

PLAYBOOK DEEP DIVE

The never-before-told backstory of Pence's Jan. 6 argument

Former judge J. Michael Luttig shares the story of the run-up to the insurrection, and why he thinks it's time to reform the Electoral Count Act.



of the conservative legal world. He started his career as a young aide at the U.S. Supreme Court, worked as an attorney in the Reagan White House, clerked for Judge Antonin Scalia before he was a legal icon, helped guide the appointment of two other Supreme Court justices and was appointed to a federal judgeship by former President George H.W. Bush.

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During Luttig's time on the bench, one of his clerks was a young attorney named John Eastman. In recent months, Eastman's name has become

Eastman argued that then-Vice President Mike Pence had the ability to discard certified electoral votes from contested states — a notion that has been roundly debunked, but which Trump’s closest allies clung to (and which helped to inspire some of his supporters to storm the Capitol in rage).

That story is, by now, well known. But there’s another part of the story — one that hasn’t been told until now.

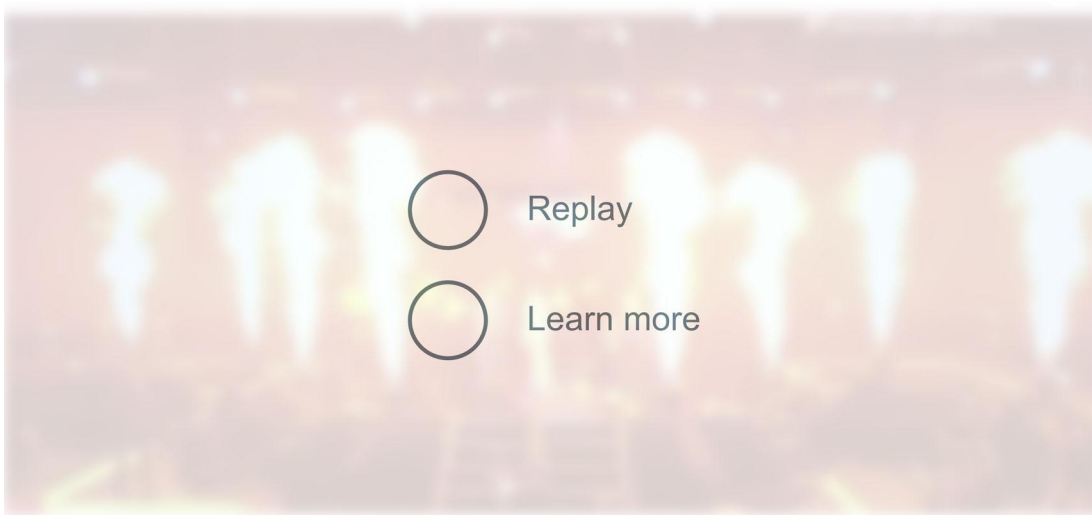
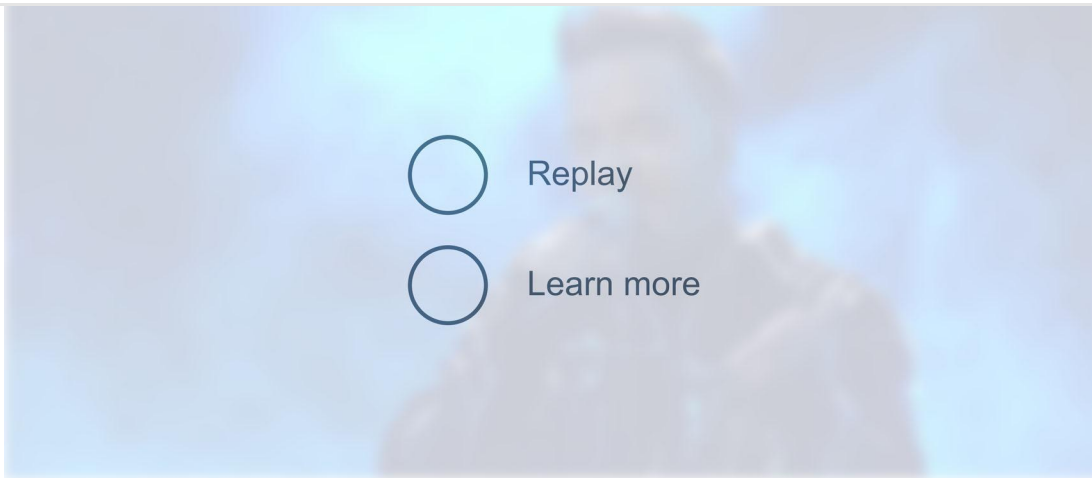
Today, in his first in-depth interview on the topic, Luttig shares the story of those days before the insurrection, when he was unknowingly enlisted to help Pence reject Trump’s efforts on Jan. 6.

