THE PATTERN OF FAILURES TO APPEAR

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May, 1977

TABLE OF CONTENTS

INTRODUCTION

Failures to appear in court represent a major cost associated with the pretrial release of criminal court defendants. Previous research has focused primarily on distinguishing defendants who do and do not fail to appear on the basis of a combination of demographic factors, the defendant's prior criminal history, and various characteristics of the current court case. However, little attention has been directed towards the temporal distribution of failures to appear. Two notable exceptions are the research of Schaffer (1970) and Davis (1975).

Schaffer studied the non-appearance rates of a sample of defendants scheduled for a post-arraignment appearance in Manhattan Criminal Court during the first three months of 1967. He reported that most failures to appear occurred early in the life of a case and found little evidence that lengthy court procedings served to increase the likelihood of non-appearance. However, his research included both bail and personal recognizance releases and offers no separate analyses of the pattern of failures to appear separately by the type of release the defendant secured.

Davis' research was based on a sample of defendants arraigned in the Bronx between December 1, 1974 and February 28, 1975 whose appearance histories were traced through July, 1975. Davis concludes that court delay is at least as important a predictor of a defendant's likelihood of non-

appearance as his or her predisposition to fail to appear. While Davis' research focused solely on defendants released on their own recognizance at criminal court arraignment, his analysis was not restricted to pretrial appearances but instead included all adjournments scheduled prior to sentencing.

The research discussed in this paper attempts to identify the pattern of failures to appear prior to disposition of criminal charges for defendants released on their own recognizance at arraignment. Non-appearance rates are examined by ordinal adjournment number, by number of weeks from criminal court arraignment, and by arraignment, and by number of adjournments scheduled for each defendant.

RESEARCH DESIGN AND POPULATION

The research population employed in this study consists of all 566 defendants released on their own recognizance at criminal court arraignment in all boroughs of New York City except Queens between May 3 and May 9, 1976. The appearance histories of these defendants were traced for the ten-month period from May 3, 1976 through February 27, 1977.

The 566 defendants represent 49.6% of the 1141 defendants whose cases were not disposed at arraignment during the sample week. Over 80% of the defendants were recommended for release-on-recognizance (ROR) on the basis of verified or non-verified community ties by the New York City Pretrial Services Agency.

	Verified Recommended	Non-Verified Recommended	No Recommendation	Other[1]	TOTAL
# ROR'D	334	120	78	34	556
# NON-DISPOSED	528	212	248	153	1141
% ROR'D	63.2%	56.6%	31.4%	22.2%	49.6%
ROR'S AS A % OF TOTAL # ROR'D	59.0%	21.2%	13.8%	6.0%	100.0% (N=566)

As classified by the New York State Penal Code, the defendants were arraigned on charges ranging from A felonies to violations. The modal offense class for defendants' most severe arraignment charge was D felony. Over three quarters of all ROR'd defendants were in the D felony to A misdemeanor range.

FELONIES				MISDEMEANORS		UNCLASSIFIED MISDEMEANORS & VIOLATIONS	TOTAL
A or B	C	D	E	A	B		
5.1%	10.8%	33.0%	17.7%	15.4%	3.9%	4.1%	100.0% (N=566)

All defendants released on their own recognizance from New York City Criminal Courts, regardless of whether they were recommended or not recommended for release by Pretrial Services Agency are required to "check-in" with PTSA personnel at the courthouse immediately after arraignment and prior to all subsequent court dates. PTSA notifies these defendants by mail of the time and place of their hearings and requires that they acknowledge receipt of the court-date notification letters.

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1. "Other" includes defendants for whom no recommendation could be made because the defendant possessed a legal impediment to release on own recognizance such as a current charge of bail jumping or an outstanding warrant.

Defendants who fail to respond to their letters are sent "delinquent" letters, which are followed by telephone calls should the additional letter fail to elicit a response.

Despite these notification procedures, 101 or 17.8% of the 566 defendants released on their own recognizance at arraign- missed at least one scheduled court appearance during the ten- month period examined. Sixteen defendants failed to appear at more than one adjournment: Nine defendants missed two appearances, six missed three and one defendant missed four scheduled appearances. Thus, the sixteen repeat jumpers, 15.8% of all defendants who ever failed to appear, account for almost one-third of missed appearances. The 85 defendants who missed one adjournment account for the re- maining 68% of the 125 failures-to-appear.

