To: UEC
From: Petitioner Tylus (Jeremy Keeney, counsel)
Date: April 10, 2012
Re: Petitioner's brief (on remand)

Having correctly found Parikh violated the CSG Compiled Code, the UEC should not issue demerits outside of the guidelines.

- **Sufficient cause.** The UEC needs to find a mitigating factor to be "reasonably relevant and supported by the evidence" in order to assess demerits outside of the guidelines. *Parikh, Tylus v. UEC.*

  - **No serious harm:** this factor cannot be considered reasonably relevant because
    1) if the UEC rules that an abundance of complaints received is grounds for no serious harm, then potentially hundreds of students will be denied due process for their cause of action. *Mandell.* Petitioner Tylus received additional emails from SSW students immediately after the original UEC hearing, but these students did not file complaints because they thought this issue was already addressed. Since the UEC already decided the case on the merits, these folks were precluded from bringing a claim, but yet face the possibility of mitigated demerits because they did not join the Tylus/ Bowen complaint. 2) Two parties independently filed complaints regarding this issue. It is fairly uncommon for two opposing parties to join forces on a claim against a third party. 3) A spam email to over 500 students is a de facto violation of the rights of each recipient. *Mandell* 4) SSW students who received an endorsement from the President of the SSW Union would be more likely to vote, thereby resulting in enough votes to alter the outcome of the election. The harm form the email cannot be undone.

  - **Advisory opinion:** this factor is not relevant because Mr. Borock's opinion was clearly not meant to be more than just his opinion, it was based on a separate set of facts, and Mr. Borock clearly stated the advisory opinion given to Parikh was not binding and that Parikh should proceed with caution. Handouts given to all candidates at the candidates' meeting stated that permission could not be granted to email an official university listserv, but this was also regarded as not binding. The Compiled Code also states that emails cannot be sent to lists that the sender does not own. It would be unreasonable for the UEC to weigh one non-binding opinion any differently than another non-binding opinion, especially since Mr. Borock did not intend for his advisory opinion to alleviate any of Parikh's culpability. This is illustrated by his comment in *Tylus and Bowen v. Parikh* (n3), "his opinion was 1) not advisory; 2) not representative of the rest of the commission; 3) based on the specific examples provided by Parikh not identical to the facts here. Moreover, Borock warned Parikh to be very careful about playing loose with the email rules." The advisory opinion was not relevant and it was not intended to reallocate any risk that Parikh assumed by playing close to the rules.

  - **Demerits:** Demerits should be issued at 2 per violation. That affords the UEC ample discretion to choose 2 demerits instead of the maximum 4 demerits per violation. This results in a minimum of 584x2= 1164 demerits.