

CREATIVE MOTION PRACTICE

by

Sam Dennis & John A. Lentine

BEING A
LAWYER

— IS EASY, IT'S LIKE —

RIDING A BIKE

EXCEPT THE BIKE IS ON FIRE

YOU'RE ON FIRE

EVERYTHING IS ON FIRE

AND YOU'RE IN HELL

I DON'T FILE MOTIONS BECAUSE.....

● OUR EXCUSES

- I already get discovery from DA's office so no need to file motions.
- The Court has a standing Order on discovery so no need to file motions.
- The case is simple and will probably resolve any way so no need to file motions.

● THE UGLY TRUTH

- I'm super busy and don't have time.
- It's a waste of time because I don't get much out of filing motions.

Thou Shalt
Change The
Game

**I don't wanna be a product
of my environment**



**I want my environment
to be a product of *me***

ORIGINAL REPORT SUPPLEMENTAL REPORT

PAGE 1 OF 2

 INVESTIGATION REPORTS (CONFIDENTIAL)

DEFENDANT: Peak, Louis III
 : 1003 1/2 W. Hill Ave
 : Valdosta, Ga 31601
 OFFENSE: Poss. Cocaine / Marijuana
 VICTIM: STATE OF Georgia
 LOCATION: 300 Blk W. Hill Ave

DATE: 5-30-00 TIME: 1832CASE INVESTIGATOR: EASON E

DETAILS

On Tuesday May 30, 00 at 2332 hrs I stopped a B/m on a bicycle at the 300 Blk Wells st for no light. B/m later identified as Louis Peak III 1003 1/2 W. Hill Ave stopped off of the bicycle and handed me his drivers Licenses. I explained to Peak the reason he had been stopped and began checking warrants through dispatch. While checking warrants through dispatch, I told Peak I was going to check him for weapons. I then asked for permission to search his pockets? Peak stated, "I have not done anything wrong", I really do not want you to check my pockets. I was suspicious Peak may have a weapon or illegal narcotics in his pockets, so I asked him specifically if he had a knife, gun or razors in his pocket? Peak stated "No" I asked Peak did he have illegal narcotics in his pockets? Peak ~~hesitated~~ then he passed gas ^{and} said ~~I'm sorry I farted~~. I began patting the outside of Peak pockets while he was telling me what was in each pocket. In Peak front left pocket I felt what appeared to be plastic bags or soft tissue with something firm inside. Peak stated that was his pocket change. I asked Peak to take it out. Peak reached in his front left pants pocket and pulled out a clear plastic bag of marijuana and said "here". Peak was placed under arrest at this time. During the search of Peak incident to no lawful arrest

* Located a pack of New Port cigarettes in his back left pants pocket.

A STATUS: ACTIVE CLEARED BY ARREST EX. CLEARED UNFOUNDED

REPORTING OFFICER

EASON E

NUMBER

6331

APPROVING OFFICER

McMurry

NUMBER

U36005-30-00

MOTION TO SUPPRESS FOR SMELLY PROBABLE CAUSE

MAY-11-01 08:57 AM DISTRICT ATTY OFFICE SJC 912 245 5281

P. 01

IN THE SUPERIOR COURT OF LOWNDES COUNTY
STATE OF GEORGIA


STATE OF GEORGIA S INDICTMENT NO. OOCR-709
VS. S
LOUIS PEAK, III S

ORDER

The Defendant's Motion to Suppress having come before this Court for a hearing, and the Court having considered evidence and argument of counsel, it is

HEREBY ORDERED, that Defendant's Motion to Suppress be GRANTED.

SO ORDERED this ~~10th~~ day of May, 2001
nunc pro tunc the ~~17th~~ day of ~~October~~, 2000.


H. ARTHUR MCLANE
Chief Judge
Superior Court of Lowndes County

ORDER PREPARED BY:

ROBERT T. GILCHRIST
Assistant District Attorney
Southern Judicial Circuit
State Bar No. 294641

THREE RULES OF CREATIVE MOTION PRACTICE

BRAINSTORM ALL FACTS AND ALL LEGAL ISSUES:
(WHAT IS THEIR NATURAL AND LIKELY "END")

-DECIDE WHICH "END(S)" ARE CONSISTENT
WITH YOUR THEORY OF THE CASE AND WHICH
ONES MAY SERVE A "STRATEGY" AND FILE
MOTIONS ACCORDINGLY

-DRAFT ACCORDING TO THE ANATOMY OF A
MOTION

WHAT DO MOTIONS DO FOR BRAINSTORMING?