The failure-to-appear rate is most typically calculated as the number of missed appearances as a proportion of the total number of appearances scheduled. The failure-to-appear rates discussed in this research all represent aggregate rather than delayed or willful failures. No distinction is made between terminal and non-terminal failures to appear. In other words, a missed appearance is considered to be a failure-to-appear regardless of whether or not the defendant subsequently returned to court. Defendants' returns on warrants are not tallied as scheduled appearances. Of the 1400 post-arraignment appearances scheduled for the one-week cohort, 125 resulted in the issuance of a bench warrant, a "non-appearance" or "failure-to-appear" rate of 8.9%.

As expected, however, defendants who were recommended for release-on-own-recognizance on the basis of verified (6.5%) or non-verified (7.2%) community ties showed far lower rates of non-appearance than those who were not recommended (16.8%).

	Verified Recommended	Non-Verified Recommended	No Recommendation	Other	TOTAL
# Scheduled Appear.	828	318	179	75	1400
# Failures to Appear	54	23	30	18	125
% Failure to Appear	6.5%	7.2%	16.8%	24.0%	8.9%

Examination of non-appearance rates by severity of arraignment charge indicates that defendants ROR'd at arraignment on A or B felonies were least likely to fail to appear, followed by those arraigned on B misdemeanors. Defendants in the most minor charge category included in this research (violations and unclassified misdemeanors) and those charged with A misdemeanors showed the highest rates of non-appearance.

	FELONIES				MISDEMEANORS		Violations & Unclassified Misdemeanors
	A or B	C	D	E	A	B	
# Scheduled Appear.	102	138	496	261	314	48	41
# Failures to Appear	2	15	35	21	39	3	10
% Failure to Appear	2.0%	10.9%	7.0%	8.0%	12.4%	6.2%	24.4%

<u>FINDINGS</u>

A. <u>Distribution of Scheduled Appearances and Failures to Appear</u>

The vast majority of scheduled appearances and failures-
to-appear of defendants released on their own recognizance at
arraignment are concentrated in the early weeks of criminal
court cases (See Graph I). 20% of the 1400 scheduled appear-
ances encompassed by this research and 12% of the failures to
appear occurred during the first three weeks after arraignment.
Approximately 80% of the appearances and warrants found in the
ten months subsequent to arraignment occurred within fifteen
weeks. Only 5.1% of all scheduled appearances and 6.4% of
all failures to appear were in the last three months (thirteen
weeks) examined in this research.

The volume of scheduled appearances peaked in the third
week subsequent to arraignment, the modal week, with 182
appearances. The volume of failures to appear was greatest
in the fifth week, when eighteen bench warrants were issued.
During week 26 and each of weeks 29 through 43, fewer than
ten appearances were scheduled. No warrants were issued for
defendants in the one-week cohort during twelve of the 43
weeks examined. Thus, the volume of scheduled appearances
and of failures to appear both drop dramatically as defendants'
cases reach final disposition.

