

### INVESTIGATING OFFICER'S REPORT

*(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)*

1a. FROM: (Name of Investigating Officer - Last, First, MI)  Fitz, Danielle N.	b. GRADE  O-4	c. ORGANIZATION  H&S BN, MCB Camp Pendleton, USMC	d. DATE OF REPORT  10 Dec 2010
2a. TO: (Name of Officer who directed the investigation - Last, First, MI)  Carroll, J.C., Lieutenant Colonel, USMC	b. TITLE  Commanding Officer	c. ORGANIZATION  MALS 16, MAG 16, 3d MAW MARFORPAC, MCAS Miramar, CA	
3a. NAME OF ACCUSED (Last, First, MI)  Ochoa, Robert J.	b. GRADE  E-4	c. SSN  XXXXXX5486	d. ORGANIZATION  MALS 16, MAG 16, 3d MAW
			e. DATE OF CHARGES  1 Oct 2010

*(Check appropriate answer)*

4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)	YES	NO	
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)	X		
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d) (2), 502(d)	X		
7a. NAME OF DEFENSE COUNSEL (Last, First, MI)  Faraj, Haytham	b. GRADE	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any)  Marshall, Meridith	b. GRADE  O-4
c. ORGANIZATION (If appropriate)  Puckett & Faraj, PC		c. ORGANIZATION (If appropriate)  HQHQRON, MCAS Miramar, CA	
d. ADDRESS (If appropriate)  1800 Diagonal Road, Ste 210 Alexandria, VA 22314		d. ADDRESS (If appropriate)	
9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)			
a. PLACE  N/A	b. DATE		

I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.

c. SIGNATURE OF ACCUSED

10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: <i>(Check appropriate answer)</i>	YES	NO
a. THE CHARGE(S) UNDER INVESTIGATION	X	
b. THE IDENTITY OF THE ACCUSER	X	
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31	X	
d. THE PURPOSE OF THE INVESTIGATION	X	
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE	X	
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT	X	
g. THE RIGHT TO CROSS-EXAMINE WITNESSES	X	
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED	X	
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION	X	
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING	X	
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE <i>(If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)</i>	X	

b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL  
N/A

**NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c"). Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."**



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Block 12a.

Alfredo Villalobos	NCIS Special Agent	NCIS Field Office, Miramar
Joshua Woods	O-1	3d MAW, Miramar
Charla Kos	CIV	Rancho Bernardo, CA
Ronald Russell	E-6	MALS-16 Power Plants, Miramar
Kiet Gia Ton	E-7, U.S. Army	11th Bn ARCD, Los Alamitos
Jose Rivera	CIV	Chula Vista, CA
Brandon Anders	CIV	Oregon
David George Bell	CIV	Littleton, CO
Phong Nguyen Ho	Sheriff	Covina, CA
Frankie Elias	CIV	Lancaster, CA
Raymond Ochoa	Sheriff	San Antonio, TX

Block 13a.

Investigative Exhibits

1. Appointing Order
2. Charge Sheet
3. Unauthorized absence documents (Bate Stamps 1152, 1158-1171)
4. Statement of Cpl Ochoa to NCIS of 13 Jul 05 (Bate Stamps 0051-0053)
5. Credit Report of Cpl Ochoa (Bate Stamps 1142-1145)
6. Security Service Financial Statements of Cpl Ochoa (Bate Stamps 0075-0092)
7. Navy Federal Credit Union Financial Statements of Cpl Ochoa (Bate Stamps 0449-0516)
8. Statement of Jose Garcia to NCIS of 14 Jul 05 (Bate Stamps 0545-0546)
9. Statement of Robert Burke to NCIS of 14 Jul 05 (Bate Stamps 0579-0580)
10. Statement of Joshua Woods to NCIS of 30 Aug 05 (Bate Stamps 0244-0245)
11. Contract btwn Burke, Woods, and Ochoa of 11 Mar 05 (Bate Stamps 0582)
12. Statement of Charla Kos to NCIS of 14 Jul 05 (Bate Stamps 0575-0576)
13. Statement of Ronald Russell to NCIS of 21 Jul 05 (Bate Stamps 0875-0876)
14. Contract btwn Russell, Jennifer Russell, and Ochoa of 13 Jul 05 (Bate Stamps 0878)
15. Statement of Kiet Ton to NCIS of 28 Jul 05 (Bate Stamps 0701-0706)
16. Statement of Jose Rivera to NCIS of 14 Jul 05 (Bate Stamps 0577-0578)
17. Statement of Brandon Anders to NCIS of 14 Jul 05 (Bate Stamps 1019-1020)
18. Statement of David Bell to NCIS of 17 Aug 05 (Bate Stamps 1127-1128)
19. Statement of Phong Ho to NCIS of 14 Jul 05 (Bate Stamps 0630-0632)
20. Statement of Frankie Elias to NCIS of 14 Jul 05 (Bate Stamps 0523)
21. Memo of Timothy Herington to NCIS of 23 Aug 05 (Bate Stamps 1132-1133)
22. Contract btwn Herington and Ochoa of 7 Jun 05 (Bate Stamps 1135)
23. Statement of Ochoa to Herington of 14 Jul 05 (Bate Stamps 1136)
24. Carbon copies of checks of Herington (Bate Stamps 1134)
25. Copy of check from Ochoa to Herington of 14 Jul 05 (Bate Stamps 1137)
26. Statement of Christian Cruz to NCIS of 19 Jul 05 (Bate Stamps 0719-0720)
27. Loan documents and contract for 2003 Cadillac Deville (Bate Stamps 0139-0151)
28. Navy Federal Credit Union Financial Statements of Phong Ho (Bate Stamps 0635-0696)
29. Continuance Request and approval
30. Emails of scheduling the investigation
31. Email closing the investigation of 29 Nov 10

