

POLITICO Playbook: Exclusive: The secret history of Pence's Jan. 6 argument

By RYAN LIZZA

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RUSSIA-UKRAINE LATEST —“Russia to stage nuclear drills with Ukraine tensions high,” by AP’s Vladimir Isachenkov, Yuras Karmanau and Darlene Superville in Kyiv

— **Meanwhile, President JOE BIDEN** this afternoon will speak with the leaders of France, Germany, Italy, Poland, Romania, the U.K., the EU and NATO, per ABC News.

THE PLAYBOOK INTERVIEW — On Wednesday, we spent three hours talking to one of the most influential conservative legal thinkers of his generation: **J. MICHAEL LUTTIG.**

— **As a staffer** in the **GEORGE H.W. BUSH** White House, Luttig helped put **CLARENCE THOMAS** on the Supreme Court.

— **As a federal judge,** he authored some of the most consequential decisions of the post-9/11 era, including a defense of the federal government’s authority to designate alleged terrorists as “enemy combatants.”

— **In 2005, he was the runner-up** to be **GEORGE W. BUSH**’s choice to fill a vacancy on the Supreme Court. (**DICK CHENEY** favored him, **HARRY REID** threatened a filibuster, and Bush gave the job to Luttig’s good friend, **JOHN ROBERTS.**)

More recently, Luttig played a key behind-the-scenes role during the Trump administration. He was considered as a possible FBI director, and strategized with his old friend **BILL BARR** when both men were considered as replacements for A.G. **JEFF SESSIONS.** In the end, Luttig never served **DONALD TRUMP:** His wife told him she would leave him if he did.

Like a lot of conservatives, Luttig watched the Trump administration unfold with growing dismay. But he remained quiet.

Then, Trump used the Electoral Count Act, an obscure 19th-century law, to try to convince then-VP **MIKE PENCE** that he had the ability to overturn their loss to **JOE BIDEN** and **KAMALA HARRIS.** The legal strategist behind Trump’s effort was well known to Luttig: **JOHN EASTMAN** was one of his many influential former law clerks.

Eastman, despite his reputation now, was respected on the right. Pence needed someone with even more clout to convince conservatives that Eastman's scheme was a crackpot idea.

They needed Luttig.

The full story of how Pence would recruited the former judge to provide the legal arguments for Pence's actions on Jan. 6 is told here for the first time in the latest episode of our "Playbook Deep Dive" podcast.

Here's a key excerpt, edited for clarity and length:

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. ...

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." ...

Richard said, "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 Jan. 6" — two days hence. And I said, "Wow, no, I did not know that. You can tell the vice president that I said that he has *no such authority* at all." Richard said, "He knows that," I said "OK," and we hung up. ...

I got up the next morning ... 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." ... Just try to put yourself in my position. I had not a clue [what to do]. ...

He called back ... 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 said, "How do I tweet something more than 180 characters long?"

Ryan Lizza: Wait a second ... 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 cutup, 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 says, "Dad, I don't have time for this. You've got to learn this stuff on your own." 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." ... 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 ... I read and reread it multiple times, and then I take a deep breath and I hit "tweet." ...

Lizza: 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 [Jan.] 6 from two of my clerks ... They said, "The vice president is on his way to the Capitol, and he cited you in his letter to the nation." ... 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 was floored ...

The vice president called me the next morning to thank me. ... And I said to the vice president that it was the highest honor of my life that he had asked me, and I will be grateful to him for the remainder of my life.

[Click here to listen to the full conversation](#), including details of Luttig's latest legal crusade: convincing Republican senators to reform the Electoral Count Act so a repeat of Jan. 6 can never happen.

TOP-ED — "[Our Democracy Shouldn't Rest on a Rickety Law](#)," by Sen. **SUSAN COLLINS** (R-Maine) writing about the Electoral Count Act in the NYT. **Her concluding paragraph:** "We do not know if we will succeed, but we are trying to fix a serious problem. The senators working on this legislation have philosophical, regional and political differences. When we disagree, we attempt to persuade one another — we cajole, haggle and even argue — but we do so with an eye on a common goal. That is the way it is supposed to work in a democracy. Maybe we could refer to the process as 'legitimate political discourse.'"