V O L U M E

180 150 120 90 60 30

SCHEDULED
APPEARANCES

FAILURE
TO APPEAR

WEEKS

2 4 6 8 10 12 14 16 18 20 22 24 26 28 30 32 34 36 38 40 42 44

GRAPH I

NUMBER OF SCHEDULED APPEARANCES AND FAILURES TO APPEAR

FOR FORTY-THREE (43) WEEKS AFTER ARRAIGNMENT

MAY 3, 1976 - FEBRUARY 27, 1977
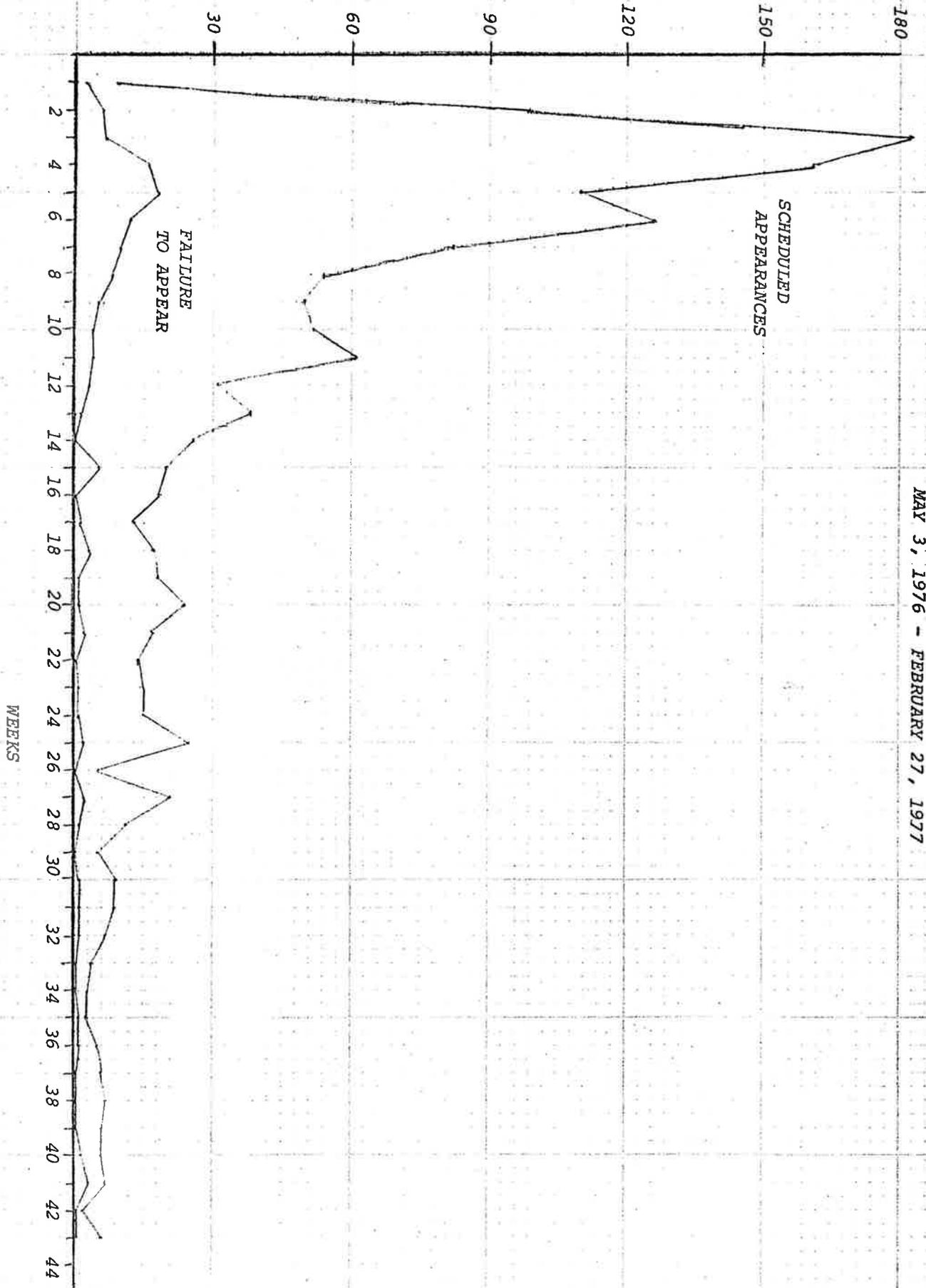
FINDINGS

B. <u>Total Number of Adjournments and Failures to Appear</u>

The number of times each defendant is required to appear in court prior to disposition of their charges shows considerable variation. While all 566 defendants were scheduled for a first adjournment, only 57.4% were required to appear again. Although 13% were scheduled for five or more court adjournments, only eight defendants were required to make ten or more court appearances.

Just as appearances scheduled during the first few weeks after arraignment represent the bulk of all scheduled appearances, first adjournments comprised 40% of the 1400 appearances scheduled for the 566 defendants in the one-week cohort (see Graph II, p.9). Second and third adjournments account for an additional 37% of scheduled appearances. Fifth through thirteenth adjournments constitute 14% while the eighth through thirteenth represent only 4% of all scheduled appearances.

Similarly, failures to appear show the same progressive decrease in volume noted above. Non-appearances at first adjournments constitute 42% of all non-appearances. Failures to appear at fifth through thirteenth adjournments comprise 10% while those that occur at eighth through thirteenth represent only 3% of the total volume of failures to appear.