ISOLATE FACTS

CHANGE SOME FACTS or HOW WE WANT THEM INTERPRETED/PERCEIVED?

REQUIRE ADMISSIONS FROM THE STATE THAT MAY BE LOGICALLY INCONSISTENT OR INESCAPABLE

ALLOW US TO CONTROL THE PROCESS

● PREPARATION

PREPARATION BREEDS FEAR AND RESPECT

- GET TO KNOW YOUR CLIENT
- Be the Owner of the facts
- Pre trial investigation
- Study discovery
- Develop the Theory of the Case and Themes
- Develop themes not just for trial, but for *talking* with prosecutors and judges

Possible Themes For Prosecutors

- Man I love this case
- Have you looked at that case where you FAILED to charge the complainant OR you know the that case where that the complaint lied to the cops?
- You actually gonna make me try that case?
- Are you gonna have all the witnesses there or do you want me to subpoena them (pre-trial hearings or trial)
- You should kick my ass in this case, but in a few minutes your gonna have to

Possible Theme for a Judge

- Judge, because of the victim they chose in this case we are gonna be here a while
- Judge the prosecutors said their hands are tied and we are going to have to try this case
- Judge we have not been given any real choice so we are gonna try this case

RULE ONE

- **BRAINSTORM FACTS:**
 - FACTS BEYOND CHANGE
 - SHITTY FACTS BEYOND CHANGE
 - EXAMPLES:
 - DEAD BODIES
 - STATEMENTS
 - GUN
 - ANY PHYSICAL EVIDENCE (MAYBE)

SOME STARTING QUESTIONS

- CAN THE FACTS, SPECIFICALLY THE SHITTY ONES, BE “CHANGED”
 - IS IT A FACT?
 - OR IS IT AN ALLEGATION STEMMING FROM THE STATE’S *INTERPRETATION* OF A FACT?
- EX: THE STATEMENT PROVES JOHNNY’S INNOCENCE. IT IS NOT A “CONFESSION”

RULE TWO

OBJECTIVES OF MOTIONS

(*TRIAL CENTERED*)

