

Operations: Construction Documentation

(after construction)

Texas School Construction and Procurement Conference - November 30, 2023

Warranties



In the beginning any Contractor or Architect can make you feel secure . . . What matters more, however, is how you feel at the end.

**The Contractor Warrants . . . that
the materials and equipment
furnished under the Contract will
be of good quality and new. . .**

The Contractor further warrants
that the Work will conform to the
requirements of the Contract
Documents . . .

. . . and be free from defects,
except for those inherent in the
quality of the Work the Contract
Documents require or permit . . .

Work, materials, or equipment not
conforming to these requirements
may be considered defective.

The Best-Laid Schemes o' Mice an'
Men Gang Aft A-gley



Robert Burns
To A Mouse (1786)





Enforcing Warranties



ENFORCING WARRANTIES

- 😊 ***Most Warranties Begin To Run on the Date of Substantial Completion.***

ENFORCING WARRANTIES

- 😊 ***Substantial Completion Is the Stage in the Progress of the Work When the Work or Designated Portion Thereof Is Sufficiently Complete in Accordance With the Contract Documents So That the Owner Can Occupy or Utilize the Work for its Intended Use.***

ENFORCING WARRANTIES

- ☺ ***How Do You Know When Substantial Completion Is Achieved?***
 - ★ ***Architect Issues a Certificate of Substantial Completion.***
 - ★ ***Building Is Ready for Occupancy.***

ENFORCING WARRANTIES

- ☺ ***What Is a Warranty***
 - ★ ***A Warranty Is a Promise Made by the Contractor to the Owner That Forms a Part of the Basis of the Bargain.***
 - ★ ***It May Be Express or Implied***
 - ★ ***A201 Warranties Are Fairly Weak.***
