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Apr. 12, 2011 3:33 PM ET

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AP Exclusive: FBI thought Demjanjuk evidence faked

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BERLIN (AP) — An FBI report kept secret for 25 years said the Soviet Union "quite likely fabricated" evidence central to the prosecution of John Demjanjuk — a revelation that could help the defense as closing arguments resume Wednesday in the retired Ohio auto worker's Nazi war crimes trial in Germany.

The newly declassified FBI field office report, obtained by The Associated Press, casts doubt on the authenticity of a Nazi ID card that is the key piece of evidence in allegations that Demjanjuk served as a guard at the Sobibor death camp in occupied Poland.

Throughout three decades of U.S. hearings, an extradition, a death sentence followed by acquittal in Israel, a deportation and now a trial in Munich, the arguments have relied heavily on the photo ID from an SS training camp that indicates Demjanjuk was sent to Sobibor.

Claims that the card and other evidence against Demjanjuk are Soviet forgeries have repeatedly been made by



Exhibit 2 - Questioned Identification Document Showing Relationship of Rubber Stamp on Photograph Versus Rubber Stamp on Document.

FILE - This image released by the Department of Justice in Washington on Thursday, Feb. 21, 2002 shows a World War II-era SS identity card from the Trawniki training camp alleged to have belonged to John Demjanjuk. The FBI believed the Soviets "quite likely fabricated" evidence central to the prosecution of Demjanjuk, according to newly declassified documents from the 1980s — a revelation that could help the defense as closing arguments resume Wednesday, April 13, 2011 in the retired Ohio auto worker's Nazi war crimes trial in Germany. The FBI field office report, obtained by The Associated Press, casts doubt on the authenticity of this Nazi ID card that is the key piece of evidence in allegations that Demjanjuk served as a guard at the Sobibor death camp in occupied Poland. (AP Photo/Department of Justice)

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EXHIBIT C

Demjanjuk's defense attorneys.

However, the FBI report provides the first known confirmation that American investigators had similar doubts.

"Justice is ill-served in the prosecution of an American citizen on evidence which is not only normally inadmissible in a court of law, but based on evidence and allegations quite likely fabricated by the KGB," the FBI's Cleveland field office said in the 1985 report, four years after the Soviets had shown U.S. investigators the card.

It was the height of the Cold War at the time, and the ID card from the Nazi's Trawniki training camp had not been as closely examined by Western experts as it has been today. Since then it has been scrutinized and validated by courts in the U.S., Israel and Germany — though experts at the current trial left room for doubt, with one conceding that a counterfeiter with the right materials could have forged the card and other documents.

The FBI agents argued that the Soviets had an interest in faking the documents as part of a campaign to smear anti-communist emigres.

Those conclusions contradict the findings of another branch of the Department of Justice, the Office of Special Investigations, or OSI, which was in charge of the overall Demjanjuk probe.

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A quarter-century later, Demjanjuk, now 90, is standing trial in Munich on 28,060 counts of accessory to murder, which he denies. A verdict is expected within a month.

The AP discovered the FBI report at the National Archives in College Park, Md., among case files that were declassified after the Ukrainian-born Demjanjuk was deported from the U.S. in May 2009 to face trial in Germany.

It had not previously been seen by defense attorneys in Demjanjuk's trials in Germany, Israel or the United States, and German prosecutors also were unaware of the document. It is unclear whether prosecutors in the U.S. and Israel knew about it.

The FBI report was among more than 8 million pages of records by federal agencies that were transferred to the National Archives in 1998 under the Nazi War Crimes Disclosure Act.

However, the field office report was excluded from public view by the OSI, which was exempted to protect ongoing investigations and prosecutions. The AP learned late last year that partially redacted Demjanjuk files had been opened up, and recently reviewed them.

Neal Sher, the director of the OSI from 1983 to 1994, called the Cleveland report "replete with errors that completely undermine its credibility." He said in an email that "great care was taken to authenticate any documents" and not one was found to be forged.

But others involved in the U.S. case say it was a key piece of evidence about which they were previously unaware.

Russell Ezolt, the top lawyer for the U.S. Immigration and Naturalization Service in Cleveland at the time, said the report could have influenced the outcome of Demjanjuk's denaturalization trial.

"I never saw that," he said in a telephone interview from his home outside Cleveland. "This was the key bit to the trial. ... If you take away his ID card as a guard, what's left?"

Since no known eyewitnesses can place Demjanjuk at Sobibor, the case largely revolves around Nazi-era documents captured by the Soviet Union and provided to American, Israeli and now German authorities.

The March 4, 1985, report, on FBI letterhead and marked "SECRET," says the Cleveland office's investigation "strongly indicated" a Soviet scheme to discredit "prominent emigre dissidents speaking out publicly and/or leading emigre groups in opposition to the Soviet leadership in the USSR."

In dismissing the claim, former OSI director Sher said Demjanjuk was not an "outspoken dissident" but kept a low profile. He said the first U.S. judge to rule on the case, as well as an appeals court had declared they believed the ID card was authentic and reliable.