I am considering IE's 1 - 31 for this investigation.

Block 14: In response to my question, neither Defense Counsel nor Trial Counsel raised any issue during the hearing concerning any of the accused's

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mental responsibility at the time of the alleged commission of the offenses charged, or the accused's competency to participate in his own defense.

**Block 15:** The defense objected to IE 21, the MEMO written by Todd Herington. The defense stated that the memo is not a sworn statement that he swore to it 5 years after he actually wrote the memo. He also stated that Mr. Herington can make himself available for swearing to his memo but cannot come down to Miramar to testify. I overruled his objection and informed the parties that I would consider IE 21 based on RCM 405(g)(4)(B)(i). Since Mr. Herington swore to this memo in front of a uniformed officer (an adjutant) that I would treat it as a sworn statement.

**Block 16:** As to witness availability, Special Agent Villalobos might be deploying in the next fiscal year but he does not know exactly when. Lt Woods leaves for Pensacola on 7 December for 6 weeks and then he transfers to Corpus Christi, Texas. Sgt 1<sup>st</sup> Class Ton is scheduled to PCS in July 2011.

**Block 21:**

Investigative Hearing. The hearing opened at 0830 on 15 November 2010 and was closed at 1500 on 29 November 2010. The defense requested to keep the investigation open until they received certain documents that they might want to include in the investigation. As of the Friday after the initial hearing, (19 Nov), Defense had yet to receive the documents. The following week the IO was on leave for the Thanksgiving Holiday period. On 29 November, the IO gave both sides the opportunity to submit any further documents and argument on the evidence. Neither side had anything further to present so the investigation was closed on 29 November.

Jurisdiction. The military justice system has subject matter jurisdiction over the offenses charged and has personal jurisdiction over the accused since he was on active duty at the time of the alleged offenses and has since remained on active duty.

Availability of witnesses to testify at hearing.

The defense wanted to call Todd Herington to testify. A letter was sent to Mr. Herington and it was returned. A SNCO called him but he did not return the call. Major Hatch called the S-3 shop where he works and then emailed Mr. Herington and still there was no response. He then called the SJA for 3d MAW and the XO for MAG 39 and finally spoke to Mr. Herington and invited him to testify at the hearing. He said he did not want to testify in person or on the phone. He is a civilian contractor working at Camp Pendleton. He provided a memo he had previously written to NCIS and he swore to it in front of an adjutant. I determined that Mr. Herington, a civilian was not reasonably available to testify based on the fact that he is a civilian and I did not have subpoena power to force him to testify.

Summary & Analysis of Live Testimony.

**NCIS Special Agent Alfredo Villalobos**

When SA Villalobos opened this case, it was a cold case and had been closed. What he knew about the case was that several Marines and an Army member had given money to Ochoa for real estate investments and/or vehicles and they were not getting their money back. Ochoa had admitted that he took money from them but he was going to give them their money back. He had spent a lot of the money on gambling. At the time Ochoa had no money in his bank account and his pitch to them was that he was going to double or triple their money.

