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CHAPTER 9

PUSHING SOFT DRINKS

"POURING RIGHTS"

I HAD NEVER HEARD OF "POURING RIGHTS" UNTIL LATE IN 1998 when I received a telephone call from a representative of the New York State School Food Service Association, inviting me to comment on that topic at its next meeting. She explained that the term referred to a recent development in food marketing: large payments from soft drink companies to school districts in return for the right to sell that company's products—and only those products—in every one of the district's schools. I was aware that colleges and universities had negotiated vending contracts with soft drink companies, and I knew that nutritionists and school food service directors had long been concerned that soft drinks and other top-of-the-Pyramid foods were sold in competition with the more nutritious foods provided by federally supported school meal programs. Although these contracts seemed to raise special concerns about their effects on children's diets, I had not heard debates about their health implications at professional meetings, nor had I heard discussions of their potential for fostering an environment that might actively promote soft drink consumption at the expense of more appropriate food choices. As I soon learned, the loudest protests against these contracts were coming instead from competing soft drink companies. These companies objected to restraints on *their* trade and on consumers' "freedom of choice" in the marketplace. As this chapter explains, soft drinks raise nutritional issues that place them at the forefront of present-day dietary concerns. For this reason, pouring-rights contracts illustrate some of the more disturbing consequences of "eat more" marketing imperatives.

WHY CARE ABOUT SOFT DRINKS?

For the purposes of this discussion, a soft drink is a soda made from carbonated water, added sugar, and flavors. Diet sodas substitute artificial sweeteners for the sugar but are not consumed by children to any great extent. By this definition, a soft drink is the quintessential “junk food”—high in calories but low in nutrients. A 12-ounce can contains about 1.5 ounces of sugar and 160 calories, but so little else of nutritional value that the Center for Science in the Public Interest rightfully refers to soft drinks as “liquid candy.”¹ From a nutritional standpoint, water or almost any other beverage is a better option. As shown in Table 23, a 12-ounce glass of orange juice—even that reconstituted from cans—provides substantial amounts of vitamin A, folic acid, potassium, and other vitamins and minerals along with its sugar and calories, as does an equivalent amount of 1% low-fat milk. Worse, soft drinks are the single greatest source of caffeine in children’s diets; a 12-ounce can of cola contains about 45 milligrams but the amounts in more potent soft drinks can exceed 100 milligrams—a level approaching that found in coffee.²

If soft drinks were occasional treats, no nutritionist would be the slightest bit concerned about them. But they are produced and consumed in vast quantities. As shown in Table 24, soft drinks have replaced milk in the diets of many American children as well as adults. School purchases reflect such trends. From 1985 to 1997, school districts decreased the amounts of milk they bought by nearly 30% and increased

TABLE 23. The nutrient composition of soft drinks, per 12-ounce serving, in comparison to orange juice and low-fat milk

	Coca-Cola	Pepsi	Orange Juice ^a	Low-Fat 1% Milk
Calories	154	160	168	153
Sugar, g	40	40	40	18
Vitamin A, IU	0	0	291	750
Vitamin C, mg	0	0	146	3
Folic acid, µg	0	0	164	18
Calcium, mg	0	0	33	450
Potassium, mg	0	0	711	352
Magnesium, mg	0	0	36	51
Phosphate, mg	54	55	60	353

SOURCE: J.A.T. Pennington, *Bowes & Church's Food Values of Portions Commonly Used*, 16th ed. (Philadelphia: J.B. Lippincott Co, 1994) IU = international units, g = grams, mg = milligrams, and µg = micrograms.

^aMade from frozen concentrate.

TABLE 24. Beverages available, gallons per person per year,^a in the U.S. food supply, 1970-1997

	Soft Drinks			
	Diet	Regular	Juice	Milk
1970	2.1	22.2	5.7	31.3
1975	3.2	25.0	6.9	29.5
1980	5.1	29.9	7.4	27.6
1985	7.1	28.7	8.3	26.7
1990	10.7	35.6	7.9	25.7
1995	11.8	39.8	8.7	24.3
1997	11.6	41.4	9.2	24.0

SOURCE: J. J. Putnam and J. E. Allshouse. *Food Consumption, Prices, and Expenditures, 1970-1997*. (Washington, DC: USDA, 1999).

^aOne gallon = 128 ounces. The annual supply of 12-ounce soft drinks in the United States in 1997 is equivalent to 442 regular drinks and 124 diet drinks per capita.

their purchases of carbonated sodas by an impressive 1,100%.³ From 1970 to 1997, the production of sugar-sweetened sodas increased from 22 to 41 gallons per person per year. These volumes require translation; they mean that the yearly *per person* supply of 12-ounce soft drinks in the United States is equivalent to 442 regular and 124 diet drinks (total 556). On average, enough regular soda is produced to supply every American adult, child, and infant with 1.2 daily 12-ounce drinks, or nearly 200 calories per day from this source alone. The production of diet sodas also rose during this period, from 2 to nearly 12 gallons per person per year.

