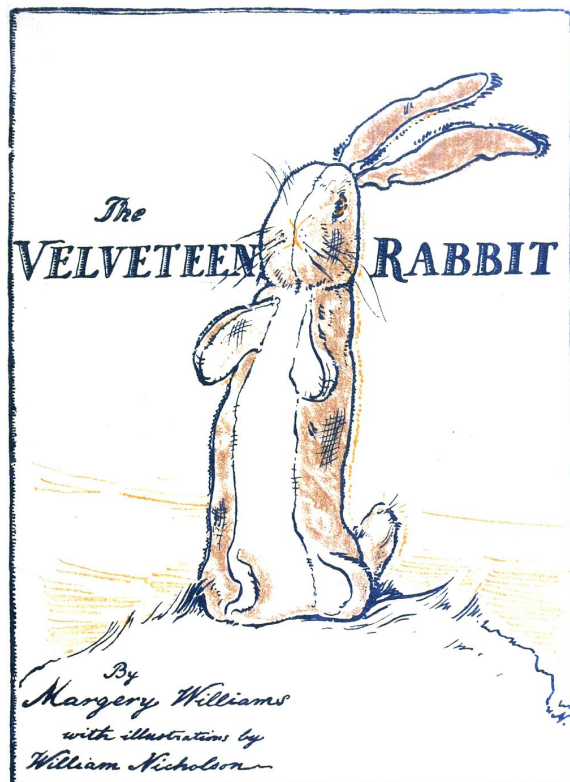
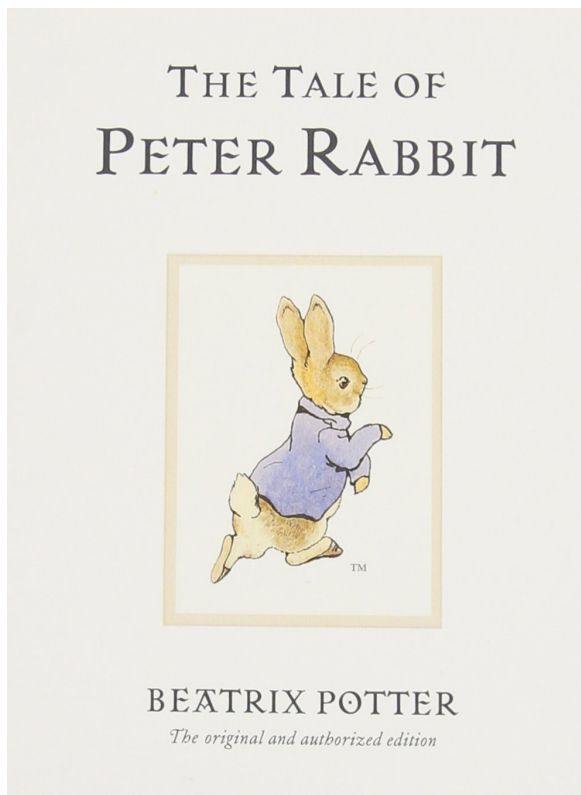
CopyrightX: Final Examination

Spring 2018

Professor William Fisher

Question #1

Rabbits have been central characters in children's books for many years. Prominent examples include the mischievous Peter (the central figure in Beatrix Potter's 1901 book, *The Tale of Peter Rabbit*) and the passive stuffed rabbit who ultimately comes to life in Margery Williams 1922 book, *The Velveteen Rabbit*. (Copies of the covers of those two books appear below.)



Mike Pence is currently Vice President of the United States. He has long opposed both gay marriage and initiatives to strengthen the legal rights of lesbian, gay, bisexual, and transgender people. In 2006, he supported an amendment to the U.S. Constitution that would have prohibited gay marriage, arguing that “societal collapse was always brought about following an advent of the deterioration of marriage and family.”

Mike and his family own a real rabbit, which they have named Marlon Bundo. A photo of Mike, his wife (Karen), and the rabbit appears below.



