

Video Evidence and Vital Nonhumans

Megan McIntyre, Sonoma State University

Content warning: This article contains sensitive images of the aftermath of the bombings, including images of severely injured victims.

This article discusses the role of video and photographic evidence in the aftermath of the 2013 Boston Marathon Bombings. Using scholarship from new materialism and rhetorical theory, this article argues that video of the explosions acted as a lively co-participant in the construction of networks that produce rhetorical/material agency. I offer an extended examination of the circulation of lively nonhumans in the network instantiated by the 2013 Boston Marathon bombings; namely, I follow the surveillance videos that came to figure heavily in the identification, discovery, and prosecution of Dzhokhar Tsarnaev. Ultimately, I argue, our dependence upon and interaction with a multitude of nonhuman actors isn't a new development; rather the increasing integration of technology into our rhetorical practice forces us to at last grapple more fully with the ways that seemingly passive objects directly impact and participate in rhetorical work.

Introduction

Every year, on the third Monday of April, the city of Boston shuts down. Banks and businesses close, and the downtown area is cordoned off by barricades and police officers. It's Patriots Day in Boston. Inaugurated as a way to commemorate the American Revolution Battles of Lexington and Concord, the holiday features reenactments and parades, celebrations and sports: the Boston Red Sox have played a home game on Patriots' Day every year since 1959, with a few notable exceptions for inclement weather. The holiday is also home to the Boston Marathon.

The Boston Marathon, managed by the Boston Athletic Association since its

inception in 1897, is the oldest annual marathon in the world. The course follows a grueling twenty-six plus miles through winding, hilly terrain, and culminates as the course reaches Boston College's "Heartbreak Hill." The final five miles of the marathon take runners back into the city, winding through Brighton and Brookline before runners make their way back into downtown. On Patriot's Day 2013, tragedy intervened into this final stretch. Nearly three hours after Rita Jeptoo, the women's winner, crossed the finish line and long after most of the elite runners had completed the course, two bombs, constructed in pressure cookers, filled with BBs and nails, and stashed about 200 feet apart and about 300 yards



Figure 1: The image above shows the aftermath of the bombing.

from the finish line, exploded, killing three and injuring more than 200 runners, spectators, and emergency personnel.

Watching the raw footage of the scene recalls any number of apocalyptic disaster movies. Photos and video taken at the exact moment of the blast show twin flashes of fire followed by billowing smoke, then screams and terrified, blood-and-soot-covered people running. A few seconds after the blasts, police officers converge on the scene, some with guns drawn searching for a hint of the perpetrator; some, with a look of disbelief and terror, tend to victims.

Within minutes, all trace of non-emergency personnel has been evacuated from the immediate scene. Very soon, all that fills the frame are flashing lights and strewn paper and plaster. Police would find no hint of the perpetrators in the physical aftermath of the bombings. But in

the digital traces of the event, in the numerous amateur and professional photos and the scores of celebratory and surveillance videos, law enforcement found answers as to the who, if not the why, of that terrible day. In particular, video from cameras installed by the Port Authority and local businesses provided the now iconic photographs of the Tsarnaev brothers among the Marathon spectators in the moments before the bombing. This same video—plus additional video from spectators and victims—eventually played a significant role in the prosecution and conviction of Dzhokhar Tsarnaev.

The identification, capture, and successful prosecution of the younger Tsarnaev relied heavily on surveillance video and images taken from surveillance videos. These videos and photographs function within and among rhetorically

agentive networks; these networks are groups of humans and nonhumans bound together in common cause or by common experience. Such networks are rhetorical because they act to persuade or create change, even if not all members do so via spoken or written communication.

Nonhumans, here meant to identify not just nonhuman animals but also what we might call objects or things, include bullets, bombs, and shoes as well as less physically weighty objects like hashtags, videos, and computer programs. In the case of the prosecution of Dzhokhar Tsarnaev, some of the most effectual nonhuman participants are videos and images, which alongside humans (witnesses, judges, jurors, lawyers, law enforcement officers, and citizen informants) and other nonhumans (courtrooms, screens, shrapnel, chat logs and other exhibits and evidence), resulted in the arrest and conviction of Tsarnaev. The presence of such lively co-participants isn't some new invention of an increasingly networked world; instead, our networked world finally allows us—perhaps even requires us—to recognize their ongoing participation.