I must emphasize that these are *production* figures that for the most part overestimate consumption; they do not necessarily reflect the amounts people actually drink. Surveys of actual dietary intake, on the other hand, tend to underestimate consumption, but they too indicate increasing intake of soft drinks by children, and especially by teenagers. As shown in Table 25, children begin drinking these beverages very early in life and steadily increase the amounts they consume through adolescence and young adulthood. One national survey reported that children aged 2-17 increased their average daily intake of sugar-sweetened soft drinks from just under 7 ounces to nearly 10 ounces just from the early to mid-1990s.⁴ USDA data from 1994-1995 indicated that girls aged 12-19 drank 12 ounces of regular soda (160 calories) on average, and boys drank 21 ounces (280 calories). Diet sodas barely enter into this picture; on an average day, girls were drinking an additional 2 ounces per day of diet soda, and boys 1 additional ounce.⁵ For children at the higher levels

the retail price charged by my local Manhattan convenience store, but still leaving \$19.01 to cover supply, labor, overhead, and funds donated to the school district. Even taking the large initial lump-sum payments and sales taxes into consideration, soft drink companies were unlikely to lose money on those deals.

I could not obtain reliable sales figures, but school food service directors laughed at the suggestion that students might consume an average of one case (24 12-ounce sodas) per year; they thought one soda *per day* was more realistic, at least for high school students. The quoted comments of a marketing consultant hired by 63 school systems to negotiate such contracts support this higher estimate.¹⁶ An official of a school district in New York state told me that his students drink so many sodas that the biggest problem is keeping the vending machines stocked, and teachers of my acquaintance give similar accounts. If just *half* the students in a district of 10,000 students consumed one soda per day, gross sales should have been more than \$25,000 per week. To such figures must be added sales of drinks at sports and community events. Yet in one New York state contract, the amount that Coca-Cola guaranteed to the district over the *entire* 10-year period came to a total of just \$15 for each student. These comparative figures explain why a PepsiCo official described such contracts in 1998 as "a pretty high stakes business development," and a Coca-Cola official said that his company would "continue to be very aggressive and proactive in getting our share of the school business."¹⁷

It must be noted that more recent contracts deal with larger amounts of soda. By 2001, soft drink companies were routinely placing 20-ounce sodas in vending machines, and pricing them at \$1.00–1.50. The larger sodas clearly encourage "eat more." They provide 250 calories each and are a better value (5.0–7.5 cents per ounce compared to 8.3 cents per ounce for the 12-ounce can). In addition, they are vended in portable screw-top plastic bottles that permit sipping throughout the day rather than downing in one gulp. This last feature particularly distresses dental groups alarmed about how the sugar and acid in soft drinks so easily dissolve tooth enamel.⁸

Nevertheless, it is not difficult to understand why administrators of financially strapped school districts would find these contracts irresistible. As the American population has aged, as the gap between rich and poor has widened, and as the proportion of low-income school children has increased, the tax base for public schools has consistently eroded. Schools barely manage to provide for basic educational needs, let

alone activities that might appear as frills. It is easy to understand why school districts in Colorado, Ohio, and Texas would contract with Coca-Cola, Pepsi, or Dr Pepper for pouring rights worth millions of dollars, why larger school districts would auction their rights to the highest bidder, and why school districts would hire consultants to help them negotiate the best possible deals. The Center for Commercial-Free Public Education, an advocacy organization in Oakland, California, announced that nearly 200 school districts in 33 states had entered into such contracts by early 2000, a four-fold increase in just 2 years.¹⁸ In the contract that set the standard, a 53-school Colorado district relinquished its Pepsi vending machines when it signed an \$8 million, 10-year agreement with Coca-Cola that included cash bonuses for exceeding sales targets and incentives such as a new car for a senior with perfect attendance and high grades.¹⁹

Even smaller contracts might provide sports, arts, or computer facilities not otherwise available from state or local resources. The 1998 contract between the North Syracuse Central School District in New York state and Coca-Cola, for example, is a 10-year agreement that requires all 10 of the district's schools and preschool programs—with a combined population of 10,100 students—to use Coca-Cola products exclusively in all vending machines, and at all athletic contests, booster club activities, and school-sponsored community events. The contract calls for the company to install, maintain, and stock at least 135 vending machines in schools throughout the district, for which it guarantees a payment of \$1.53 million—\$900,000 upon signing and the rest distributed in annual installments of \$70,000. The contract stipulates that the company is to pay additional commissions on purchases that exceed target amounts and is to donate 150 free cases of Fruitopia drinks, provide drinks to fundraising groups for resale, and also include software, coupons, or other premiums for each vending machine placed.²⁰ With the assistance of a powerful state legislator, the district was able to leverage this contract to obtain state aid for a \$6.5 million sports facility for the high school. These terms were considered so favorable that the New York State Education Department used them to develop a prototype contract. In 1999, the 18-school district in Albany, the state capital, negotiated a contract with Coca-Cola worth just \$667,000 but only for five years, because the school board wanted to retain some flexibility in the marketplace.²¹