Vice-President Mike Pence and his wife, Karen Pence, with their pet bunny, Marlon Bundo, during a reception at the Eisenhower Executive Office Building. Photograph by Doug Mills / NYT / Redux

On Christmas Day in 2017, Charlotte Pence (the daughter of Mike and Karen) gave her father, as a present, a homemade book containing a children's story that Charlotte had written, in which a rabbit named Marlon Bundo played a central role. Charlotte had illustrated the story with a few quickly drawn illustrations. Mike was charmed by Charlotte's story and asked her if she'd be willing to publish it. Karen, a highly skilled painter, offered to paint some watercolors, which might be used instead of Charlotte's sketches to illustrate the story in the published version. Mike offered to find a publisher. With some trepidation, Charlotte agreed to the plan.

The next day, Mike called a friend at Regnery Publishing, who quickly agreed to publish the book. Karen spent a month completing the paintings. By the end of January 2018, the book was finished. In February, Regnery Publishing sent advance copies to critics and began a promotional campaign. The book was scheduled to go on sale to the public on March 19, 2018.

Selections from the book appear on the following pages.

MARLON BUNDO'S
A Day in the Life of
THE VICE PRESIDENT



Written by CHARLOTTE PENCE
Illustrated by KAREN PENCE



Allow me to introduce myself—
I am Marlon Bundo Pence.
I live with my family here
At the vice president's residence.

Some people call me BOTUS—
A name any bunny would love.
It means "Bunny of the United States"—
A job I am very proud of!





As the official bunny in residence here,
I help out whenever I can.
So Grampa and I get ready for
The busy day we have planned.

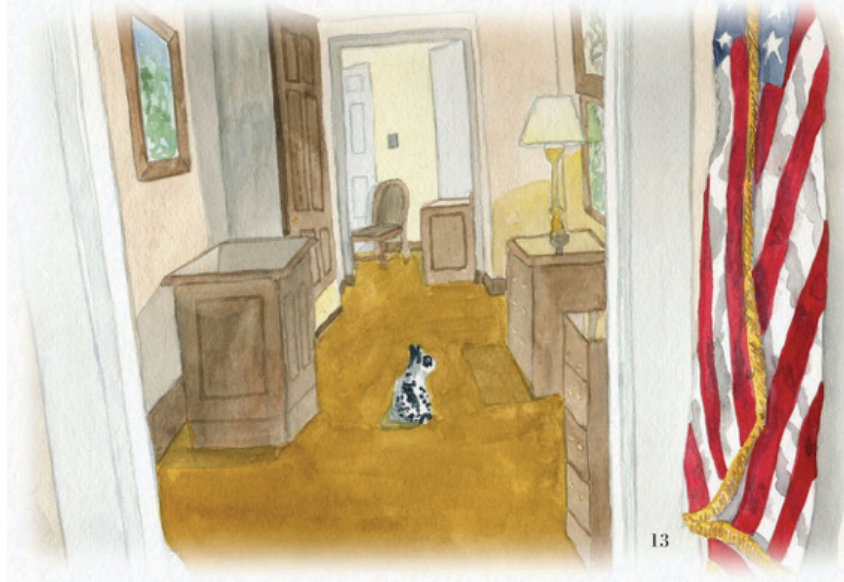
Grampa says goodbye to Grandma,
And we head to the motorcade.
He grabs some freshly brewed coffee
From the Naval Enlisted Aides.



I hop up into the black limo
To make sure I get a good seat.
I want to see all the people
Who will soon be lining the streets!

