Nick Nanton and Andrew Sherman Interview – Edited Version 10/25/11

Nick: First of all, I strongly advise everyone to go to Amazon, ...go to your local bookstore, ...do whatever you have to do and get Andrew's book. It will help you grow your business fast and right. It is what Andrew is known for. So make sure you get out and get it.

Andrew, today I want to dig in to some of the things in your book, *Harvesting Intangible Assets*. You and I can both agree it may not be something that hops off the shelf at your average start-up entrepreneur, but it's something they absolutely need to know more about. So I want to dig in a bit more and help people understand more about why they need to know how to harvest intangible assets. And so, I guess before we even get into intangible assets, give me a little bit of an insight on what you consider intangible assets.

Andrew: Well I think the key point is that every company has them. I don't care if you're high tech, low tech, Fortune 500, middle market, small company – every company has tangible assets (e.g., desks, chairs, computers) and intangible assets. The accountants used to call it goodwill. We finally started realizing five or ten years ago that goodwill was not an adequate line item to describe relationships, channels, know-how, show-how, systems or processes. Your average start-up entrepreneur may not have developed those things yet, but there are millions of smaller companies around the country and around the world that do have these assets. But it's kind of like coins under the sofa cushion. If you don't get up and look under the sofa cushion you'll never know what things of value are right under your seat.

Nick: Got it. Okay cool. So now let's talk a little bit about innovation. Certainly, we think of the recent passing of Steve Jobs, who I certainly consider to be an amazing innovator; though I think innovation is a hard thing for people to understand. And innovation, obviously, is what really drives this sector in business. I think that's because it's truly unique. Its the unique relationships and unique products, services, all those things – in my mind, they are really the intangible assets. Again, you can probably define it better than I can.

But if we were to talk about innovation, what would you say what's wrong with, or at the very least, missing from, the standard business approach to innovation?

Andrew: All right, well there are a lot of sub-questions in that question. So let me pick it apart. First of all, Steve Jobs, may he rest in peace. One of the great innovators of all time. Steve Jobs, like Thomas Edison, believed in what I call customer-centric innovation and I talk about it in the book. It's innovating for the delight and pleasure of the customer, not suffering *Inventor Syndrome* – which is when the innovator is innovating to please his peers and not his customers. So let's get that out of the way.

Steve had many rules of innovation many of which I agree with, many of which are reflected in the book – even though obviously I didn't have the foresight to see his passing. As far as innovation being at the heart of what I'm talking about in the book, let me remind your listeners there's two types of innovation. First, there's *breakthrough innovation*, which is literally: send a man to the moon, a cure for cancer. They are the huge sort of 'breaking-the-paradigm' types.

Secondly, and its one of the things that we Americans are very good at, is *incremental innovation*. Think about it, Ray Kroc did not invent the cheeseburger. Tom Moynihan did not invent pizza. Howard Schultz did not invent coffee. Fred Smith did not invent overnight delivery. These are all incremental innovators bringing business model innovation, service innovation, channel innovation, branding innovation, packaging innovation. Just in the last week, if you picked up the newspapers, Heinz just came up with a new ketchup packet because they realize that most of us are eating French fries while driving a minivan – and we should have it in a cup, not in a packet, and that's the way you're going to start seeing it in fast food.

The Lion King was the number one selling movie last year. Hello? Lion King came out 15 years ago, but the digital version, the incremental innovation of Lion King moved ahead of all the brand new movies. Every company is capable of incremental innovation – even if they're not capable of, or don't have the budget for, breakthrough innovation.

Nick: Awesome. So everyone can innovate. That's really key. I do agree with what you said there, particularly with Jobs, an amazing innovator. Cool.

Moving from there into the book, *Harvesting Intangible Assets* again, I want to make sure everyone knows what it's called – *Harvesting Intangible Assets* – because they're going to want to get it; you focus on the importance of not just supporting innovation at the individual, team or department level, but also on fostering an organizational culture of innovation. That sounds like a daunting task to accomplish...most businesses don't have a culture in general. Actually, I guess they do, but not an intentional culture. And so, if you're telling people to foster an organizational culture of innovation, where do I begin? Where do I start to plant those seeds?