The most questionable aspect of these contracts is that they link returns to the companies and to the schools to amounts that students

drink. At first glance, the financial advantages to the schools may seem impressive, especially because a significant part of the funding comes in an immediate lump sum that is not tied to sales. Most schools use the funds for sports facilities—scoreboards seem to be a particular favorite—but some buy furniture, sound systems, or computers; support student employment; and occasionally pay for scholarships. But because the contracts provide additional benefits for consumption levels that surpass quotas, school administrators are placed in the position of pushing soft drinks to faculty, staff, and students. Not that they necessarily mind doing so. In a letter widely circulated on the Internet and reprinted in a national magazine, a Colorado district administrator who signed himself “The Coke Dude” announced payments of \$3,000, \$15,000, and \$25,000, respectively, to his elementary, middle, and high school principals—along with some ground rules:

We must sell 70,000 cases of product . . . at least once during the first three years of the contract. If we reach this goal, your school allotments will be guaranteed for the next seven years. . . . If 35,439 staff and students buy one Coke product every other day for a school year, we will double the required quota. Here is how we can do it. . . . Allow students to purchase and consume vended products throughout the day. . . . I know this is “just one more thing from downtown,” but the long-term benefits are worth it.²²

Given the financial benefits of such contracts, it is understandable why many school administrators might resist thinking about, let alone dealing with, the agreements’ ethical implications or health consequences. School officials justify the contracts as breaking no new ground: soft drink vending machines already exist in schools, soft drinks already pervade American culture, children are not forced to drink sodas, and contracts can be written to safeguard students’ rights to drink other brands. From this standpoint, the benefits of soft drink contracts appear to outweigh any nutritional or other concerns they might raise. On this precise issue, the administrator of an Ohio school district with a new PepsiCo contract wrote,

We have worried about whether we’re forcing students to pay for their education through the purchase of soft drinks. In the end, though, we have decided that is not the case, because each student has the option to buy or not to buy. . . . Americans drink 13.15 billion gallons of carbonated drinks every year—which means somebody is making a lot of money. Why shouldn’t schools get their share? In the end, everyone wins: the students, the schools, the community. And for once, even taxpayers get a break.²³

Early in 1999, at the New York State conference I attended, the participating school food service directors expressed strong disagreement with such views. They were deeply troubled by a broad range of issues related to the length, exclusivity, and financial terms of the contracts, to the lack of adequate federal oversight of foods sold in competition with school meals, and to the widespread failure of schools to enforce even the weak rules that do exist. In particular, they worried about the consequences of pouring-rights contracts for the economic viability of school food service operations and the integrity of the schools' educational mission—all for good reason.

The typical pouring-rights contract period greatly exceeds the tenure of most school boards; boards cannot be held accountable when schools are locked into contracts that may prove unfavorable—financially or otherwise—in later years. Not surprisingly, the exclusivity feature frustrates competing soft drink companies that would like to sell *their* products to school children. A representative of one such company told conference participants that publicly supported schools have no right to dictate what students eat, when parents and children might want something else. Only in prisons, he said, are brands forced upon populations in this manner.

Indeed, the exclusivity of the contracts leads to situations so patently absurd as to elicit nationwide media attention. In one incident, a high school in Georgia suspended a senior student because he wore a shirt sporting a Pepsi logo to a "Coke Day" rally sponsored by the student government. To avoid such embarrassing attention, New York State Education Department contracts include a noteworthy clause that explicitly permits students, employees, and guests to drink and wear products that bear competing logos on school grounds.²⁰

A critical question is whether the contracts encourage greater consumption of soft drinks. People who track trends in pouring-rights contracts think that is exactly what they do: "What we have seen in just about every exclusive contract around the country is a resulting increase in the amount of soda consumed by students. . . . There's almost always an increase in the number of vending machines, and they're put into schools that previously didn't have them. . . . They're also putting machines in schools with younger children."²⁴ If children are drinking soft drinks, they are less likely to be eating more nutritious foods, especially those offered in school meal programs. This brings us to the issue of competition with school meals. As we shall see, pouring-rights contracts affect federal regulations for competitive foods, and we must now turn to a discussion of this otherwise obscure area of federal policy.