The videos and images used during Tsarnaev's trial are particularly agentive, telling the story of the bombing even when human memory failed or became murky; on more than one occasion during the trial, in fact, witnesses deferred to the videos over their own recollections and experiences. From a legal standpoint, the presence of the human witness—who can establish the authenticity of the video and its content—is necessary in establishing



“Video Of Tsarnaev Brothers Around Boylston Street On Day Of Boston Marathon Bombing,” YouTube. (Click [here](#) for video.)

the relevance, admissibility, and evidentiary weight of the video. Federal Evidence Rule 901 (FED. R. EVID. 901, 2011) requires “evidence sufficient to support a finding that the item is what the proponent claims it is,” which would include an expert or non-expert but confirming witness. From a persuasive perspective, though, the video can be cast as a more powerful, more experiential witness to the crime. In this sense, then, the videos used during Tsarnaev's trial had as much (or perhaps more) impact than the human witnesses and victims that represent the bulk of the testimony in the trial.

This deferral to video evidence over human recollection is not surprising given the long history of surveillance technologies and their role in legal proceedings. Surveillance as part of our legal system (as an investigatory, if not prosecutorial, tool) dates back at least to the Civil War, when military and civilian rivals would tap or intercept telegram messages (Solove, 2004). As police forces professionalized in the twentieth century and organized crime rose in volume and

prominence, the means, ubiquity, and uses of surveillance technologies expanded rapidly (Solove, 2004). Though legal scholars, including Jennifer Granholm (1987), predicted “complex evidentiary questions surrounding the indirect use of a tape for the purposes of prosecuting” individuals captured by permanent surveillance cameras (p. 707), like those run by the MBTA in downtown Boston, the reality has been far less contentious: twin Supreme Court rulings in 1986 found surveillance video did not violate suspects’ fourth amendment rights, and those rulings have largely withstood the test of time, though the Supreme Court did rule (in 2001’s *Kyllo v. United States*) that thermal imaging represented an illegal search. With very few exceptions, though, so long as videos meet evidentiary standards (namely that they are admissible, relevant, and authenticated), surveillance video has been found both relevant and powerful in the courtroom.¹

NETWORKED AGENCY IN RHETORICAL THEORY

Though the legal value of video evidence persists, these videos have long been treated as mere objects, without the kind of lively influence afforded to nonhumans within a new materialist framework. New materialism “conceives of matter itself as lively or as exhibiting agency” (Coole and Frost, 2010, p. 7).

This lively matter associates with human actors to create agentive networks. These relationships are not fixed, however; rather the configuration of the network changes based on the motives for and kinds of action needed in a particular situation. The flexible and fluctuating nature of the networks imagined by the new materialists suggests an expanded notion of agency and cause; no longer does the human actor stand alone as the agent of change; they are now joined in the position by a multitude of other actors. Further, they are shaped by these nonhuman actors as much as the human actor shapes them, and it is within their relationships with these other actants (human and nonhuman) that agency is produced.

This view of agency and action heralds a shift for rhetoric. In particular, Nathaniel Rivers (especially his multimodal work in *Enculturation* [2012, 2014]) but also his collection—edited with Paul Lynch—on Latour in rhetoric and composition) and Alex Reid (2012) argue for a prominent place for nonhuman actors within rhetorical theory and agency. Reid sees the move toward an object-oriented or at least an object-interested rhetoric as fundamental for better understanding how rhetoric impacts the world around it: “As I see it, the prospects for a digital rhetoric might begin with an investigation of the rhetorical

¹ It is important here to recognize the extent to which surveillance technologies are bound up in a history of racial violence, as Simone Browne argues in her historical study of surveillance, *Dark Matters*. Further, surveillance represents a primary way that

societies impose power over bodies: “The act of observing, which simultaneously performs the discursive operations of looking and classifying, constructs the observer as subject and the observed as object” (Twigg, 1992, p. 23).

operation of these objects so that we might understand how our democratic, scientific, and cultural discourses develop with these objects as participants.”

Nonhumans, then, are not surrounding, inert matter that constrains our practice but rather, are productive members of networks that produce action and change. This newly recognized networked existence, Rivers (2014) argues, is not one intended to privilege the nonhuman over the human but instead to “account for humans and nonhumans in symmetrical ways: as actors acting but never alone.” For these digital rhetoricians, networked theories of agency and action allow us to decenter human actors so that we can attend to the nonhumans who shape, constrain, and participate in rhetorical practice.