- DEVELOP YOUR THEORY
- HELPS YOU SETTLE ON THE THEORY
- DRIVES YOUR THEORY
- DRAFT MOTIONS ACCORDINGLY

RESOLUTION CENTERED

- MAKE STATE WORK
- INCREASE PRESSURE ON STATE AND THEIR WITNESSES
- CHANGE THE BENCH'S PERCEPTIONS



RULE THREE

ANATOMY OF A MOTION

- **TITLE**
- **RELEVANT FACTS**
- **RELEVANT LAW**
- **APPLICATION OF LAW TO FACTS**
- **PRAYER**

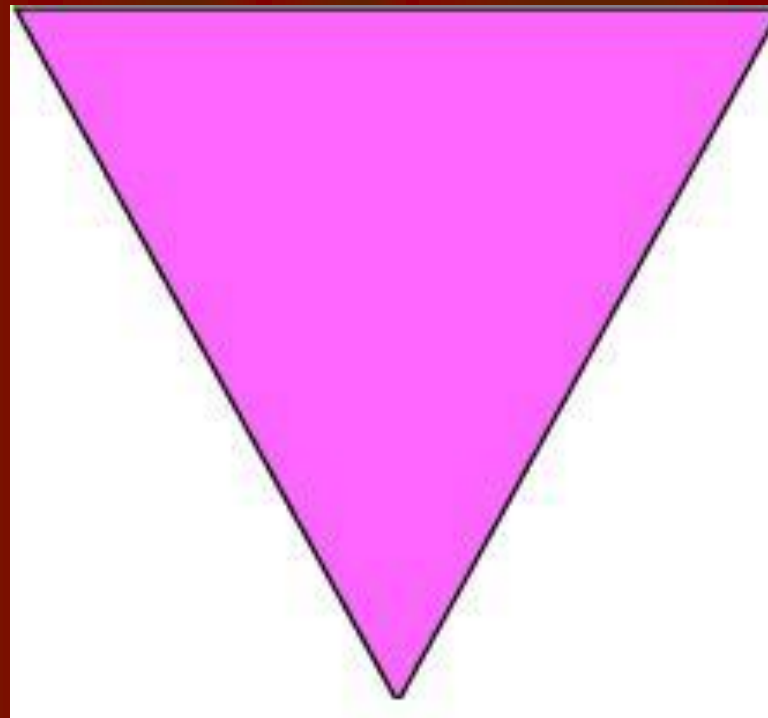
TEMPLATE FOR DRAFTING A MOTION

- DRAFT IN A LOGICAL PROGRESSION TO A SPECIFIC GOAL

General

to

Specific



RELEVANT FACTS

- ONLY THOSE FACTS THAT ARE GERMANE TO YOUR MOTION

EXPLAIN HOW THOSE FACTS INTERPLAY WITH WHAT YOU WANT AND WHY THE LAW SAYS YOU SHOULD GET IT....OR BETTER YET, WHY THE JUDGE THINKS YOU SHOULD GET IT!

RELEVANT LAW

- ANY AND ALL CONSTITUTIONAL PROVISIONS AND AMENDMENTS (both Federal & State)
- ALWAYS FEDERALIZE!
- STATUTORY & CASE LAW, RULES OF EVIDENCE, PROCEDURE AND PROFESSIONAL RULES OF CONDUCT,
- AND DON'T FORGET *STRICKLAND!*

A WORD ABOUT "*GOOD FAITH*"

- IT IS "GOOD" TO HAVE "FAITH" IN OUR SYSTEM
- "GOOD FAITH" DOES NOT MEAN SUCCUMBING TO BAD LAW WITHOUT A FIGHT (WHEN IN DOUBT. . .FILE IT!)

PRAYER/REMEDY

- WHEREFORE . . .
- DEMAND WHAT YOU WANT
- COURT WILL NOT NORMALLY GIVE YOU SOMETHING YOU HAVENT ASKED FOR
- UNLESS IT IS BAD!

TITLES

- NO MAGIC WORDS
- ONLY LIMIT IS YOUR IMAGINATION
- MAKE IT A *GRABBER*
- ONCE SEEN HAS TO BE READ AND HEARD

SOME EXAMPLES

- MOTION FOR PRODUCTION OF ALLEGED VICTIM JACKSON'S INCONSISTENT STATEMENTS, FABRICATIONS AND LIES TO POLICE OTHER THAN THOSE PREVIOUSLY MADE KNOWN TO THE DEFENSE
- MOTION TO REVEAL THE DEAL
- MOTION FOR SPECIFIC DISCOVERY DISCLOSURE OF ALL MATERIALS AND INFORMATION PERTAINING TO "THE CREEPY MAN" PREVIOUSLY NAMED AS A POSSIBLE SUSPECT BY A STATE'S WITNESS
- MOTION TO SUPPRESS ILLEGALLY OBTAINED EVIDENCE BASED ON BARE BONED BOILERPLATE AFFIDAVIT INCAPABLE OF SUPPORTING PROBABLE CAUSE

LANGAUGE OF MOTIONS

- ***ACTIVE***
- ***ELIMINATING LEGALESE WHENEVER POSSIBLE - KEEPING IT SIMPLE***
- ***ELIMINATING BOILERPLATE FROM FORM MOTIONS***
- ***PERSONALIZE***
- ***INSTRUCTIVE***
- ***PERSUASIVE***

THE OPENING SALVO

- Generally we should *always* file motions..
- In every case...
- All the time, pretrial, during trial, afterwards...
- It is a process without end, but always with purpose...
- Many motions are generic to all cases while others more case specific....
- TRY THESE TO START.....

ROUND ONE!

- Initial Motion for Production of Discovery
- Motion to Preserve Evidence (FLIE immediately!)
- Motion to Disclose Experts
- Motion to Extend Time to File Pretrial Motions
- Motion to Suppress Statements and whatever else (don't got any fine then say it for the record and/or grant it)
- Motion for Notice of Intent to Use Similar Act Evidence (Rule 404(b)) and to Seal the Response
- Motion to Disclose Impeaching Information
- Motion to Disclose Favorable Evidence (*Brady, Kyles, Giglio*)
- Motion to Disclose Witness List
- Motion for In Camera Inspection of Grand Jury Testimony of Witness Statements
- Motion to Strike Alias

INDEXING AND NUMBERING

- Create an Index of Motions to File with multiple motions
- Create a numbering system
- Use client's initials and sequential numbering of motions (i.e. JL-1), place at right header of each motion corresponding to Index.
- YOU now control the motion process!!
- And don't forget the proposed ORDER!