GRAPH II

NUMBER OF SCHEDULED APPEARANCES AND FAILURES TO APPEAR

FOR THIRTEEN (13) ADJOURNMENTS

MAY 3, 1976 – FEBRUARY 27, 1977

VOLUME

SCHEDULED
APPEARANCES

FAILURE
TO APPEAR

ADJOURNMENT NUMBER
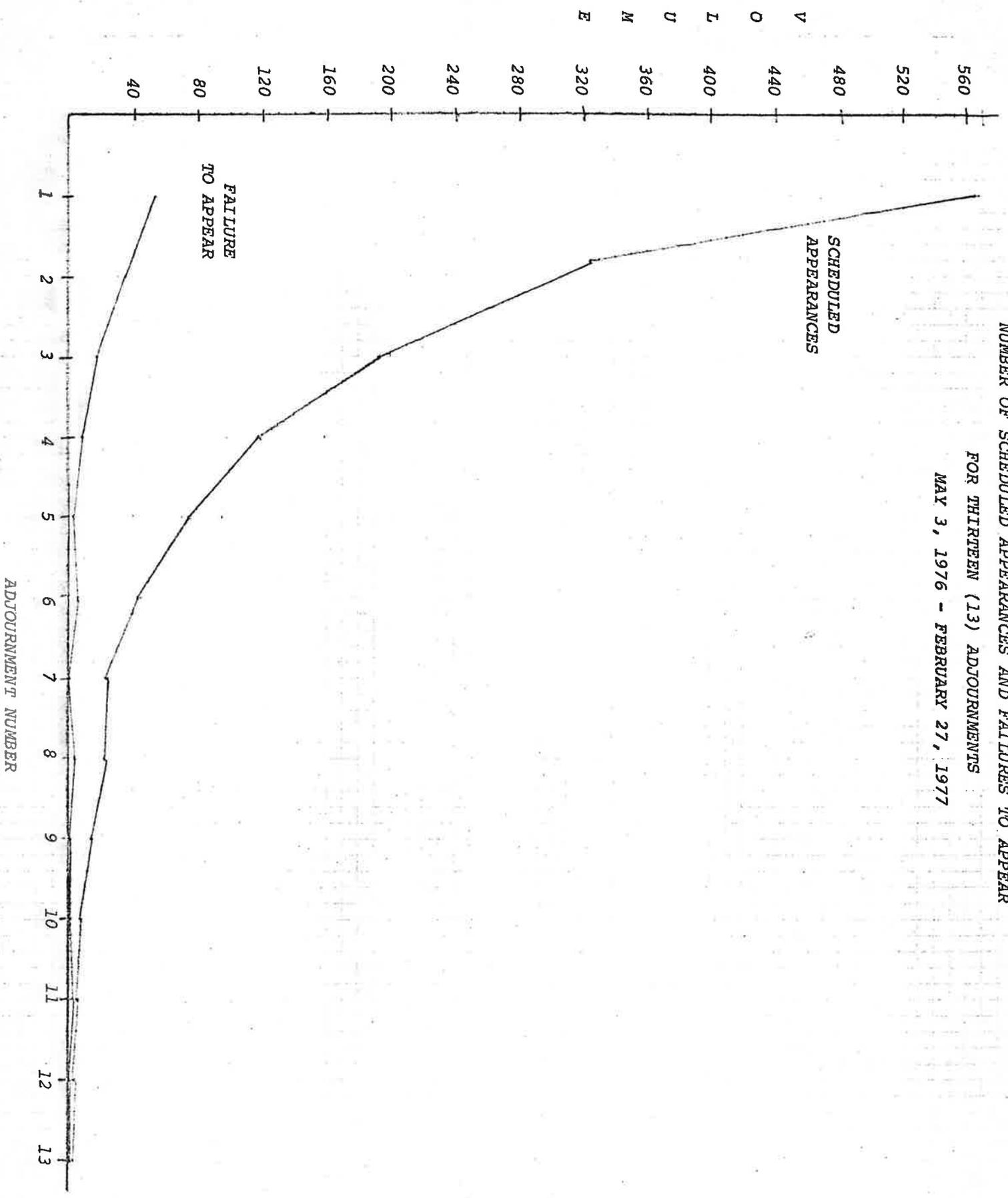
<u>FINDINGS</u>

C.   The Pattern of Failure-to-Appear Rates by Number of Weeks from
          Criminal Court Arraignment

Failure to appear rates show marked fluctuations from week
to week (see Graph III, p.11). A variety of "smoothing" techni-
ques which are discussed in detail in the Methodology section,
pps. 25-28, were therefore employed to facilitate data analysis.
The results of these procedures are remarkably consistent and
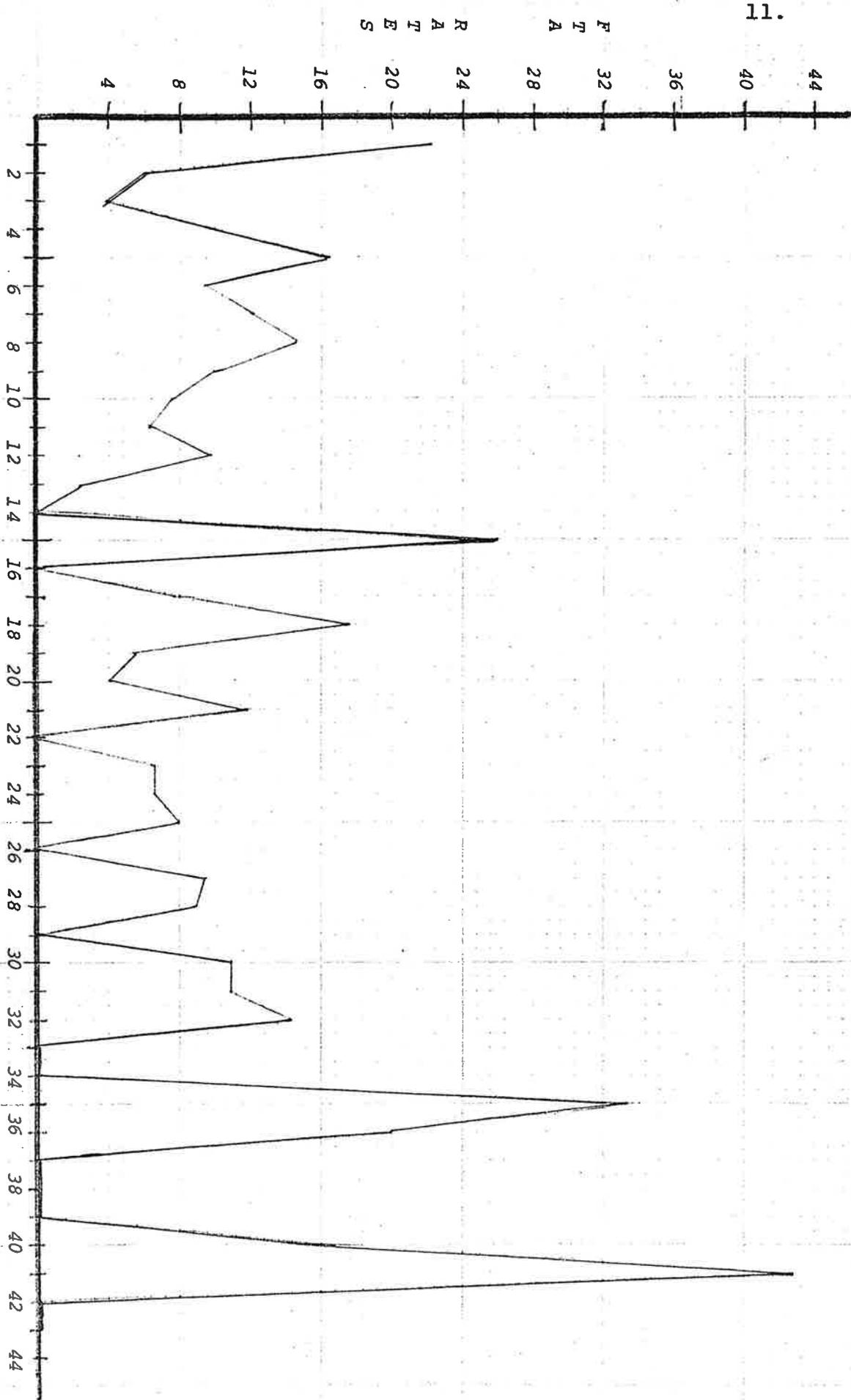are displayed in Graphs IV - XII (pps. 13-21).

The findings of this research indicate that the non-appear-
ance rate of defendants released on their own recognizance at
arraignment tends to rise[1] quickly and then decrease before
more slowly rising again. Although the graphs vary somewhat,
the first rise in the non-appearance rate appears to peak during
the fourth through eighth weeks after arraignment. All of the
graphs then show a decreasing rate of failure-to-appear which
reaches a low point between the fourth and sixth months. On
most graphs, two troughs are shown during this period. The
first occurs approximately between weeks twelve and fifteen
while the second appears between weeks 21 and 24. The data
does not permit a more precise determination of the temporal
position of the lowest point in the declining failure-to-appear
rate that characterizes this period. The bar graphs (Graphs
X - Xll, pp. 19-21) that display non-appearance rates for
equal fifths of the distribution of scheduled appearances are
not sufficiently refined to show two troughs but nevertheless
evidence a low failure-to-appear rate during this time span.