Happy Friday. Thanks for reading Playbook. Drop us a line: [Rachael Bade](#), [Eugene Daniels](#), [Ryan Lizza](#).

BIDEN'S FRIDAY — The president will receive the President's Daily Brief at 10 a.m.

HARRIS' FRIDAY (all times Eastern):

— **7:20 a.m.:** The VP will hold a bilateral meeting with NATO Secretary-General Jens Stoltenberg.

— **9 a.m.:** Harris will hold a multilateral meeting with Latvian President **EGILS LEVITS**, Lithuanian President **GITANAS NAUSEDA** and Estonian PM **KAJA KALLAS**.

— **Harris will remain** in Munich overnight.

Press secretary **JEN PSAKI** will brief at 2:30 p.m.

THE SENATE is in. **THE HOUSE** is out.

STEP INSIDE THE WEST WING: What's really happening in West Wing offices? Find out who's up, who's down, and who really has the president's ear in our West Wing Playbook newsletter, the insider's guide to the Biden White House and Cabinet. [For buzzy nuggets and details that you won't find anywhere else, subscribe today.](#)

Hillary Clinton raises the hand of New York Gov. Kathy Hochul after delivering the keynote address during the 2022 New York State Democratic Convention at the Sheraton New York Times Square Hotel on Thursday, Feb. 17. | Michael M. Santiago/Getty Images

PLAYBOOK READS

ALL POLITICS

MCCARTHY ENDORSES CHENEY CHALLENGER — House Minority Leader **KEVIN MCCARTHY** officially backed **HARRIET HAGEMAN**, the primary challenger to Rep. **LIZ CHENEY** (R-Wyo.), [Olivia Beavers reports](#). While tensions have simmered between McCarthy and Cheney for over a year, it's highly unusual for party leadership to back a challenge to a sitting member of their conference.

— ***The inside game:*** “While McCarthy’s decision will be welcomed by members of the Freedom Caucus and could help him stave off a potential challenge for the speaker’s gavel should Republicans win back the majority, it won’t come without a cost,” [write CNN’s Ryan Nobles, Manu Raju and Melanie Zanona](#). “Many rank-and-file Republicans are uncomfortable with members of the party turning on each other and fear it could ultimately hurt their efforts to win elections in competitive districts.” ***Interesting quote:*** “I think the party should try and continue to work with them,” said Rep. **PETE SESSIONS** (R-Texas). “I think this is a fight between Donald Trump and [Reps. **ADAM KINZINGER** (R-Ill.) and Cheney], not the party.”

— **Trump, meanwhile, is pushing Wyoming Republicans** to change election laws so Democrats and independents can’t change their affiliation the day of the primary to support Cheney, [Meridith McGraw reports](#). Ending crossover voting in primaries has been a bugaboo for some Republicans in the state for years. But now Trump and Club for Growth’s **DAVID MCINTOSH** have personally called Gov. **MARK GORDON** to urge him to support the legislation, which he has yet to back.

FIRST IN PLAYBOOK — The DCCC is planning to call on House Republicans to return \$162,000 in donations from individuals in seven states who signed on as “fake electors” in the aftermath of the 2020 presidential election. “NRCC Chairman **TOM EMMER** (R-Minn.) and House Republicans must return these shady donations or admit they’re just fine with politicians

scheming to steal the power of American voters,” DCCC spox **CHRIS TAYLOR** will say in a release.

CONGRESS

— **A government shutdown has been averted** after the Senate passed a funding bill Thursday. It is headed to Biden’s desk and will “give bipartisan bargainers more time to reach an overdue deal financing federal agencies until fall,” writes AP’s Alan Fram.

