In this section we'll talk about how you build leverage in a negotiation and ultimately, how you get to an agreement.

Clint: How does an entrepreneur increase their negotiating leverage?

Brad: The most powerful way to increase your negotiating leverage is to have multiple options. Going through the process of getting to a financing, if you have two, three or four term sheets that you're negotiating simultaneously, gives you the confidence to ask for terms because you know what the best terms you currently have on the table are.

Timing matters a lot in this, in that, negotiations go stale pretty quickly. It's hard to keep a negotiation going over a long period of time. As a result, if you get a term sheet and are then just starting the process of beginning to talk to the other VCs, it's unlikely that any of them will be ready in time to really enter into a negotiation.

Working hard to have things happen in parallel, so that once you get a first term sheet you can then ask the other people that you've been talking to for responses, yes or no, and term sheets from them that allow you to engage into a tight negotiation over a week or two or three period of time.

That's rather than a situation where you're in a series. You get something and now you're hustling over the next three or four weeks to get the next thing. That linkage of timing is a very powerful lever in negotiation as well.

Clint: Do you have any words of wisdom or principles for keeping all of these VCs going at the same time?

Brad: It's very hard. You know the cliché 'herding cats' is absolutely correct. You can't force the VCs on your tempo. Recognize that the only thing you can do is encourage and create boundaries where you're driving to answer. Recognizing that you're running a process in parallel is probably the most important thing.

A lot of entrepreneurs get excited about a VC who tells them that they're really interested in something sort of hold off others and gets to the point where they get to either a term sheet or not. In a lot of cases it's 'or not'. Then all of a sudden you have to spin up those other people that you were sort of holding at bay.

It's much more effective to run the process in parallel for multiple people and then get to the place where you're able to say, "Look, I have a term sheet and I want to get closure on this by the end of next week." Giving people a date certain for when you want to get there offer and a date certain when you want to close something is a powerful way to try to get people in line.

Recognize that you can't do that until you actually have something that you can point to. If you give people a date certain and no one shows up, it's very hard to go back and say, "Well, we're giving everyone another two weeks." You've just lost a lot of leverage in the negotiation.

That management process is a tricky one, but the idea of trying to run everything in parallel instead of in a series is the underlying point.

Clint: What do you think of the idea of the entrepreneur giving the VC a term sheet to king of move things along?

Brad: I'm not a fan of the entrepreneur giving the VC a term sheet. There's only one situation where this is really effective, which is at the seed level when you're trying to get a group of angels and maybe seed VCs to pull together in a financing.

Generally speaking, you want the VC to give you the term sheet first, for a variety of reasons including you have no idea what terms they're going to set, and the terms that they may offer you are higher or better than the terms that you might put in your term sheet. By letting them play their card first in the negotiation, you get a lot more information about where things are going to start.

The other dynamic is it feels very naïve in a lot of cases. I'll occasionally, in a very early interaction with an entrepreneur, get their proposed term sheet well before I've made any decision about whether I want to invest or not. That's an error, because really what it does is it puts either artificial pressure on me, or when I ask the entrepreneur, "This term sheet you just gave me, did it come from another VC?" and the answer is "No." when I ask the question, "Why are these terms the terms you want?" the entrepreneur rarely has any reason for it.

I'm not really engaged in investing. It's very easy for me, in that moment in time to disengage.

Clint: How about getting a deal to closure? What are some principles that an entrepreneur can use to get that signature, get that cash in the bank?

Brad: Let's assume that you want to get the term sheet done. Recognize that there's a big difference in getting the term sheet agreed to and getting the financing closed. When you're driving to get the term sheet agreed to, the key there is to keep things at a relatively high level.

Understand the terms, especially around economic and control that are important to you. Don't negotiate them line by line. Try to negotiate them as a collection with the VC. Try to get to closure on what's important and have that memorialized in the term sheet.

Generally, you should be able to do that in a matter of days. It shouldn't take a lot of back and forth. Obviously have a strong lawyer on your side help, but don't hand the negotiation over to the lawyer. Try to keep it a business negotiation between you and the VC on the other side. Then include the lawyers to help draft the language and include the language in the term sheet.

Assume that you've got a term sheet agreed to. You're probably 30 to 40 days away from closing the financing. You've got definitive agreements to create. You've got a process to go through. You've got some diligence left on the VC side still.