In fact, the field’s attention to social media and multimodal composition provides a perfect opportunity to open ourselves to the nonhumans who already populate our practice. As Rivers (2012) asserts in the conclusion to his series on Latour’s potential for rhetorical theory, “Rhetoric’s investment in new media composition (which is far from universal) has drawn our field’s attention to a range of potentially extra-discursive skills. Rhetoric’s simultaneous material turn ratchets-up this interest in the non-discursive. We are invested in both the rhetoric we can achieve through new media and the rhetorical agency of the media themselves.” For Rivers, as for Reid, new media production—and the technologies and spaces required to compose in new media environments—

reveal our reliance on and engagement with nonhuman actors. This dependence isn’t a new development; rather the increasing integration of technology into our rhetorical practice forces us to at last grapple more fully with the ways that seemingly passive objects directly impact rhetorical work.

How, then, might we understand the agentive power of this video evidence and of nonhuman actors more generally? As Laurie Gries (2015) notes in her discussion of new materialism, digital rhetoric, and the circulation of the Obama Hope image, an image becomes agentive and rhetorical “as it materializes and actually affects change in our daily realities” (p. 4). Gries further argues that this kind of ecological understanding of agency, in which images circulate alongside humans and other nonhumans in networks that have agency via their interactions with one another and with other networks, creates a need for “empirical evidence” and concrete examples of when and how images have this kind of agentive force (p. 58). In what follows, I offer just such a concrete example, though this example materializes differently than the one Gries describes. For Gries, the rhetorical and material power of an image expands via proliferation. In the case of Obama Hope, power and velocity come via conscription into an ever-expanding number of networks. On the other hand, the images in the Tsarnaev case achieve materially agentive power via their articulation to particular institutionalized networks and discourses. As the reach of the image

consolidates into the specific, local space of the courtroom, its power expands until it eclipses even eyewitness testimony.

A MORE ROBUST ROLE FOR NONHUMAN ACTORS

New materialism is a useful frame for this discussion for at least three reasons. First, new materialism offers perhaps the most robust and agentive understanding of nonhuman participants because as I noted above, new materialism “conceives of matter itself as lively or as exhibiting agency” (Coole and Frost 2010, p. 7). Or as Jane Bennett (2010b) puts it, new materialism presupposes “a materiality that is itself vibrant or active” (p. 49). Second, utilizing new materialism to frame this discussion allows me to emphasize the material nature of images and video. There are any number of weightier material objects I might follow when considering the Boston Marathon bombing: the bombs themselves are certainly nonhuman, fiercely material members of the agentive network that produces the tragedy. I might focus instead on shoes or bodies or bullets or police cars. All of these substantial material participants could offer important insight into the events under consideration here. However, none of these objects wield the kind of discursive power offered by the videos, a point emphasized by the case that takes up the second half of this discussion. This case requires an expanded notion of what it means to be material. New materialism’s insistence on lively matter allows me do just this. It is the liveliness, then, that becomes my object of

study and classification as opposed to the physicality of the nonhuman in question.

Third, and finally, this new materialist analysis allows me to connect material rhetorics to visual rhetorics as an analytical tool and perspective. Since its inception as a subfield, scholars of visual rhetorics have tended to define the field as one of either production, concerned with crafting rhetorically powerful images or text/image hybrids, or as a set of tools to examine how visual elements already participate in rhetorically powerful ways. The latter vision of the field, espoused by Cara Finnegan (2004), who characterizes visual rhetoric as “a mode of inquiry” (p. 198), and Sonja Foss (2004), who defines visual rhetoric as “a critical-analytical tool or a way of approaching and analyzing visual data that highlights the communicative dimensions of images or objects” (p. 306), is most useful to me here. Analyzing the participation of these surveillance videos in the discursive network of Tsarnaev’s trial reveals them to be powerful both materially and discursively. They persuade. They have an impact, perhaps even (as I will outline later) a more significant impact than the human witnesses to the bombings.