— **Senate Dems are “bracing for a potentially lengthy showdown** over Biden’s Federal Reserve nominees,” and “preparing for the possibility that the GOP might use the same bare-knuckle tactics against other high-profile nominees, including Biden’s forthcoming Supreme Court pick,” report WaPo’s Mike DeBonis and Rachel Siegel.

— **Every member of Congress will be invited to attend the SOTU** in person on March 1, “crowding the House chamber for the first time since the outbreak of the pandemic,” per AP’s Zeke Miller and Lisa Mascaro.

THE TRUMP TIGHTROPE — Senate Republicans had a campaign retreat in Palm Beach last weekend, just a few miles from Mar-a-Lago. But very few of them bothered to go visit Trump when he was headlining an event at his Florida retreat, Burgess Everett reports. “Some Republicans who traveled to Florida for the National Republican Senatorial Committee event said they weren’t snubbing Trump, who has pushed in vain to depose Senate Minority Leader **MITCH MCCONNELL**, and would be visiting with him soon. And several wouldn’t be welcome, since some senators who voted to convict the president at his second impeachment trial were among those wooing donors at the NRSC events. But other Republicans said hanging out with their onetime commander-in-chief is the furthest thing from their minds.”

MORE ON THE RUSSIA-UKRAINE CONFLICT

— **Russia’s supposed military pullback “was a deliberate ruse** to mislead the United States and other world powers, four [U.S.] officials said Thursday,” reports WaPo.

— **“President Biden and his top aides** acknowledge they are risking American credibility as they constantly renew the alarm that Russia is only ‘several days’ away from triggering an unprovoked land war in Europe,” writes NYT’s David Sanger. But they’re willing to take that risk if it deters Russian President **VLADIMIR PUTIN** from invading Ukraine.

— ***The new best-case scenario?***: “[A] growing number of diplomats and leaders pouring into Munich for an annual security conference said they thought the best they could hope for was no invasion — but a long siege of Ukraine,” Sanger writes. “Under that scenario, Mr. Putin might do everything short of sending his troops over the border — cyberattacks, assassinations, coup plots, cutting off trade — in hopes of toppling the government without triggering sanctions.”

— ***The Biden reset:*** Biden’s response to Ukraine “has avoided the diplomatic mistakes that dogged his first year in office,” WSJ’s Ken Thomas and Gordon Lubold write. “European officials have praised Mr. Biden’s approach, a change from last year, when they faulted the administration’s chaotic handling of the withdrawal of U.S. troops from Afghanistan.”

THE SENATE’S DILEMMA — With Russia on the verge of a war with Ukraine, the Senate is twisted in knots over how the U.S. should respond, Andrew Desiderio reports. “It’s a stark contrast with how they handled the former president, whose approach to Putin got handcuffed early by a harsh, bipartisan sanctions bill. Many of the same lawmakers who chose to go heavy-handed on Trump now are largely deferring to Biden’s promises to bring down the hammer on Putin — chiefly a sign of lawmakers’ increasing inability to come to an agreement, even in the face of war.”

JUDICIARY SQUARE

HOT ON THE LEFT — In 2009, Columbia, S.C., circuit court Judge **J. MICHELLE CHILDS**, one of Biden’s potential Supreme Court nominees, sentenced a man to 12 years in prison for selling 8.73 ounces of weed. “Childs’s harsh sentence came as a surprise,” The American Prospect’s Alex Sammon writes. “The Richland County Public Defender’s Office quickly filed a motion to reconsider the sentence, detailing ‘improper arguments, unfounded speculation, and incorrect legal assertions’ by the prosecution. Childs was unswayed and dismissed the public defender’s office’s motion.”

THE WHITE HOUSE

BIPARTISAN RESISTANCE TO WH PUSH FOR COVID RELIEF — While Biden and members of his Cabinet say they are running low on funds to manage the Covid-19 pandemic, our Alice Miranda Ollstein reports that “lawmakers aren’t so eager to spend big — again — on a pandemic many would just as soon declare over. ... The push for a Covid supplemental bill is encountering bipartisan resistance.”