“LEADING MOTIONS”

- HOW TO MAKE THE PROSECUTORS CHOOSE THEIR THEORY AND LOCK THEM IN?
- MOTION FOR MORE FOR MORE DEFINITE STATEMENT OF FACTS
- MOTION TO RESPOND TO ALL DEFENSE MOTIONS IN WRITING

DESTROYING SAFE HAVENS THROUGH MOTIONS

- MOTION TO VIEW AND INSPECT THE SCENE
- MOTION FOR PERSONNEL FILE OF POLICE OFFICERS(S)
- MOTION TO DISCLOSE THE CI & CI's HANDLER(S)
- MOTION TO INSPECT, EXAMINE AND TEST ALL PHYSICAL EVIDENCE
- MOTIONS *IN LIMINE* – TO ADMIT OR PRECLUDE ADMISSIBILITY OF EVIDENCE

"IN YOUR FACE" MOTIONS

- Motion to Prohibit State from Using the term "Victim"
- Motion to Prohibit Improper Bolstering or Vouching
- Motion to Determine Competency of Witness (child)
- Demand for Confrontation and to bar all hearsay
- Motion for SOP and Protocols
- Motion for Notice of State's Intent to Use PowerPoint Presentation and for pretrial evidentiary hearing to determine admissibility of such presentation during the trial
- Motion to Compel / Motion for Noncompliance "Data Dump"
- Motion to Dismiss for Spoliation of Evidence
- Motion for TAIN T Hearing

MORE MOTIONS

Stand your Ground/Immunity motion

Motion to Dismiss for Presumptively
Prejudicial Pre-Indictment Delay

Motion for Cautionary Instructions (i.e. in
voir dire or for photographs)

Motion for Return of Property

Motion to Allow for Proper Clothing at all
Hearings

REACTIVE MOTIONS

- Objection to State's attempt to use Certificate of Analysis
- Objection to State's attempt to offer improper character evidence (404(b))
- Objection to State's attempt to use presumptively inadmissible remote convictions
- Motions to Suppress (ID, Statements, Physical Evidence)

USING THE RULES

**RULES OF EVIDENCE
AND OF
CRIMINAL PROCEDURE**

"RULES" MOTIONS

- Motion to take Notice of FACTS and Instruct the Jury of the Same (R. 201)
- Motion to Disclosure of ALL Facts and/or Data Underlying Experts Opinion (R. 705)
- Motion to Disclose Lay Opinions (R. 701)
- Motion to Disclose Any Evidence of Bias, Prejudice or Interest (R. 616 – Bias is never collateral")
- Offers of Proof (R. 103)

MORE ON "RULES" MOTIONS

- Use all the "Rules"
- Especially those rules pertaining to PURPOSE and CONSTRUCTION (Rule 1.2 MISS.R.CRIM.PRO.)
- ADD the PURPOSE AND CONSTRUCTION rules to all your motions (simplicity in procedure, fairness in administration, elimination of unjustifiable expenses and delay)