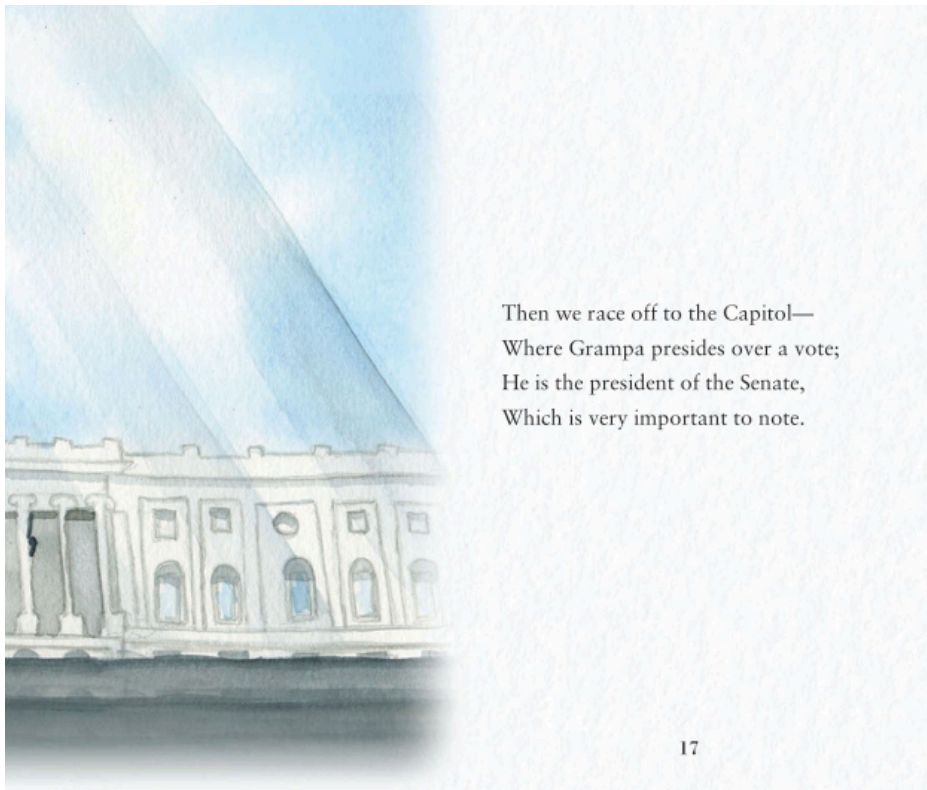
Each day as we drive to the White House,
We see people waving their flags.
Grampa always gives them a thumbs-up,
And I give my tail a nice wag!

Grampa has lots of meetings
And other important events,
But the most important meeting is first.
That's the one with the president!



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Then we race off to the Capitol—
Where Grampa presides over a vote;
He is the president of the Senate,
Which is very important to note.



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As we go back down to the residence,
I'm very glad to be home.
But as we pass by Grampa's office,
I hear the ringing of the phone.

I tell Grampa his day's not done
By tugging on his shoe.
He picks up the phone—it's the president!
Grampa gives him the day's review.

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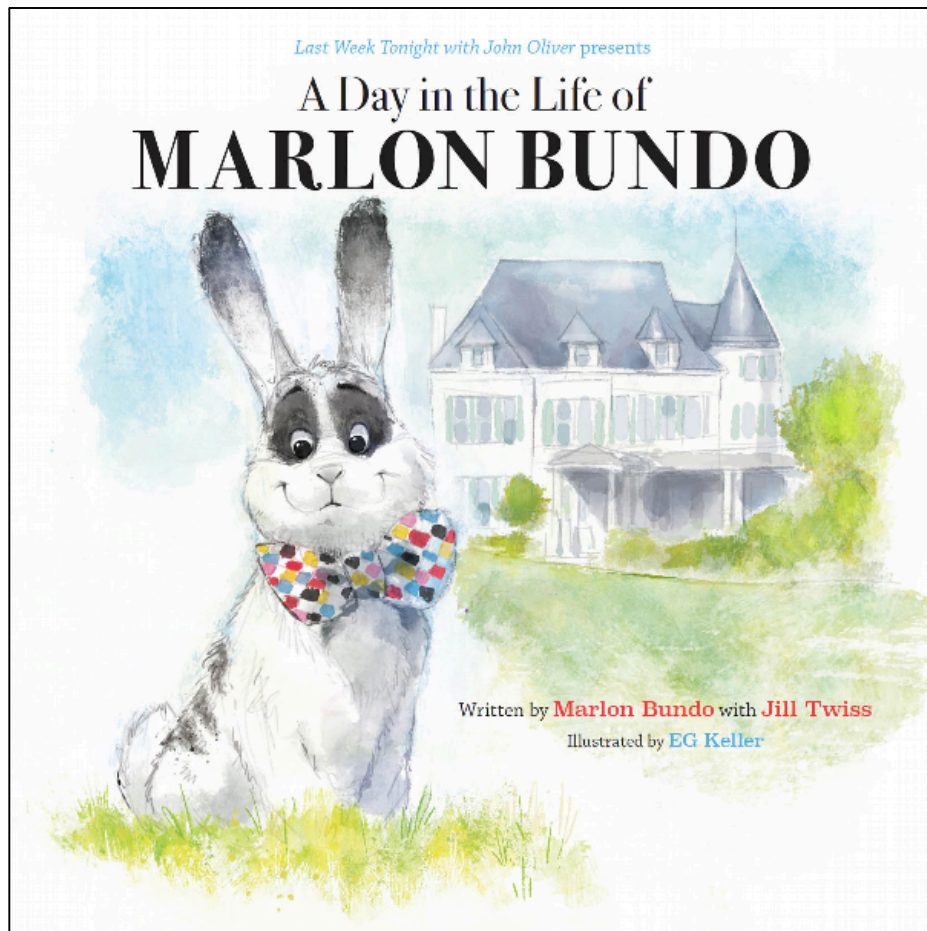
At last Grampa gets out his Bible,
And he quietly bows his head.
I place my paw on his hand
For one little prayer before bed.