Following a Nonhuman

On Monday April 15, 2013, two bombs (one in front of the Forum, a local restaurant, and another in front of Marathon Sports) exploded near the finish line of the Boston Marathon, killing three and injuring more than two hundred others. The site of the blasts—situated in downtown Boston among restaurants,

bars, and shops—was covered by a number of video cameras: in addition to the local CBS affiliate’s finish line camera, most local businesses in the area had at least one camera focused on the area of the blast, and the Massachusetts Bay Transportation Authority installed cameras throughout the downtown area, including at least six cameras with a view of the finish line or surrounding area. A week after the blast, on Monday, April 22, 2013, the US government filed charges against now-convicted Boston Marathon bomber Dzhokhar “Jahar” Tsarnaev. Tsarnaev (alternately called “white hat guy” or “Suspect #2” in news reports following the bombing) faced numerous charges, including conspiring with his older brother Tamerlan to use a weapon of mass destruction resulting in death, a charge whose punishment can include an indefinite prison sentence or the death penalty. (Tsarnaev was sentenced to the latter.)

Among the most important pieces of evidence against Tsarnaev was surveillance video from these local businesses and the Massachusetts Bay Transportation Authority. The first day of Tsarnaev’s trial casts this fact into stark relief.² From the beginning of the prosecution’s opening statement, it is clear that the three Assistant U.S. Attorneys plan to rely heavily and return often to the myriad videos that depict the staging, explosion, and aftermath of the Tsarnaev brothers’ bombs: from the initial narrative that

frames their opening statement to the 19 explicit references to surveillance video to the more than 30 oblique references (via phrases like “you’ll see” and “it shows”) to video of the suspects, surveillance video of the scene was the cornerstone of the prosecution’s case.

The defense’s opening remarks rely much less heavily on the videos, but they acknowledge the devastating power of the images to come: “If the only question was whether or not that was Jahar Tsarnaev in the video that you will see walking down Boylston Street... it would be very easy for you: It was him.” The defense acknowledges, right from the start, that the videos offer incontrovertible proof of Tsarnaev’s guilt in a way that even the best eyewitness testimony cannot. And as becomes clear as the first day of testimony unfolds, for jurors, the video evidence is meant to operate experientially. They are not just told what has happened and who is responsible; rather they are able to see for themselves the staging of the bomb, the identity of the bombers, and the devastating aftermath of the explosion. The defense acknowledges that it is this experience of the scene—possible via the video evidence that dominates the first day of testimony—that indicts their client beyond all doubt. And the prosecutors agree:

The surveillance tape shows the defendant walk up to that spot. He's got a backpack slung over his shoulder.

² All quotes from *United States v. Dzhokhar A. Tsarnaev*, case no. 13-cr-10200, were acquired through CNN archives (“Transcripts,” 2015):

<http://www.cnn.com/interactive/2015/03/us/tsarnaev-trial-transcripts/>.

And the moment he gets there, he dips his shoulder, and after that, you never see the backpack on his back again. But photographs show that it's at his feet. It shows him stop right behind Martin Richard and the other children who are lined up on the railing watching the race. It shows him stand there looking at them and looking over their heads at the runners. Then it shows him make the phone call to his brother. . . . That video revealed that the defendant was one of the bombers.

This video, then, becomes the central witness; the lynchpin in the prosecution's case. This nonhuman actor, when combined with the institutional power of the courtroom, prosecutor, judge, and jury, holds power over the human defendant. The video acts discursively, and that action has a significant effect.

LATOUR'S HYBRIDS AND TECHNOLOGICAL NONHUMANS

The work of Bruno Latour might be useful here. Specifically, Latour's work on hybrids (see, for example, his 2011 essay "Love Your Monsters") offers a way of understanding how technological nonhumans—the product of human work but operating at least somewhat independently of their human creators and caretakers—participate alongside humans in producing agency. No longer merely utilitarian, technological hybrids play an integral role in the creation of a common world, as more than tools, as co-inhabitants of the new world (Bennett 2010a; Gries 2015; Haraway 1991; Latour

2011). As Ehren Pflugfelder (2015) notes in his discussion of Latour's nonhuman agency, for Latour, "agency inhabits human/nonhuman hybrids in many and varied forms (and always more than one agent position at a time)" (p. 121-122). Nonhumans—particularly technological and visual nonhumans—are not the passive objects many theories of agency imagine them to be. On the contrary, nonhumans are vibrant, vital, productive members of agentive networks. It follows, then, that the surveillance videos used during this first day of testimony might have a significant and lasting impact on the outcomes of the case: they shape the case, opening and foreclosing prosecutorial approaches, supporting or superseding eyewitness testimony, and providing experiential evidence to the jury.