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SA Villalobos was able to contact all of the witnesses except for 2. Regarding Sgt Bennett, he contacted her about the title to the Escalade. At the time of the previous reception, she had not received her title to the Escalade that Ochoa sold her. She now has the title and she did pay for the car. SA Villalobos was not able to contact Burke or Garcia.

Ochoa went UA before his original Art 32 investigation was to begin. It was a fugitive investigation that led to his arrest. NCIS contacted U.S. Marshalls in San Antonio, Texas and the Marshalls contacted Ochoa's two brothers who were also in law enforcement in Texas. The brothers contacted the mother of Ochoa and then she was able to contact Ochoa. The brothers contacted Nick Rose, U.S. Marshall and they brought Ochoa to a parking lot and met Agent Rose.

SA Villalobos does not know if Ochoa actually invested the money. Some people did get their money back but not the full amount. He had taken money from people promising a return and there was no paperwork involved. There is evidence that he withdrew large amounts of cash at casinos but there is no evidence of gambling.

SA Villalobos might be deploying in the next fiscal year.

**2ndLt Joshua Woods**

Lt Woods was a Sergeant back in 2005 and has since completed the MECEP program and is awaiting flight school. He leaves for Pensacola shortly and will be there for 2 months and then he goes to Corpus Christi.

Lt Woods adopted his statement as part of his testimony. Back in 2005, he gave Ochoa money. Ochoa always had a nice car and they hung out together. Ochoa said that he made his money from the stock market and showed him on the internet the NASDAQ and S&P 500 numbers. Lt Woods gave him some money to invest and he saw that it went up in value and Ochoa gave him his money back. Another friend Burke had asked about investing so they both wrote up a contract with Ochoa for him to invest in real estate. Ochoa said he was purchasing a foreclosed home and that was how he made his money. The contract stated that if they didn't get their 8% return then he would give them their money back in 3 months. They both gave him some time to get the money back. When they didn't get their money back, they filed in small claims court. Twenty minutes before the court was supposed to start, Ochoa told them he would give them their money back and said he would go to the bank right away. Burke went to the bank with Ochoa and Ochoa gave him his \$2,000 back. Lt Woods never got his money back. He could not go with Ochoa to the bank because he had class. Shortly after this, Ochoa went UA. Ochoa had the vehicles and had the trust of people around him and there was no reason not to believe him. Burke told Woods that he got his money back and he wouldn't have taken Woods' money. Ochoa never denied owning Woods' money.

Lt Woods leaves for Pensacola on 7 December for 6 weeks.

**Charla Kos**

Charla Kos is currently a civilian and lives in Rancho Bernardo. She was on active duty for 10-11 years and left in 2007. Ochoa worked for her when she was a Sergeant. She adopted her statement to NCIS of 14 July 2005. She was all set to testify at the previous Article 32 when Ochoa went UA. He told

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her that her money was going to be doubled. He was "flipping" houses and her money was going to cover the closing costs. After she gave him her money, he would try to pay her back with \$100 here and \$100 there. She thinks he still owes her \$500. She doesn't know if Ochoa ever purchased a foreclosed home. At the time she believed Ochoa was a truthful person. She had the impression that Ochoa had money. People were talking about him doubling people's money. He told her he had a real estate license and said that he had doubled people's money. Officers were calling on him in the shop.

Kos initially gave Ochoa \$4,000. He said he would double her money. She eventually got back \$3,500 from Ochoa, \$100 here and \$100 there. He was always making excuses but never denied owing her money. Other people in the shop were giving him money too. People eventually started talking to each other and realized they got "duped." It all came to light when Sgt Bennett told Kos that Ochoa sold her a vehicle and she hadn't gotten her title yet.

At one point Ochoa showed her a bank statement of his with a lot of money in it (\$500,000) so she believed it was legitimate. He would be online looking at houses and said he was flipping houses. When she had given him \$4,000 she gave it to him in cash and there was no receipt or record.