GRAPH III

GRAPH I. FAILURE TO APPEAR RATES BY WEEK

MAY 3, 1976 – FEBRUARY 27, 1977

F
T
A

R
A
T
E
S

44
40
36
32
28
24
20
16
12
8
4

2 4 6 8 10 12 14 16 18 20 22 24 26 28 30 32 34 36 38 40 42 44

WEEKS

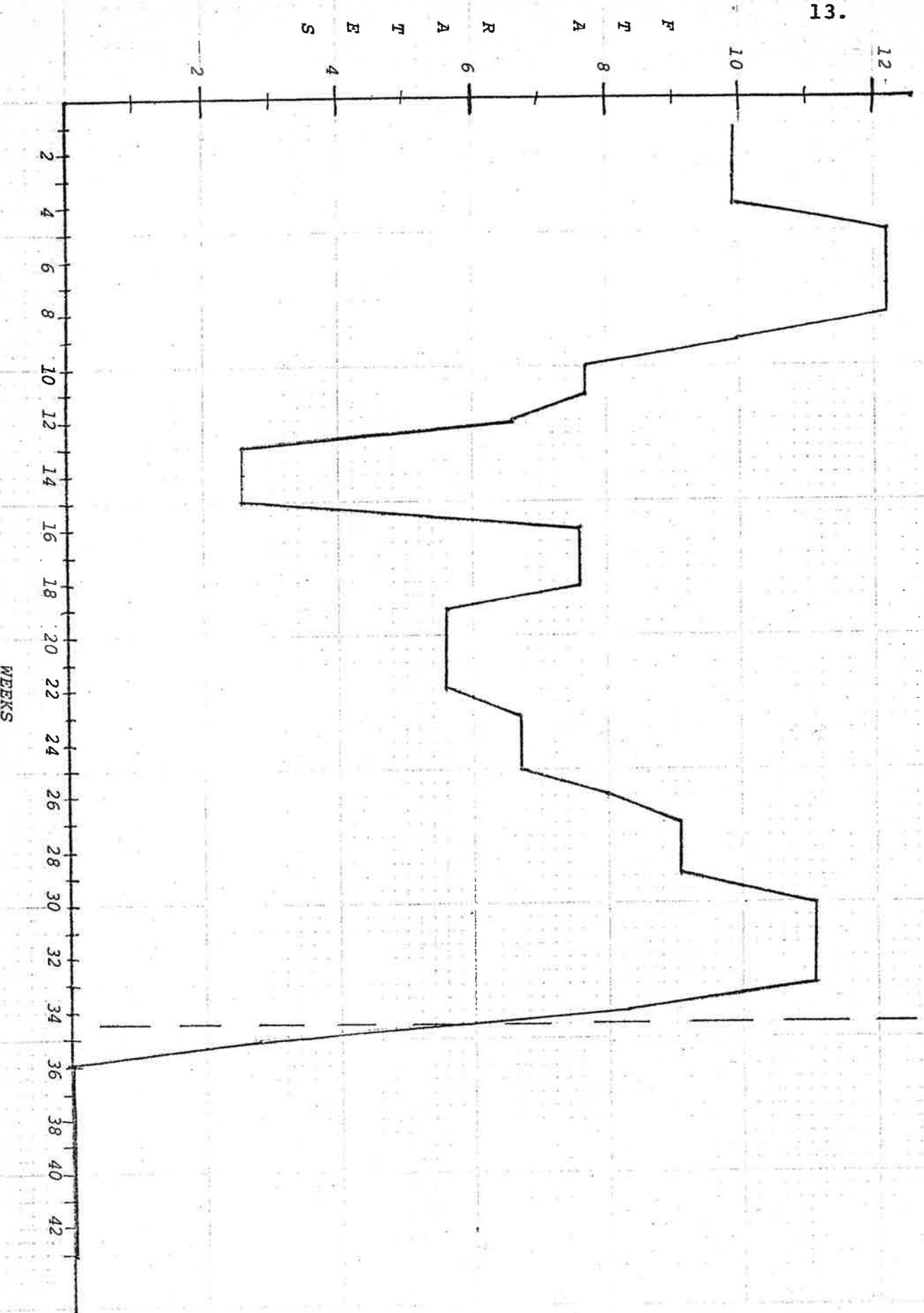Cohort of 566 Defendants ROR'd at Arraignment from May 3 to May 9, 1976

The graphs then show a general rise in the failure-to-appear rate through the remaining months examined. However, even the smoothed graphs of the non-appearance rates for the final two months, approximately weeks 34 or 35 through 43 tend to show substantial fluctuation. Although the volume of scheduled appearances is too small for analysis to be reliable, an upward trend is suggested. Only the graph of running medians (Graph IV, p. 13) shows a reduced failure-to-appear rate for this period. While the graph shows a non-appearance rate of 0% for the last seven weeks examined, this may be discounted as an artifact of the running median technique since five of the 45 appearances scheduled during this time resulted in the issuance of a warrant.

