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Transcript

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HARRY SMITH: Today on FACE THE NATION, Detainee destiny: Should the Guantanamo detainees be tried on U.S. soil?

Not in my backyard. The tribunal tempest--justice or the only way to win conviction?

And the photo file, the presidential reversal on the release of thousands of pictures of prisoner abuse. We'll debate all those issues.

President Obama reversed course when he decided that unpublished pictures of detainees should not be released citing the safety of U.S. forces abroad. He's also promised to close the prison at Guantanamo Bay by next January.

But where will those detainees go? And kinder, gentler tribunals. Will that keep us safe?

We'll have the debate between the executive director of the ACLU, Anthony Romero, and Congressman Peter King, Republican of New York.

Then we'll talk about President Obama's upcoming Supreme Court pick with Joan Biskupic of USA Today and John Dickerson of Slate Magazine.

But first, debating the detainees on FACE THE NATION.


HARRY SMITH: Joining us from New York, Congressman Peter King and here in our studio, Anthony Romero. Good morning to you both.

ANTHONY ROMERO (Executive Director, ACLU): Good morning.

REPRESENTATIVE PETER KING (Ranking, Homeland Security Committee): Good morning.

HARRY SMITH: Let's start with the news about the tribunals. The headlines from this--no evidence admitted gained from harsh interrogation techniques. Hearsay, some hearsay will be admissible in court. To you, Anthony Romero, is there any good news in this?

ANTHONY ROMERO: Well, of course there is good news in the fact that we are not going to use evidence gleaned from torture. But there are four problems with continuing with the military commissions as I understand them from-- from the Obama White House.

First, by continuing with the Bush military commissions, we are going to delay justice. It will take years before we see justice in these commissions.

HARRY SMITH: Because, one, there's-- already they said at least hundred and twenty days before this can go on.

ANTHONY ROMERO: Partisan squabbling in Congress, legislative change, surely litigation on behalf of the detainees. This is not going to render swift justice for the 9/11 families or for anyone.

Second of all, I think what is important to underscore is that the tribunals themselves are under the jurisdiction of the Department of Defense. That's a mistake. That's the same Department of Defense that authorized, enabled, and allowed torture to occur. It lacks the credibility to undertake that effort.
HARRY SMITH: And, ironically enough, at least three very high-ranking flag officers from the Department of Defense have said in-- in very specific language they don't think these work.

ANTHONY ROMERO: They don't work. And in fact it should be the Department of Justice, not the Department of Defense.

HARRY SMITH: And quickly, what are your other points?

ANTHONY ROMERO: The other third would be that to give it to the Department of Defense and to put them in the saddle would be a propaganda victory for our enemies.

And finally, the fact is, that it is an ineffective system of justice. I have been there. I have spent weeks at Guantanamo. It's not going to work. We have the best system of justice in the world, and rather than jerry-rig or fix an already broken system, we ought to use the one that works.

HARRY SMITH: Peter King, when you heard this news this week about the tribunals continuing, did you think it was good news or bad news?

REPRESENTATIVE PETER KING: I thought it was certainly a step in the right direction, and it's another acknowledgment by President Obama that we do live in a very dangerous world, and that very serious measures have to be taken. I disagree with virtually everything Mister Romero has said. The fact is that these military tribunals, even under President Bush, as far as I can tell, gave more rights to defendants than were given at Nuremberg.

As far as the hearsay rule, the fact is, there were already some restrictions on hearsay. Now there are going to be— you know, the burden is going to shift a bit. But primarily, it is what had already been in effect.

And as far as torture with confessions, the fact is we have had cases thrown out already in these tribunals because it was felt that the confessions were obtained under duress.

As far as accusing the military of sanctioning torture, that's just the same libel that's been perpetrated by the ACLU continually here. The fact is, obviously in every war in every instance there are going to be abuses, but to say that people at the top levels in the administration or the past administration or this one, were carrying it out is just wrong. Even President Obama, the reason he is not releasing the photos is because he said those who have been guilty and are responsible have been found and punished.

So I don’t think-- I don’t know what purpose the ACLU serves in constantly tearing down the United States, constantly attacking our government, and now it is not just President Bush, it's President Obama.

ANTHONY ROMERO: May I--

HARRY SMITH: (Overlapping) Hang on one second, because we are going to get to the photos here in just a couple of minutes. Why do you think the President made this decision?