I think of all our adventures today,
From the White House to the Capitol dome.
And I remember how blessed I am
To call this great nation my home.

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John Oliver is a comedian, who has been sharply critical of President Trump and Vice President Pence. Since Trump's election, his weekly television show, *Last Week Tonight*, has become increasingly popular. When Oliver learned of the impending publication of *A Day in the Life of the Vice President*, he asked two members of his staff, Jill Twiss and E.J. Keller, to write and illustrate another children's story, entitled, *A Day in the Life of Marlon Bundo*. Oliver worked closely with Twiss and Keller in producing the manuscript. The cover and excerpts from the book that they created together appear below.





Hello. My name is Marlon Bundo, and I am a bunny.

I live with Mom, Grandma, and Grampa in an old, stuffy house on the grounds of the U.S. Naval Observatory. That's because my Grampa is the Vice President. His name is Mike Pence.



My Very Special Day started out like every other day.



I woke up all alone.

Then I ate a fine bunny-breakfast all alone,



while I watched the news . . . all alone.

You see, sometimes old, stuffy houses are also lonely.



After breakfast, Grandma suggested I go with Grandpa to his office. But the office, I knew, was even more stuffy and lonely than the house. So I said no, and went out to the garden instead.

That is when I saw Him. He was a big, fluffy bunny with the floppiest floppy ears and the bushiest bushy tail. He was bunny-beautiful.



I was standing still. But being near him made me feel like my heart was still **hopping**.



"My name is Marlon," I said. "But my family calls me BOTUS. It's short for 'Bunny of the United States.' It's a long story."

"My name is Wesley, and my family calls me Wesley," said Wesley.

Wesley and I hopped together all around the garden. We hopped over daisies. We hopped over tiny carrots that weren't ready to grow up and be lunches yet.

We hopped over Phil and Dennis.