**SSgt Ronald Russell**

SSgt Russell is on active duty and attached to MALS-16. He met Ochoa in late 2004/early 2005. He adopted his statement made to NCIS on 21 July 2005. They had a social relationship in addition to working together. They went camping in the desert a lot and rode 4-wheelers. He even came over for Thanksgiving and Christmas. SSgt Russell gave Ochoa \$20,000 to invest, in 2 installments of \$10,000. He has received \$8,000 back. Ochoa said he was flipping houses and gave Russell a packet and a couple of books on flipping houses. Ochoa told him that he was going to take the first \$10,000 put it in a house and he will triple the money. Russell knew it wasn't guaranteed since it was an investment. Then Ochoa told him about a house that was \$50,000 and that if he gave him another \$10,000 Ochoa would cover the rest from the money that he owed Russell. Time went on and there was no money received. Ochoa was going to the casinos a lot and things were getting fishy. Russell kept on hounding him about the money but he was always making excuses. Ochoa told him that his lawyer ran off with a bunch of his money. Ochoa gave Russell back \$8,000 and then he wrote him a check for \$14,000. Russell went to Navy Federal and they told him there were insufficient funds. Russell's wife went to Ochoa and had him sign a contract saying that he owed them \$12,000. Russell does not know if Ochoa ever purchases a foreclosed home, either before or after he gave him his money.

At one point Russell drove past the house that Ochoa was supposedly buying. It was just outside the Miramar gate somewhere. Ochoa told Russell that he was putting \$50,000 toward what was owed on the house and possibly taxes. At one point, Russell believed he was not going to see his money again so he started asking Ochoa about the money and the fact that he was gambling. Ochoa told him he was going out gambling with SSgt Cruz. He thinks SSgt Cruz owned the house they were living in in Canyon Lake. Ochoa had a side to him where he would keep things from him and not tell the whole story. When Ochoa gave him his \$8,000 back, Ochoa said that he "won big" so Russell believes it was casino winnings.

**Sergeant First Class Kiet Gia Ton**

Sgt Ton is in the Army and is a member of 11<sup>th</sup> Battalion ARCD (Army Reserves Career Division) in Los Alamitos. He is a career counselor. He adopted his statement he gave to NCIS on 28 July 2005 as part of his testimony. He has been in the Army for 19 years. He was introduced to Ochoa by Phong Ho or Jimmy, who is the younger brother of Ton's friend. He has known Jimmy since Jimmy was 5 years old. Jimmy, a Marine, came to him and asked him if he could borrow some money and that he needed it right away. Ton could not get to the bank before it closed so he asked his girlfriend and brother to borrow money. Ton cannot remember exactly who he gave the money to, Ochoa or Jimmy, but Ochoa left with the \$11,000. They both told him he would triple his money. They needed the money to pay closing costs on a house. Ton later called Jimmy when he wasn't seeing any return and asked for his money back. Ochoa wrote him a check for \$8,000 and then a separate one for \$3,000. He deposited \$8,000 in the bank and waited to deposit the \$3,000. Ochoa and Jimmy then came to his office and asked if he wanted to buy and sell houses with them and to be partners in their business. It would be \$50,000 to join and he would get 10% return. Jimmy told him it was legitimate and that he had seen hundreds of thousands of dollars in Ochoa's bank account. Ton thought it made sense, especially with the housing market. He knew he would at least get his money back.

Now, Ton still has a relationship with Jimmy and he believes Jimmy was swindled just like he was. Jimmy had been very excited about making more money but he was duped just like Ton. Jimmy had to pay for the loan that he took out and Ton never saw any transactions with any house. He thinks Ochoa still owes him \$40,000. At one point Ton gave Ochoa \$3,000 for maintenance of a house Ochoa said he was going to sell. Ton is scheduled to PCS in July 2011.

**Jose Rivera**

Jose Rivera served 9 years in the Marine Corps and currently lives in Chula Vista, California. His EAS was February 2007 and he was a Sergeant. He adopted his statement to NCIS of 14 July 2005. Rivera originally gave Ochoa \$7,000 and Ochoa paid him back \$4,000. Ochoa still owes him \$3,000. He knows Ochoa. They gambled with each other and they play black jack. SSgt Cruz was their SNCOIC and Cpl Ochoa was his roommate for a while. Rivera believes that the house they lived in was owned by SSgt Cruz. Rivera and Ochoa knew each other from Okinawa. He thought he was trustworthy. He had heard that he helped another Marine out and he asked Ochoa about investing. Ochoa told him that if he gave him money that he would invest it for him. He was buying real estate, fixing up the houses and then selling them. It seemed like Ochoa always had money and nice cars so he thought it was all legitimate. Rivera didn't do any research on investing and just trusted Ochoa. Ochoa told him that he could possibly double his money. When he received part of his money back it came in 2 installments.