ANTHONY ROMERO: I think the President is being ill-informed. I think if the President had spent as much time as I have sitting in those military commissions like Guantanamo, several weeks I have sat there in the back of that courtroom, he would see the debacle of justice. He would see that there is no way to resurrect these military commissions.

It’s like a toxic waste dump. You can’t just build a new house on a toxic waste dump. You have to move the house. And we have the best system of justice. Our courts are well equipped to handle this.
Look, we had the blind sheikh, prosecuted, convicted, serving time. Padilla, prosecuted, convicted serving time, the dirty bomber. Mister Reid, the shoe bomber. Prosecuted, convicted, serving crime (sic). Our prisons are equipped to hold them. We have supermax prisons that can hold these individuals.

HARRY SMITH: Congressman, what about that idea? Because there is a long-- a significant history of terrorists that have been convicted-- tried and convicted in U.S. courts and are currently in prison.

REPRESENTATIVE PETER KING: In almost every instance, including the blind sheikh, there-- there were cases where the investigations began here in the United States, where, from beginning to end, there was the Justice Department involved, the FBI involved from the start.

In these cases, we’re talking about many people-- many cases, battlefield arrests. We’re talking about people like Khalid Shaikh Mohammed, where you don’t -- can’t always have the CSI team. You can’t have somebody there to give him Miranda rights.

This is a wartime situation. It’s a wartime situation with combatants who don’t comply with the rules of war.

HARRY SMITH: Yes.

REPRESENTATIVE PETER KING: So, to say that we can-- it’s absolutely insanity to say that we can be trying these people in the Southern District of New York or Northern District of Virginia. It just won’t work.

HARRY SMITH: Let me ask you this, then, Congressman. Some people suggest, though, with these tribunals, it’s just a way to make the fix in. Some of those folks who have been brought into de-- detention, many have been released. Hundreds actually have-- have been released. Some there are-- are on what could be dest-- best described as fragile circumstances. In order to convict-- get a conviction, is the tribunal the only way to get it?

REPRESENTATIVE PETER KING: In many cases, yes. And there’s going to be other cases where I don’t even know if the tribunals are working. That’s why the reports coming out of the administration, that could-- there could be up to fifty of these detainees who are very violent, very dangerous, but there may not be enough evidence and the government may be looking for a form of preventative detention.

And the fact, is I think President Obama is being very well-advised. He now, as President of the United States, sees the security reports. He gets the classified-- classified information, he knows how dangerous this world is. He realizes what would happen to allow these people back into the United States, to bring them into the U.S. where they may be entitled to more rights, end up being released, and we would have terrorists in the United States.

But he also realizes--we’re talking about justice. There’s also justice for those who were killed on-- on September 11. I just came from ground zero a half hour ago, where they were doing a-- a whole program to prepare for another attack.

And when you realize what went on down there and to see this great compassion and concern that Mister Romero and the ACLU have for Khalid Shaikh Mohammed and others and the-- and the venom they have toward the President of the United States, I wished that was reversed a bit and they had the venom and bile--

HARRY SMITH: (Overlapping) Go ahead.

ANTHONY ROMERO: I think what’s important to underscore, sir I live eight blocks from the ground zero site. So, I live there, I was there that day as well. We lost one of our board members, who was a police officer, who died in the World Trade Center. We all understand the importance of the events of that day.

REPRESENTATIVE PETER KING: (Overlapping) I know him too by the way. Yeah.
ANTHONY ROMERO: And what’s significant here is that this is about American value. We don’t change the rules to have a certain outcome. We have a government; we have the FBI, the CIA, the Department Of Defense, the State Department, all of whom have been involved in these cases for eight years. They should bring all the muster and energy and the brightest minds and prosecutors to throw the weight of the entire government at these cases.

If you can convince a neutral judge with established rules that have not been changed that they should be convicted, lock them away. But if you don’t, they walk. That’s the American system. You don’t change the rules to have a pre-ordained outcome.

HARRY SMITH: Very quickly, Congressman?

REPRESENTATIVE PETER KING: (Overlapping) There’s nothing in the system-- there’s nothing in the system that goes against American values. Again, if you look at commissions over the years, you go back to the Nuremberg trials, the fact is, this is American values.