This final point seems particularly valuable to the prosecution team. Recognizing the experiential power of the videos, they rely heavily on video evidence to supplement survivor and eyewitness testimony. On the trial's first day, the prosecution introduced four videos into evidence. These videos included three surveillance videos as well as personal video from one of the victims/witnesses, Colton Kilgore, a freelance photographer/videographer who attended the Marathon to watch his mother-in-law run the race. On 23 occasions during the first day of testimony, the prosecution played sections of video to support, corroborate, and add detail to witness testimony.

Examining two of these interactions between (human) prosecutor, (human)



“Boston Marathon Bombing Scene From Inside Marathon Sports Store,” YouTube. (Click [here](#) for video.)

witness, and (nonhuman) video evidence offers us insight into the relationships between human and nonhuman members of this agentic network. Each of these interactions follows a similar pattern: after the witness’s introduction to the court, prosecutors introduce complementary video evidence that will support or demonstrate the content of the testimony. As testimony continues, prosecutors pause frequently to show brief sections of video that support or demonstrate the coming questions and answers. Each of these moments allows the judge and jury to experience the events as the witness re-experiences and recounts them.

SHANE O’HARA AND THE VIDEO’S MEMORY

Let’s begin with the prosecution’s second witness of the day: Shane O’Hara, the manager of the Marathon Sports on Boylston Street. O’Hara’s testimony is meant to highlight the immediate chaos and aftermath of the explosions, something the prosecutors focus on early on in his testimony by pairing his verbal recollections with video evidence from the

store’s internal surveillance camera. Details like O’Hara’s position in the aftermath of the explosions, the physical state of the store, and the conditions of bystanders caught outside in the explosion constitute much of O’Hara’s testimony. Each of O’Hara’s exchanges with the prosecutors is punctuated by the intervention of the video, as we can see from this selection from the court transcript:

Q. Is that you standing near the door?

A. That’s me. I just kind of opened up the door there.

Q. What are you doing?

A. Probably at this stage we’re trying to get people into the store. The door usually is opened, so now I’m just kind of holding it up and we’re reaching in and trying to grab people in—into the store. You ask about my memory. I thought originally I was right at that door, and that’s kind of a chaotic moment. This is the woman that—I didn’t necessarily remember that I did the tourniquet. I thought I passed that on to somebody else.

This moment is particularly telling: as O’Hara re-experiences the video alongside the others in the courtroom, his recollection is challenged, and he defers to the video, revising his role to reflect the video evidence. In this way, the video evidence operates as an even more reliable witness than the human participant and changes the human participant’s recollection and experience of his role in the event.

Q. So is that what you're doing there, you're tying something around her leg?

A. Yup. One of my goofinesses of me is I look at people's feet. So the first thing I remember is seeing her feet and seeing blood trickle down her leg. And then I felt for where her—where the blood was coming from, and that's then when I grabbed the shorts.

(Videotape played.)

Q. Now, what are you doing here?

A. We just started now tearing off as much of the apparel as we could possibly find and get— That's one of my other colleagues in the green shirt there. We're just now taking—me as a manager, I feel like I still have to do kind of my job, so we were trying to save hangers.

Each time the video intervenes in O'Hara's testimony, it serves two purposes. First the video supports and/or clarifies O'Hara's recollection of events. The nonhuman participant confirms human experience. Second, the video serves as a powerful way for the jury to not only hear about the aftermath of the bombing but to see it just as the victims and witnesses did the day of the attacks. The videos are powerful witnesses to the events of the day, and they transform the passive jurors into witnesses themselves.

The goal of focusing on the participation of video here, and on nonhumans more generally, is to make them and the work they do visible and efficacious, for as Rivers (2014) notes,

“we humans are not the only ones here, and we are far from being the only beings who matter. All matter matters, and so all matter is rhetorical.” Matter is rhetorical in two senses: first, matter is constituted by both physical and discursive work. I'm thinking here of the messy hybrids that populate Latour's work and of Donna Haraway's material-semiotic actors. Matter is also rhetorical because it is necessary for rhetorical production. We need wifi and word processors, microphones and stages, classrooms, courtrooms, and social media spaces. Enrolling these vibrant nonhumans into our rhetorical practice may also allow us access to conversations and problems from which rhetoric has often been excluded.

COLTON KILGORE AND VIDEO EVIDENCE AS EXPERIENTIAL

Prosecutors use video evidence in similar ways with the witness who follows O'Hara: Colton Kilgore. Kilgore begins by describing the video that the jury is about to see, which shows the scene immediately before and after the explosion:

A. Yeah. So this video is one that I shot just as random runners were coming by...But as I was sitting up my brain kind of was in a haze and I couldn't hear out of my left ear and there was just screaming. And I realized, no, this was something much worse than that, and it must have been a bomb.