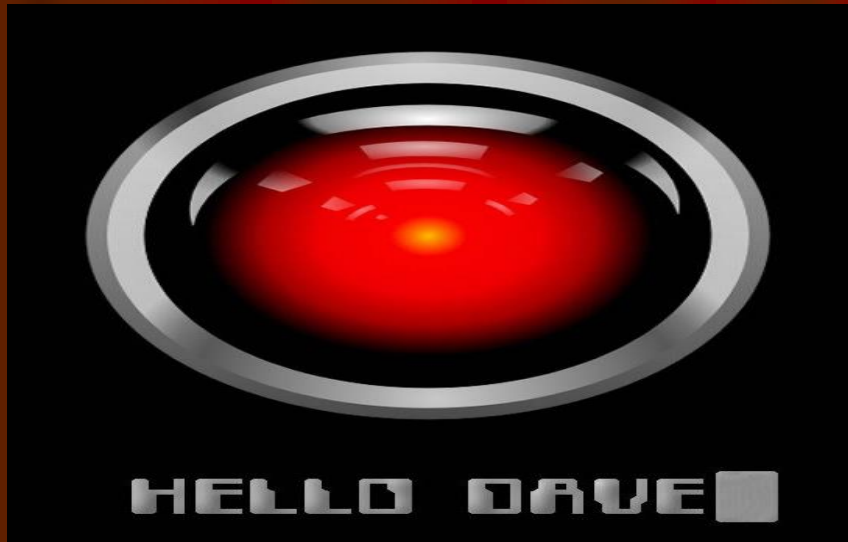
EX PARTE MOTIONS

- THE BEST!!
- USUALLY FOR RESOURCES (\$\$\$)
- GETS YOU ONE ON ONE FACE TIME WITH COURT
- GETS YOU THE ABILITY TO PRESENT SOME OF YOUR THEORY TO THE COURT
- ALLOWS YOU TO PERSUADE AND SHAPE THOUGHT PROCESSES TOWARDS THE CASE

MOTIONS AND MACHINES



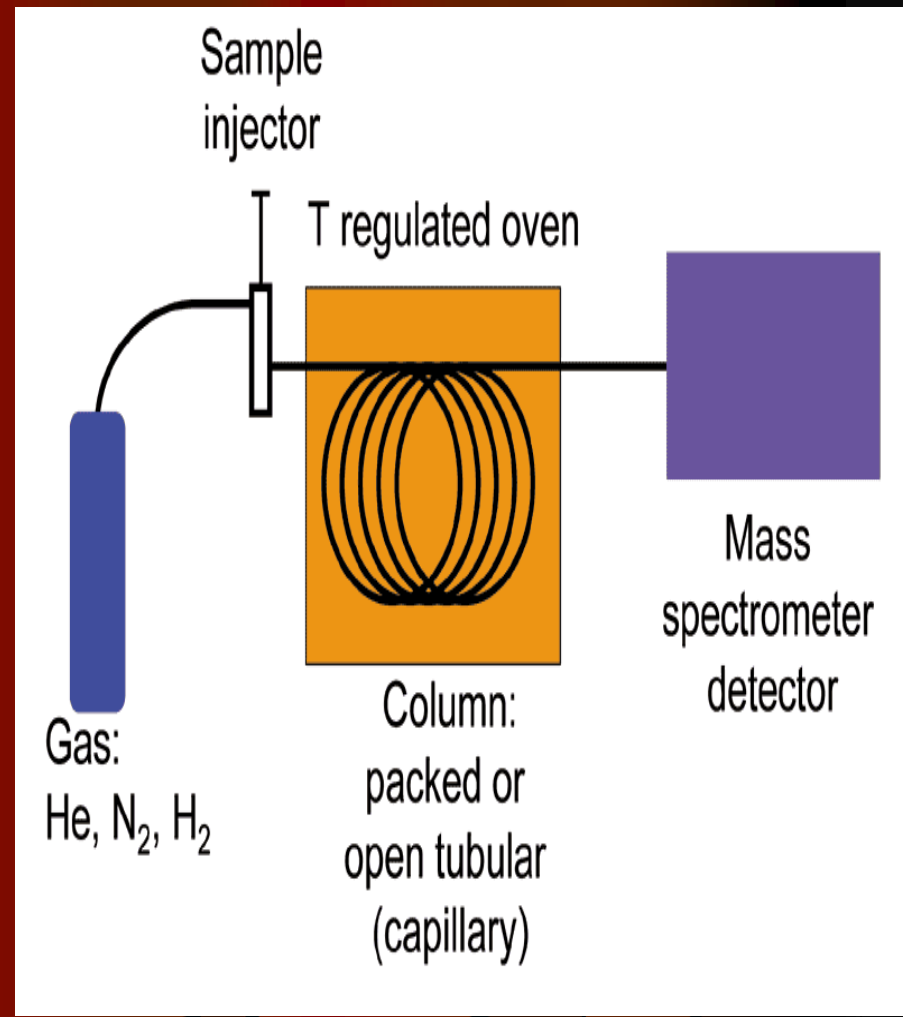
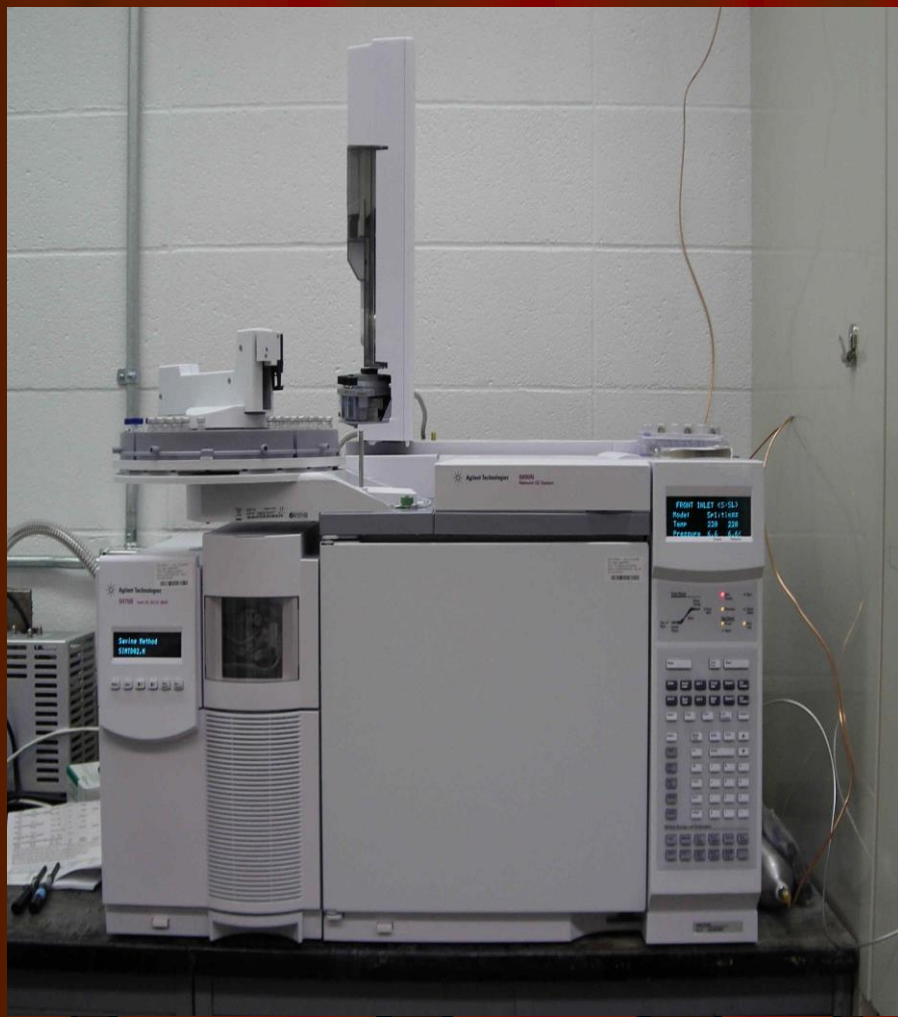
MACHINES ARE....