**Brandon Anders**

Brandon Anders was on active duty in the Marine Corps from 2001 to 2006 and was a Sergeant when he got out. Currently he lives in Oregon. Anders adopted his statement given to NCIS on 14 July 2005. Anders gave Ochoa \$5,000. Ochoa told him he would triple his money. They had been good friends and hung out together. They went to a casino a couple of times together. He felt like he could trust Ochoa. At one point Ochoa showed Anders an account that had \$280,000 in it on the internet. He saw him gamble

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\$1500 during an entire night of gambling. Time went on so he wanted his money back. He looked for him at the shop. Anders noticed Ochoa's car outside the shop so he went looking for him. He was nowhere to be found. A door was locked into one of the rooms so he went to go get a key. He unlocked the door and found Ochoa inside hiding. Ochoa then wrote him a check and Anders took it to the bank but there were insufficient funds. Shortly thereafter is when everything came to a head. Anders never got his money back. It looked as though Ochoa always had money to spend and Anders heard that he threw down at least \$10,000 a night gambling. Ochoa at one point said that he had his realtor's license and that he bought and sold houses. Anders had no documentation from Ochoa.

**David George Bell**

David Bell testified telephonically. He is currently a civilian living in Littleton, Colorado. He was active duty in the Marine Corps from August 2002 to August 2007. He was assigned to MALS-16. He adopted his statement to NCIS of 17 August 2005. He works for Lockheed Martin now. He was in Iraq when Ochoa went UA and did not know about the previous Article 32. When Bell gave Ochoa his money he gave it to him in a cashier's check. Ochoa did not like that he was using a cashier's check. The day before Bell's deployment, Ochoa wrote him a check for \$5,000 but it turned out to be a bad check. He believes Ochoa had the intent to pay back the money eventually. At one point they both drove around looking for foreclosures and he also saw a printout of a foreclosure. It looked legitimate at the time. He doubts the legitimacy of the foreclosure listing now. He was promised his initial investment at least. When Bell first gave him his money, Ochoa made it sound really good. Bell knows Maj Harrington. He showed up at the barracks one time looking for Ochoa and they walked out together.

**Phong Nguyen Ho**

Phong Ho testified telephonically. He is a civilian living in Covina, California. He goes by Jimmy. He is a Los Angeles County Sheriff. He was in the Marine Corps from 2001 to 2006 and attached to MALS 16. He adopted his written statement given to NCIS on 14 July 2005. In the Marine Corps he was a jet engine technician. He knows SSgt Cruz and Ochoa. He remembers going to Cruz's house back in 2004. He never talked to Cruz about an investment deal. Ochoa told Ho that he buys houses but Ho never saw these houses. Ho noticed the cars Ochoa was driving became more and more luxurious. Ho remembers telling Cruz that there was no something right about what Ochoa was doing. Ho warned his friend Ton that he shouldn't do business with Ochoa. He made it clear to Ton that it wasn't Ho that was borrowing money, it was Ochoa. There was a meeting when all three of them met and Ton lent Ochoa some money. Ho was the middle man. The \$6,000 that was deposited into Ho's banking account was from Ochoa paying Ho back from the money that Ho had given him. There was also a deposit of \$3,000 and Ho thinks that was from when he sold his bike. He didn't tell Ton what he felt until he actually thought something wasn't right.

Cruz and Ochoa were good friends and they went out together a lot. He heard Cruz talk to other people about flipping houses. Ho went to Cruz when he thought something wasn't right about Ochoa. At one point Ochoa showed Ho property addresses and photos and showed him a bank statement with money. It all seemed real. When Ochoa would talk about it he made it seem like it was such an adventure that you could make a lot of money. When Cruz talked about it, it was in a social context and he was just asking questions about it. Ho



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was more like a co-worker with Cruz. He believes Ochoa still owes him between \$15,000 and \$17,000.

**Frankie Elias**

Frankie Elias testified telephonically. He is currently a civilian living in Lancaster, California. He was in the Marine Corps from 2004 to 2009 and was in MALS 16. He adopted his statement made to NCIS of 14 July 2005. In June or July 2004 Ochoa asked him if he wanted to buy a truck from him. He said he just bought it and he was going to put a lift on it. He wanted \$15,000 for the truck. He showed him the registration. Elias trusted Ochoa as an NCO and he had never bought a car before. Ochoa told him he bought it a week prior. About the time the investigation started, Elias was supposed to get the truck but he never got it and is out \$15,000.