The findings of this research thus indicate that both high failure-to-appear rates and large volumes of scheduled appearances characterize the period shortly after criminal court arraignment. While the high non-appearance rates beyond six months subsequent to arraignment do not involve a large number of defendants, they do suggest that court delay contributes to defendants' proclivity to miss scheduled court appearances. Further confirmation of these findings is provided by analysis of failure-to-appear rates by adjournment which is discussed in the section that follows.

[1] Although one graph (Graph VI, p. 15) shows a drop in the failure-to-appear rate from the first to second weeks, the small number of appearances (9) scheduled for the first week after arraignment renders this divergence trivial.
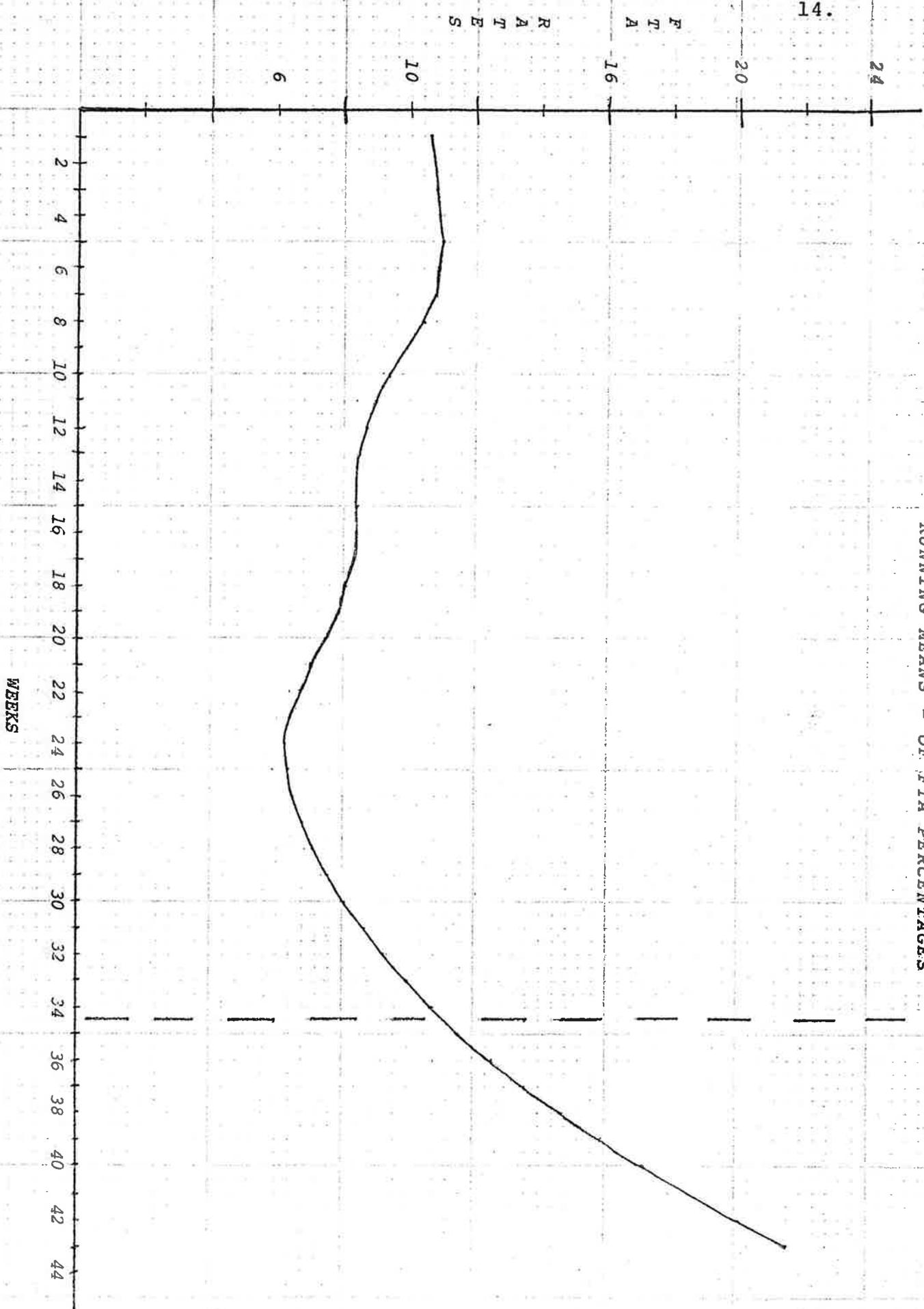
GRAPH IV.