MOTIONS ON MACHINES AND THAT EXPERT *BEHIND THE CURTAIN*

- Motion to Disclose Experts, basis of opinions, CV, and data and information used to form basis of opinions
- Motion to Disclose Maintenance Records and Logs of.....whatever the machine is
- Motion for Independent Testing and..
- Motion for Daubert Hearing as to.....
- Motion to Press the Button

GCMS



POST TRIAL AND PLEA RELATED MOTIONS

- MOTION FOR J.A. AFTER TRIAL
- MOTION FOR NEW TRIAL
- MOTION FOR PROBATION, SPILT SENTENCE, OR ANY SPECIFIC TYPE OF SENTENCE

MEMORANDUMS IN SUPPORT OF...

- Youthful Offender Status
- Probation
- Split sentence
- Community Corrections
- Any other type of Sentence

REALITIES OF MOTION PRACTICE

- NO LIMIT TO THE NUMBER OF MOTIONS
- NEW IDEA IS A NEW MOTION
- OBJECT IS NOT ALWAYS TO WIN THE MOTION
- RATHER THE OBJECTS ARE TO DEVELOP THE MOTION PRACTICE SO THE THEORY AND THEMES OF THE CASE WILL BE BETTER DEVELOPED FOR TRIAL, BY GATHERING INFO OR ELIMINATING EVIDENCE, OR TO BLOW THE CASE UP IN ITS INCEPTION

IN THE END



**TODAY I WILL DO
WHAT OTHERS WON'T,
SO TOMORROW I CAN DO
WHAT OTHERS CAN'T**

believe-toachieve.tumblr.com

WAKE UP.
KICK ASS.
BE KIND.
REPEAT.