[...]

A. In this video you are going to see a

lot of chaos and a lot of people on the ground. There is smoke, there's shrapnel on the sidewalk that's smoking, there are people who are injured. And I believe in this video you will see Rebekah's leg injury. And, yeah, that's—

After describing what jurors and others in the courtroom are about to experience, Kilgore moves on to describe parts of his experience that jurors won't be able to experience: the "deafening sound," the "ringing in [his] ears," and the "smell of smoke," which was, he said "kind of gunpowdery, blood, flesh. Just acrid, disgusting." Just before the video plays for the jury, he moves back to describing what the jury is about to experience in the video:

A. On the ground I remember seeing just chunks of metal, sort of like ball-bearings, BBs. At one point I was sitting—because I was—my sister-in-law, Gina, had—she had had an artery and nerve severed in her right leg, and so she was laying there. And I had her lay back in my lap, and as I sat, I sat on something that burned me, and I realized that everybody laying there was just laying on this burning metal shards of stuff and glass and all kinds of just random stuff. (Video played.)

Q. Mr. Kilgore, do you know who this is?

A. Yes; that's Noah.

Q. And what's happening here?

A. At this moment Noah is screaming

and everyone around us is trying to figure out what happened. And there's yelling, there's crying. Noah had a shrapnel wound in his leg and so he was—you know, as a five-year-old boy, obviously, like the rest of us, was terrified but didn't know where his mom was, didn't know what was happening.

Kilgore's testimony continues in a similar vein: he alternately works to prepare jurors for the content of the video he shot (and that they are about to see) and supplements the video with elements the jury can't experience via video: smells, heat, pain, and fear that cannot be experienced second-hand.

NONHUMAN PARTICIPATION IN THE COURTROOM ASSEMBLAGE

The courtroom testimony on the first day of Tsarnev's trial represents an assemblage of actors working toward a single goal: showing the jury what it was like in the first chaotic minutes after the blasts. Assemblages that include nonhuman technologies and technological artifacts (like digital videos and images) are particularly interesting examples of what Latour (1992) calls the "sui generis object: the collective thing," which are peculiar, he says, precisely because they are "too full of humans to look like the technology of old, but... too full of nonhumans to look like the social theory of the past. The missing masses are in our traditional social theories, not in the supposedly cold, efficient, and inhuman technologies" (p. 175). For these

composite networks/assemblages, strength, durability, and responsivity come from distribution and an ever-expanding number of weak and strong ties to other networks. Or, as is the case with the example that follows, the strength of the network comes from its articulation to specific institutional networks and discourses.

Change and persuasion require a multitude of actors and artifacts, and their relationships with one another make each of them stronger and better able to resist outside forces and respond to outside problems. Latour's (1996) theory of networks and assemblages begins not with grand theories or universal laws but with "irreducible, incommensurable, unconnected localities, which then, at a great price, sometimes end into provisionally commensurable connections" (p. 3). For the circulating nonhumans under consideration here, these provisional connections and emerging networks are forged by one specific stimulus: the Boston Marathon bombings and the resulting social and legal obligations facing the community at large, and the force of the surveillance videos is directly tied to their connection to the courtroom.

The ongoing use of video evidence in support of survivor testimony highlights another important argument from new materialist theories of nonhuman participation, namely that speech acts cannot replace—though they can seek to re/present—the nonhumans for which they purport to speak. The decision by prosecutors to supplement survivor

testimony—which most trial attendees cast as devastating and moving—with video testimony reinforces the important role of nonhuman participation (in this case the video images) in communicating the events of the day. As David Boeri and Kevin Cullen (2015) argue in their coverage of the trial, the video (which ends with "random...and chaotic shots" of the aftermath of the bombing compiled from a variety of sources) allows the jury—and the wider public the jury represents—to bear witness to Tsarnaev "being confronted with the reality of what he did." The "random and chaotic shots" that characterize the video shown in open court force Tsarnaev and the jury to experience some of the disorienting aftermath that the survivors describe in their testimony.