But we cannot surrender in the face of the enemy. We can’t have unilateral disarmament. We have to apply American values to the real world, and the real world is--these are vicious terrorists and the ordinary rules of evidence, in many of these cases, were not applied. Unfortunately, there’s no CSI guy in Afghanistan.

HARRY SMITH: Let’s-- let’s move on to the interrogation photos—-

ANTHONY ROMERO: (Overlapping) Sure, of course--

HARRY SMITH: --because this is another significant reversal of-- of Obama policy. Because it was quite clear two courts have already decided these photos should be made public, and then, apparently, on the advice of General Odierno and Defense Secretary Gates, that these photos should be held.

What do you think?

ANTHONY ROMERO: Well, we’re all concerned about the safety of our soldiers. That’s obvious. What’s also true is that it’s not the photos that will put them at risk. It’s the policies that authorize torture and abuse that was authorized at the highest levels and that went down the chain of command across the theaters of war.

When we’re talking about two thousand photos that talk about abuse or torture under American custody, we’re not talking about a few rogue apples. We’re not talking about a few rogue soldiers. We’re talking about decisions made at the highest levels of our government. And the only way to deal with that would be to have an investigations and prosecutions to ensure accountability.

HARRY SMITH: We’ll-- We’ll get to that in just a second.

Congressman, should these photos be made public or should they be kept secret?

REPRESENTATIVE PETER KING: Absolutely not. They serve absolutely no purpose and it is absolutely wrong to say this was approved at the highest levels of government. Not just President Bush but President Obama--President Obama has said that those who were guilty of this have been punished. There was a few people. And the fact is, anyone involved in this. This was absolutely disgraceful conduct. They should be punished to the fullest extent of the law.

But to somehow think that by floating all these pictures out here somehow we’re going to find that somebody at a high level was involved, this is absolutely wrong. It does put our troops in danger and it serves no purpose other than, again, to denigrate and downgrade the military of the United States.
And this canard is always out there, people at the highest levels approved it. I don’t know anyone at the highest levels who approved Abu Ghraib. If President Barack Obama for a moment thought that somebody at a high level had approved it, he would go after them. This is not-- this was not his administration.

HARRY SMITH: (Overlapping) But the idea-- but the idea of these harsher interrogation methods have been part and parcel of the Bush administration, going back to all the way back to 2002. That has been documented. And people who were convicted in the Abu Ghrai travesty feel, especially the lower-level folks, feel like they were scapegoated by this. Might these pictures not in fact show that this was endemic and part of the process?

REPRESENTATIVE PETER KING: No, because there was no connection at all between the CIA memos, the interrogations that were carried out, the extra interrogations of Khalid Sheikh Mohammed and the others, have nothing to do with with MP reservists might have been doing at Abu Ghraib. That was out-and-out torture, that was out-and-out humiliation and debasing of prisoners, and there is no way that they knew what was going on as far as the CIA examining Khalid Sheikh Mohammed. That is a phony argument that’s thrown out there to try to meld it all together.

The fact is the CIA memo was very precise, very direct. What those others were doing is off on their own. And the ACLU is trying to meld it all together so they can just attack the United States.

HARRY SMITH: All right, Anthony Romero, is this an issue of transparency or security?

ANTHONY ROMERO: Absolutely it is about both. And-- and to be clear, the government chose not to make this a question around national security. There are exemptions under the Freedom of Information Act the government chose not to claim.

This is a question about how do we redress the secrecy that was endemic in the Bush administration. This lawsuit, I might remind the public, is a lawsuit we filed in October of 2003. We asked for any and all documents related to torture and abuse at Guantanamo, at Abu Ghrai, and in Bagram. The two thousand photos, the sheer volume of them show that these were not a couple of isolated incidents. We are likely to find photos from across all the theaters of war. They are likely to show exactly those enhanced interrogation techniques that were authorized by the Office of Legal Counsel at the highest levels. And, frankly, that’s why we need them in order to ensure accountability.

HARRY SMITH: Two courts, Congressman, have already said these photos should be made public. Is the only way for the White House to keep them secret to classify the pictures?

REPRESENTATIVE PETER KING: I think the President should declare an executive order. I would just say, let the American people decide if they want to believe the American Civil Liberties Union or President Obama.

