



2013

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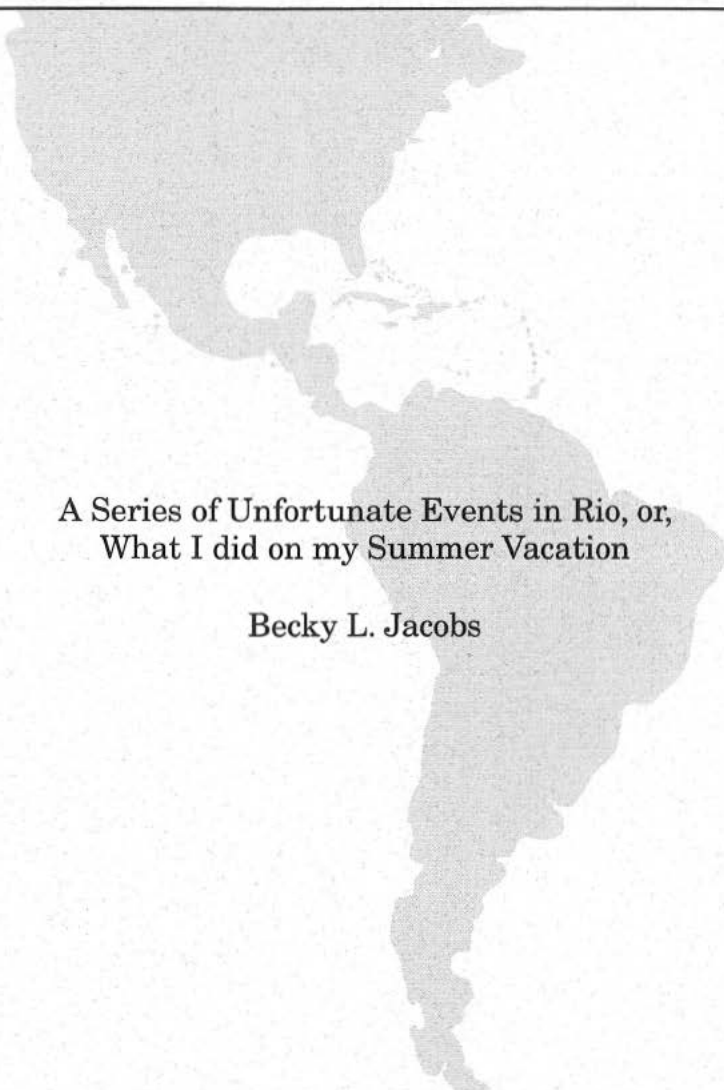
Jacobs, Becky L., A Series of Unfortunate Events in Rio, or What I Did on My Summer Vacation (May 15, 2013). The University of Miami Inter-American Law Review. Vol. 44, No. 2 (Spring). pp. 149-159. [legal cite: 44 U. Miami Inter-Am. L. Rev. 149 (2013)]; University of Tennessee Legal Studies Research Paper No. 236. Available at SSRN: <https://ssrn.com/abstract=2399577>

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THE UNIVERSITY OF MIAMI
**INTER-AMERICAN LAW
REVIEW**

Spring 2013 • Volume 44 • Number 2



A Series of Unfortunate Events in Rio, or,
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Becky L. Jacobs

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Becky L. Jacobs*

I. INTRODUCTION

By way of background and for some context, I lived and worked in Brazil before I joined the faculty of the University of Tennessee College of Law, so I am a total Brazilophile, and I try to get back as often as I can. I was incredibly fortunate, then, when I had the opportunity to participate in the Study Space V workshop on cultural diversity, property rights, and sustainable development. It is a very timely topic for Brazil.

Rio has grown dramatically in recent years, and it faces many challenges as it prepares to host the 2014 FIFA World Cup and the 2016 Summer Olympics.¹ The Study Space workshop explored how these challenges may threaten Rio's unique physical environment. We also considered how all levels of government will manage these challenges while attending to environmental justice concerns. A fantastic and very diverse group participated in the workshop, including legal academics, anthropologists, geographers, and political scientists from all over the world, and even some very talented graduate students. It was a very good thing that everyone was collegial because we spent virtually every waking hour together for seven days—it was intense. Our mornings were spent with speakers and panels on particular topics; we then would go on field trips in the afternoons to explore the topics in situ. In the evening, we would discuss our daily activities and review the voluminous readings we had been assigned.