TRUMP CARDS

TRUMP MUST ANSWER QUESTIONS UNDER OATH — Trump, **DONALD TRUMP JR.** and **IVANKA TRUMP** must answer questions under oath as part of a civil inquiry by New York A.G. **TISH JAMES** into the Trump Organization’s business practices.

— *When will it occur?* Per the ruling by New York Supreme Court Justice **ARTHUR ENGORON**, they must be deposed within the next three weeks.

DURHAM LATEST — “**JOHN H. DURHAM**, the Trump-era special counsel scrutinizing the investigation into Russia’s 2016 election interference, distanced himself on Thursday from false reports by right-wing news outlets that a motion he recently filed said **HILLARY CLINTON**’s campaign had paid to spy on Trump White House servers,” writes NYT’s Charlie Savage. “[E]ven as he did not acknowledge any problem with how he couched his filing last week, Mr. Durham said he would make future filings under seal if they contained ‘information that legitimately gives rise to privacy issues or other concerns that might overcome the presumption of public access to judicial documents.’”

TV TONIGHT — **PBS’ “Washington Week”**: Dan Balz, Francesca Chambers, David Sanger and Barbara Starr.

SUNDAY SO FAR ...

CBS “Face the Nation”: House Majority Whip Jim Clyburn (D-S.C.) ... NATO Secretary-General Jens Stoltenberg.

MSNBC “The Sunday Show”: California Gov. Gavin Newsom ... Jane Harman ... Interior Secretary Deb Haaland ... Janet Dees.

ABC “This Week”: Martha Raddatz anchoring from Lviv, Ukraine. **Panel:** Rick Klein, Donna Brazile, Rachael Bade & Frank Luntz.

FOX “Fox News Sunday,” guest-anchored by Bill Hemmer: Sen. Ted Cruz (R-Texas). **Panel:** Karl Rove, Jennifer Griffin and Harold Ford Jr.

Gray TV “Full Court Press”: Austan Goolsbee ... Ron Fong.

CNN “Inside Politics”: **Panel:** Amy Walter, Hans Nichols, Vivian Salama and Melanie Zanona.

NBC “Meet the Press”: **Panel:** Yamiche Alcindor, Courtney Kube, Peggy Noonan and Ashley Parker.

DON’T MISS CONGRESS MINUTES: Need to follow the action on Capitol Hill blow-by-blow? Check out Minutes, POLITICO’s new platform that delivers the latest exclusives, twists and much more in real time. Get it on your desktop or download the POLITICO mobile app for [iOS](#) or [Android](#). [CHECK OUT CONGRESS MINUTES HERE](#).

PLAYBOOKERS

Melania Trump announced [the official POTUS TRUMP NFT collection](#).

Jen Psaki went [on an emotional rollercoaster](#) watching the Olympics women’s figure-skating competition.

FRIDAY LISTEN — The first guest on the new season of **Bill Clinton’s** new podcast is **Jason Isbell**, talking about vaccines, public health, the opioid epidemic and more, [per Deadline](#).

IN MEMORIAM — [“Walter Dellinger, influential scholar and lawyer, dies at 80,”](#) by AP’s Jonathan Drew and Mark Sherman: “During the administration of former President Bill Clinton, Dellinger headed up the influential Office of Legal Counsel ... and served as the acting solicitor general ... Dellinger remained an active commentator on legal, political and other news until just before his death. Ahead of the 2020 presidential election, Dellinger helped lead a legal team assembled by Democrats to take on election-related court cases.”