 - ★ ***We'll Get to This.***

ENFORCING WARRANTIES

☺ *Proving the Warranty Claim*

- ★ *Show That the Contractor Breached the Warranty.*
 - ★ *The Leaky “Watertight” Roofing System*
 - ★ *Don’t Make Oral Warranty Claims. If You Do Call, Follow Up With a Letter.*
 - ★ *Make the Claims in Writing and Send Them via Certified Mail.*
 - ★ *Be Specific About the Problem and, if You Can, State the Likely Impact of a Failure To Comply With the Warranty.*

ENFORCING WARRANTIES

☺ *Defenses*

- ★ *No Notice*
- ★ *Failure To Mitigate*
- ★ *Failed To Comply With the Terms of the Warranty Agreement or Voided the Warranty*

ENFORCING WARRANTIES

☺ *Defenses*

- ★ *Failed To Comply With the Terms of the Warranty Agreement or Voided the Warranty***
 - ★ *Roofing Warranties in Particular***
 - ★ *Requires Certification by Manufacturer***
 - ★ *Sometimes Prohibits Walking on the Roof***
 - ★ *Maintenance and Repair Requirements***
 - ★ *Notice Requirements***

ENFORCING WARRANTIES

☺ *The Key Is Good Documentation:*

- ★ *Of Your Attempts To Seek Performance Under the Warranty;***
- ★ *Of the Contractor's Failure To Comply With Your Reasonable Requests for Compliance;***
- ★ *Of the Damages That the District Suffered as a Result of the Defects in the Materials or Workmanship;***
- ★ *That the Contractor Should Have Known That the District Would Suffer Further Damages if the Contractor Failed To Comply With Their Warranties to the District***

Example Timeline for Documentation of Construction Defects

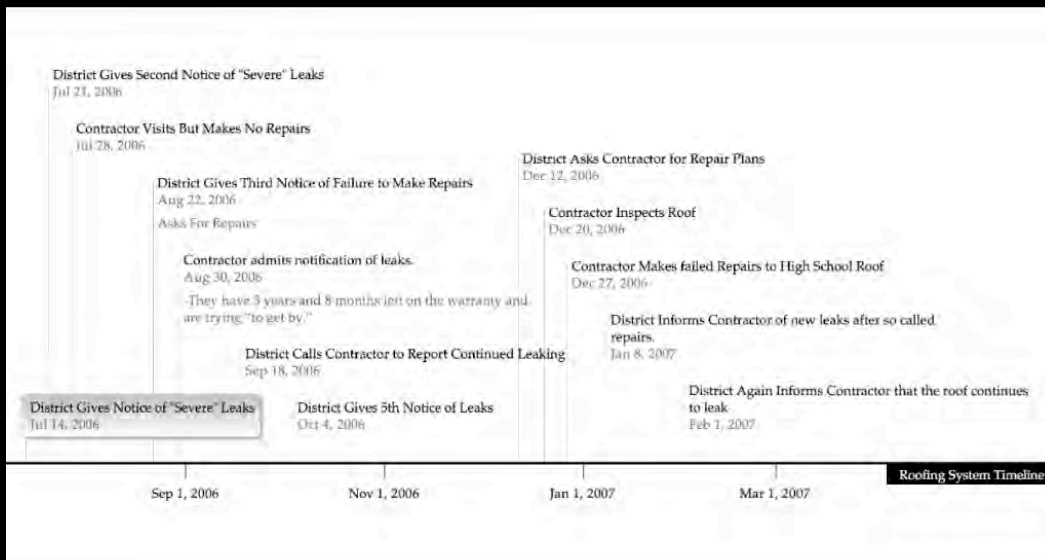
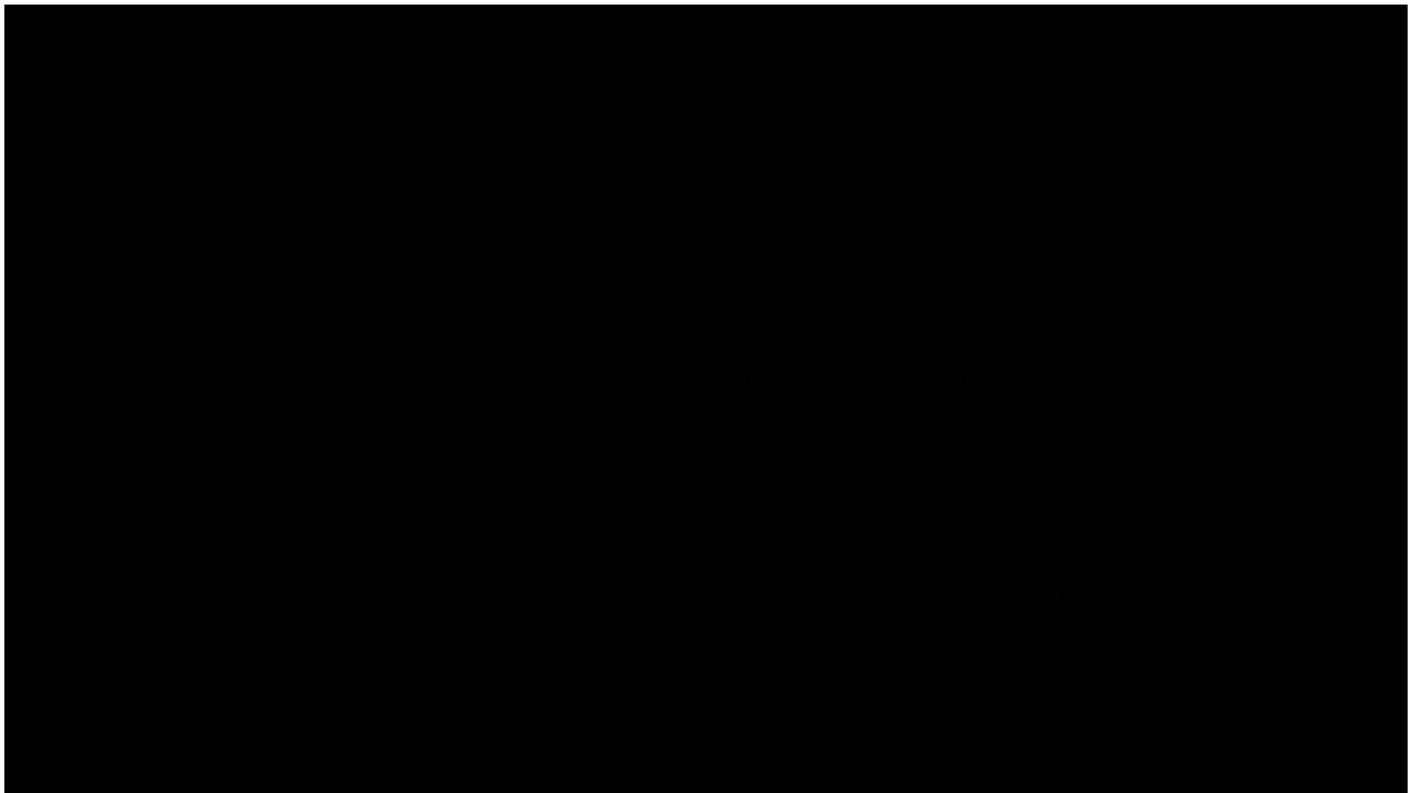
*We'll be happy to go out to the
high school and make repairs
just like we always have.*