COMPETING FOR STUDENTS' COINS AND APPETITES

Soft drinks have long concerned federal regulators. In 1914, for example, Harvey Wiley, then head of the forerunner of today's Food and Drug Administration, said of such products, "While the miscellaneous bottled soft drinks on the market with the exception of those bearing habit-forming drugs, such as Coca-Cola (caffeine), cannot be said to be absolutely injurious, they represent to my mind second grade products of miscellaneous composition which does not recommend them for consumption by the young. . . . Why give your child [these] . . . when you can always obtain . . . pure fruit juices obtained direct from the lime, the berry, the orange or lemon?"²⁵

Sales of soft drinks in schools, however, are permitted as a result of amendments to the Child Nutrition Act of 1966, which in turn amended provisions of the National School Lunch Act of 1946. As outlined in Table 26, the history of regulations dealing with sales of soft drinks and other "junk foods" (graciously defined by Congress as "foods of minimal nutritional value") is part of a 50-year saga of nearly annual tinkering with the rules that govern the school lunch and school breakfast programs. The regulations for sales of soft drinks and other "competitive" foods—foods that children might buy instead of federally supported meals in the school cafeteria—constitute a minuscule part of the saga, but they illustrate the way commercial interests dominate congressional decisions about matters that affect the health of children.

For more than 30 years, in efforts to protect the nutritional and economic integrity of federally subsidized school meal programs, groups such as school food service officials, nutritionists, and advocates for children's health sought regulations to restrict sales of competitive foods in public schools. For decades, soft drink companies—often joined by principals, school boards, and state education departments—opposed any "time-and-place" restrictions on when or where soft drinks and other competitive foods might be sold. The results of this historical conflict readily reveal why advocates view the current regulations as promoting the commercial interests of soft drink companies far more than they do children's health.

By the late 1960s, coin-operated vending machines selling soft drinks and snacks were already well established in schools. Parents, school officials, health authorities, and even Congress could recognize as "an obvious fact of life" that sales of such foods directly competed with federally supported meal programs "for the children's coins and appetites."²⁶

TABLE 26. Selected events in the history of regulations governing sales of soft drinks and other competitive foods of "minimal nutritional value" in elementary and secondary schools

1946	National School Lunch Act passed to promote use of surplus agricultural commodities in school meals as a way to improve the nutritional status of low-income children.
1966	Child Nutrition Act requires USDA to develop regulations governing nutritional aspects of school meal programs.
1970	Amendments to 1966 act ban sales of competitive foods in or near school cafeterias during mealtimes but allow individual foods served in school meals to be sold competitively at other times and places, in effect restricting only soft drinks and candies.
1972	Amendments permit sales of competitive foods during mealtimes if proceeds benefit schools or school groups, and transfer authority to regulate competitive foods from USDA to state and local boards of education.
1977	Amendments restore USDA's authority to regulate competitive foods.
1978	USDA proposes rules restricting sales of foods of "minimal nutritional value"—soft drinks, water ices, chewing gum, certain candies—from the beginning of the school day until after the last lunch period; withdraws proposal in response to comments.
1979	USDA again proposes rules; PepsiCo organizes letter-writing campaign opposing USDA authority.
1980	USDA issues final rules similar to those proposed in 1978. National Soft Drink Association sues to overturn regulations; loses, appeals, and wins in 1983.

Congress, therefore, asked the USDA secretary "to take a hard look at some of the competition to the balanced meal offered within schools . . . [at] the availability of candy bars, soft drinks and a snack line in the school cafeterias."²⁷ In 1970 Congress passed amendments that allowed the USDA to block sales of competitive foods at the same time and place as school meals were offered (that is, in the school cafeteria during lunch periods) but permitted any food *ever* served as part of a school lunch to be sold at *other* times and places. This arcane distinction meant, for example, that cake could be sold but soft drinks could not.²⁸

As a result of these rules, soft drink companies lost revenue, but so did the schools. To protect the ongoing income they derived from sales of snack foods, school officials joined soft drink companies in pressuring Congress to allow competitive foods to be sold at *any* time and place (again, this meant in the cafeteria during lunch periods), provided that the proceeds went to the schools or to approved student organizations. They also induced Congress to remove the USDA's authority to regulate

TABLE 26. (continued)