Our morning and evening sessions were held at one of our

* Associate Professor of Law, University of Tennessee College of Law. Email: jacobs@utk.edu. I would like to thank Professor Colin Crawford, *o fundador da festa*, Professor Romulo Sampaio, Professor Maria Clara Dias, and the institutional and other organizers, particularly Fundação Getulio Vargas, for the opportunity to participate in Study Space V and its publications. I want to thank the faculty of the Stetson and St. Louis University Colleges of Law, particularly James Fox and Ann Scarlett, who hosted me on exchanges during which I presented a very nascent version of this. From them, I received excellent feedback, all of which has worked its way into my work.

1. Roderick Gilchrist, *Roll on Rio! The World Cup, the Olympics and a booming economy, Brazil is ready to party like never before*, MAILONLINE, Dec. 22, 2009, <http://www.dailymail.co.uk/travel/article-1237254/Roll-Rio-The-World-Cup-Olympics-booming-economy-Brazil-ready-party-like-before.html#ixzz1J9bWyGbS>.

host institutions, the law school at the Fundação Getulio Vargas (“FGV”). FGV is not only one of the best law schools in Brazil, but it and the foundation with which it is associated are also very influential policy institutes that often produce reports for Brazilian governmental units and conduct polls and surveys.² So, on any given day in the FGV building, you may run into news-makers and news reporters, government officials, judges, and reporters. Therefore, there is a dress code. I know that you are thinking, who cares? But that dress code is the genesis of this essay.

Let’s consider the dress code:

Fundação Getulio Vargas has a very strict dress code. People wearing shorts and flip-flops will be denied access to the building. Students who fail to comply with this regulation will not be allowed entry into the building under any circumstances.³

Seems pretty innocuous, right? However, as with any rule or law, the real meaning is revealed through its interpretation and application. In this essay, more of a story really, I will describe a day in the life of Becky Jacobs during Study Space V, after which I will explore how I perceived my day was a series of experiential metonyms for a number of the concepts that we were discussing in the workshop.

II. BECKY’S BAD DAY

A. *The Skort Event*

Thus begins my tale of woe. My story begins on the morning of the third day of the workshop. I arrived at the law school bright and early, looking forward to a panel on property titling in the *favelas*. I was dressed for walking through muddy, unpaved conditions as it was quite rainy, and we were scheduled to head out to one of the favelas after that day’s morning session.

I chose to wear a skort,⁴ along with tennis shoes and a polo shirt. How would one describe a skort? Well, it is a skirt with attached shorts, similar to a tennis skirt. As I was going through

2. For more information about FGV, see <http://portal.fgv.br/en> (last visited Apr. 10, 2011).

3. See <http://ebape.fgv.br/relacoes-internacionais/intercambio/international-students/undergraduate> (last visited Apr. 10, 2011).

4. As I emphatically stand by my position that it is a skirt-like item of clothing, I will use “skort” in the singular. However, if one describes the garments as shorts, it may be more accurate to use the plural form, skorts. I believe the included photo of that day’s sartorial selection adequately defends my position.



security at FGV, a male guard looked quizzically at my skort and noticed the shorts part of the garment. He politely stopped me and would not let me enter the building. Assuming that he was appalled at my singular lack of style, skorts apparently not being the height of female fashion in Rio,⁵ I of course attempted to make the case that, although I probably was guilty of a crime of fashion, my skort would not be classified as shorts (*calcoes*) but was in fact a skirt (*saia*). The guard really was trying to be helpful, but he was uncertain and asked me to wait while he consulted some higher up. I did wait, but he returned and apologetically ushered me out, explaining that the person with whom he had consulted confirmed, without of course even seeing my skort, that the rule was the rule.

Now, as we debated while I waited for the ruling from above, I watched at least four people enter the building wearing tank tops or Havaianas flip flops, which, as you probably know, are the national shoe of Brazil. You will recall that, as flip flops, they are impermissible under the dress code. Yet, the guard stood his ground and turned me away, regretfully and abashedly, but firmly.

So, there I was on the street. It was raining; I was going to be late to the panel; and I was facing about a thirty-minute trip on the Metro back to my apartment to change. I decided to try to find

5. Nor are they in the United States, but no one would ever claim that I am a fashionista.

a store and buy a pair of jeans or a skirt so that I could avoid the hour-long delay.

