Evolution of Presidential Authorizations’ Language (p. 231)

March 11, 2004 authorization explicitly says Art II overrides (“displaces”) FISA, Title II statutes (p. 480)

The first significant difference between the March 11, 2004, Presidential Authorization and prior Authorizations was the President’s explicit assertion that the exercise of his Article II Commander-in-Chief authority “displaces” the provisions of law, including the Foreign Intelligence Surveillance Act and chapter 119 of Title 18 of the United States Code (including 18 U.S.C. § 2511(6) relating to electronic surveillance, to the extent of any conflict between the provisions and such exercises under Article II.”

As discussed above, FISA and the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2521 (generally referred to as Title III) are by their terms the “exclusive means by which electronic surveillance, as defined in [FISA], and the interception of domestic wire, oral, and electronic communications may be conducted.” 18 U.S.C. § 2511(2)(b). This new language was based on the same legal rationale Yoo first advanced in support of the Stellar Wind program – that FISA cannot be read to infringe upon the President’s Commander-in-Chief authority under Article II of the Constitution during wartime. [FS/STLW/SL/OC/NF] [FS/STLW/SL/OC/NF]

Gap between authority and actual practices (p. 480)

Second, to narrow the gap between the authority given on the face of prior Authorizations and the actual operation of the program by the NSA, the terms governing the collection of telephony and e-mail metadata were clarified. The underlying language for “acquiring” both telephony and e-mail metadata is “acquired” only when queried, not when obtained/collected (p. 481)

(ii) header/router/addressing-type information, including telecommunications dialing-type data, is “acquired” for purposes of subparagraph 4(b) above when and only when, the Department of Defense has searched for and retrieved such header/router/addressing-type information, including telecommunications dialing-type data (and not when the Department obtains such header/router/addressing-type information, including telecommunications dialing-type data, such as [redacted] for retention). [redacted] for retention.

Making the bulk collection fix retroactive (p. 482)

Moreover, the President asserted in the March 11 Authorization that the newly drafted distinction between “obtaining and retaining” meta data versus “acquiring” the meta data “reflects the consistent course of conduct under such Presidential Authorizations that has been known to and authorized by me, and shall be deemed to be a part of such Presidential Authorizations as if [paragraph 4(b)(i) & (ii)] had been explicitly included in each such Presidential Authorization at the time of presidential signature; any action taken prior to presidential signature of this authorization that is consistent with the preceding sentence is ratified and confirmed.” 171 Id. at para. 4(b). [FS/STLW/SL/OC/NF]

According to Comey and Philbin, this new language was Addington’s
March 19, 2004: narrowed Stellarwind's usage from intl terrorism to Al Qaeda & allies (armed conflict)  (p. 505)

First, the March 19 Modification inserted language to narrow content collection (basket 1) to Al Qaeda and affiliated terrorist groups, as the Department had advised. The new content collection authority in paragraph 4(a) of the March 11 Authorization, with the new language from the March 19 Modification indicated in italics, was:

acquire a communication (including but not limited to a wire communication carried into or out of the United States by cable) for which, based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are reasonable grounds to believe such communication originated or terminated outside the United States and a party to such communication is a group engaged in international terrorism, or activities in preparation therefor, or any agent of such a group, provided that such group is Al Qaeda, is a group affiliated with Al Qaeda, or is another group that I determine for purposes of this Presidential Authorization is in armed conflict with the United States and poses a threat of hostile action within the United States.