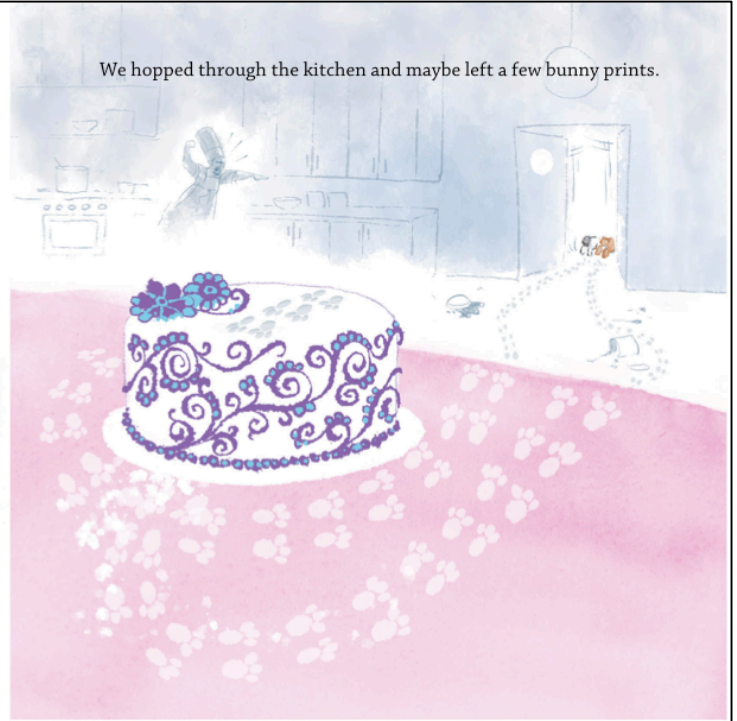


Once we had hopped through every part of the garden, we didn't want to stop hopping. So, we hopped right inside the old, stuffy house.



We hopped up and down the creaky stairs and made beautiful, creaky stair-music together.

We hopped through the kitchen and maybe left a few bunny prints.