1983	U.S. Appeals Court rules that USDA cannot impose "time-and-place" restrictions on sales of competitive foods.
1985	USDA revises rules; prohibits sales of competitive foods of minimal nutritional value only during lunch periods in cafeterias; permits such sales at all other times and places, with no restrictions on allocation of revenues.
1990	Citizens Commission on School Nutrition recommends restrictions on availability of non-nutritious foods in schools.
1991	American Dietetic Association and American School Food Service Association recommend restricting or banning sales of competitive foods in schools.
1994	Senate introduces bill to restrict or ban school sales of soft drinks and other foods of minimal nutritional value. Congress reaffirms 1985 rules but permits USDA to propose "model language" recommending time-and-place restrictions on sales in elementary schools.
1995	Center for Science in the Public Interest (CSPI) petitions USDA to require competitive foods to meet standards for good nutrition.
1998	CSPI publishes <i>Liquid Candy: How Soft Drinks Are Harming Americans' Health</i> ; urges schools to stop selling soft drinks.
1999	USDA places soft drinks at the "eat less" tip of its <i>Food Guide Pyramid</i> for children aged 2-6.
2000	Public Health Service calls for an improvement in the dietary quality of meals and snacks served in schools. Text of <i>Dietary Guidelines</i> suggests reducing intake of added sugars by limiting use of soft drinks. General Accounting Office issues report on school commercialism.

sales of competitive foods and, instead, to delegate decisions about such sales to state and local boards of education. These decisions effectively deregulated competitive foods, leading critics to charge that "profit had triumphed over nutrition."²⁶ After 1972, sales from vending machines and other competing venues increased in many schools. In 1977, during the more liberal Carter administration, Congress viewed sales of competitive foods as an abuse of the school meal programs and restored the USDA's regulatory authority. Yet in doing so, Congress demanded and received assurances from the USDA that the agency would not actually *ban* competitive foods but would only restrict sales of soft drinks and other foods of minimal nutritional value that "did not make a positive contribution to children's diets."²⁹

With its newly regained authority, the USDA then attempted to ban sales of foods of minimal nutritional value just until after the end of the last lunch period. Because this plan provoked a deluge of angry public comments, the USDA withdrew it and solicited additional input. Some

4,200 comments were submitted in response, filling a 15,000-page record. In 1979 the USDA again proposed this idea, this time defining foods of minimal nutritional value as those containing less than 5% of the Recommended Dietary Allowances for eight nutrients (protein, vitamin A, ascorbic acid, niacin, riboflavin, thiamin, calcium, and iron) per 100 calories or per serving. This definition meant that the restrictions would apply only to carbonated soft drinks, water ices, certain candies, and chewing gum. Even this revised proposal elicited more than 3,000 comments, of which 562 could be traced to a PepsiCo directive to its employees suggesting that they tell the USDA that its health objectives would be better achieved through nutrition education. Despite these pressures, the USDA held firm; its 1980 final rules continued to ban vending of soft drinks until the end of the school lunch period.³⁰

In the early 1980s, encouraged by the election of a more conservative administration, soft drink producers tried a more aggressive tactic. They took the USDA to court, charging that its regulations were "arbitrary, capricious, and an abuse of discretion . . . and in excess of statutory jurisdiction." The District Court dismissed the complaint, stating that "it is an obvious fact of life that a . . . vending machine, no matter where located can act as a magnet for any child who inclines to the non-nutritious."³¹ Soft drink producers appealed the decision and won. The Appeals Court ruled that the intent of Congress was simply to control sales of "junk foods" during meal service and that the USDA had no right to otherwise restrict the time and place of sales of competitive foods—even those of minimal nutritional value. The court did allow one exception: Competitive foods other than those of minimal nutritional value could be sold in the cafeteria during meal service if the proceeds went to approved student groups. In practice, this decision meant that the USDA could prohibit the selling of soft drinks only in the cafeteria during meal service periods and had to allow sales of sodas at any other time or place.³¹

As might be expected, this ruling stimulated sales of competitive foods (with the equally predictable result that school food service operations lost revenue) leading advocacy groups to renew their efforts to restrict such sales. They encouraged Senator Patrick Leahy (Dem-VT), then chair of the Senate Agriculture Committee, to introduce a bill to reinstate a complete ban on sales of soft drinks and other competitive foods of minimal nutritional value until the end of the last lunch period. Predictably, Coca-Cola opposed the bill and organized a letter-writing campaign among school principals, superintendents, and coaches who feared losing revenues generated by vending machines. The *New York Times* quoted

Senator Leahy as complaining that "the company puts profit ahead of children's health. . . . [K]ids have no money, no political clout, no political action committees. . . . If Coke wins, children lose."³² In hearings on his bill, the senator charged that "some local officials were being misled by Coca-Cola or other bottlers into believing that they had to allow soda machines in their schools." Congress, he said, should put the health of children above corporate profits.³³

According to the *New York Times*, a spokesman for Coca-Cola argued that his company makes "no nutritional claims for soft drinks . . . but they can be part of a balanced diet. Our strategy is ubiquity. We want to put soft drinks within arm's reach of desire . . . [and] schools are one channel we want to make them available in." A lobbyist for the soft drink industry explained to a reporter, "You have no evidence that the consumption of soft drinks is in any way harmful."³⁴ This same lobbyist told a Senate committee, "We question whether there is a need for 'Big Brother' in the form of USDA injecting itself into . . . decisions when it comes to refreshment choices."³⁵ School principals also opposed the bill on the grounds that it would interfere with their ability to bring in revenue for discretionary activities.