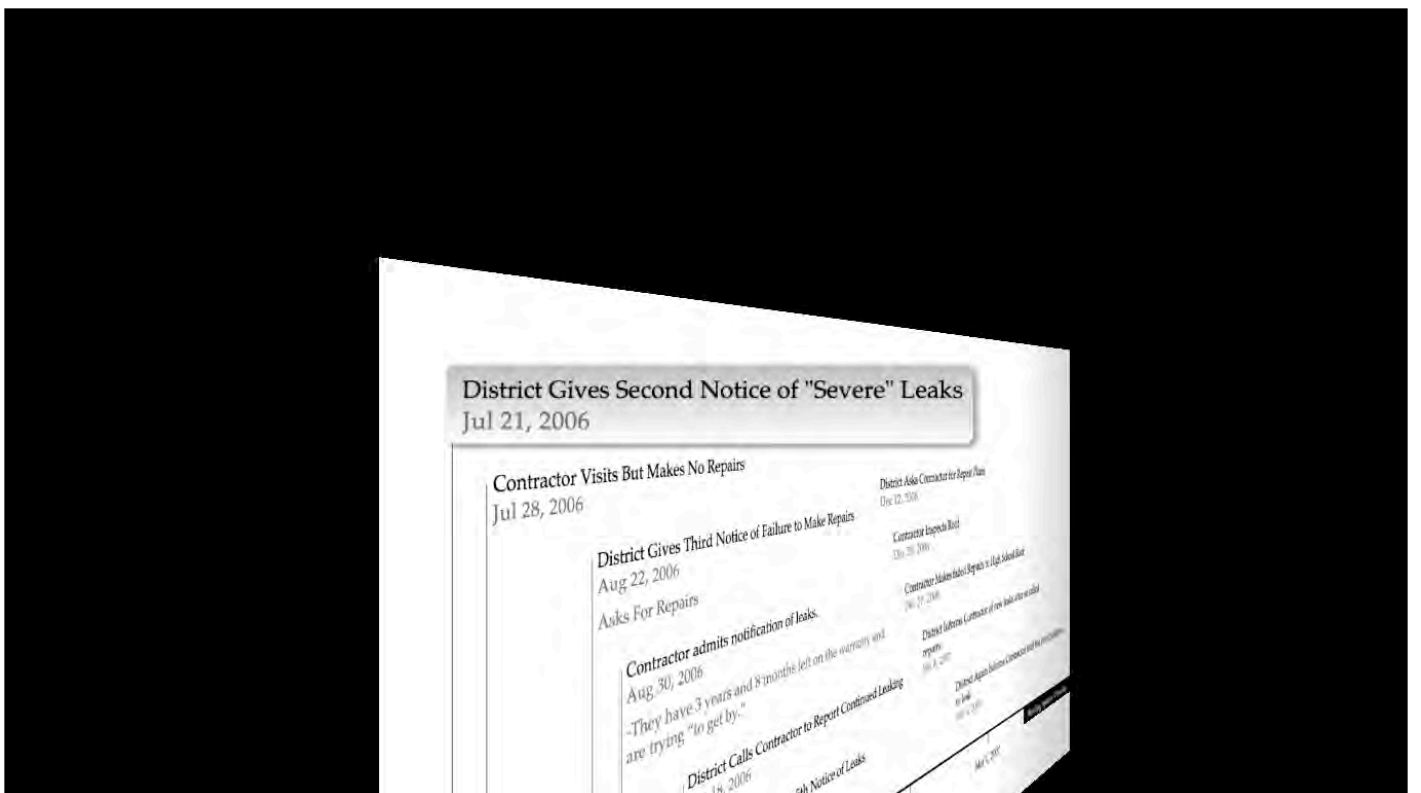
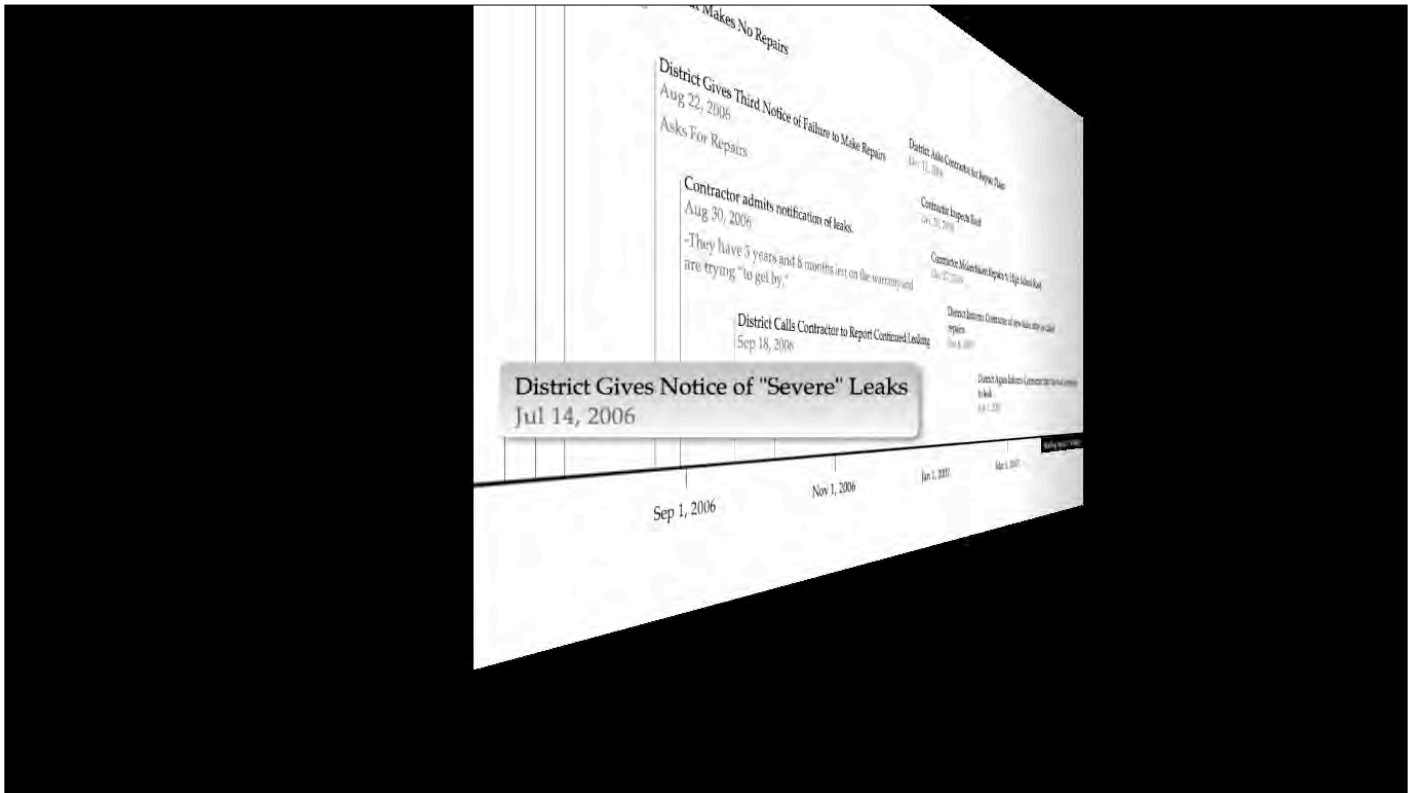
Contractor at Trial