Andrew: Well Nick, it's a great question, and one that's really on my mind the most. If I could get a little bit political for a second, we are looking at a 9.1% or so unemployment rate, which everyone knows is completely unacceptable. We have protests on Wall Street. We've got all that stuff going on.

But the bigger crisis that no one's talking about, the elephant in the room if you will, is the 40 to 50% *under-employment* rate. Do you know that a study just came out in the U.K. that 59% of workers in the private sector in the U.K. are dissatisfied, somewhat dissatisfied or actively dissatisfied? In the U.S., the numbers are not far below that. Our *under-employment* rate is a bigger problem in the country than the unemployment rate. And what that means is that we have brain-power that's not being harnessed. We have people capable of doing things that they're not being asked to do at work. They're under-motivated, they're under-performing, they're under-appreciated, and they're underpaid. So, a culture of innovation begins with just a basic premise of putting people in jobs that they're capable of doing, and producing the productivity, results, creativity and innovation that they're capable of producing.

So that's like a fundamental rehash of our entire workforce. Now what can an entrepreneur do once they've started, to put the right people in the right seats on the right bus? Obviously, they can be innovators themselves. They can talk to their HR departments about creating the right rewards for innovation. Remember that the definition of insanity is if you keep doing what you're doing and then expect different results.

Well, if a company keeps rewarding, I'll give you a good example from the book. We worked with a large Japanese company that kept rewarding their engineers for patents issued. What do you think patents issued gets you in terms of revenues? It gets you nothing. The raw patent on the face of it gets you nothing.

Nick: Right, but it explodes your revenue if used correctly.

Andrew: What you just said is true if the company starts exploiting the patent. But the point I was trying to make is if you reward people just for getting patents issued, what are they going to do? They're going to file more patents. If you reward people for harvesting those patents, for creating new market opportunities, new revenue opportunities, new profit centers, new consulting services, new whatever, then you'll reward people for producing results from the patent. So you see the fine distinction I made.

But the point I was making is that if you just reward people for getting certificates on the wall, that's what they'll do. If you reward people for making revenues from certificates on the wall, that's what they'll do. And we still have a very archaic reward systems inside many companies, big and small, for rewarding innovation and for fostering true shareholder value from that innovation. You with me?

Nick: I am completely with you. And again, what Dave Foster said was that Steve Jobs did not have the *Inventor Syndrome* that you were talking about – where one guy's going to invent something for another inventor because there's really no audience they're catering to other than bonuses for getting another patent, which could be completely useless in the marketplace.

Andrew: Exactly. And so there's a lot of companies still out there whose reward and compensation systems are not geared towards driving innovation. I talk in the book about Google's 70/20/10 rule. Every employee could face getting fired at Google if they don't spend 70% of their time on their day job, 20% of the time on innovation around their day job, and 10% of their time on innovation not relating to their day job. And that's big stuff. Could you imagine someone as entrepreneurial as you or Jack being fired for not being innovative enough? *That's a culture of innovation*.

Nick: That is. So to the guy who says, "That sounds really 'new age-y' and 'lip service-y.' I'm a small company. I've got a bottom-line that I've got to meet. I've got a lot of employees. That sounds like, 'yeah, if I had \$800 billion dollars I could do that too'." What do you say to that guy?

Andrew: I'd say to him he's absolutely wrong. I have never ever, ever met a company that did not have some intangible asset that they could harvest and, if you don't have an intangible asset that you can harvest and I'm wrong, let's open up another can of worms. There are thousands of large companies, government labs and universities that have innovation; innovation that they're not harvesting and you could harvest with them. So even the smallest of companies with the tiniest of budgets could take advantage of the principles in the book, because if they can't harvest

their intangible assets, there are tons of unharvested fields of intangible assets out there that they can harvest.

Nick: Awesome. Love it. Now let's look at a couple of concrete examples of intangible assets because we talked about different kinds of innovation and knowledge, but let's talk about some concrete examples of intangible assets.

Andrew: Well, I'll give you a good example and it's from a small company. Okay? We worked with a small company a few years ago that was basically in the toy business. They had about 10 patents around a particular toy. I can't disclose details obviously, but the bottom line was when we studied their patents, we found up to 23 other applications of other products and services that sat inside their patent claims.