Such objections convinced Congress to retain the permissive regulations. In discussions of amendments to the School Lunch Act passed in 1994, a Senate committee suggested that the USDA should instead develop "model language" to restrict sales of soft drinks and other such foods in *elementary* schools before the end of the last lunch period, but it left the decision about whether to adopt that language to the discretion of state and local school authorities. Congress advised the USDA to send a letter to secondary schools reminding them that federal laws restricted profit-making sales of soft drinks in food service areas during lunch periods.³⁵ When advocacy groups called on the USDA to impose tighter controls on vended and competitive foods, officials explained that Congress had given the agency no authority to regulate the sale of foods *outside* the food service area.³⁶

As had been the case since 1972, the 1994 amendments explicitly invited state and local school authorities to impose more stringent restrictions on sales of competitive foods, and several have done so. New York State regulations enacted in 1987, for example, follow the earlier, more restrictive USDA proposals: "From the beginning of the school day until the end of the last scheduled meal period, no sweetened soda water, no chewing gum, no candy including hard candy, jellies, gums, marshmallow candies, fondant, licorice, spun candy and candy coated popcorn,

and no water ices except those which contain fruit or fruit juices, shall be sold in any public school within the state."³⁷

Although reliable data on compliance are difficult to obtain, advocates, teachers, and school officials tell me that state and federal rules are routinely ignored. To begin with, soft drink companies circumvent the rules by donating sodas to schools for free distribution during school meal periods, a development that prompted Senator Leahy to introduce additional legislation to stop such practices: "Nutrition doesn't go better with Coke or Pepsi at lunchtime . . . [T]his is a loophole—big enough to drive a truck through—that hurts our children . . . not unlike the old days when the tobacco companies would hand out free cigarettes to kids."³⁸ Furthermore, the companies developed sweetened fruit "drinks" that can be sold on lunch lines; these contain just barely enough juice (5%) to get around being defined as a food of minimal nutritional value.

Some evidence, limited though it may be, suggests the ubiquity of rule breaking. A survey of 55 Minnesota high schools found that 95% of the schools that had vending machines left them unlocked and thus accessible during some school hours, 29% left them unlocked all day, and 15% left them open during the lunch period—despite state regulations that discourage sales of soft drinks during lunch periods. The same survey also found that 60% of the vending machines were located in cafeterias.³⁹ A nationwide survey by the General Accounting Office found that 20% of U.S. schools gave students access to vended snacks and drinks during lunch periods and that two-thirds allowed other competitive foods to be sold during lunchtimes.⁴⁰ A more recent USDA survey reported that about one-fourth of all schools had vending machines located in or near the cafeteria.⁴¹ If nothing else, these studies prove that opportunities for violating regulations are readily available.

On this basis, advocates in New York City organized a class-action suit against the board of education, the chancellor of education, and five school principals to enforce a universally ignored city regulation that flatly prohibits "the sale of non-nutritious food, either directly or through vending machines" in public schools. Noting that the money for competitive junk foods in schools "comes from the poorest section of New York City—public school parents—who can least afford it," the suit argued that officials are obligated to comply with existing laws.⁴² After a two-year delay, the court ruled that the Board of Education must comply with the law and stop selling foods of minimal nutritional value until after the last lunch period. If schools wanted to sell foods such as sweetened soft

drinks during lunch periods, they would have to ask the head of the city's school food service operations for permission. Whether schools will comply with these directives, which carry no penalties, remains to be seen.

UNDERMINING NUTRITIONAL GOALS

Advocates maintain that if schools are doing their job properly, school meals should contribute to healthful eating habits, should be fully integrated into educational activities, and should receive adequate financial support. They believe such purposes would be best served if food service departments managed sales of all food in schools, rather than administrators or sports officials for whom nutrition and health are not necessarily high priorities. Advocates especially fear that competitive foods jeopardize the economic viability of school meal programs, because these programs are expected to be self-supporting with federal reimbursements and must have adequate sales volume to survive. The short time devoted to lunch periods in many schools also discourages students from eating full meals and encourages the purchase of competitive foods that can be eaten on the run.