Norman J.W. Goda, one of two main historians to review the vast volumes of material from U.S. investigations of Nazi war crimes declassified over the last decade, suggested both the

FBI and OSI could be correct: The Soviets could have used the evidence for its own purposes, but it could also be genuine.

"The Soviets did, in fact, use war crimes cases for propagandistic effect, but it was often the case that Moscow provided valid information as well," said Goda of the University of Florida.

Demjanjuk's defense attorney in Germany, Ulrich Busch, said German investigators have received 100,000 pages of Demjanjuk-related documents from the U.S. for the trial, which began in November 2009, but the FBI report was not among them. He plans to petition the court to introduce it as evidence.

"It's completely new," he said.

He noted as particularly important the way the FBI said the KGB presented evidence to the U.S. Department of Justice: allowing the material to be viewed only at a Soviet embassy or consulate but not examined by document experts.

"It's very explicit, and the same thing happened here," Busch said, noting he could view two Russian-held Nazi "transfer lists" from 1943 only at the Russian Consulate in Munich. The documents indicate a guard named Demjanjuk was sent to Flossenbuerg concentration camp and to Sobibor.

"The Russians said we could look at them but that we couldn't do anything with them, couldn't examine them, and then they took them away," Busch said.

The defense has argued throughout the trial that the ID card is a clever fake, noting that Demjanjuk's height and eye color don't match and alleging there are indications the photograph was taken from old identity papers and glued to the card.

The lead prosecutor in the German case told the AP he also was unaware of the FBI report, but said he has no doubts about the evidence. Hans-Joachim Lutz acknowledged the ID card was only shown — not turned over — to American investigators at the time of the 1985 report, but said court experts in Israel and Germany later obtained access to the original, and testified that they believe it to be genuine.

"Now it has been determined to have been genuine, so for us 1985 is relatively uninteresting," he said.

The OSI in the past has been accused of withholding evidence that could have cleared Demjanjuk.

Demjanjuk immigrated to the U.S. in 1952. He was extradited to Israel in 1986, after the Nazi allegations surfaced, and stood trial there on accusations that he was the notoriously brutal guard "Ivan the Terrible" at the Treblinka extermination camp.

He was convicted and sentenced to death — then freed when the Israeli Supreme Court overturned the ruling, saying the evidence showed he had been misidentified by witnesses.

In a 1993 review of the American denaturalization hearing that led to his extradition, a federal U.S. appeals panel concluded that the OSI engaged in "prosecutorial misconduct that seriously misled the court."

It said the office failed to disclose exculpatory information — including statements of Ukrainian guards at Treblinka who "clearly identified" another man as "Ivan the Terrible."

A Department of Justice report from 2008 made public last November said the OSI's handling of the Demjanjuk case was "the greatest mistake it ever made."

Demjanjuk returned to the United States after his Israeli release, and German prosecutors brought forward new charges that he served as a low-ranking guard at the Sobibor death camp — once more based mostly on Soviet-provided material received from the OSI.

In Germany, Demjanjuk has again claimed to be a victim of mistaken identity — a Ukrainian Red Army conscript who was captured in Crimea in May 1942 and held prisoner throughout most of the war.

The FBI report accuses the Soviets of anonymously feeding names of emigres to the United States as suspected Nazis. The OSI would then ask the Soviet Union for evidence from captured Nazi records, and "the KGB produces a record purporting to tie the accused with the commission of Nazi atrocities."

"In court, the KGB officer thereupon 'shows' the documents to the judge but does not permit the documents to be presented in evidence or to be otherwise copied," it adds.

By the time the field report was sent to FBI headquarters in Washington, Demjanjuk had already had his citizenship revoked and was facing extradition to Israel.

It is not clear whether it was forwarded to OSI, though agency director Sher contends it was not.

Calling it "an embarrassment for the FBI," he said in an email: "I would guess that FBI headquarters felt precisely that way when they read the memo and accordingly did not do what the Cleveland FBI office asked them to do: Call OSI about this matter."

The FBI unit chief in Washington to whom the report was addressed, Storm Watkins, said it would have been his responsibility to pass along the information to OSI, but that he does not remember whether he did.

"I'm not aware to what extent an investigation was done," he said, referring other questions to the FBI's public affairs office.

Agent Scott Wilson, now assigned to the Cleveland field office of the FBI, said: "We will let the document stand on its own and would not make any further comment."

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Attorney John Gill, who represented Demjanjuk in the 1980s, said the Cleveland field report could have bolstered defense arguments against extradition — and possibly put a quick end to what ended up being another 25 years of legal wrangling.

"Obviously they hid behind the technicalities of two separate investigations," Gill said by telephone from Cleveland. "It's an important document in my opinion that would have showed once again that they've got the wrong guy."

Herschaft reported from New York and College Park, Md.

Online:

National Archives, <http://www.archives.gov/lwg>

Department of Justice OSI report, —<http://1.usa.gov/g4YSyW>

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