To better understand the controversy over damage class actions, and especially to learn about trends and issues in class action practice, we interviewed leading class action practitioners. We used a non-random purposive sampling technique aimed at identifying individuals in plaintiff and defense practices and private- and public-sector positions to select respondents.

On the plaintiff side, we interviewed leading class action practitioners who have served as class counsel in myriad lawsuits. We also interviewed plaintiff tort attorneys who oppose class action certification of mass torts; some of the latter nonetheless had represented parties in class actions. We interviewed some plaintiff attorneys whose practices primarily focus on financial injury suits, others whose practices primarily focus on personal injury suits, and some whose practices include a mix of both types. On the defense side, we interviewed corporate (in-house) counsel in a number of different industrial sectors as well as outside defense counsel. In the public interest sector, we interviewed representatives of organizations that have intervened in class action lawsuits as well as those who have represented class members. While all of the private practitioners we interviewed primarily represent parties in damage class actions, several of the public interest lawyers we interviewed generally or sometimes represent parties in other types of class actions. We interviewed a private attorney who has a specialty practice as an intervenor, a staff attorney in a state attorney general’s office, and a nonlawyer communications expert who specializes in designing and placing class action notices. Table C.1 shows the distribution of interviews by type of firm or organization.1

Many of those whom we asked to participate invited colleagues to join them in the interview, or asked us to interview several people in their firm or organization sequentially. As a result, we talked with 70 individuals at 41 firms and organizations. The typical interview lasted for 90 minutes, but some were lengthier and on a few occasions we spent half a day or more at a particular firm or organization. In a few instances, we conducted multiple interviews with a single individual. (We later re-interviewed some of those who participated in this phase of the study for our case study analysis.)
We conducted all of the interviews during this phase of the study under the promise of confidentiality. In discussing class action practices, some individuals cited specific cases. Some were uncomfortable talking about actual cases, even under a promise of confidentiality, and invoked instead unnamed or hypothetical cases to illustrate their points. Some interviews focused exclusively on a single class action, and others ranged over the respondent’s recent class action experiences.

All of the interviews were conducted over a 15-month period from October 1996 through December 1997. During this time, there were ongoing activities in the Civil Rules Advisory Committee and Congress directed at changing Rule 23. We anticipated that some respondents would view the interview as an opportunity to lobby us on the correctness of their views regarding class actions and argue for particular changes. Although we did discuss various proposals to change Rule 23 in our interviews, we focused our questions on respondents’ actual experiences with class action lawsuits and their beliefs about the uses and abuses of class actions based on these experiences. We asked all of the interviewees to tell us about their and their firm’s (or organization’s) experience with class action litigation in recent years and recent changes in filings. We asked them to compare and contrast appropriate and inappropriate uses of class actions, with reference to actual cases, and to discuss settlement practices and outcomes in cases they had litigated. When respondents identified areas that they thought merited reform, we asked them to identify types of changes they thought worthy of consideration. Most respondents spent most of the interview time discussing their own experiences litigating class action lawsuits, and their assessments of these experiences, rather than promoting or opposing proposed reforms.

The individuals we interviewed have a wide range of perspectives and experiences covering virtually all areas of class action practice, but they do not consti-
tute a random sample of class action participants. Our discussion of trends in class action filings derives from our interviews with these individuals, but we cannot draw statistical inferences to the population of class action litigators from these interviews. Our analysis of the virtues and vices of damage class actions (presented in Chapter Three) was shaped not only by what we learned in the interviews, but also by our own and others’ previous empirical studies of mass torts and class actions, and by the rich legal scholarship on the dynamics of class action litigation.

NOTE

1During this phase of the research we did not interview legal scholars who have studied class actions. But in the course of our study we had the opportunity to discuss class action policy issues and our research findings with colleagues and others at academic workshops and conferences.

We also did not interview judges during this phase of the research, as we anticipated that practitioners would be a better source of broad nationwide trends in class action filing and settlement practices.