**Raymond Ochoa**

Raymond Ochoa testified telephonically from San Antonio, Texas. He is a detective in the Bexar County Sheriff's office in San Antonio. He is in the criminal investigative division. He is the half brother of Ochoa. They have the same father but different mother. Back in September 2010 he spoke to a U.S. Marshall in his office. It was his day off and the Marshall asked him to come into his own office. They told him there was a warrant for his brother's arrest and asked him if he knew where he was. He told them no and said he would do what he could to find him. He went to his stepmother's house and she gave him Ochoa's phone number. Raymond called Ochoa and talked to him about what was going on. Ochoa told him he wanted to turn himself in. Ochoa told Raymond that he was tired of being on the run and wanted to get it over with. They agreed to meet off Highway 90. Raymond and his other brother Ryan met Ochoa and then called the U.S. Marshall. They told him their brother wanted to turn himself in. So they met the U.S. Marshall. Ochoa was in the brother's car and when the Marshall arrived Ochoa got out of the car and went over and got into the Marshall's car. Ochoa had had a baby and he was nervous and scared. Before this, Raymond had not spoken to Ochoa for a few years.

**Analysis of the Charges.**

**Charge I: Article 86**

**Specification 1:** The specification is in proper form. Reasonable grounds exist to believe that the accused committed this offense, except for the apprehension language. IE-3 contains DD Form 616, which documents his dates of unauthorized absence. Numerous witnesses also testified of his absence and his status as a fugitive. There is evidence to support that Ochoa turned himself into the U.S. Marshall; therefore, I recommend that the language "was apprehended" be deleted from the specification.

**Charge II: Article 121**

**Specification 1:** The specification is in proper form. Reasonable grounds exist to believe that the accused committed this offense. The oral testimony of Frankie Elias and his written statement to NCIS differ. He stated that he paid Ochoa \$15,000 for the truck but in his written statement he paid him \$16,000. Since his written statement was made right after the incident, I believe the amount is \$16,000 vice \$15,000. The specification should remain the same. Ochoa took advantage of this unsuspecting lance corporal and stole \$16,000 from him. Elias never received the truck.

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**Specification 2:** The specification is in proper form. Reasonable grounds exist to believe that the accused committed this offense. Charla Kos testified that Ochoa still owed her \$500. He told her about his real estate dealings and that he could double her money in a month. He told her he had a real estate license and an account with \$500,000 in it. It appears these were all lies in order to get her money. He also made dozens of excuses as to why he couldn't get her the money back to her.

**Specification 3:** The specification is in proper form. Reasonable grounds exist to believe that the accused committed this offense. Jose Rivera testified that Ochoa said he would invest his \$7,000. When Rivera followed up with him several times he would always make excuses. Rivera's testimony differs from his statement to NCIS. During his testimony, he stated that Ochoa gave him back \$4,000, but in his written statement, he stated that Ochoa only gave him back \$2,000. I recommend keeping the specification at \$5,000 that Ochoa allegedly stole from Rivera.

**Specification 4:** The specification is in proper form. No reasonable grounds exist to believe that the accused committed this offense. Charles Burke did not testify nor could he be located by NCIS. Furthermore, Lt Woods testified that Burke received his money back from Ochoa. The written statements by both Lt Woods and Burke indicate Burke never received his money; however, Lt Woods testified specifically that Burke got his money back. He also testified that they were taking Ochoa to small claims court and that is when he paid Burke back. This was not mentioned in either Woods' or Burke's written statements. I recommend dismissing this specification.

**Specification 5:** The specification is in proper form. Reasonable grounds exist to believe that the accused committed this offense. Lt Woods testified that he gave Ochoa \$2,000 to invest in a foreclosed home. The date expired when he was to receive his money back and he never paid him back his original investment. Although Ochoa states that he had every intention of paying people back their money, possibly indicating a wrongful appropriation charge, the larceny charge should still remain. The fact that there is no evidence of any investment in real estate and that money deposited into his bank account was immediately spent leads a reasonable person to believe that Ochoa lied to Lt Woods and scammed him out of his money.

**Specification 6:** The specification is in proper form. Reasonable grounds exist to believe that the accused committed this offense. SSGT Russell testified that he gave Ochoa a total of \$20,000, \$12,000 of which he has yet to get back. Ochoa told him he was going to triple the money by buying a foreclosure. He never bought a foreclosure. Then he told Russell if he gives him \$10,000 more, he will combine that with the money he still owed him and purchase a house for \$50,000 for him and his wife. Ochoa never purchased the house. When Russell asked him about his money, Ochoa told him he would think about it and thereafter made excuses. He gave Russell \$8,000 of his money back.