— [“Martin Tolchin, 93, Dies; Times Reporter Was a Founder of The Hill,”](#) by NYT’s Joseph Fried: “Martin Tolchin, a former reporter for The New York Times who covered Congress with a keen knowledge of its twisting ways and power plays and who was later the founding publisher and editor of The Hill, a successful newspaper devoted to events on Capitol Hill, died on Thursday at his home in Alexandria, Va. He was 93.” **Tolchin came out of retirement in 2006 to help launch Politico.**

— **Clark Reid** died Wednesday at 69 in Alexandria, Va., surrounded by family. “Clark worked as a newspaperman before getting into politics,” his friend Glen Bolger writes in. “Clark was an

NRCC field representative in the 1988 and '90 cycles, ran the campaigns and served as chief of staff to Republican Congressman Mac Collins of Georgia, and worked in the Department of Commerce for Presidents Bush, Obama, and Trump. He is survived by his daughter Savannah Reid.”

HOLLYWOODLAND — “The Girls on the Bus” TV show adaptation of **Amy Chozyck**’s “Chasing Hillary” has gotten a straight-to-series order at HBO Max, [per Deadline](#).

SPOTTED dining separately at Fresco in Manhattan on Thursday night: **Michael Cohen, Rudy Giuliani** and **Stephen A. Smith**.

SPOTTED at a dinner with **Lachlan Murdoch** on Thursday night hosted by **Jamie Weinstein** and **Michelle Fields** at their home in Woodland Normanstone: **Jonathan Swan, Ryan Lizza, Olivia Nuzzi, Daniel Lippman** and **Brian Nick**.

NEW — The UChicago Center for Effective Government announced their next cohort of senior practitioner fellows, joining the center for the next year: **Tiana Epps-Johnson, Mindy Finn, Elizabeth (Liz) Hempowicz** and **Rudy Mehrbani**.

TRANSITIONS — **Erica Sackin** is now leading comms at Meta around counterterrorism and dangerous organizations and individuals. She previously was senior director of comms at Planned Parenthood. ... **Susan Ruffo** is now a senior adviser and senior director for ocean and climate at the U.N. Foundation. She most recently was executive director of the Circulate Initiative, and is an Obama White House alum. ... **Marci Nielsen** is now VP for policy and advocacy at Resolve to Save Lives. She most recently was chief adviser for Covid-19 coordination for Kansas Gov. Laura Kelly.

ENGAGED — **Michael O’Donnell**, a marketing professor at Georgetown’s McDonough School of Business, proposed to **Katherine Dolgenos**, a law clerk at the Senate Homeland Security and Governmental Affairs Committee, on Wednesday at the Spanish Steps in D.C., with a photographer there to sprinkle rose petals. The couple originally met on a pandemic date in January 2021 when they had drinks at Bar Charley. [Pic](#)

WELCOME TO THE WORLD — **Jamie Wadovick Gentle**, senior project director at Public Opinion Strategies, and **Michael Gentle**, a staff sergeant in the U.S. Air Force, welcomed Bennett Michael Gentle on Feb. 5. [Pic](#)

— **Liz Sidoti**, managing director at Abernathy MacGregor, and **Andy Davis**, manager of the Cato Institute’s print production center, on Wednesday welcomed Owen Everett Davis, who joins big sister Norah Quinn Davis. [Pic](#)

HAPPY BIRTHDAY: Reps. **Brett Guthrie** (R-Ky.), **Steve Womack** (R-Ark.) and **Jared Huffman** (D-Calif.) ... **Keith Urbahn** ... **James Hohmann** ... NPR’s **Rachel Martin** ... **Bill Bertles** ... **Kiara Pesante Haughton** ... **Al Quinlan** ... FT’s **Janan Ganesh** (4-0) ... **Marc Lampkin** ... **Abby Blunt** ... **Lucien Zeigler** ... CBS’ **Rebecca Kaplan** ... **Angela Chiappetta** ... **Elizabeth Kanick** ... **Matt Burgess** ... **Danielle Borrin Hertz** ... **Abbey (Blume) Gibson** ... **Adam Prather** ... **Jesse Purdon** ... former Rep. **Eliot Engel** (D-N.Y.)

... **Ben Wofford** ... former Illinois Gov. **Bruce Rauner** ... **Denise Dunkel** ...
POLITICO's **Deanna Garcia** and **Raven Waters**