Now to your point, Nick, which I totally agree with – that company doesn't have the resources to exploit 23 new products or services. But that's why God created licensing. All they need to do is start writing up some of the lowest-hanging fruit among those claims, which included everything from military backpacks to stadium covers – and see if there weren't licensees out there for them. The licensing revenue from those applications of their patents could be very lucrative and highly profitable, because there's not a lot of cost attached to it. So that's a concrete example.

Tons of other concrete examples sit inside companies know how, show how, training systems, distribution channels. Almost every franchised company in the world is harvesting their intangible assets by leveraging and licensing their brands, their trade secrets, their systems, their purchasing discounts. What else is a franchise but a harvested field of intangible assets?

Nick: I love the way you put that. Real interesting. One time I went to a seminar on how to sell your business for the most money, and it was a great set up – in that the guy that was teaching the seminar obviously owned a company that helped people market their companies for more money, which is great. He was prospecting intentionally by education, which is what many of us do all the time. I love it.

But one of the coolest stories he told us was about this guy who had a machine shop in the Northwest Pacific, like in Oregon or so, and he was trying to sell his business. He manufactured, I don't know, ...maybe 50 pieces a year, ...maybe 100 pieces a year, that ended up going into big industrial machines. And the guy wanted to sell his company because he was going to retire. But the value he placed on it was like the equipment and maybe the one-time annual revenue, whatever it was, and he was ready to sell. Well another guy comes in and realized what he's doing in his business. It just so happens that the customer who he's selling his pieces to is John Deere. And so, there's this Japanese company that's been trying for five years to get distribution through John Deere. So he ends up selling the guy's company for like, I don't know, a multiple of 30 times or something ridiculous, to this Japanese company, because the intangible asset that they had was a distribution channel in a direct relationship with John Deere. And I just find that so amazingly fascinating. It's, to me, even less obvious than what else could we use our patents for? It was such a non-obvious point for so many people, but it really just hammers that point home - that you might not even know what you're sitting on until you get into an environment

with other people who've been in that place before, and start collaborating and figuring out where the value is here.

So I guess leading into that, I would say and I know you'd say, that innovation is a collaborative discipline. Why would you say that?

Andrew: Well that's exactly right. There's a company that realized that even if it may not show up on the balance sheet, their distribution channels, their relationship, their trusted brand was an asset that can be harvested.

There's another point made in the book that I know you can relate to - that goes back to work done up at NYU where they're looking at our nation's accounting systems and gap, and saying that only 15% of the true intrinsic value of S&P 500 is captured on its financial statements. If we're going to drive shareholder value and grow this economy, we've got to find that other 85%.

Nick: That's a crazy number. Wow! So its a collaborative discipline. I want to go back to that a bit because I think the problem is that with some people, especially with a lot of the people I work with – I'd like to say in the range from broke to \$4 billion – people on all spectrums of where they're going in business. So there's a guy who's sitting there by himself somewhere whose business is doing okay or pretty well, or maybe even terrible. Why would you encourage this guy to get involved in collaboration with others in order to really find the true innovation and harvest those intangible assets?

Andrew: Well it's up to them. I guess it's one of those things I shouldn't have to beg them to do. If he's interested in driving shareholder value, ...if he's interested in staying competitive, ...if he's interested in positioning his company one day for sale...I'll tell you this, if I'm sitting on intangible assets that have real value in the marketplace and I'm about to sell my company, I don't want my buyer finding that out in due diligence, because they're sure as heck not going to amend the purchase price in an upward manner based on what they find. I want to know what I'm sitting on at the start. I want to know what I have.

Now, if you choose not to harvest it, then you can be like the farmer who lets his corn rot in the field. It's your call. But at least, at least you owe it to yourself and your stakeholders and your employees and your family, to know the value of the corn that's sitting in your field.

Nick: And how would your typical business guy figure that out? Is it as simple as getting together with some guys in the same industry, different industries and kind of masterminding what he's on top of? Is there someone who specializes in that? Certainly I know you do, but who do people normally call, an IP attorney? How do you figure out what you're sitting on?

Andrew: Well I think you start, as we talk about in the book, with an IP audit, a strategic audit. That could be done by the right kind of lawyer. It could be done by a lawyer/strategist. It could be done by a combination of the two. But someone has to help you understand what your fields are capable of producing and what your fields have produced. And there's going to be an investment of some time and consulting fees in that, but if the company's instincts are that they

have these assets, then they probably do – and it's probably going to be a worthwhile medium to long term investment.