B. A Skort by Any Other Name

It was still fairly early in the morning, but I managed to locate a *Lojas Americanas*, Brazil's homegrown version of Wal-Mart, that was just about to open. Two *Lojas* employees, who were rolling up the heavy steel security doors, waved me in. I started into the store, and, as I was walking under the doors, a big chunk of metal from one of the doors came loose and fell on me. I kid you not, it knocked me right over.

I ended up lying face down on the floor (Quite lucky that I was wearing a skort, right?). When I sat up, I carefully felt around and discovered that I was bleeding and had a big bump on my head. All of the employees in the store ran over to help me—they were absolutely mortified.

Still in a panic about getting to the workshop, I assured the massed huddle of concerned employees that I was fine, that it was just a little blood, and that I always saw two of everything. Although a bit unsteady on my feet, I began to look around the store for something to wear that would not violate FGV's somewhat ambiguous dress code.

The store was a very small one, and there were no jeans or dresses to be found. I tried to wave good-bye so that I could get home as quickly as possible and change, but the store clerks insisted on helping me find something. They tried so very hard to help, bringing me a towel and then a tablecloth to use as a skirt, then a full slip with a lovely push up bra to use as a dress, or, one of my favorite ideas, a pair of men's underwear that they cut the legs out of to make a skirt. One of the clerks even tried to give me the jeans she was wearing. I was sorely tempted, but, even had I been that selfish, they would not have fit. Alas, a good thirty minutes passed before I could make my escape without offending those lovely folks.

C. Ladies First

Believe it or not, at this point in the story, it still is before 9:00 am. I had resigned myself to going all the way back to the apartment to change and headed to the Metro, which was crowded with morning rush hour commuters. Holding my bloody head, I stealthily wove my way to the platform for the "Women's Only" car, and, lo and behold, as I tried to push my way in, about ten men shoved

me aside and entered. As the train pulled away from the platform, I watched longingly; it appeared that the “Women’s Only” car was at least fifty-percent filled with men.

The rest of the story is somewhat anticlimactic. I finally made it back to my apartment, cleaned my wounds, changed into a pair of pants just to be safe, then hurried back to the workshop and caught the second part of the morning’s speakers, who were fantastic. I then trooped around in the mud in Cantagala during our field trip, getting soaked because, in the excitement of the morning’s events and in my rush to get back to the workshop, I totally forgot my umbrella. One of my colleagues finally took pity on me and loaned me a head-to-toe rain poncho, which I realized would have totally covered my skort so that I could have gotten into FGV. So much for my out-of-the-box thinking!

III. BECKY’S METONYMIC REVELATIONS

As we debriefed the day’s workshop activities that evening, I paused to reflect upon my morning. While it may be attributable to the head wound (and, if you think this is a poor essay, that is my story and I am sticking to it), I began to perceive several parallels between my Series of Unfortunate Events in Rio and the themes that we were developing in Study Space V.

One of the themes that we discussed in the workshop is the high level of uncertainty and ambiguity in interpretation of the law. Brazil has one of the most well developed legal systems in the world, including in the environmental area.⁶ In fact, environmental protection is one of the values enshrined in the 1988 Brazilian Constitution.⁷ However, it is often difficult to divine the meaning of its laws. This has several consequences, the first of which is that terms that seem fairly obvious can have surprising and unexpected meanings. Take, for example, the term *kilombo*, or *quilombo*. The 1988 Constitution included a provision granting land rights to the surviving *kilombo* communities that exist throughout the country.⁸

Kilombos are rural Afro-Brazilian communities that formed colonies of resistance against slavery. Although these communi-

6. See Colin Crawford, *Defending Public Prosecutors and Defining Brazil’s (Environmental) “Public Interest.” A Review of Lesley McAllister’s Making Law Matter: Environmental Protection and Legal Institutions in Brazil*, 40 GEO. WASH. INT’L L. REV. 619, 619 (2009).

7. CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 225 (Braz.).

8. *Id.* at art. 68.

ties were formed in many different ways, judicial interpretation of the constitutional provision has restricted the definition of the term to those communities whose members are descended from groups of fugitive slaves that escaped or rebelled violently against their servitude.⁹ Proving that a community satisfies this definition is a complicated and technical bureaucratic procedure and inter-agency conflicts further complicate the implementation of the constitutional right.¹⁰ While it is a frivolous comparison, it seemed to me that my skort was being defined in the same formalistic fashion,¹¹ no pun intended, as was “*kilombo*”—pragmatism was absent.