For “Playbook Deep Dive,” Ryan Lizza talks with Luttig about his advice to Pence then, what needs to be done to rewrite the Electoral Count Act now and why he’s choosing this moment to make his legal commentary loud, clear and *very* public — in panel discussions and [op-eds in publications like The New York Times](#). *A transcribed excerpt from that conversation is below, edited for length and readability.*

J. Michael Luttig: I was first called by the vice president’s outside counsel, Richard Cullen, on the evening of Jan. 4. We now know that that was after the fateful Oval Office meeting that day between the president and vice president, where John Eastman made the argument that the vice president could overturn the election unilaterally as presiding officer.

Ryan Lizza: And you know John Eastman?

Luttig: John Eastman was one of my clerks — over 25 years ago — and Richard Cullen is one of my closest friends in all of life. And we had been, at that point, talking seemingly every day — if not multiple times a day — throughout the entire Trump administration because, of course, our close friend, Bill Barr, was attorney general.



So he called me. I was having dinner. No big deal: this is like your best friend calling. He called the night of the 4th and says, “Hey, Judge, what do you know about John Eastman?” And I said, “He was a clerk of mine 30 years ago.” He says, “Well, what else do you know?” I said, “I don’t know. John’s an academic, he’s a professor, he’s a constitutional scholar — and he’s a *brilliant* constitutional scholar.”

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Lizza: This is sort of shocking to hear you say this, considering the way that most people have been introduced to John Eastman.

Luttig: Well, read everything that was written about him before, you know, Jan. 6.

Lizza: So that's interesting: the person who was the architect of the attempted coup, essentially — I think it's fair to use that language — was actually a well-respected legal mind with sound views of the Constitution and not some legal quack.

Luttig: That's correct: The farthest thing from it. So Richard said, "Well, you don't know, do you?" And I said, "Know what?" He said, "John's advising the president and the vice president that the vice president has this authority [to reject electoral votes] on January 6" — two days hence. And I said, "Wow, no, I did not know that. Well, look, you can tell the vice president that I said that he has *no such authority* at all. And Richard said he knows that, I said OK, and we hung up.

morning — I get up about 4:45 — and I'm having my coffee, and Richard calls — which is not unusual. But the *call* was unusual. He said, “Judge, can you help the vice president?” And I said, “Sure, what does he need?”

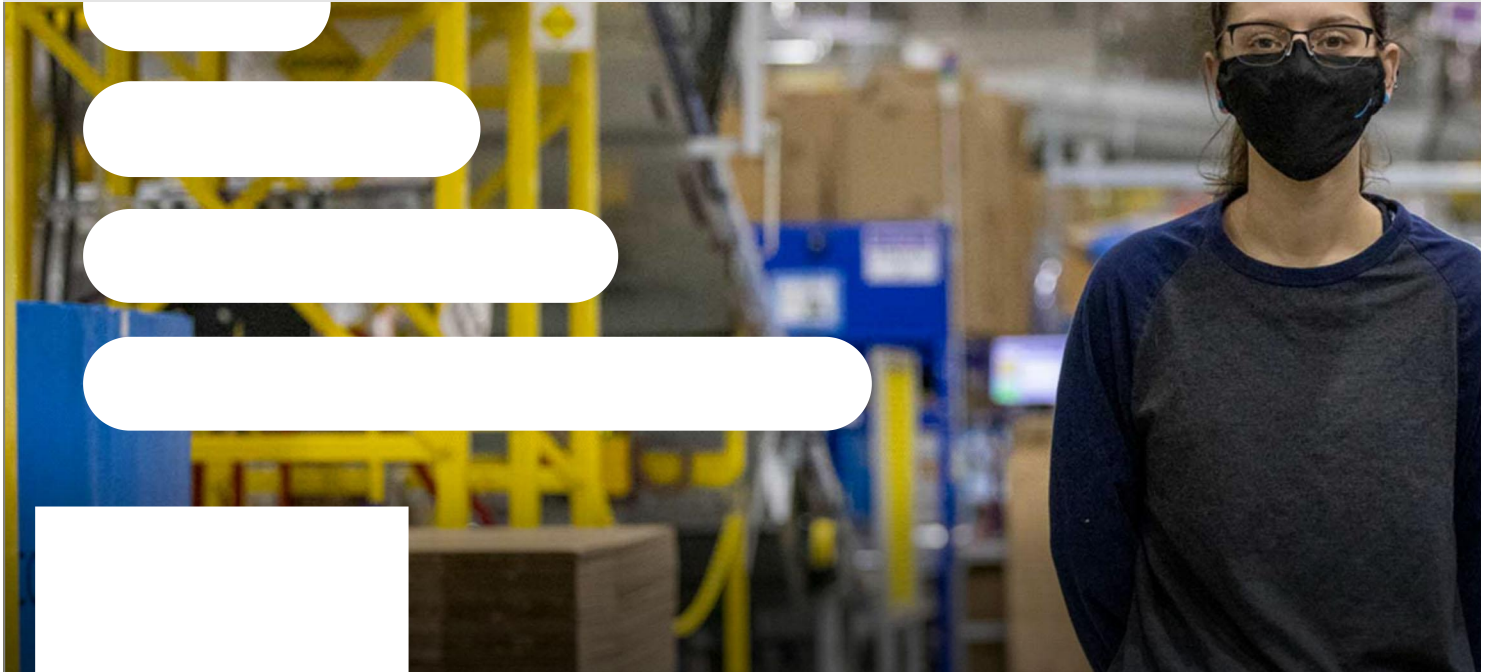
He said, “Well, we don't *know* what he needs.” And I said, “What do you mean you don't know what he needs? Then why are you calling me?” He said, “Look, this is serious.” I said, “OK, I understand. What do you want?” He's talking with Marc Short and the vice president. And he says, “We need to do something publicly, get your voice out to the country.”