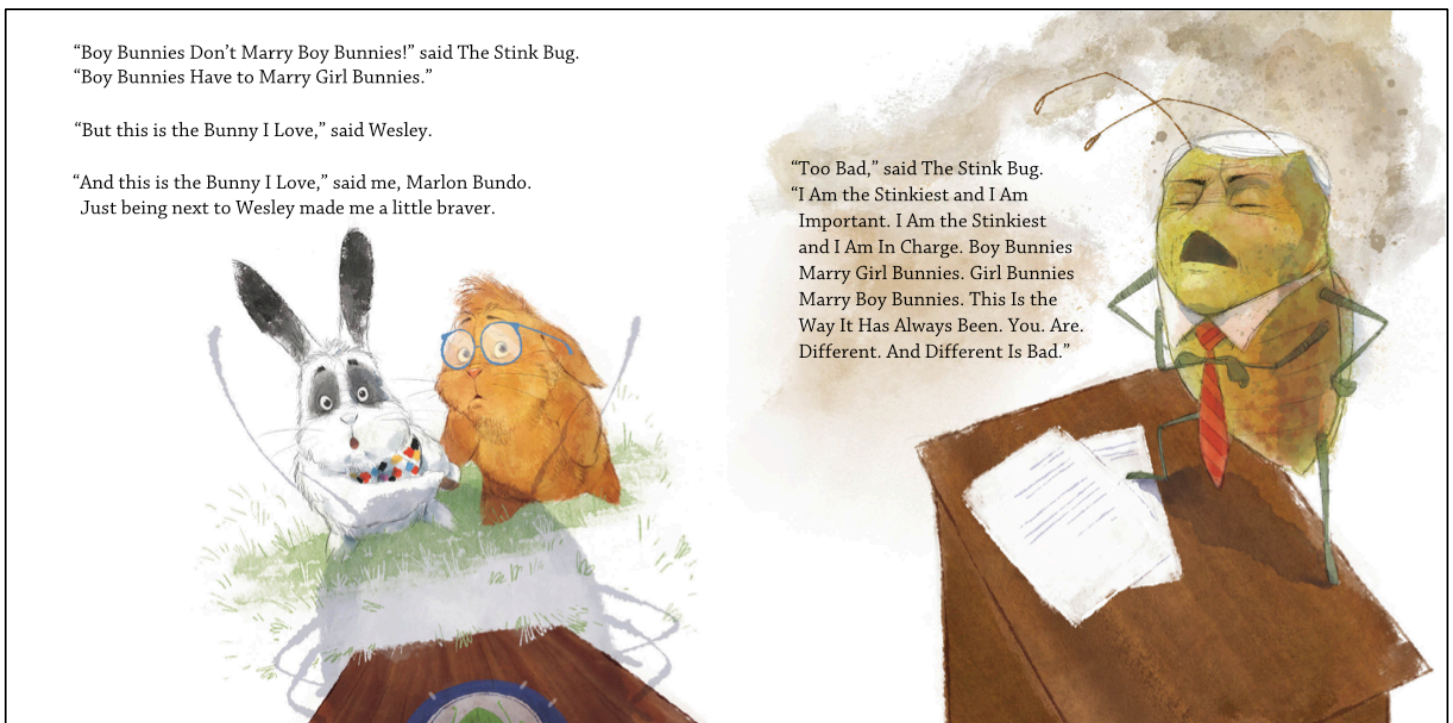
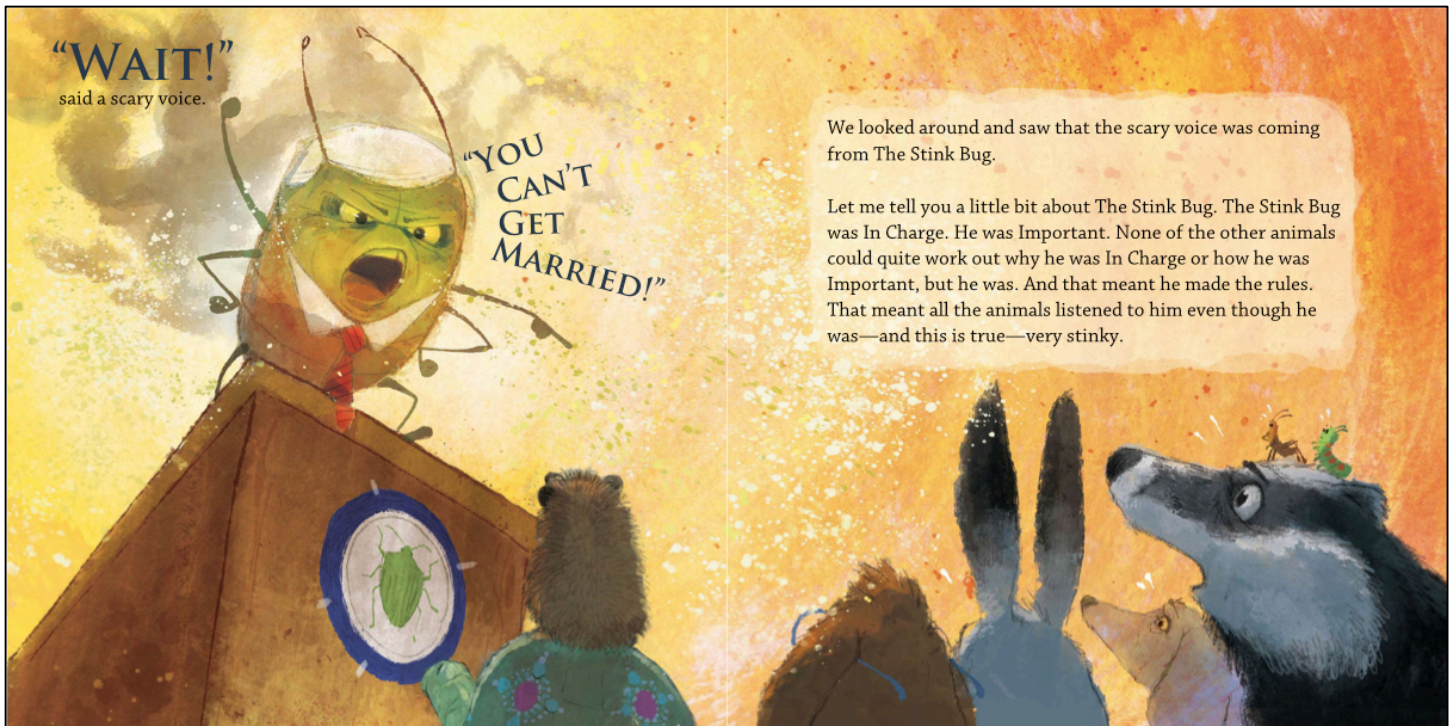
At the end of our hop, I said, "Wesley, I don't want to hop without you ever again."

And Wesley said, "That's funny, because I never want to hop without you, Marlon Bundo, ever again."



And we both said, "We will get married and hop together Forever."

It was a very good hop. It was the Best Hop. And I realized something: when I hopped with Wesley, my old, stuffy house didn't feel lonely anymore.



"Everyone is different. And different is *not* bad," said Scooter who is a turtle. "Different is Special."