The Skort Event implicates yet another theme of the Study Space V workshop—appearances are more important than content. This “form over substance” tendency has had significant deleterious consequences, particularly in the context of the physical environment. For example, Guanabara Bay, the enormous bay on whose shores Rio is situated, looks clean and tidy from the roadside with the sun reflecting softly and the yachts bobbing gently. However, it is one of the most polluted ecosystems in the world.¹² Many observers fear that Rio will squander a wonderful opportunity to make real progress on cleaning up the Bay and resolving its other problems in advance of the World Cup and the Olympics. A national predisposition to consider only the superficial could interfere with a clean up. As one Brazilian told us, reality is less important than what is visible to the elites in their yachts who will resist spending money to address a problem they cannot see or experience.

I felt that I was a victim of this “appearance is everything”

9. Luiz Fernando Do Rosário Linhares, *Kilombos of Brazil: Identity and Land Entitlement*, 34 J. BLACK STUDIES 817, 818 (2004).

10. *Id.* at 822-23.

11. It has been suggested that the rule perhaps was being applied precisely as it was designed to do—to “control” the conduct of women and to prevent women from dressing in what was deemed to be an inappropriate and/or sexually distracting manner. This is a very thought- and dialogue-provoking theory and deserves further exploration, a line of inquiry I perhaps can return to later. However, in this instance, I cannot claim gender discrimination. Men and women in t-shirts and Havies streamed in and out. Perhaps it was fashion or height discrimination? Curly hair? I jest, but the administration and faculty of FGV are committed to and demonstrate principles of equal access in every respect, with women among their top administrative ranks and those of scholarly achievement and recognition. Further, believe me, if you had seen me in my skort, it is unlikely that this was this was the motivation for my ejection from the building.

12. See generally Monica Costa, et al., *Total Mercury in Perna perna Mussels from Guanabara Bay - 10 Years Later*, 261 THE SCIENCE OF THE TOTAL ENV. 69 (2000).

mindset at FGV. The guard at the law school let seemingly anyone into the building, no matter who they were or why they were there, even those who were not attending classes or participating in FGV-sponsored events. However, he barred me solely on the appearance of my clothing and, while he was focused on me, other rule violators slipped in. It did not matter to him at all that I was an invited visiting academic.

Weak and selective enforcement is yet another characteristic of the Brazilian legal system of which the Skort Event is representative. My example here relates to bureaucratic processes such as land titling or environmental permitting. When elites, including corporate investors such as ThyssenKrupp in Sepetiba Bay,¹³ and quasi-governmental entities such as Petrobras, the national oil company of Brazil, are seeking permits for large scale, complex construction or other economic projects, all levels of government in Brazil often provide assistance to smooth the process along. This is not a criticism. Having once worked in the private sector, I value public officials who work collaboratively with investors on compliance issues.

However, the bureaucracy becomes insurmountable; the process proves to be too cumbersome; and limited or no governmental help appears to be available for disadvantaged communities or public interest organizations that seek to assert or claim legal rights. This includes *kilombo* communities that are claiming their constitutionally guaranteed land entitlements,¹⁴ for members of the Landless Workers Movement (“MST”) who sometimes require government assistance to assert the constitutional condemnation authority for qualifying land,¹⁵ or for affected residents who seek to hold the government or businesses accountable for environmental damage or for failures to comply with legal requirements. As I watched the tank top, flip flop wearers enter FGV, I personally experienced this selective enforcement proclivity.

My skort debacle also reminded me of another attribute of Brazilian society, which is the latent propensity for deferring to hierarchical structures and/or authority.¹⁶ Many Brazilians appear to have a very strong paternalistic streak or are strongly

13. See, e.g., <http://www.boskalis.com/about-us/projects.html> (last visited May 19, 2013).

14. See Linhares, *supra* note 9 and accompanying text.

15. See, e.g., Wendy Wolford, *Producing Community: The MST and Land Reform Settlements in Brazil*, 3 J. OF AGRARIAN CHANGE, 500 (2003).