Nick: Got that. So you have to be willing to invest a little bit into it. Well, at the risk of a shameless plug that I'm not going to benefit from at all, which everyone will appreciate, there's only one guy I'd really trust to at least start with to figure out how to do that, and his name rhymes with Andrew Sherman. So glad to have you on the line. Everyone should check out if they're in a place where they want to figure that out.

This has been years ago, I probably spent two hours with you Andrew in the board room of one of Jack's companies, and the amount of stuff we came out with from that meeting on what we were sitting on, what kind of relationships we had, and what kind of relationships we needed, whether or not there were possible acquisitions and mergers, it just blew my mind! So I absolutely think everyone should get the opportunity to experience that, because it really can make your business explode. There's untapped, just huge waterfalls of income, that you could be finding if you were just to open your eyes to it and get out of the blinders you wear everyday, which most of us do. Kind of like working inside your business and everyone says, "You need to work on the business." But even beyond that, you need to figure out what there is to work on, and what you're just totally sitting on every day in the sofa. As you said, its the money in the sofa that you're sitting on without absolutely any clue on why you're doing it. So there's that.

Also in the book you stress the importance of Intrepreneurship. And that's Intrepreneurship with an 'I' instead of Entrepreneurship with an 'E'. Why do you think Intrepreneurship tends to be overlooked and misunderstood in so many companies? And I guess we probably need to explain to some people what Intrepreneurship really is.

Andrew: Well Intrepreneurship is essentially the practice of entrepreneurship inside a larger organization and it goes back to our discussion; our lively discussion about a culture of innovation. If you're a small-to-midsize company or even quite a large company, what the chapter talks about is how do you mimic the creativity and innovation that comes out of entrepreneurial companies by liberating people to be more intrepreneurial? They never leave their day job but they have profit-level responsibility. They have accountability. They have opportunities for ownership. They have budget accountability. How do you create an entrepreneurial-like experience inside your larger intrapreneurial culture? And a lot of the harvesting of intangible assets for midsize and larger companies is only going to happen if they create these intellectual capital agrarians as I call them in the book. These are people that are committed to farming without leaving their day job, because they kind of love where they work, but they want to be more intrapreneurial.

Nick: That's awesome. This is something I talk about a lot. I think a lot of companies are really afraid of this side of things, to create entrepreneurs within because their value might exceed what they earn. They might realize the value they have, instead of where they're at right now, and they might get recruited to go somewhere else. And I really love the analogy and I think there's been a book written on it. Its a free agent marketplace and with the advent of the Internet and basically just a flow of information in general, you have an opportunity in front of you that I think you can either take advantage of, or you can squander.

First of all, everyone inside your company has the ability to be an intrapreneur. Not only innovating on the inside, but also by creating sales messages and communication messages to the outside – even through tools like blogs and Twitter and Facebook where they're communicating what they know and what they learn and what they do through their eyes of what your overall company does. And I find it really intriguing that you could get a lot of business you're not getting right now, were you to foster the communication of your employees with those inside and outside. This happens because a different person is going to buy into your products or service from the eyes of a computer programmer than they are from the eyes of a sales guy or CEO. There's just so much untapped knowledge and viewpoints that you can go through.

So I love the fact that this all swarms around the same thing, and people might be very afraid of the shift in value and the balance of power as well. So if I allow my employees to become intrapreneurs I've got to figure out better ways to incentivize them. At some point we're all now on a very even, open-value scale. If the value of that employee, ...if the scale tips, and their value is way greater than the amount I'm compensating them, they're going to go somewhere else or someone's going to recruit them.

It's always been the fact that you've been able to see if the value of the employee was way under what you're paying them. But I just kind of love, ...I get really excited, about this kind of whole *free agent* marketplace where everyone can prove their value. It's pretty easy to see and the flow of information is easy to follow.

Andrew: I agree with you Nick. I think that in the context of Intrepreneurship, Boeing for example, is famous for doing technology spinouts where their employees become owners of a company where the spinout company licenses back from Boeing. Other companies are starting to look at that. It's a way to lose people without losing people, if their entrepreneurial instincts are really coming out. So I think that the beauty of what we're both talking about here is creativity and flexibility and being focused on shareholder value, more than your focus on noncompete clauses, and this whole phenomenon of open-innovation is starting to influence that too. We're all connected now through Web 2.0 in ways that we never imagined five or ten years ago. And is it as relevant where we draw a paycheck from as it is from where we're creating value?