I am a Republican. I have no political reason to be defending President Obama. But here is a President who came to office on very much of an anti-war policy, being very critical of certain policies of the Bush administration. He has looked at all of these. He has looked at the photos. He has looked at the cases, and he says that those who are guilty have been punished. And rather than spread this out over the next several years and have it in media all over the world to satisfy the ACLU, I say let’s get behind our President. I’m a Republican but I stand behind the President.

HARRY SMITH: (Overlapping) Cong-- Congressman, what about the idea, though, that the damage has already been done and it won’t matter what further pictures are shown? That-- that whatever damage, the die has already been cast?

REPRESENTATIVE PETER KING: No, the more pictures, the more damage. And I say no good comes out of it. No good comes out of it whatsoever, except some voyeristic thrill that maybe some people get from looking at this.
The reality is the damage has been done but more damage can be done as well.

ANTHONY ROMERO: (Overlapping) Congressman King--

REPRESENTATIVE PETER KING: We shouldn’t do it. And I’m standing with the President.

ANTHONY ROMERO: Congressman King, in the America I know, every fact gets known, whether it is a year from now, five years from now, twenty years from now. These photos will be released to the world community. And the question for this President as he inherits a terrible mess, a terrible mess left to him by his predecessors, is how do you make a clean break with that past? How do you ensure that you put us back on the footing that is going to restore our standing at home and abroad? And the release of the photos, the release of the documents, the release of the memos that we have been arguing in court for six years is an essential part of ensuring that our government gets back on track.

That was a promise he made to us. And great presidents have to make difficult decisions to put a country back on track from the mess they inherited. That’s our role. That’s our role—to help President Obama do the right thing.

HARRY SMITH: Very quickly, Congressman King. Former Vice President Cheney wants material gleaned from harsh interrogation methods made public to show that those methods were effective. Should they be made public?

REPRESENTATIVE PETER KING: Only if it doesn’t damage the national interests.

Let me just answer Msiter Romero. The America I know wants a commander in chief who wants to protect our troops, who wants to win wars. We have a very difficult war ahead of us in Afghanistan. The President is dramatically increasing the number of troops. It’s going to take a lot of tough action.

I don’t want people in the CIA and our military wondering whether the ACLU is going to be coming after them in three or four years. Fine, if these photos come out twenty years from now, fine. The war will be over. We would have won the war. Hopefully, we would have defeated Islamic terrorism. But I don’t see an America where we have to put everything out there, everything out there, and not care about the risks to our troops. I stand with the President on this.

HARRY SMITH: Let me put that question to you, Mister Romero, this notion that these-- these results of harsh techniques be made public. Are you on the side of vice president-- former Vice President Cheney?

ANTHONY ROMERO: I actually agree with Vice President Cheney. Show me the proof. I think it’s a bluff. I-- frankly, show me the proof. You can redact the documents to make sure that any information gleaned doesn’t jeopardize national security. We shouldn’t have classified information, but show us the extent to which that information is actually valid.

We hear Robert Mueller, the director of the FBI, say in an interview just recently that there was no credible evidence obtained from these interrogations.

REPRESENTATIVE PETER KING: (Overlapping) Okay, I just-- because time is running out. Harry can I say--

HARRY SMITH: Very quickly, Congressman.

REPRESENTATIVE PETER KING: Yes. The fact is George Tenet, who was appointed head of the CIA by Bill Clinton says they did work.

The fact is General Hayden, who was appointed head of the NSA by Bill Clinton and then head of the CIA by President Bush said they did work.
ANTHONY ROMERO: (Overlapping) Show me the proof.

REPRESENTATIVE PETER KING: The current director--the current director of national intelligence, President Obama’s man, says they did work. So, again, if I have to believe these people or the ACLU, which delights in tearing down the U.S., I stand with our government.

HARRY SMITH: All right. Finally, detainees: President Obama has said he wants Guantanamo closed by next January. What should happen to the people who are left there?

ANTHONY ROMERO: They should be transferred to established criminal courts--courts that have been able to handle such cases--the blind sheikh, Padilla, Moussaoui, I didn’t mention before, Reid.

We have the capacity. We have the prisons that can hold them. We have the finest system of justice in the world. Let’s use it. Let’s not make a new one up.

HARRY SMITH: Congressman, where should they end up?