16. Hsu O’Keefe & William M. O’Keefe, *Business Behaviors in Brazil and the USA: Understanding the Gaps*, 31 INT’L J. OF SOCIAL ECON. 614–22 (2004).

susceptible to paternalism. The guard at FGV crumbled in the face of my objections, but he could not make a decision. He instead sought an authority figure to make the decision for him, refusing to take responsibility.

This deference to authority may not be obvious, but it appears to be deeply engrained in Brazilian culture. I have experienced this in the permitting process, during which lower level bureaucrats sometimes are reluctant to provide interpretations or to make decisions, instead seeking approval or advice from supervisors or managers. This can cause enormous uncertainty and delays for projects and leave space for misconduct of the “don’t ask for permission, ask for forgiveness” variety.

Also, this mindset can put those with little political access at a severe disadvantage in the administrative realm: elites have access and have influence with decision-makers. What in my opinion is a still relatively inexperienced civil society in Brazil may be at least in part attributable to this tendency to deference.¹⁷ Citizens were at one time conditioned to having someone in charge take care of their problems, and they are only slowly developing the capacity to engage the system on their own. The efforts of one group organized to address the environmental and other issues confronting communities surrounding Sepetiba Bay are representative. As I understood their efforts, group members approached prosecutors from the Ministério Público to champion their cause.¹⁸ When this was not successful, their activities were largely ineffective, despite their obvious passion and commitment.

The bump on the head had dislodged yet another metaphor or allegory in my poor little brain. With this one, I compared the old and obviously damaged door of the *Lojas Americanas* to Rio’s infrastructure, in particular its basic sanitation facilities. Like the defective door at *Lojas*, the city’s old water and waste systems have struggled to keep up with the city’s population and industrial growth. It was not until the early 1990s that Rio was able to begin modernizing and upgrading these systems with a large loan from the Inter-American Development Bank and the Japanese

17. Cf. Peter Houtzager & Adrian Gurza Lavalle, *Civil Society’s Claims to Political Representation in Brazil*, 45 ST. COMP. INT’L DEV. 1 (2010). This situation is changing, however. Oscar Vilhena Vieira, *Public Interest law: A Brazilian Perspective*, 13 UCLA J. INT’L L. & FOREIGN AFF. 219, 235 (2010).

18. These conclusions are based upon my recollection of conversations and presentations that took place during a workshop field trip to Sepetiba Bay. Any errors in interpretation are exclusively mine.

Eximbank.¹⁹ They are still working on this project, nearly 20 years later, and there is significant work to be done—only about 35% of the city's residents are hooked into the sewage system.²⁰

My experience with the wonderful employees of *Lojas* brought to mind a very positive characteristic of Brazilians that sometimes can prove to be a challenge to those attempting to work within the system. This experience is not uncommon in Brazil; Brazilians are amazingly generous and very creative, and they will literally give you the shirt off of their backs to help. This can be an incredible benefit, but it sometimes can cause more problems than those that you are trying to solve. In an effort, most of the time a sincere effort, to provide help to the public and to the regulated community, environmental bureaucrats will give you erroneous and sometimes conflicting advice or issue permits that can be challenged for containing incorrect information, as happened with the ThyssenKrupp project in Sepetiba Bay. The permitting of the project was controversial. Some claim that Federal Law No. 7661/88 and Regulatory Decree No. 5.300/2004 requires that enterprises in coastal zones be licensed by the federal environmental agency, IBAMA. ThyssenKrupp's permit, however, was issued by the Rio de Janeiro state environmental agency, FEEMA.²¹

I also extracted a metonym from the presence of men in the "Women's Only" car. Was this situation shocking? Well no, because the Brazilian public has a general disregard for the law. It has been reported that, "[a] survey of law students in Rio revealed that only [six] percent believed that conflicts in Brazil were principally resolved through the law and legal institutions; ninety-four percent considered the *jeito* or the 'law of the strongest' to be predominant."²² As one scholar notes, "Brazil is a country where, despite an abundance of thoughtful and well-constructed

19. US Export-Import bank loans Brazil 3 billion USD for oil and World Cup, Mercopress.com, (last visited May 17, 2013), <http://en.mercopress.com/2011/03/21/us-export-import-bank-loans-brazil-3-billion-usd-for-oil-and-world-cup>.

20. Press Release, *Water Management Remains Vexing Problem Despite Progress - Current IDB-Financed Projects Stress Institution Building and Community Participation*, Banco InterAmericano de Desarrollo (Mar. 2002).