Nick: I could not agree more, although where you create value you need to find a paycheck, right?

Andrew: Correct. I was going to say the converse of what I just said is not necessarily true.

Nick: Yeah, right. Exactly.

...And for those who don't know, you also talk about what's a CIO?

Andrew: CIO is a Chief Information Officer. There's a lot of CIO's out there. Then there's the Chief Innovation Officer. What I talk about in the book is a CHIPLE, a Chief Harvesting Innovation, in other words the point being there's not enough organizational chart accountability. If you're just going to dump it on the desk of the chief information officer, you're going to wind

up with an IT solution. If you're going to dump it on the desk of the chief innovation officer you may get a little bit better results, but it can't be a solo approach. I talk in the book about how it needs to be integrated with each HR, integrated with finance. There has to be internal disciplines around internal venture capital like allocation of budgets. There has to be HR involved for motivational rewards. So as many times as we can create titles, those titles will be meaningless if the person with those titles lacks the ability on a cross-functional basis to get things done, or if the board or CEO is not supporting their agenda 100%.

Nick: Got that. Cool. So you're advocating creating this position that is not already there but not just letting it fall under the kind of traditional thought of what a chief information officer would do because truly they are usually IT-oriented, data people. You're kind of advocating the creation of a more accountable position. It's not just information flow. It's how to harvest the information and innovate as well.

Andrew: Exactly. If you create the title and empower somebody to do the job, that would be a good start. But to really make it work and to create that culture of innovation, it's got to be much, much more than that.

Nick: Perfect. Yep. And along with it, it's got to have the support of everyone around them and all the other things you discussed. Cool. All right, so let's talk about the book again, where you talked about intellectual asset-management. How do you establish a system like that, and does it make sense for more than just high-tech companies?

Andrew: Well yeah. This is one of my hot buttons, not that the other ones aren't hot buttons, but think about it. If you made widgets and I came into your business and I said, "So show me your widget inventory management system." And you said, "Well we don't really have an inventory management system. We just ship a lot of widgets and we hope people buy them and sometimes when I have a gut feel about whether we need more widgets, we make more." I would look at you like you're 'nuts', right?

Nick: Yep.

Andrew: So if your primary asset is intangibles, how could you not have an intangible asset management system? And that's the biggest problem out there in corporate America. When I speak on this topic around the country and around the globe, I ask CEOs, business leaders, entrepreneurs, ..."Do you have an IM system in place?" Maybe two hands go up out of one or two hundred in the room. Then I ask the two people who raised their hand, "Is the IM system working?" And then no hands go up. So here we have a society that is shifting to an information-based society where knowledge capital rules, and companies don't have basic inventory management systems around intangibles like they do for their widgets, and that's got to end.

What are the tangible assets of Google? What are the tangible assets of Apple? What are the tangible assets of Microsoft? None of these companies tangible assets are anywhere near the value of their intangible assets. So they've got to put systems in place to manage these assets, ...to understand what they have, ...to take inventory of them, ...to prioritize them, ...to figure

out when to pick them off the vine, which is one of the analogies in the book about not picking too soon and not picking it off the vine too late or will turn rotten and spoil.

Nick: Just like fruit. ... Awesome. One of the things that I've been involved in for years, and everyone on the line knows, is music and film, and the really creative sides of the media business. Now, there's a lot of controversy and confusion surrounding the protection of intellectual property. I've tried my best over the years to try to make it easy to understand, and certainl, it's so interesting the way that the culture has shifted too, that it is a whole different animal on whether kids today understand intellectual property. Certainly not the way we did. Can you give us all some basics to live by, and some basic legal facts that all business leaders need to know about intellectual property and protecting it?

Andrew: Yeah, it's interesting. I had a much longer chapter five, as you can imagine, and the publisher kind of pushed back and said, "You know you've written some other great books where you talked about the legal aspects of IP. So keep your chapter five, IP chapter, a bit on the streamlined side." So I really just tried to give a quick review. But one of the coolest things about this country is where patent and copyright laws come from. Let's see Nick, do you know where they come from?