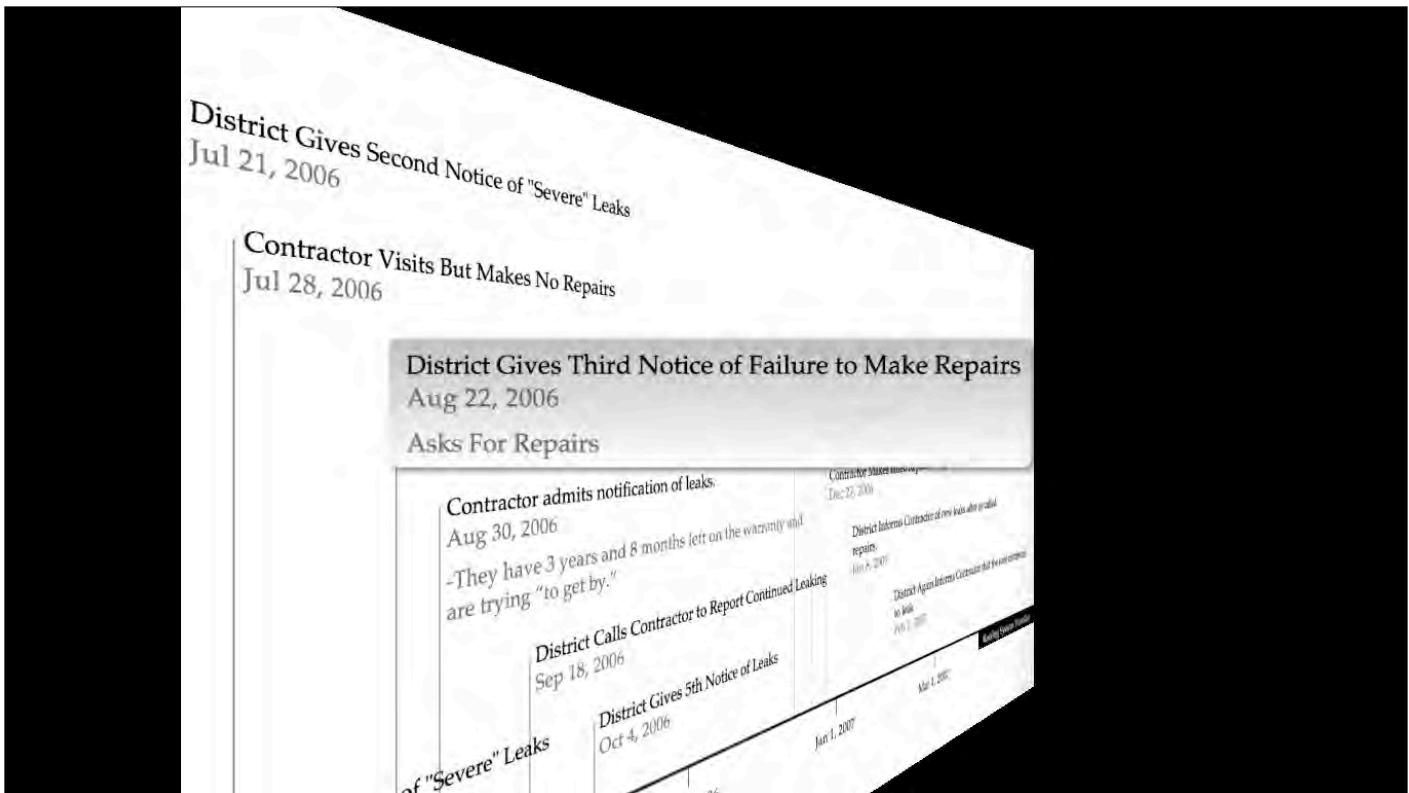
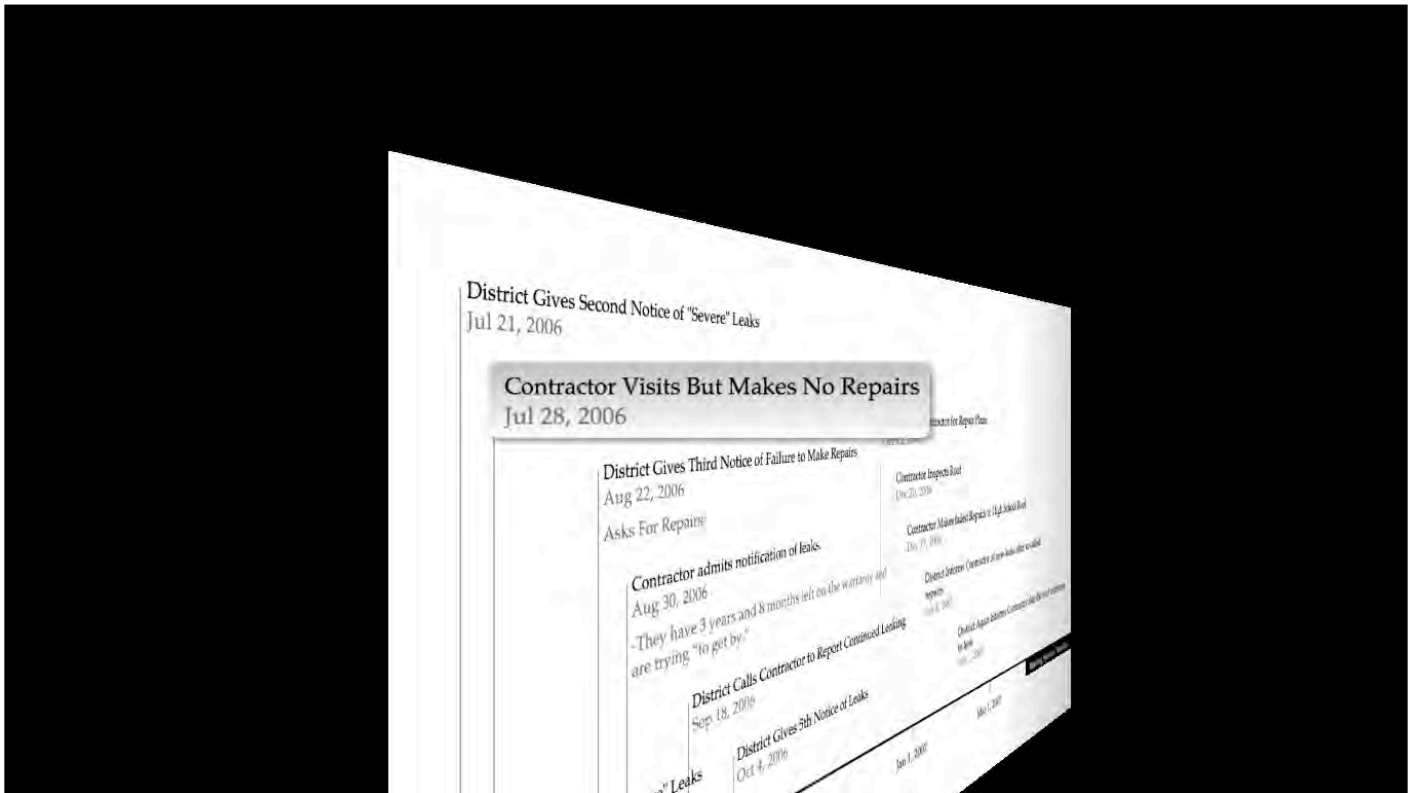