"Wait!" said Mr. Paws who is a very good dog and also a very *smart* dog. "Wait a minute! We get to decide who is In Charge. We get to decide who is Important. We can vote!"

And on this Very Special Day, all the animals voted on who they wanted to have In Charge.



They chose . . .

. . . NOT The Stink Bug.

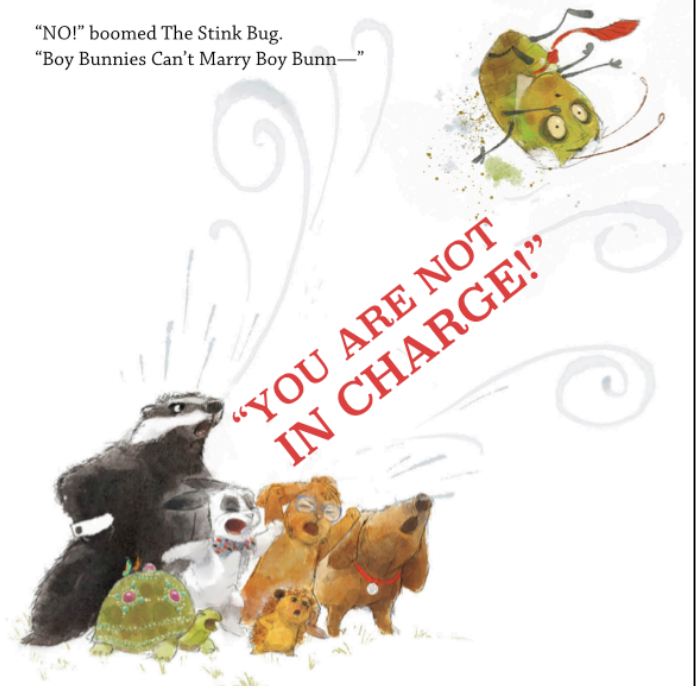


"Hooray!" said me, Marlon Bundo.

"Hooray!" said Wesley.

"Hooray!" said all of our friends. Because that is what friends say.

"NO!" boomed The Stink Bug.
"Boy Bunnies Can't Marry Boy Bunn—"





In early March of 2018, Oliver entered into confidential negotiations with Amazon.com concerning publication and marketing of *A Day in the Life of Marlon Bundo*. After considerable discussion, Amazon agreed to sell both print and Kindle versions of the book, to promote it aggressively, to donate all of the profits from sales of the book to charities selected by Oliver, and to keep both the book and the marketing plan secret until March 19. In return, Oliver agreed not to sell the book through any other booksellers and to indemnify Amazon if Amazon were held liable for copyright infringement.

Most of Oliver's television show on the evening of March 18 was devoted to criticism of Mike Pence's politics. Near the end of the show, Oliver briefly discussed the impending publication of *A Day in the Life of the Vice President*. He held up an advance copy of the book and read a few passages from it. He then held up a copy of his own book. He praised the Pences' book, describing it as a "fun sweet book about a rabbit," but argued that his own product was superior, calling it a "better bundo book." He urged viewers to buy his own product instead of the Pence book in order "to send Pence a message."



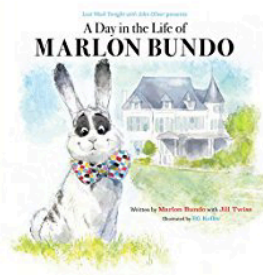
John Oliver, appearing on Last Week Tonight (HBO), March 18, 2018

In the following days, a large number of viewers did indeed order copies of *A Day in the Life of Marlon Bundo* from Amazon, many more than purchased copies of *A Day in the Life of the Vice President*.

Between March 19 and May 2, Amazon maintained on its website a special “Marlon Bundo Page,” where it featured – and juxtaposed – the two books. A screenshot of the page appears below.

Book Format: [Hardcover](#) | [Kindle Edition](#)

Best Seller




Last Week Tonight with John Oliver Presents a Day in the Life of Marlon Bundo Mar 18, 2018
by Marlon Bundo and EG Keller (Gerald Kelley)

Kindle Edition
\$8⁵¹
Get it **TODAY, Apr 8**

Hardcover
\$11⁵⁰ ~~\$18.99~~ ✓prime
Temporarily out of stock. Order now and we'll deliver when available.