VIDEO EVIDENCE IN THE SEARCH FOR THE BOSTON MARATHON BOMBERS

To best understand the particular importance of the video evidence, it might be useful to highlight another way in which these videos—particularly stills taken from the videos—impacted the prosecution and conviction of Tsarnaev: by the time prosecutors showed the jury video from the camera above the Forum's front door, the image of the younger Tsarnaev wearing a backwards white baseball cap was already well-known. On April 18, 2013, just over forty-eight hours after the twin blasts rocked the Marathon finish line, the FBI released two now iconic photographs of their primary suspects. Already, we can trace the path of the surveillance video from the Forum to

at least three hybrid collectives or matters of concern: the FBI's hunt for the Marathon bombing suspects, the U.S. government's case against Tsarnaev, and the media coverage of his trial. In each of these cases, some group of humans and nonhumans faces a problem. For the FBI, their network of facts, evidence, investigators, and victims faced an obstacle: in order to move from search and rescue to investigation to indictment, the network needed to identify perpetrators. To identify perpetrators, the network needed the help of as yet unknown actors who could provide names and locations for the suspects. These photographs are the threads that connect the FBI to those with the information they need. Without the photographic and video evidence, as well as the arguments made by the FBI and publicity and context articulated by local and national news organizations, this connection becomes impossible or at least improbable.

The interactivity between discursive/persuasive work and specific digital technologies and their products leads to one final point about the role of video evidence and the question of networked agency: technological nonhumans participate in and shape discourse and are themselves shaped by discourse. To reiterate, nonhumans are not inert matter but productive members of networks that produce action. This is especially true of visual nonhumans, as Gries (2015) reminds us: "As images... enter into divergent associations, they become a material force that generates ripples of collective change" (p.

56-57). Networked theories of agency and action allow us to decenter human actors so that we can attend to the nonhumans who shape, constrain, and participate in rhetorical practice. In fact, rhetorical theory's attention to social media and multimedia provide opportunities to open ourselves to the nonhumans who already populate our practice. This way of thinking requires a shift from a human- and logos-centric notion of agency as it reveals our reliance on and engagement with nonhuman actors. This dependence isn't a new development; rather the increasing integration of technology into our rhetorical practice forces us to at last grapple more fully with the ways that seemingly passive objects directly impact rhetorical work.

Conclusion

Recognizing nonhuman participation in agentive networks marks an important shift in the focus of rhetorical and material investigations of how agency is produced. Coole and Frost (2010) argue that changes proceed from "infinitesimally small causes" which eventually "end up having massive but unanticipated effects" (p. 14) and which "[dislocate] agency as the property of a discrete, self-knowing subject" (p. 20). Without the unified Enlightenment subject at the center of rhetorical/material agency, the actors needed to produce agency multiply, and we may begin to recognize the participation of nonhumans alongside their long-recognized human counterparts. These nonhumans are not the stable, static objects of old; on the contrary, nonhuman participants are

vibrant, vital contributors to rhetorical situations. To quote Jodi Nicotra's (2016) examination of shame in social media, the way that video nonhumans participate in the eventual conviction of Tsarnaev reinforces that "technologies are not separate or supplemental to the rhetorical acts, but are rather co-constitutive" alongside human and other nonhuman actors. In other words, images participate in rhetorical acts and produce agency via circulation; tracing the circulation and noting the specific, temporally grounded consequences allows us to better understand the meaning of nonhuman participants and better account for their role in the networks in which they participate.

The narrative that closes this discussion offers one such example: the videos introduced into evidence at Tsarnaev's trial are enrolled in multiple legal networks, first in the form of stills released to the public as part of the hunt for the suspects and later as an exhibit for the prosecution in first phase of the trial. The videos act within networks, among human and nonhuman participants, in measurably agentive ways: the suspects are identified (with help from the photographs crafted from surveillance video) and the younger Tsarnaev is convicted. We can count the consequences, see the effects, and point to the powerful participation of these nonhuman members of a social-legal-technological network.

The video witnesses also raise other questions: in situations where human and nonhuman actors offer differing accounts

of their action, who or what do we believe? Particularly in deliberative situations, like court cases—who or what do we trust to the exclusion of other accounts of the action of the network? Repeatedly throughout the Tsarnaev trial, the video is taken to be the most credible participant in the courtroom, as witnesses trust the video's depiction of events over even their own experiences. These nonhumans become significant members of a thoroughly agentive network and their impact emphasizes the power and value of nonhuman members of heterogeneous networks.