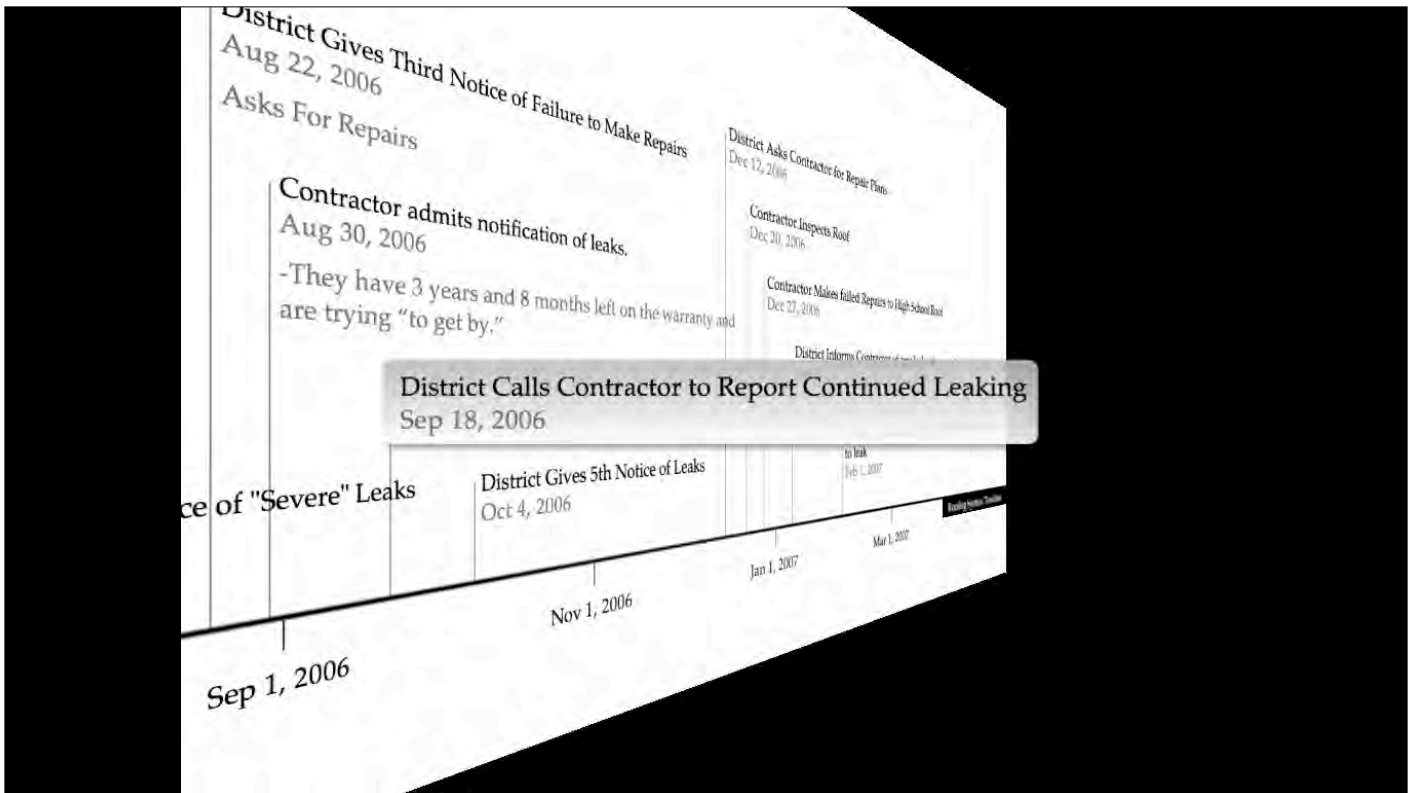
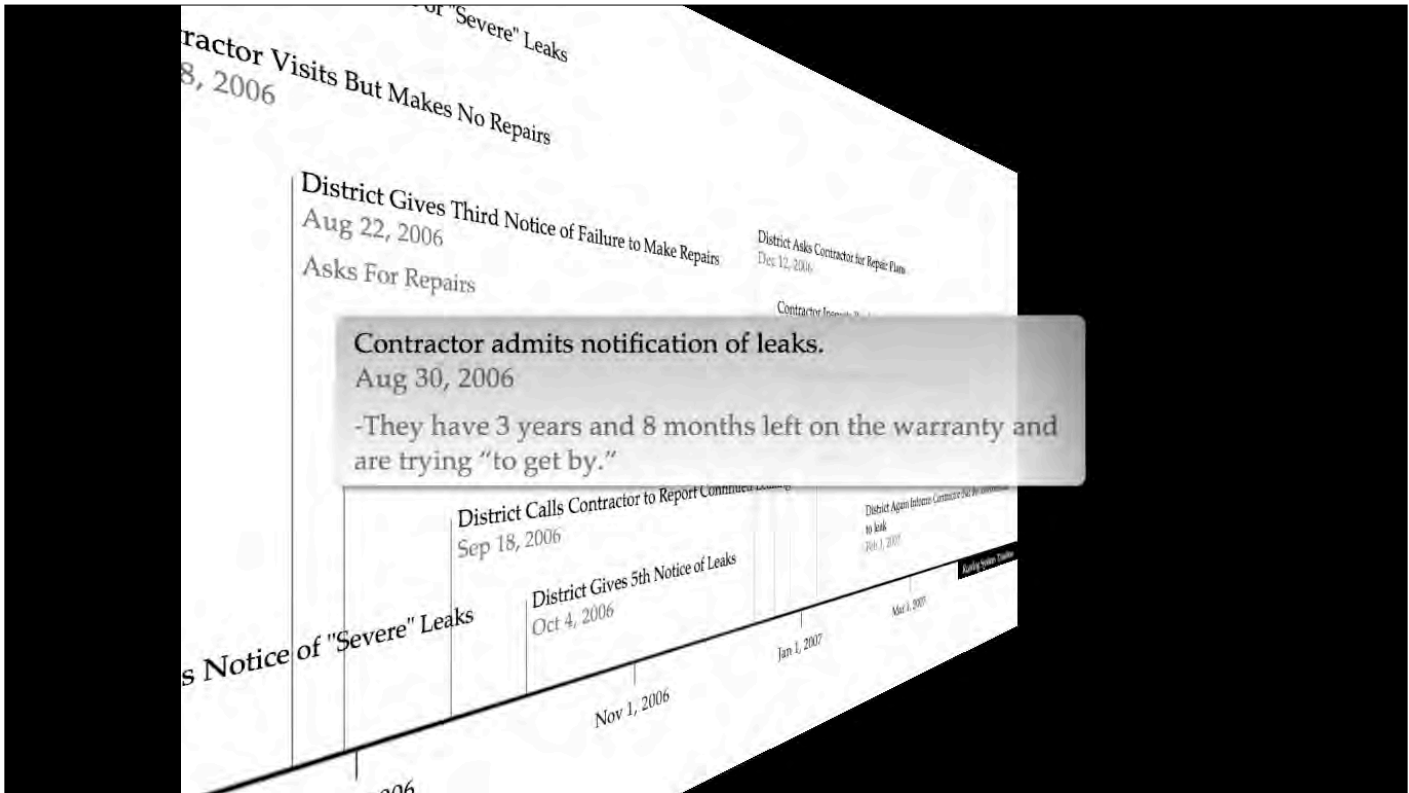