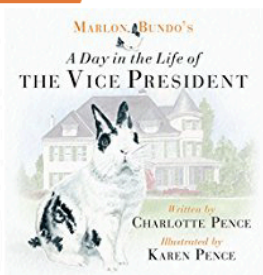
Audible Audiobook
\$0⁰⁰
Free with Audible trial

★★★★★ 4,997



Amazon's Marlon Bundo Page
Discover books, read about the author, find related products, and more. [More about Marlon Bundo](#)
Bestselling Books: Last Week Tonight with John Oliver Presents a Day in the Life of Marlon Bundo.

Best Seller



Marlon Bundo's Day in the Life of the Vice President Mar 19, 2018
by Charlotte Pence and Karen Pence

Kindle Edition
\$8⁵⁴
Get it **TODAY, Apr 8**

Hardcover
\$11³⁹ ~~\$18.99~~ ✓prime
Get it by **Tuesday, Apr 10**
More Buying Choices
\$10.97 (15 used & new offers)

★★★★★ 437

In a press release on March 20, a spokesperson for Regnery Publishing sharply criticized Oliver’s book, commenting, “It’s unfortunate that anyone would feel the need to ridicule an educational children’s book and turn it into something controversial and partisan.” By contrast, Charlotte and Karen Pence responded to the publication of Oliver’s book with equanimity and grace. Charlotte even purchased a copy of Oliver’s book.

Charlotte remains bemused and untroubled to this day. However, as sales of Oliver’s book rose and sales of the Pences’ book stagnated, Karen’s attitude began to change. Karen began discussing with her advisers and friends a lawsuit against all parties involved in the creation and distribution of *A Day in the Life of Marlon Bundo*. Recently, Karen’s ruminations became public, when, in a televised interview, she stated:

“John Oliver has cavalierly stolen crucial pieces of our story and my art. Plagiarism of this sort would get you thrown out of school – and I won’t stand for it either. Unless he publicly apologizes and immediately ceases selling that disgraceful piece of propaganda, I’ll see him in court.”

Some of Oliver’s advisors are worried. “You’ve made your point,” one of them suggested. “Why not apologize and let it go?” Oliver, however, remains committed to maximizing the public profile of his book and insists that he will never apologize.

In a memorandum containing no more than 2500 words, analyze the following questions:

- (a) What aspects of *A Day in the Life of the Vice President*, if any, are subject to copyright protection?
- (b) Who owns the relevant copyrights?
- (c) Have Oliver and his team and/or Amazon.com violated any of the exclusive rights enjoyed by the copyright owners?
- (d) If so, could Oliver and his team and/or Amazon.com successfully invoke any affirmative defenses to justify their actions?
- (e) If not, what remedies would be available to the copyright owners if they pursued the litigation to its conclusion?

If you need additional information in order to address any issue confidently, say what that information is and why it matters.

[This question contains a fictionalized version of a true story. Many of the statements made in the question are true, but others are “alternative facts” – i.e., either distortions of true events or outright fabrications. If you happen to know (or learn) about aspects of the true story that are inconsistent with the narrative set forth above, you should ignore that knowledge when framing your answer.]

Question #2

Select one of the following dimensions of copyright law:

- a) the scope of the exclusive right to perform a work in public;
- b) exceptions and limitations to authors' exclusive rights;
- c) moral rights; or
- d) statutory damages.

Briefly describe how the issue is addressed under the law of the United States and how it is addressed under the law of one other country or region (such as continental Europe or Latin America). Which of the two approaches, in your judgment, is superior? Why? Your answer may not exceed 1200 words.

Question #3

Select one of the following dimensions of copyright law:

- a) the "safe harbor" enjoyed by online service providers;
- b) the scope of copyright protection for musical compositions;
- c) formalities; or
- d) traditional knowledge.

Then select one of the four intellectual-property theories that were examined in this course. What insight into how copyright law should address the dimension you select might be derived from the theory you select? How does your analysis illuminate the strengths and weaknesses of the theory? Your answer may not exceed 1200 words.

End of Exam