REPRESENTATIVE PETER KING: They should stay at Guantanamo until the President finds out where they should go. Even Senator Webb, a leading Democrat, today said that Guantanamo should be kept open beyond next January.

The Democrats in the Senate adopted a resolution, an amendment, saying that there should be no Guantanamo detainees brought into this country.

So, more and more, we’re finding the American people on one side, the ACLU and the troglodytes from the New York Times on the other, where they belong. And I think President Obama is making the right decisions. And he made a mistake about Guantanamo. I expect to see that reversed by next January.

HARRY SMITH: You expect to see a reverse? He should keep it open you said?

REPRESENTATIVE PETER KING: I think he’s going to keep it open at least until we find out where they can go. President Bush wanted to close it. President Obama wants it closed, but he made a mistake by setting an arbitrary deadline, as they’re realizing how dangerous this is to be releasing dangerous people into the United States, into a court system that cannot accommodate them.

HARRY SMITH: Congressman, thank you very much.

REPRESENTATIVE PETER KING: Thank you.

HARRY SMITH: Anthony Romero, we thank you very much for your time.

ANTHONY ROMERO: It was my pleasure, Harry. Thank you.

HARRY SMITH: We’ll be back in just a minute.

(ANNOUNCEMENTS)

HARRY SMITH: Joining us now is Joan Biskupic, Supreme Court correspondent for USA Today. Her new book, “American Original: The Life and Constitution of Supreme Court Antonin Scalia” will come out in the fall.

Also with us, John Dickerson, CBS News political analyst and chief political correspondent for Slate Magazine.

Good morning to you both.
JOAN BISKUPIC (USA Today): Good morning.

JOHN DICKERSON: Good morning.

HARRY SMITH: So there are wish lists. There are apparently short lists. There are ideas about, but do we really know anything about what the Obama administration is thinking about in terms of filling the vacancy of the Supreme Court?

JOAN BISKUPIC: Well, we do know a couple things, Harry, but there are plenty of things we don’t know. And we’re really not that far into the process yet. The President has yet to talk to any individual who might be considered for this and has yet to actually receive a true shortlist of three or four names.

His staff-- it’s been coordinated through the office of Greg Craig, the White House counsel, but with lots of help from Senator Biden-- former Senator Biden, now vice president.

HARRY SMITH: Who’s been in this business a long time.

JOAN BISKUPIC: Exactly, exactly. And you think, this is the first time in fifteen years that a Democratic president will have an appointment to the court. There’s a lot of pressure from a lot of groups, from a lot of people inside the White House and close to the White House, on who should be chosen.

HARRY SMITH: Right.

JOAN BISKUPIC: I think we know a couple of things. I think it’s-- you know, ninety nine percent certain it will be a woman, given the fact that, on this nine-member Supreme Court, we only have one woman and that has been a priority of lots of people close to the White House.

Pressure from Hispanic groups to appoint a Hispanic. Now, the White House has sent out some signals that they’re looking at this over the long haul, that, with Justice John Paul Stevens being eighty nine, that they--

HARRY SMITH: (Overlapping) That-- there’s not going to be just one pick--

JOAN BISKUPIC: Exactly, and there could even be three. Who knows how many-- you know, if he’ll serve two terms or what will exactly happen.

So we know that there is pressure for more diversity on the Supreme Court, but we also know that this is a man who has taken seriously the idea of who should be on the Supreme Court.

He’s written a book about it. He was the first African-American president of the Harvard Law Review. This is something that he knows firsthand.

HARRY SMITH: John Dickerson, what-- what winds are blowing out there? What noise is being made? Do the Republicans, they can say a lot, but will they have any say in a meaningful way about who this choice will be?

JOHN DICKERSON (CBS News Political Analyst): There is always a lot of wind on these kinds of things. It is important that I think we keep, you know, the wind in its own tunnel, because what is happening is you do have a President here who also knows probably more than any President ever has known about this process. He taught constitutional law. He knows-- so he is taking as they like to say, a deep dive into these issue. And they delight in the fact there are names on the list that none of us have even heard. We’ll see if that turns out to be true in the end.

But there are institutions on the left and the right who raise money by talking about a lot of these issues and who use these moments as teaching issues on their particular issues. But you look in the Senate, the
President has the votes almost with Democrats alone. And if he’s going to pick a woman, there are two Republican female senators. It’s hard to see how they would vote against a woman in terms of a filibuster.