**Specification 7:** The specification is in proper form. Reasonable grounds exist to believe that the accused committed this offense. Phong Ho's oral testimony and his written statement are inconsistent. He does not seem to remember any details. From his oral testimony, Ochoa owes him between \$15,000 and \$17,000. From his written statement he states that Ochoa owes him about \$16,000. From his written statement, I calculate that Ochoa still owes him \$14,700. Ho paid him a total of \$23,700 and Ochoa paid him back a total of \$9,000. From his testimony and his written statement, however, it appears that Ochoa lied to him about the "investments," lied to him about the

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money paid back to Ton and his dealings with other Marines. Furthermore, Ochoa sold him a bike with no title and never gave him the bike after Ho paid him \$12,000. Ochoa also asked him for a loan to buy a bike for \$5,700. When Ho asked for that money back, Ochoa told him he already invested it. That money was not for investing, it was to help him finance a bike. Ochoa lied to Ho to accumulate money and never had the intention of paying him back.

**Specification 8:** The specification is in proper form. Reasonable grounds exist to believe that the accused committed this offense. Sgt Ton testified that he gave Ochoa \$3,000 for maintenance of a house that Ochoa said he was going to sell. Ton gave him the money on 30 August 2004. For this specification, the date should reflect August vice October. Ton never received this \$3,000 back from Ochoa. Based on all of the emails that Ton sent Ochoa (that are mentioned in his statement to NCIS), the several bad checks that Ton said Ochoa wrote him, and the apparent faulty closing/escrow paperwork Ton said that Ochoa showed him, there are grounds to believe that the accused committed larceny.

**Specification 9:** The specification is in proper form. Reasonable grounds exist to believe that the accused committed this offense. Ton testified and he wrote that he gave Ochoa \$34,000 in cash plus an original \$3,000, for a total of \$37,000. Ochoa had written him a check for \$8,000 and \$3,000 when he paid Ton back his original "investment" of \$11,000. Ton deposited \$8,000 but delayed in depositing the \$3,000. When Ochoa and Jimmy approached Ton for \$50,000, Ton said that he would give them \$34,000 plus the \$3,000 check that he never deposited. The specification should reflect an amount of \$37,000 and the year should be changed to 2004 vice 2005.

**Specification 10:** The specification is in proper form. No reasonable grounds exist to believe that the accused committed this offense. Charla Kos testified that she spoke to Jessica Bennett and Jessica had indeed received the title to the vehicle she purchased from the accused. I recommend dismissing this specification if that fact can be verified.

**Specification 11:** The specification is in proper form. Reasonable grounds exist to believe that the accused committed this offense. Anders testified that he gave Ochoa \$5,000. In his written statement he said that after 5 months Ochoa gave him back a total of \$3,500 in 3 separate checks, leaving a balance of \$1500. Ochoa told Anders that he had a real estate license and that he bought and sold houses. There is no evidence of a license or any purchase/sale transactions of a house. It appears that Ochoa lied to him about having a real estate license just to get his money.

**Specification 12:** The specification is in proper form. Reasonable grounds exist to believe that the accused committed this offense. David Bell testified that he gave his money to Ochoa and Ochoa did not pay him back. When Bell asked for his money, he stated that Ochoa wrote him a bad check. Ochoa had told him he was investing in foreclosures. From the circumstances surrounding this transaction, like the others it can be inferred that Ochoa stole the \$5,000.

**Specification 13:** The specification is in proper form. Reasonable grounds exist to believe that the accused committed this offense. Jose Garcia made a statement to NCIS in July of 2005 and he stated he gave Ochoa \$3,000 to invest in a house. NCIS has since tried to track down Mr. Garcia but to no avail. Obviously, if he cannot be located this specification should be dismissed. I recommend keeping the specification in case Mr. Garcia is found.

**Specification 14:** The specification is in proper form. Reasonable grounds exist to believe that the accused committed this offense. From the memo written by Tim Herington who later swore to it before this Article 32, it appears that Ochoa lied to him about purchasing 4 jet skis. He planned it in detail and kept on asking for more money to close the deal on the jet skis. When they went to go pick them up, Ochoa did not allow Mr. Herington to go into the store. He came out with no jet skis. Later, Mr. Herington went to the jet ski store and asked about the deal. The manager told him that he believed Ochoa was going to write a bad check and that he had never heard of the so called friend who had made the original deal. It appears that no money ever went to the jet ski shop. Ochoa created this elaborate scheme to steal money from Mr. Herington. The sworn memo, along with a copy of the checks, make it unclear as to how much money he actually gave Ochoa; however, the "contract" states that Herington gave Ochoa \$18,500.