At that point, I said, “Oh my gosh, Richard, I don't even have a job, much less an official one. I have no platform from which to speak.” I'm out here in Colorado at 6 in the morning. I don't even have a fax machine. I said, “I really don't even have a thought.” And he said, “This is urgent.” I said, “I understand.” He said, “I'll call you back in five minutes.” So we hung up, and I sat there, finished my coffee — just racking my brain.

Just try to put yourself in my position. I had not a clue [what to say].

So he calls me back in five minutes: “You got anything yet?” And I said, “No, I don't, Richard.” He says, “I'll call you back in 10 minutes.” So he calls back in 10 minutes, and I said, “Richard, honest to goodness, I have no earthly idea what I can do.” And he says, “I'll call you back in 10 more minutes, but we've got to move.” He called back in 10 minutes, and I said, “Alright, I opened a Twitter account a couple of weeks ago, but I don't know how to use it.” He said, “Perfect.” And I said, “I told you: I don't know how to use it.” He said, “Figure it out and get this done.” So I called my tech son who works for Peter Thiel, and I said, “How do I tweet something more than 180 characters long?”

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Lizza: Wait a second. You're in the position here where the vice president is being pressured by the president of the United States to overturn the results of the election. And you're the go-to legal mind who's respected among Republicans that the vice president is looking to to essentially stop a coup. Do I have that right?

Luttig: To answer the question you're asking: I understood the gravity of the moment and the momentous task that I was being asked to help the vice president with. I had been following all of this very closely in the days leading up to it. It was then — and may forever be — one of the most significant moments in American history. I'm a cut up, but I'm deadly serious when the time comes, and that day, I was as serious as I can possibly be.

Lizza: But first, you've got to learn how to tweet.

Luttig: So my son ... well, first off, he says, "Dad, I don't have time for this. You've got to learn this stuff on your own. ... I'm busy." To which I said something like, "Just tell me right now how to get this done, or I'll cut you out of the will."

that was like 10 tweets [long]. So I go down to my office, and I open up the [Twitter] instructions on my laptop and I copy and paste what I've written on my iPhone into my laptop into a Word document, and then I set about to divide it up into 180-character tweets. I read it and reread it multiple times and then, I take a deep breath and I hit "tweet."

Almost immediately, reporters started calling me: "Judge, what are you doing?" And I say, "What do you mean?" And they said, "You didn't just tweet what you just tweeted for no reason." And ... I said, "If I tweeted this for a reason, I would not be at liberty to tell you." Minutes later, The New York Times ran the tweet...

Lizza: And more importantly, the vice president cited your legal analysis on Jan. 6 in his famous letter explaining what his responsibilities and authorities were that day.

Luttig: Yes, that might be the greatest honor of my life. But it came to my attention in the least auspicious way. I got two back-to-back emails on [January] 6th from two of my clerks — both of them to the effect of: "Judge, we know what you're doing." And I said, "Guys, I don't know what you're talking about." They said, "The vice president is on his way to the Capitol, and he cited you in his letter to the nation." And they sent me a copy of it.

That's the first time that I ever knew what was to happen with the tweet from the day before. No one had ever told me that. I had no idea. And they obviously didn't want and didn't intend to tell me — and that's fine; it's none of my business. I was floored to read that and honored.

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Lizza: That was a total surprise? In the most important moment of Vice President Pence's life, that letter justifying that no, he cannot overturn the results; his role as simply ministerial — that was a total surprise to you that he cited your legal analysis as the justification for his view?

Luttig: Complete, utter surprise. And the vice president called me the next morning to thank me.

Lizza: Can you tell us a little bit about that conversation?

Luttig: He was the most gracious person in the world. I was at a UPS Store in Vail, Colorado, standing outside freezing, and my wife was sending a package. A call came [on my phone] as spam. I never answer spam calls, but I had nothing else to do. So I answered it. I said nothing for seemingly 15 seconds. And then a voice said, "Is this Judge Luttig?" And I was startled and said "Yes, it is." And the voice said, "Please hold for the vice president."

I scurried out to the car so I'd have some privacy. The vice president got on: "Judge, this is Mike Pence." And I said to the vice president that it was the

the remainder of my life.

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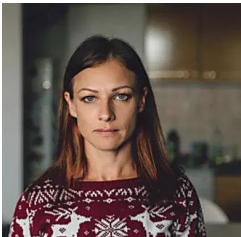
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