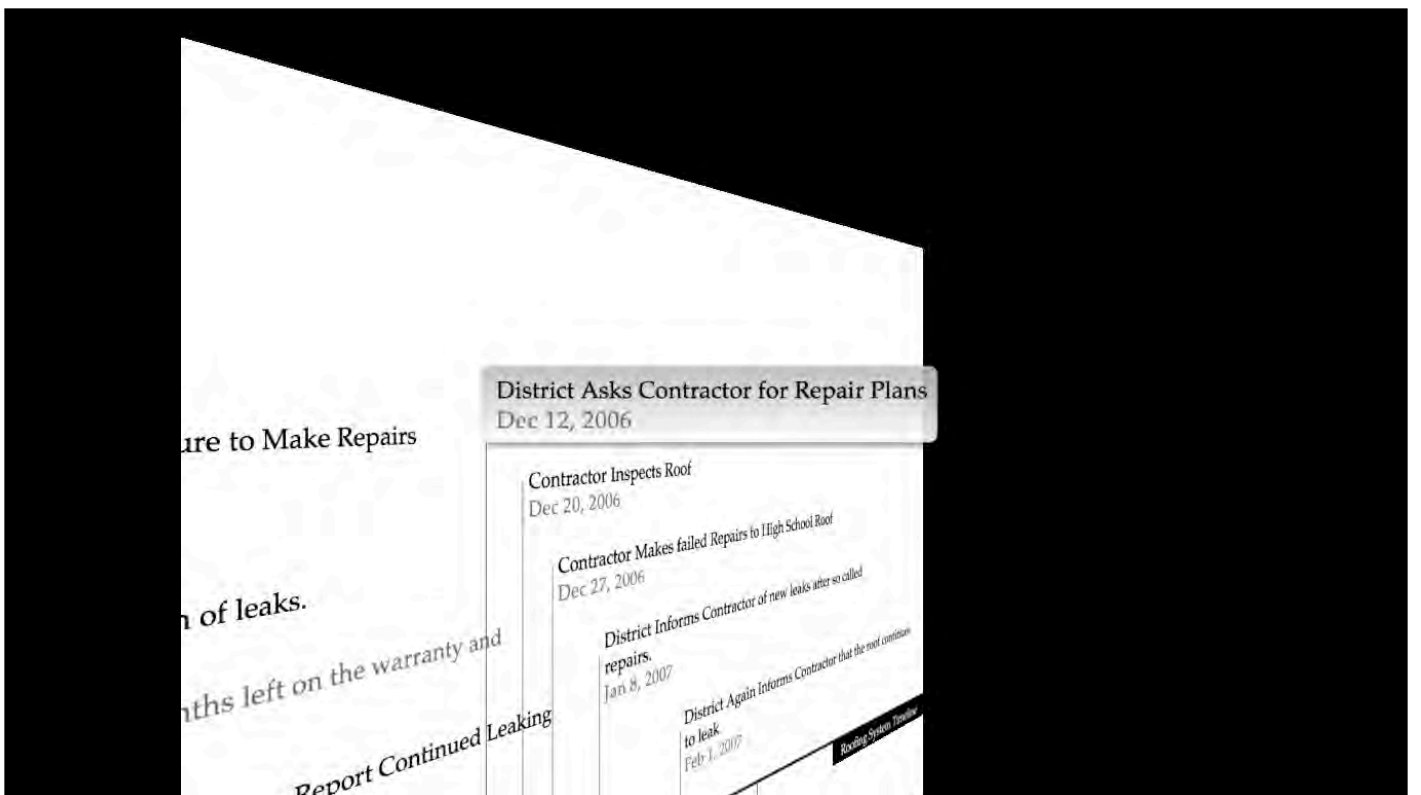
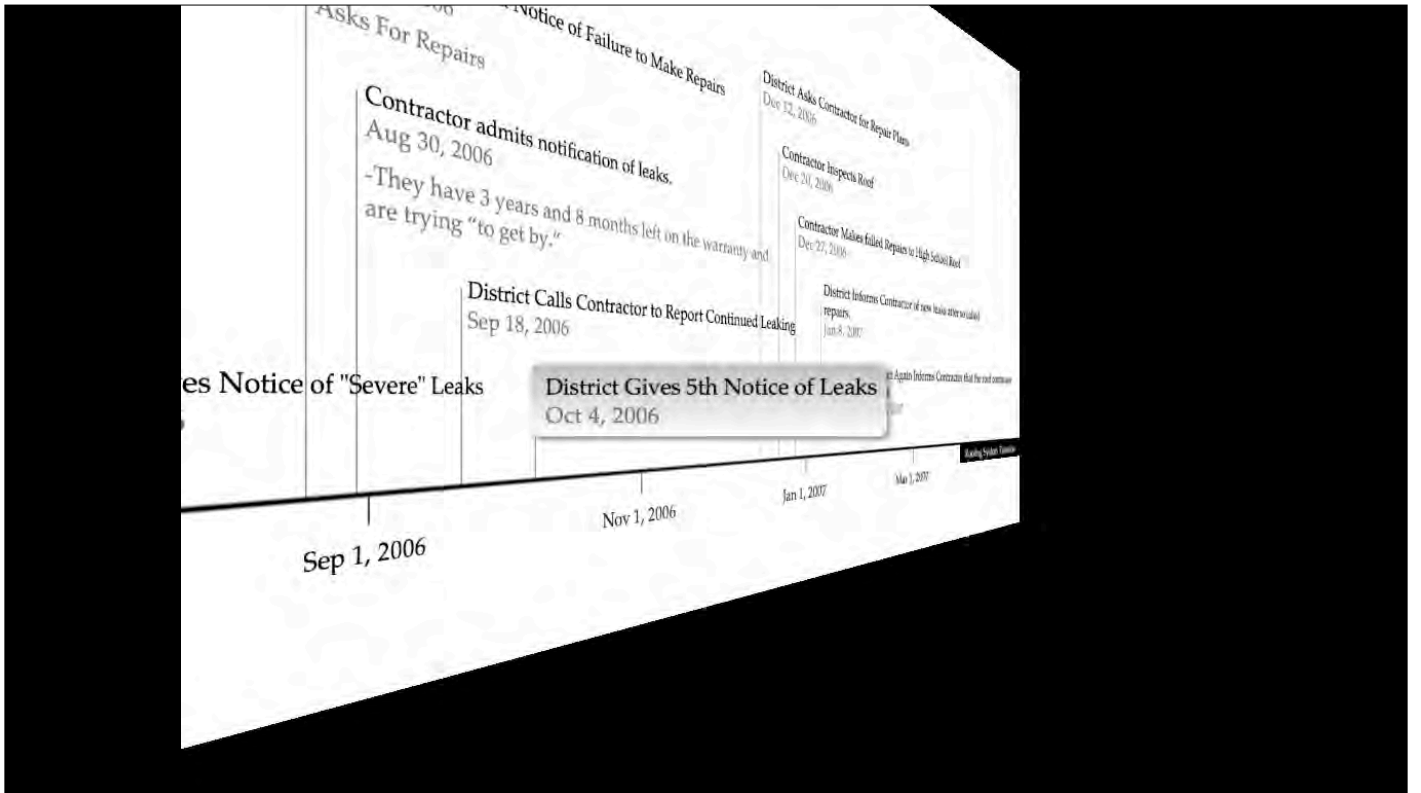