Comments on the Investigation.

There is no evidence that a home was ever purchased by Cpl Ochoa. There is no evidence he had a real estate license. He stated to people that he bought and sold houses and that was how he made his money but there is no evidence of him ever owning a house. A look at his Navy Federal Credit Union financial statements reveals that in early 2004 he had no money in his bank account and that at times he was in the negative. Whenever there was a big deposit, he would immediately withdraw the funds, make big purchases, buy plane tickets or would withdraw large amounts of money at casinos. He might say in his unsworn statement that he intended to give everyone's money back to them; however, there is no indication from any other testimony or evidence that he intended to give the money back. He did pay some people back part of the money he owed them; however, he was just shuffling money around from one party to the next. From all of the witness statements, and the bank statements of Ochoa, one can infer that Ochoa had no intention of paying people back. When he was withdrawing large amounts of cash at casinos, and making huge purchases at Fun Bike Center, "Hot Body Racing," Honda, San Diego Stereo, and EZTOM.COM (online ticket sales), along with several plane tickets, he had no intention of "investing" people's money or paying them back. For one example, Ochoa paid EZTOM.COM \$2,500 on 15 Sep 04, \$3,500 on 16 Sep 04, \$750 on 20 Sept 04.

**SSgt Cruz**

SSgt Cruz was mentioned several times during the investigation. It is the defense's contention that SSgt Cruz was the Mastermind and was doing all of the real estate investments. The accused claims he gave all of the money to SSgt Cruz. The accused made a statement to NCIS in July 2005 where he admits to trying to invest other people's money. He never mentioned SSgt Cruz. All of the witnesses said that they gave their money to Ochoa, not SSgt Cruz. There was no mention of SSgt Cruz being involved in the investments. SSgt Cruz's statement states that he never had any real estate dealings with the accused.

**Accused Unsworn Statement**

Cpl Ochoa claims that he gave money to SSgt Cruz to invest in the house he was buying. SSgt Cruz told him he wanted to "flip" houses. Cpl Ochoa said at most he kept \$100 from each person and gave SSgt Cruz between \$50,000 and \$70,000. He also claims that he never went to Sgt Ton for money and Sgt Ton never gave him money directly. He said Ton and Ho were dealing with SSgt Cruz. Cpl Ochoa also said that Charla Kos never gave him money for investments and that they would just borrow money from each other. Ochoa claims that he bought some bikes for Maj Herington and paid the difference in

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price. Cpl Ochoa said that he does not remember what he did with Maj Herington's money regarding the jet skis. He also stated that SSgt Cruz was asking for money and Ochoa told him that he didn't have any. He only had Maj Herington's money for the jet skis. SSgt Cruz pleaded with him so Ochoa gave him Herington's money. He never intended to keep the money.

Regarding the truck that Elias bought, Maj Herington had a friend who owned the truck. Maj Herington took Ochoa to see his friend so Ochoa wrote the friend a check for the truck. He received the title, registration and license plate in the mail from the friend. Then he needed money so Ochoa sold the truck to Elias. He showed Elias the title so Elias bought it. Ochoa never gave the title to Elias but Elias paid him anyway. Ochoa stated that he never got possession of the truck.

To explain the bank withdrawals at the casinos he said that he gave the money to SSgt Cruz because he never had any money.

Cpl Ochoa went UA because his previous civilian defense counsel Kenneth Norgard (sp) said that Maj Hackle (the detailed defense counsel) was a gopher. He also said that your trial is tomorrow and I need \$18,500. He told Ochoa that he was facing jail time of 60 years. He had given Mr. Norgard \$23,000.

Conclusion.

Based on the evidence submitted and the testimony of the witnesses, I conclude that reasonable grounds exist to believe that the accused committed the offenses alleged, with the exception of possibly Specifications 4, 10, and 13 of Charge II. The appropriate forum for the offenses charged is a general court-martial. The accused is alleged to have stolen tens of thousands of dollars from his fellow Marines on multiple occasions. In addition, I believe that the accused is placing blame on SSgt Cruz who he never mentioned before and is now nowhere to be found. The accused stated that he wants to pay everyone back their money, indicating that he did in fact take their money and used it, yet he places the blame on SSgt Cruz. Lastly, the accused went UA right before his original Article 32 was supposed to take place and has been UA for over 4 years. The charges warrant adjudication at a general court-martial.



D. N. FITZ