This combination of circumstances has forced school food service departments to put substantial effort into recruiting participants through development of in-house food brands, restaurant-type menus, food courts, food carts, and new food items that can be purchased separately from meals. They also are forced to seek ways to improve the image of school meals, stimulate demand for more healthful food choices, and involve students in decisions about how to make school meals more appealing. All of these actions make excellent sense from a business standpoint, but only some of them reinforce the schools' educational mission.⁴³ The dilemma is best illustrated by beverage purchases. In the 1990s, milk and other dairy products accounted for nearly one-fourth of the food costs incurred by schools. Perhaps to reduce such costs, school purchases of sweetened fruit drinks increased by 180%. Fruit drinks cost less than milk, and although they are only marginally more nutritious than sodas, they may be served on lunch lines under the regulations. Using them saves money for the schools.³

That soft drink companies deliberately compete with school meals seems quite evident from testimony at congressional hearings. During hearings for the 1994 School Lunch amendments, for example, a high school food service director testified that when Coca-Cola distributed free 20-ounce bottles of soda, participation in the lunch program

declined by half; children drank soda instead. She reported that Coca-Cola had provided her school with cash incentives, bicycles, computers, and catered events and that it would be difficult for her principal to give up such perquisites. She concluded, "Without government regulations, Coca-Cola will always win."³³ Soft drink industry lobbyists, however, consistently argue that no evidence links the sale of their products to poor nutrition, to any other health problems, or to low participation rates in school lunch programs. Others, however, state frankly that the preferred placement for vending machines is near the cafeteria, just where the Minnesota survey found them to be.

As a side issue, it should be noted that pouring-rights contracts have economic implications beyond school meal service. Because they affect the sales of milk, the contracts also affect the livelihood of community dairy farmers. Milk used to be the only beverage provided to schoolchildren. Once sodas were permitted, milk sales declined. As shown in Table 24, this change has contributed to the overall decline in the annual production of milk in the United States from 31 gallons per capita in 1970 to 24 gallons in 1997.

From its inception, the purpose of the school lunch program was to improve the nutritional status of children, while providing an outlet for surplus agricultural commodities. Figuring out how to use school meals to promote nutritional goals has not been easy, however, and has occupied Congress since 1966. In implementing the provisions of the 1994 School Lunch amendments, the USDA accepted improved nutrition as a goal when it recognized that school meals could establish "childhood eating patterns that influence lifelong habits" and specified reductions in the fat, sugar, and salt content of the lunches to bring them into compliance with federal *Dietary Guidelines*.⁴⁴

In doing so, the school meal programs also were brought into compliance with Public Health Service 10-year plans to improve the health of Americans. Since 1980, the plans have called for information about healthful dietary patterns to be included as part of comprehensive health education curricula in elementary, junior high, and senior high schools. Part of the reason for paying attention to school nutrition education is that it has been demonstrably effective, especially when supported by meals served in school cafeterias. Participants in school meal programs have been shown to consume better diets than nonparticipants. If students replace school meals with competitive foods of minimal nutritional value, the quality of their diets can be expected to deteriorate.⁴⁵

One goal of the 10-year plan released in 2000 is to increase the percentage of children and adolescents aged 6 to 19 years whose intake of meals and snacks at schools contributes appropriate proportions of nutrients and calories. The plan specifically recognizes that students today have "increased food options" at school. Thus, creating an environment supportive of healthful diets would help schools promote health as well as learning readiness.⁴⁶ Because this goal applies to foods served in snack bars, school stores, and vending machines, improving the nutritional quality of competitive foods has now been incorporated as a formal component of national nutrition policy. It is as yet uncertain whether and how government agencies will implement this policy.

PRESERVING "THAT BRIEF SHINING OASIS"

The attention that soft drink companies have recently focused on children in grades K-12 can be seen as part of the increasing intrusiveness of commercial interests into American schools. Companies routinely market food products to children in and out of school; these activities are now so common as to be taken for granted and accepted with minimal debate. The companies—and the school officials who contract with them—implicitly assume that soft drinks are appropriate fare for school-age children, rather than milk, juice, or water, any of which would be a better nutritional choice.

Here too, the level of cynicism is especially disturbing. What are we to make of the comments of a PepsiCo official who casually mentions that "marketing to the 8- to 12-year-old set is a priority," as though it were unquestionably appropriate for a soft drink company to direct sales efforts to such young children?¹⁴ And how are we to take the following comment attributed to a consultant who helps schools obtain contracts? He says that pouring-rights contracts make schools more realistic for children: "If you have no advertising in schools at all, it doesn't give our young people an accurate picture of our society."¹⁶

Pouring-rights agreements clearly teach students that school officials are willing to compromise nutritional principles for financial reasons, even when the linking of payments to higher-consumption goals puts them in the position of advocates for soft drink consumption. When a school administrator tells a reporter that "the nutrition aspect is important, but I'm ambivalent about it," he reveals his priorities; such ambivalence contributes to student attitudes that nutrition and health are not

important concerns.⁴⁷ All too rare is the school administrator who is brave enough to say, "Matters involving money properly stop at the schoolhouse door" or to insist that "education and marketing are like oil and water."⁴⁸ All too few newspapers are willing to admit discomfort with the deals schools make with soda companies, and to argue that "the more things in a school that are for sale . . . the less the school can claim to offer that brief shining oasis" from the rampant commercialism aimed at children everywhere else.⁴⁹

The well-financed promotion in schools of soft drinks and other foods of poor nutritional quality directly undermines federal efforts to improve the dietary intake of children and to reduce rates of childhood obesity. Even though colleges (and now entire cities, such as Huntington Beach, California) have become advertising vehicles for soft drink companies, elementary and secondary school students surely deserve some protection against commercial interests that contribute to poor nutrition outside of school, as well as within.