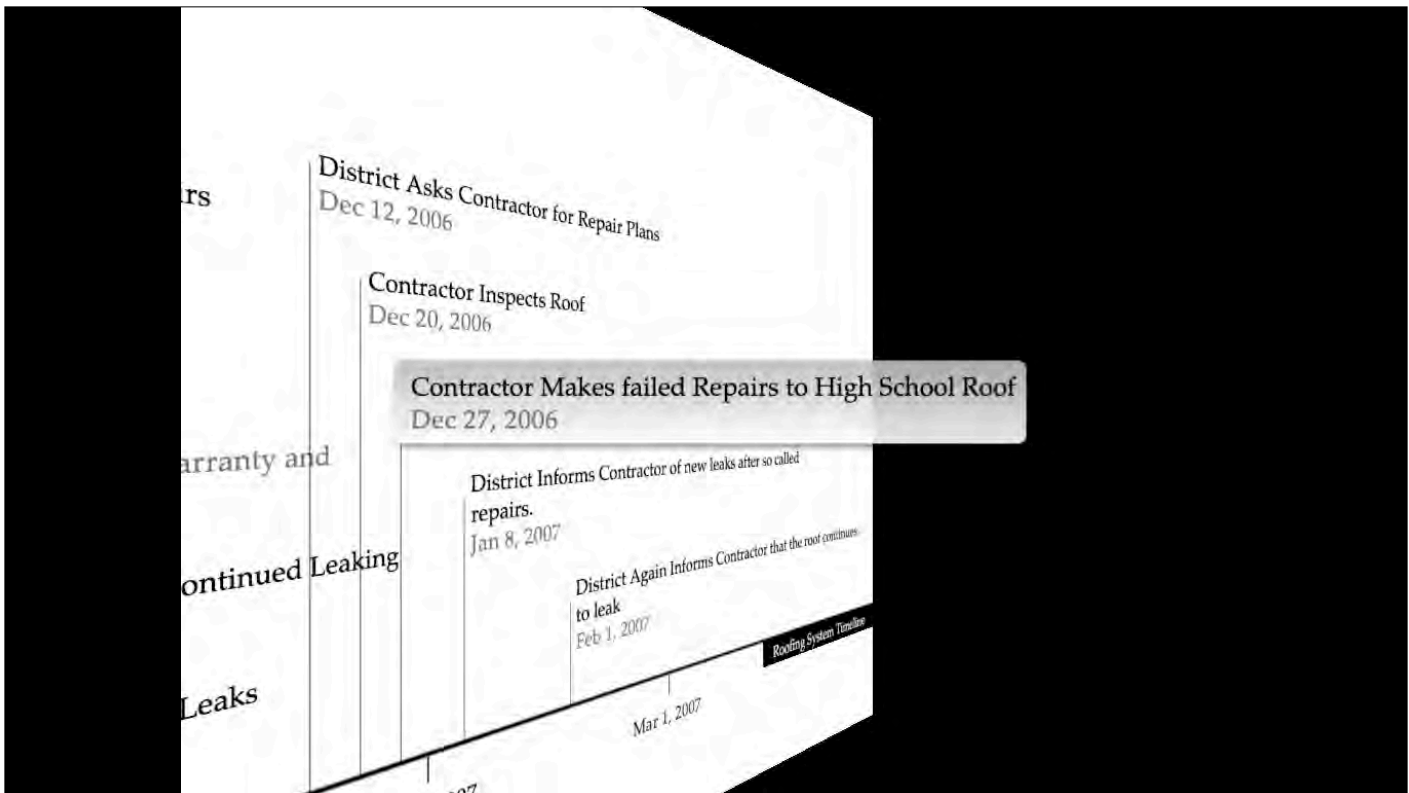
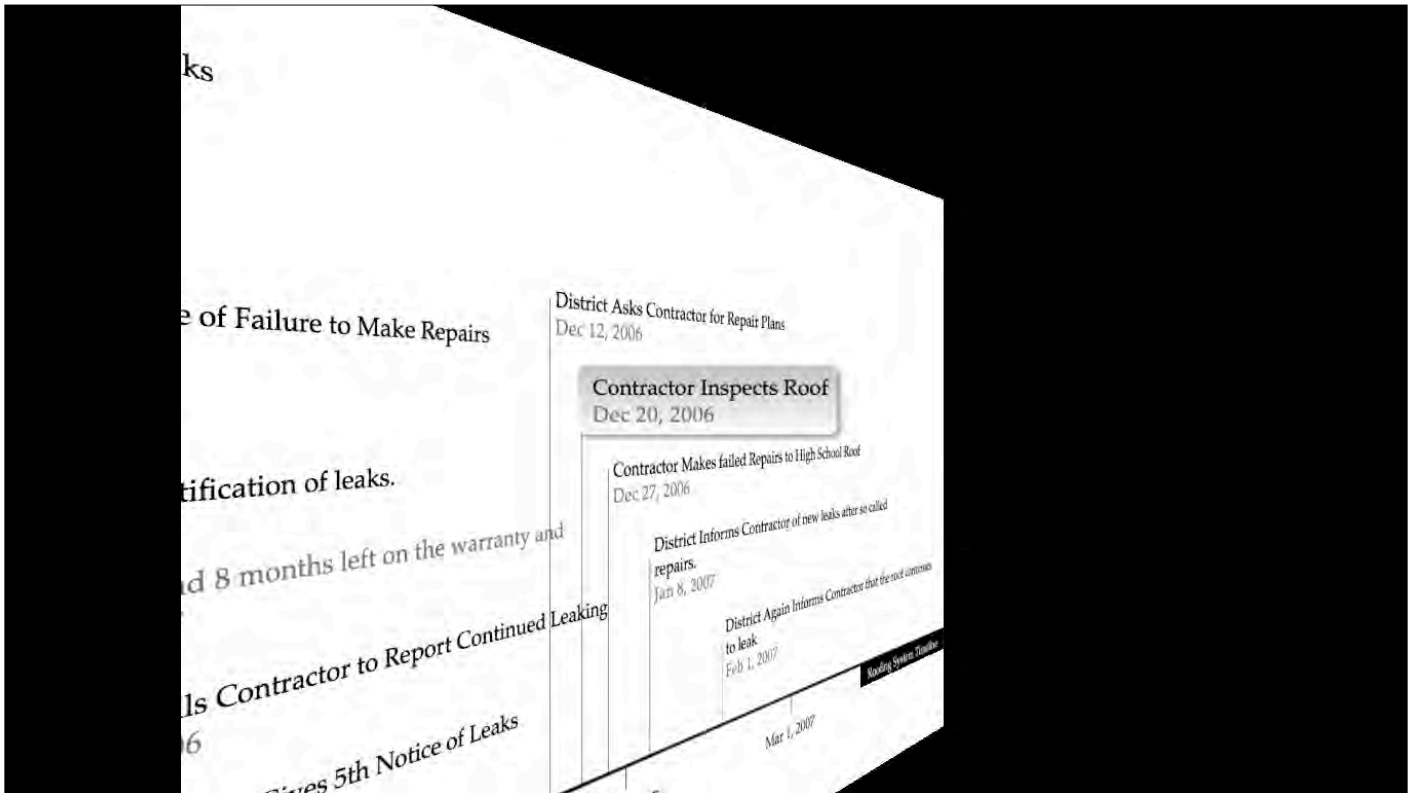