Nick: From Congress?

Andrew: They actually come from the U.S. Constitution. Article I, Section VIII.

Nick: Got it.

Andrew: 1780s. These guys are sitting around drafting the charter for what will become the greatest country in the world and the eighth most important thing they write down is intellectual property laws. So our country was founded by entrepreneurs and inventors like Ben Franklin and others. And so we're the only country in the world that has intellectual property laws baked into our Constitution and that are hundreds of years old.

You talk about some intellectual property laws not being respected in emerging markets like China or Korea or other places. We've been respecting intellectual property laws here in this country since the inception of the country.

Nick: That's awesome.

Andrew: So CEOs need to really wrap their mind around that. This is one of the fundamental rights of being a U.S. citizen and to understand how these laws can help drive their business, protect their competitive edge. But it's only recently that these laws are being viewed in the boardroom as being offensive tools as opposed to just defensive tools, up until very recently. Still, companies believe that you go out and you get a patent or a trademark to build a bigger and deeper mote around your castle, not to use them to take over more territory.

Nick: Great, great distinction there. Cool. Love it. And it is so cool, we have a good system for patents and trademarks right now. It's fairly efficient as far as filings go, but I know there's a

lot of innovation going on right now inside the patent and trademark office. Maybe more should be happening, but it's just a lot of dust getting kicked up in there right now. Any thoughts on where that's heading?

Andrew: I think that there's some patent law reform going on that our patent department is staying on top of. Brands are becoming more important than ever in our brand-driven society and certainly nobody knows that better than you guys with all the great work you're doing in Celebrity Branding and personal branding. I think that that will continue for a long time.

Copyright law has always struggled to keep up with technology going all the way back to the printing press. And it's doing the best it can. Trade secret law continues to be one of the hottest topics out there particularly in the context of this mobile workforce and *free agent* nation that you referred to earlier. And trade dress has been a more recently recognized form of intellectually property. The Supreme Court recognized that interior design and flow and *fung shei* and uniforms and music, the entire customer experience, as intangible as it may be, things like the Nike Store, are all part of a company's protected and intellectual property.

Nick: Absolutely. I agree. I think it's becoming a very cool place to invest in intangible assets and most importantly harvest them. Well cool. Last question for you – what are you most optimistic about in the future of innovation and the way it can impact American businesses?

Andrew: Well I'll tell you I don't want to feel like I'm singing the National Anthem here, but I'm still very bullish on America. I still think we're the most entrepreneurial and innovative country in the world. I think most countries look to us for thought leadership and best practices, and I think that we need to get our head out of our other body part that I won't name and start recapturing our mojo. We need to fix the science crisis. We don't have enough of our children interested in science, technology, engineering and mathematics but we do have a lot of kids interested in the kinds of incremental innovation in marketing, in packaging, in branding and channels and systems that we talked about.

I'm cautiously bullish about the future of innovation in this country and around the world. I think that just as we couldn't have imagined certain things being as much of a daily part of our lives five years ago as they are today, that that same phenomenon will continue to repeat itself under Moore's Law and other principles. And I hope from now until the day I'm six feet deep in a box, that people will continue to take this thing seriously.

Nick: Awesome. Always great to spend time with you Andrew. I hope to see you again real soon and spend some more time in the boardroom. But for anybody out there who wants to learn more, obviously they can go to Amazon and pick up a copy of the book – Harvesting Intangible Assets. Anywhere else you want to direct people to learn more?

Andrew: No. We're in the process of building a website for the book and we can get that to your community as a follow-up. But for the moment most of what you need to read is right there on the Amazon site for the book and if you want more information on the firm, certainly hit the JonesDay.com website. And Nick this has been an awesome, awesome interview. I wish I could go for another couple hours at the level of energy that we've got between us here.

Nick: Awesome man. Well likewise and I will see you soon. Everyone on the call thanks you so much for joining us. And we'll keep bringing you the newest and the best, but I don't know if I can top Andrew. So thanks again Andrew, and thanks everyone on the line. We will see you all soon. And Andrew, best of luck in your future endeavors, man.

Andrew: Thank you. Thanks for having me on the show and my best to everybody down there in Winter Park.

Nick: All right man, take care.