



## Men Convicted of Spamming, Obscenity Free Pending Appeal

***Court said appeal raises 'substantial question' of law.***

By [Justin Bourne](#)

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**SAN FRANCISCO** - James R. Schaffer and Jeffrey A. Kilbride, defendants in the first criminal convictions under the CAN-SPAM Act, will remain free on bail pending appeals to their convictions.

In an order issued late Wednesday, the U.S. Court of Appeals for the 9th Circuit reversed the District Court's denial of bail pending appeal, finding that the appellants had shown "by clear and convincing evidence" that the appeal raises a "substantial question" of law or fact "likely to result" in a reversal or order for new trial on all counts.

Schaffer and Kilbride were convicted of obscenity, money laundering and criminal violations of the CAN-SPAM Act. Their obscenity convictions were based on the online transmission of two images emailed to adult website members.

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Schaffer was sentenced to five years and three months in jail, and Kilbride was sentenced to six years and six months.

"Schaffer and Kilbride were to begin serving their sentences on Nov. 30, 2007, but will now remain home with their families until the appeal is decided," Schaffer's appellate lawyer Gary Jay Kaufman told [AVN Online](#).

He said the court's order was "a major first step in gaining both vindication for Schaffer and Kilbride, and greater protection of our First Amendment rights."

"The 9th Circuit Court of Appeals, fortunately, reversed the District Court's decision to send my client to prison while the issue of his and our First Amendment rights are adjudicated," Kilbride's appeals lawyer Greg Piccionelli told [AVN Online](#).

According to Kaufman, bail pending appeal is rarely granted in cases such as this one.

"It is only allowed for those who establish that there are substantial issues on appeal likely to result in reversal or new trial," he said. "Schaffer and Kilbride's joint motion raised numerous appellate issues, including a challenge to the applicable community standard for obscenity and the criminal CAN-SPAM statute, which are unconstitutionally vague."

Kaufman said he and Piccionelli are "ecstatic" about the court's decision. He said the case could "change the legal standard for obscenity in this Internet age."