In that case, the lawyers are going to drive a lot of the activity, but make sure you stay close to it. Anytime a meaningful business issue surfaces, either one that wasn't captured in the term sheet or was ambiguous in the term sheet, or the VC is trying to re-tray because they decided to after they've done some diligence that they want something different.

It's important to be able to have the business level conversation. I can't tell you the number of times the markup comes back from the lawyers on one side or the other. Everyone freaks out because the lawyers were overreaching in their markup. They did a bunch of stuff that didn't make sense.

Now the lawyers for you, the entrepreneur, come back and say, "Gosh, the VC asked for these 12 new things." and you get all spun up as an entrepreneur. When, in fact, the VC didn't really ask for those 12 new things. The lawyers just decided to mark up the document and be more aggressive in a game with the other lawyers.

Keep the communication line with the VC open and clear as you march through the process. Put a timeframe on the process. Don't let it drift. Define clearly how long it's going to take, communicate it, set a date for when you're going to close that you and the investor agree on and then hold the lawyers to that process.

You can close a venture backed deal over a weekend. There's nothing magical about the 30 or 45 days that it takes, other than the fact that there's process and people want the process to play out over time. Recognize that the actual technical work that needs to be done is relatively narrow.

You taking control of that versus giving it to your lawyers or letting the VC control it is a critical way to get to closure.

Clint: Questions?

Student: In that case, let's say you're a relatively inexperienced entrepreneur and you met a lawyer and you like this person, but it turns out he's the one being crazy in this lawyer to lawyer negotiation, have you ever seen that happen? Have you ever seen a case where you as an investor go to the entrepreneur and say, "Look, I think you need to change lawyers and we need to start this over."

Is there any way that an entrepreneur can prevent his or her lawyer from being that slope in the process?

Brad: It's a real challenge, especially with inexperienced entrepreneurs who have a lawyer that they feel like they trust, but is ineffective in the context of doing a venture deal. I've encountered this many times. As a VC, before I start the process of going from term sheet to definitive I'll have a direct conversation with the entrepreneur if I think they have a weak lawyer.

I won't say, "You have a crummy lawyer and you have to change them." but I'll say, "I'm concerned about your lawyer. I want you to know what this process is going to look like and it's going to be heavier on my side. On a go forward basis we can talk about what to do about legal representation, but I just want you to know that that's my reaction."

By the way, you usually can figure that out as an investor during the term sheet negotiation. The reputations of the lawyers are also relatively easy to find out. Is it a lawyer that's a solo practitioner who mostly does divorce law and this is the first time they're doing a venture deal, and they happen to be your lawyer because it's your brother in law?

I can probably tell you that that's not going to be a satisfying experience for me as an investor. Versus if you have a lawyer who has done 400 venture backed investments and knows the drill.

I'll communicate that to you as an entrepreneur. It's till your choice. I can't make you choose a council, a lawyer to use in the context of the deal. It's in your best interest to have a great lawyer.

The other thing that happens, that you can do as the entrepreneur, is you have a pretty good command of what matters and what doesn't matter. If you've read *Venture Deals* you probably know more than most lawyers that aren't practitioners in corporate deals that do venture backed deals.

You can keep things at a high level, and you can say to your lawyer, "I'm not concerned about that. I'm concerned about this. Help me focus on understanding the nuances of this particular thing." By taking responsibility for it versus simply hiding behind the lawyer, you give yourself a lot of leverage.

Student: On the sort of exploring multiple options in parallel front, it seems like you could potentially end up in a situation where you over commit yourself to pursuing too many different opportunities. Any suggestions on ways entrepreneurs can manage that process so they don't end up in trouble in terms of [inaudible 10:34] exploring different options?

Brad: I think that you actually probably don't get in the situation of having too many things that you're trying to drive in parallel. What I do see often is there's not enough attention made on pushing things forward. You're going horizontal and continuing to surface new options, rather than trying to get to an outcome.

The thing that causes that generally is uncertainty about what outcome you want. I encourage entrepreneurs to be clear about what outcome they want because widening the number of different options while you're marching towards an outcome is good, but if you're not marching towards that outcome widening the options doesn't get you anything.

Having clarity about what you want to get out of the process is important as a starting point.