Soft drinks, of course, constitute just one example of industry marketing to children, but the health effects of this product are becoming increasingly well documented. Thus a good starting place for nutrition advocacy for children is to encourage consumption of water, juices, and low-fat milk but to discourage consumption of sodas and sweetened fruit drinks, except as occasional desserts. In what must be considered a courageous move in this direction, the USDA braved the wrath of the soft drink industry when it pictured "soda pop" at the tip of its 1999 *Food Guide Pyramid* for children aged 2-6.⁵⁰

Anticommercialism advocates urge students to identify and resist school marketing, communities and states to require firm adherence to existing regulations, and school boards to disallow exclusivity agreements and pouring-rights contracts altogether. By the end of 2000, more than 30 school districts in California, Tennessee, and Wisconsin, for example, had refused such deals after protests by parents, students, and school officials. Philadelphia refused an offer from Coca-Cola for \$4.3 million over a 10-year period, and Michigan turned down a contract that would have covered 110 school districts encompassing nearly half a million students.¹⁸ At the national level, advocates are lobbying for federal regulations to restrict sales of competitive foods in general, and those of minimal nutritional value in particular, and to expand the definition of such foods to include the new "juice" products and other such foods. Others are considering a range of pricing, tax, and other "environmental"

strategies to improve the diets of schoolchildren, similar to those that I and others have proposed to address current trends in obesity.⁵¹

By 2001, such advocacy was beginning to have an effect. Days before the inauguration of President George W. Bush, the USDA asked Congress to "strengthen the statutory language to ensure that all foods sold or served anywhere in the school during the school day meet nutrition standards."⁵² Soon after, Senator Leahy introduced a new bill to require the USDA to ban or limit the sale of soft drinks and other competitive "junk foods" before the end of the lunch period on the basis that "schoolchildren are a captive market for soda vendors . . . [and] our kids pay the price when we give soft drink companies free reign to market their products in school."⁵³ In Minnesota, a state senator introduced a bill to ban sales of soda pop while school is in session, but it "failed in the committee BIG TIME" under pressure from lobbyists for soft drink companies and school boards.⁵⁴

Despite such victories, but surely in response to the threat of legal intervention, Coca-Cola announced that it would no longer require exclusivity in school contracts. Advocates, however, viewed this "retreat" as a corporate decision that would enable the company to remain in schools, and business analysts thought it would have little financial effect on the company, since school beverage sales "only" accounted for 1% of its \$20 billion in annual revenue.⁵⁵

Although pouring-rights contracts are only one component of an arsenal of food company marketing techniques, issues related to societal inequities are central to the significance of these contracts as a public health concern. Congressional reluctance to favor children's health above the rights of soft drink producers is a direct result of election laws that require legislators to obtain corporate funding for their campaigns. Like most corporations, soft drink companies donate funds to local and national candidates. More rational campaign financing laws might permit Congress to take positions based on public good rather than private greed.

Similarly, if American public schools were funded adequately, the blatant commercialism inherent in pouring-rights contracts and other marketing efforts in schools would almost certainly be subjected to debate, and departments of education, school boards, principals, and coaches would be less likely to enter into such agreements without far more public discussion than now occurs. As one San Francisco school board official explained, "Education cannot be funded by potato chip contracts. . . . [C]ome back and talk to me about nothing being wrong with these contracts when

there are Coca-Cola banners in the House of Representatives and members of the U.S. Senate can only have a TV set if they watch Channel One for 15 minutes a day."⁵⁶ Pouring-rights contracts may solve immediate problems of school funding, but their social cost is high, not least because they erode efforts to establish adequate federal, state, and local funding for public education. These contracts, therefore, point to the need for much greater public attention to overall commercial pressures on children and for a much greater level of critical scrutiny of such pressures by school officials, legislators, health professionals, and the public.

In these chapters, I have focused on the ways in which food companies use advertising and marketing methods to expand their base of consumers by targeting young people. In the next section, we move on to an even more powerful strategy: resistance to regulation. Part IV examines the ways in which food companies—in this case, those that sell dietary supplements—were able to obtain almost complete deregulation of their products and, in the process, weaken the ability of the Food and Drug Administration to regulate foods, as well.