

EXHIBIT B

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(11-20) 16:59 PST San Francisco (AP) --

The imprisonment of jailed videographer Joshua Wolf for refusing to hand over uncut tape of a violent protest has quietly entered its third month, but even some of the groups that have come to his legal aid question whether the blogger is really a journalist.

On Tuesday, when his lawyers will ask a federal judge to release him, the 24-year-old Wolf will have served 93 days in jail, surpassing the 85 days served last year by New York Times reporter Judith Miller. The record term for a journalist held in contempt was for Vanessa Leggett, a Houston-based freelancer who served 168 days in 2001 and 2002 for declining to reveal unpublished material about a murder case.

Wolf videotaped a July 2005 protest during the G-8 economic summit in which anarchists were suspected of vandalizing a San Francisco police car. One officer was struck during the rally and his skull was fractured.

Wolf sold some of the footage to San Francisco television stations and posted some of it on his Web site. He was jailed after refusing to turn over unpublished material to federal authorities investigating the crimes, claiming he is a journalist protected under the First Amendment.

His attorneys will make the same argument at Tuesday's hearing, and at the very least want a judge to allow Wolf to leave prison for Thanksgiving. If the effort fails, he could remain jailed until the grand jury's term expires in July.

With the Internet's growth, the definition of a reporter has been blurred. Bloggers like Wolf now have an instant news platform.

Wolf himself has never denied having an agenda and supporting left-wing causes. His Web site, , leads off with the statement "The Revolution will be televised."

"If I have any reservations about whether or not he is a journalist, it is whether he went there as an independent gatherer of news and information," said Lucy Dalglish, executive director of the Reporters Committee for Freedom of the Press, which has filed court papers on Wolf's behalf. "We certainly hope that in the future, if he goes to these events, he makes up his mind as to whether he's a journalist or a protester."

His attorney, Martin Garbus, said Monday that Wolf was at last year's protest solely for



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newsgathering purposes. Some of the unpublished material, he said, is of his friends speaking to the camera.

"He wasn't demonstrating," Garbus said. "He was there taking video."

Peter Scheer, executive director of the California First Amendment Coalition, said the group has doubts about whether Wolf is a journalist, but still argued in court on his behalf.

"We have assumed that he is a journalist because he has asserted that," Scheer said. "One can cross a line from being a journalist, who is essentially a chronicler of the news, to being an active participant in making it. (But) I'm not saying Josh Wolf has crossed the line."

Theodore Boutrous Jr., a First Amendment lawyer for four journalism groups who supported Wolf, said it was immaterial to the legal case whether Wolf was a reporter. The courts and even the federal government have treated him as such — meaning a reporter's rights were at stake, he said.

"The courts assumed all along he was engaged in journalistic activities," Boutrous said, "yet they refused to afford him any protection."

Still, the legal distinction between reporter and nonreporter has become muddled when it comes to complying with federal grand jury subpoenas. Most states have shield laws protecting reporters, but there is no federal shield law.

The U.S. Supreme Court ruled in the 1972 case *Branzburg v. Hayes* that reporters, like everyone else, must "respond to relevant questions put to them in the course of a valid grand jury investigation or criminal trial."

But for years *Branzburg* was largely ignored. Judges more often sided with Justice Lewis Powell's vote in *Branzburg v. Hayes* in the same case. He urged the court to order reporters to testify, to balance the First Amendment rights of journalists against the public's right to know.

That changed in 2003, when the *Chicago Sun-Times* and *Chicago Tribune* lost a bid to protect their reporters from divulging recordings of interviews of a witness in a terrorism case.

The *Branzburg* case was also successfully invoked in the investigation to find out who leaked the name of CIA agent Valerie Plame. Miller was jailed last year for refusing to testify in that case.

The case is *Joshua Wolf v. United States*, 06-16403.

Editors: David Kravets has been covering state and federal courts for more than a decade.

www.joshwolf.net

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