References

- Bennett, J. (2010). *Vibrant matter: A political ecology of things*. Durham, NC: Duke University Press.
- Bennett, J. (2010). A vitalist stopover on the way to a new materialism. In D. Coole & S. Frost (Eds.), *New materialisms: Ontology, agency, and politics* (pp. 47-69). Durham, NC: Duke University Press.
- Boeri, D., & Cullen, K. (Hosts). (2015, 4 March). Finish line episode 2: Fresh wounds reopened as trial begins [Audio podcast]. Retrieved from <http://legacy.wbur.org/2015/03/04/day-one-opening>
- Coole, D. & Frost, S. (2010) Introducing the new materialisms. In D. Coole & S. Frost (Eds.), *New materialisms: Ontology, agency, and politics* (pp. 1-43). Durham, NC: Duke University Press.

- Finnegan, C. A. (2004). Doing rhetorical history of the visual: The photograph and the archive. In C. A. Hill & M. Helmers (Eds.) *Defining visual rhetorics* (pp. 195-214). Mahwah, NJ: Lawrence Erlbaum Associates, Inc.
- Foss, S. K. (2004). Framing the study of visual rhetoric: Toward a transformation of rhetorical theory. In C. A. Hill & M. Helmers (Eds.) *Defining visual rhetorics* (pp. 303-314). Mahwah, NJ: Lawrence Erlbaum Associates, Inc.
- Granholt, J.M. (1987). Video surveillance on public streets: The constitutionality of invisible citizen searches. *University of Detroit Law Review*, 64(4), 687-716.
- Gries, L. (2015). *Still life with rhetoric: A new materialist approach for visual rhetorics*. Boulder, CO: University Press of Colorado.
- Haraway, D.J. (1991). *Simians, cyborgs, and women: The reinvention of nature*. New York: Routledge.
- Latour, B. (2011). Love your monsters. *Breakthrough Journal*, 2.
- Latour, B. (1996). On actor-network theory: A few clarifications plus more than a few complications. *Philosophia*, 25(4), 369-381.
- Latour, B. (2005). *Reassembling the social: An introduction to actor-network-theory*. Oxford: Oxford University Press.
- Latour, B. (1992). Where are the missing masses? The sociology of a few mundane artifacts. In W.E. Bijker & J. Law (Eds). *Shaping technology/building society: Studies in sociotechnical change* (pp. 151-180). Cambridge, MA: MIT Press.
- Nicotra, J. (2016). Disgust, distributed: Virtual public shaming as epideictic assemblage. *Enculturation: A Journal of Writing, Rhetoric, and Technology*, 22. Retrieved from <http://enculturation.net/disgust-distributed>
- Reid, A. (2012). Composing objects: Prospects for a digital rhetoric. *Enculturation: A Journal of Writing, Rhetoric, and Technology*, 14. Retrieved from <http://enculturation.net/composing-objects>
- Rivers, N. (2012). Manual Rhetoric. *Enculturation: A Journal of Writing, Rhetoric, and Technology*, 15. Retrieved from <http://enculturation.net/node/5021>
- Rivers, N. (2014). Tracing the missing masses: Vibrancy, symmetry, and public rhetoric pedagogy. *Enculturation: A Journal of Writing, Rhetoric, and Technology*, 17. Retrieved from <http://enculturation.net/missingmasses>
- Solove, D.J. (2004). Reconstructing electronic surveillance law. *George Washington Law Review*, 72(6), 1264-1305.
- Transcripts: Alleged Boston bomber on trial. (2015). CNN. Retrieved from <http://www.cnn.com/interactive/2015/03/us/tsarnaev-trial-transcripts/>
- Twigg, R. (1992). The performative dimension of surveillance: Jacob Riis' "How the other half lives." *Text and*

- Performance Quarterly*, 12, 305–328.
- WBUR. (2015, March 5). Boston Marathon bombing scene from inside Marathon Sports store [Video file]. Retrieved from <https://www.youtube.com/watch?v=w3b2dMLgMg>
- WBUR. (2015, March 9). Video of Tsarnaev brothers around Boylston Street on day of Boston Marathon bombing [Video file]. Retrieved from <https://www.youtube.com/watch?v=HqaGJ50Cz7o>



Megan McIntyre is an Assistant Professor of English and Writing Program Director at Sonoma State University. She received her PhD from the University of South Florida in 2015, and her research interests include digital rhetoric and writing, writing program administration, and postpedagogy. You can find her most recent work in *Prompt*, *Textshop Experiments*, and *Composition Forum*.