HARRY SMITH: Let’s talk about the ones on the short list and the one that’s on the top of everybody’s list it seems is like Sonia Sotomayor. She seems to be the presumptive choice. Came up the hard way, Hispanic, what would be the one the asterisk if you were going to put one by her name?

JOAN BISKUPIC: Because there are a lot of qualified women out there, frankly. It is not just that even though she offers this-- from parents who came from Puerto Rico, she grew up in the Bronx, father died at a young age, she really-- she went to Princeton for undergrad, went to Yale, got her law degree. Someone who certainly is smart, credentialed.

But it is not just that. There are not a lot of smart credentialed people out there and a lot of smart credentialed people who might have some diversity to them. Some mixed record from lawyers who have argued the in front of her. Who knows what kind of chemistry will be with the President. This is another thing, in the past, Presidents have interviewed individuals. Ronald Reagan famously only interviewed people like once, interviewed, Sandra Day O’Connor, loved her, introduced-- interviewed Antonin Scalia in ‘86, loved him, that was it.

Bill Clinton interviewed others, and famously the first time around with Stephen Breyer didn’t go so well and he didn’t get the pick in ’93.

HARRY SMITH: There are other voices out here saying how about somebody who is not a judge? How about somebody who didn’t go to Princeton or Yale for the Ivy League and clerked for a Supreme Court judge and served for a judge, somebody from the outside world? Any chance?

JOHN DICKERSON: One of those voices is the President’s arguably and that’s why we hear about Governor Granholm in Michigan, governor Napolitano-- former governor Napolitano now at the Department of Homeland Security, and Elena Kagan, is the solicitor-general, all of them outside of the-- and also the President talks about this notion of empathy which he has gotten beaten up on the right because they think it is sort of like a group hug, it’s a kind of softheaded thing.

HARRY SMITH: But isn’t that kind of shorthand for activist judge who will use the court as a legislative.

JOHN DICKERSON: That’s the way the right sees it for sure. But the way I think the President sees it I think we can look at what he has done himself as president. Look at this issue of the photos of the detainees. His instinct is let things out. He believes in sunshine and he also believes that the abuse is morally wrong. However, he empathized with the view of the military leaders and decided I am going to overrule my instinct. I think that is the way he thinks of empathy--is putting yourself in the shoes of other people so you can understand where they are coming from. That is the way he would define it, anyway.

JOAN BISKUPIC: The other thing Harry is everyone has this romantic issue of Earl Warren. He was governor of California, put on the court by President Eisenhower, served from about ’53 to ’69, responsible for Brown v. Board of Education. Whoever President Obama picks will be part of President Obama’s legacy and the idea of having someone who is considered of that large stature I think is a very attractive notion.

HARRY SMITH: Because that becomes a question, is it somebody to fill a spot or is it somebody to become alternately, perhaps, a court changer?

JOAN BISKUPIC: Definitely the latter, definitely the latter because you have a very tightly divided court right now, five to four. If you get someone on there who first of all the person is not going to be anymore -- any less liberal that David Souter, probably would be more liberal. It’s not going to change the dynamic that much. But the person could be much more of a leader. Somebody who actually goes out and speaks. David Souter famously did not go out and speak very much. Someone who say she could be only in her late forties or early fifties would have a very long tenure of leadership among the nine.
HARRY SMITH: And this conventional wisdom might just be Diane Wood because she is from Chicago and taught with Obama.

JOHN DICKERSON: Court of appeals judge, taught with Obama. And going back to this question of a good writer is something he is apparently looking for because even in dissenting opinions the writing gets used in lower courts.

HARRY SMITH: There you go, John Dickerson thank you so much. Joan Biskupic, we do appreciate your opinions this morning.

We will be back right after this short break.

(ANNOUNCEMENTS)

HARRY SMITH: Finally be sure to tune in tomorrow starting with THE EARLY SHOW when CBS News in partnership with USA Today launches its special series, CBS Reports: Children of the Recession--a multiplatform initiative created to raise awareness about the effects of the current economic downturn on America’s youth.

Bob Schieffer and FACE THE NATION return next Sunday with an exclusive interview with former Secretary of State Colin Powell.

Thanks for watching and I will see you tomorrow morning on THE EARLY SHOW.

(ANNOUNCEMENTS)

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