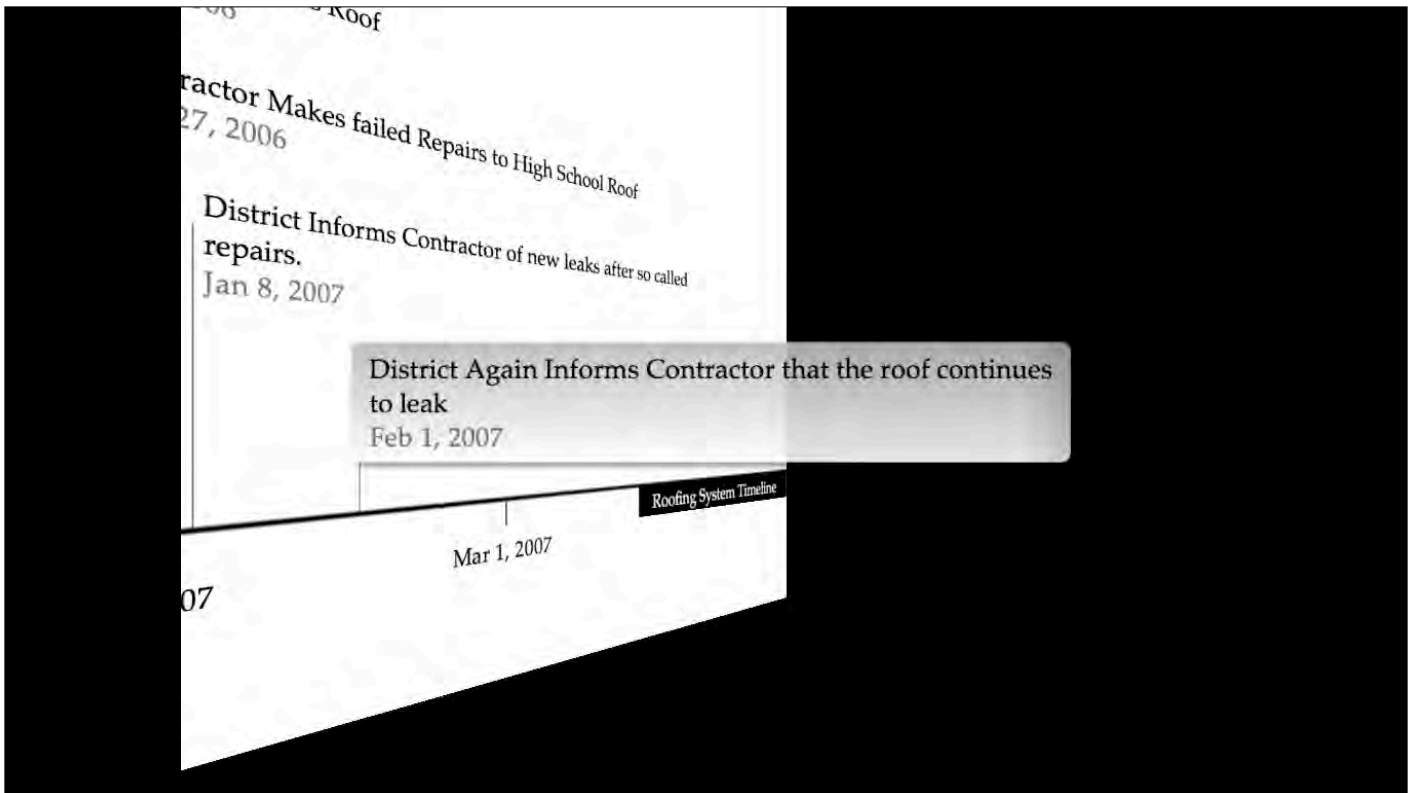
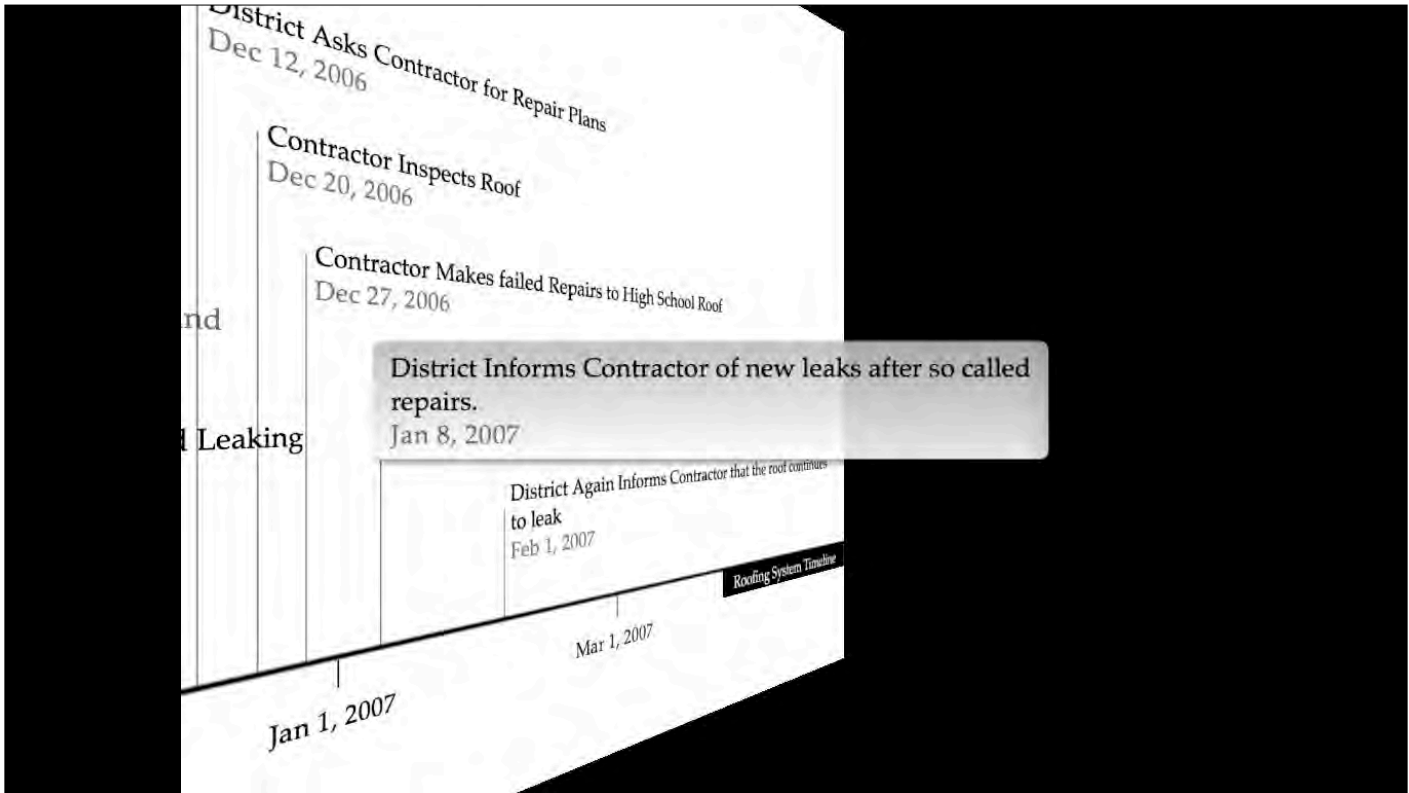












DON'T GIVE UP

- 🧐 *If the First Letter Doesn't Work, Write Another.*
- ★ *Do Not Quit.*

Any questions?

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