21. See *Counter motions and election proposals at the General Stockholders' Meeting 2010*, THYSSEN KRUPP, (Jan. 11, 2010) http://www.thyssenkrupp.com/independent/hauptversammlung_2010/gegenantraege/Counter motions_2010-01-11_132900_en.pdf.

22. LESLEY K. McALLISTER, MAKING LAW MATTER: ENVIRONMENTAL PROTECTION AND LEGAL INSTITUTIONS IN BRAZIL 12-13 (2008) (citing Eliane Botelho Junqueira, *Brazil: The Road of Conflict Bound for Total Justice*, in LEGAL CULTURE IN THE AGE OF GLOBALIZATION: LATIN AMERICA AND LATIN EUROPE 64, 93-95 (L. M. Friedman & R. Pérez-Perdomo eds., 2003)).

laws, cultural norms and social practice often preclude observance of legal norms.”²³

Although there are many examples of this attitude in the context of the country’s environmental laws, one of the most glaring examples is the Brazilian *Código Florestal*. The Brazilian forest code, established in 1934, is widely regarded as one of the most advanced environmental laws in the world.²⁴ It sets strict limits on land use in areas where the biodiversity is high: in the Atlantic Rain Forest, part of which is in Rio, landowners are required to maintain 20% of their land in its natural state.²⁵ However, the code has never been successfully enforced.²⁶ Landowners generally just ignore it, and forests all over Brazil, including the Atlantic, the Amazon (and the Cerrado), continue to be illegally deforested.

IV. CONCLUSION

By way of a post-script, my cut eventually healed, and my bump went away. In the end, it was worth every Unfortunate Event to be able to participate in the day’s events. Does my story have a moral or morals? Probably not, but perhaps, if I were forced to derive any meaning from my morning, I might propose several generalizations that would apply anywhere or with anything that is unfamiliar, not just Brazil:

1. Don’t assume you understand the rules—I did not think my skort would be a violation of FGV’s dress code.
2. Don’t accept something that doesn’t “fit” —the folks at

23. Crawford, *supra* note 6, at 622-23. A colleague posed a question about the correlation between a society’s lack of respect for the law and its ability to pass laws. Brazil has excellent laws on the books, yet data indicate that its populace has little respect for these laws and that there are widespread enforcement issues. Contrast the situation in the United States, the government of which often finds it very difficult to enact legislation. Yet we are generally a law-abiding people, and there is a general belief that our laws are strongly enforced. *See also* John McDowell, *Wittgenstein on Following a Rule*, 58 *SYNTHESE* 325 (1984).

24. *See, e.g.*, Richard Blaustein & Chris Santiago, *Will Brazil Change its Forest Code – and Kill the Amazon rainforest?*, *ECOSYSTEM MARKETPLACE* (Sept, 22, 2010), available at http://news.mongabay.com/2010/0922-ecosystem_marketplace_forest_cost.html (last visited Apr 10, 2011). Just as an aside, a revision to the Forest Code has been proposed that would relax its requirements, a change that some have warned could allow up to 80% of the Amazon to be cut down and could significantly increase carbon emissions. *Id.*

25. *See* CODIGO FLORESTAL [C. FLOR.], Decreto No. 23.793, de 23 de janeiro de 1934, D.O.U. de 21.03.1935 (Braz.), available at http://www.planalto.gov.br/ccivil_03/decreto/1930-1949/D23793.htm (last visited Apr. 10, 2011).

26. Karen Bennett, *Additionality: The Next Step for Ecosystem Service Markets*, 20 *DUKE ENVTL. L. & POL’Y F.* 417, n. 64 (2010).

Lojas Americanas were earnest and creative, but their solutions did not work for me—I had to find a solution that was a personal “fit.”

3. Be flexible and stay focused on your goal—it would have been easy just to go back to the apartment and crawl back into bed to nurse my wounds, but I did not want to miss the workshop activities.
4. Have a strong noggin—well, that is an obvious one.

But, while I did have a pretty bad morning, and while Brazil has some problems with its legal regime and in particular its environmental laws, the vast majority of my days in Brazil were amazingly good ones, just as Brazil is a global leader on environmental issues and has strong laws on the books. So, I guess that the end of the story is that I lived happily ever after, and one hopes that Rio will take care that its unique physical environment lives happily ever after, too.