SMOOTHED FAILURES TO APPEAR RATES BY WEEK: MAY 3, 1976 - FEBRUARY 27, 1977

RUNNING MEDIANS

WEEKS

FAILURE RATES

14.

F
T
A

R
A
T
E
S

6

10

16

20

24

2 4 6 8 10 12 14 16 18 20 22 24 26 28 30 32 34 36 38 40 42 44

WEEKS

GRAPH V

SMOOTHED FAILURE TO APPEAR RATES BY WEEK: MAY 3, 1976 - FEBRUARY 27, 1977
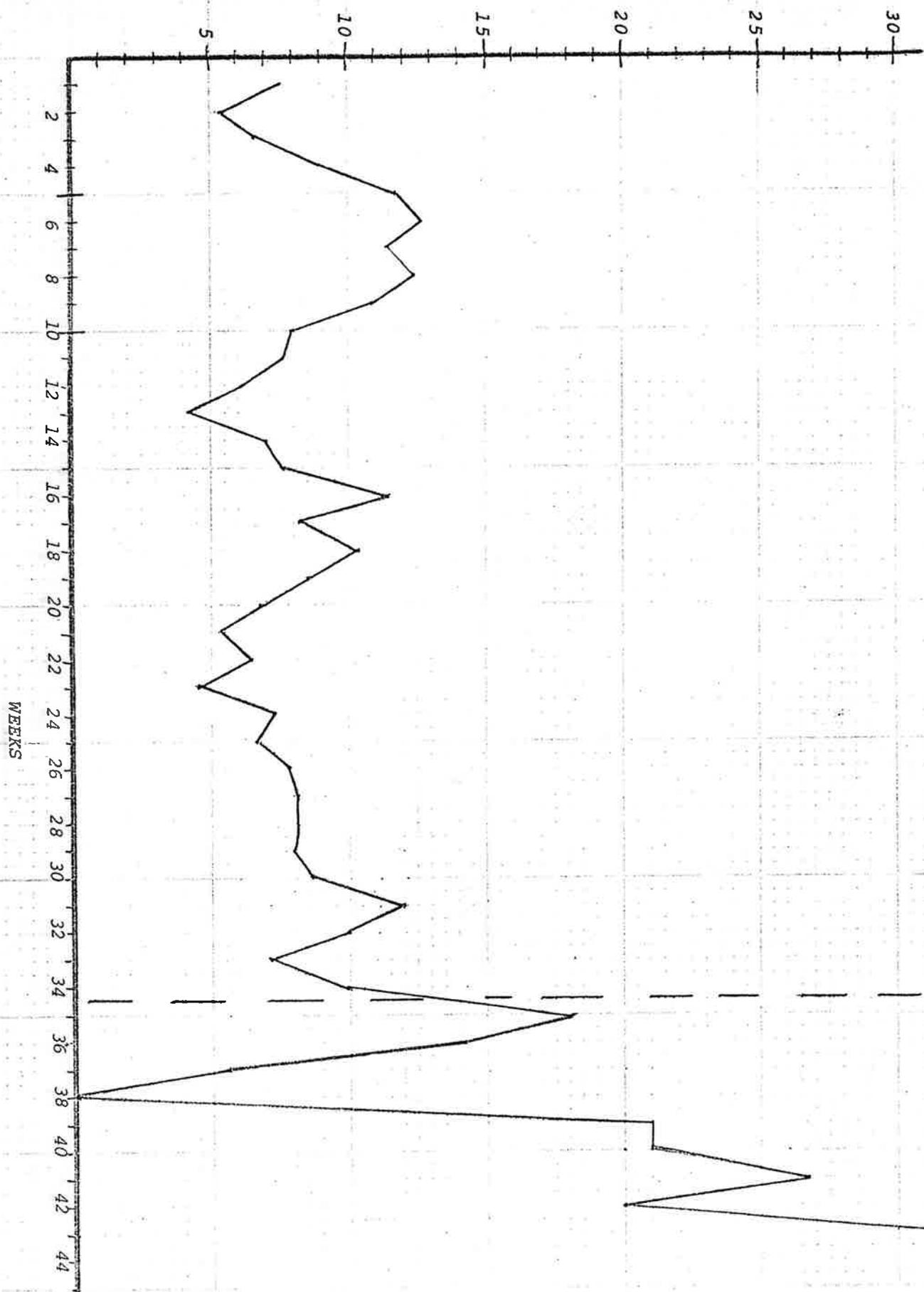
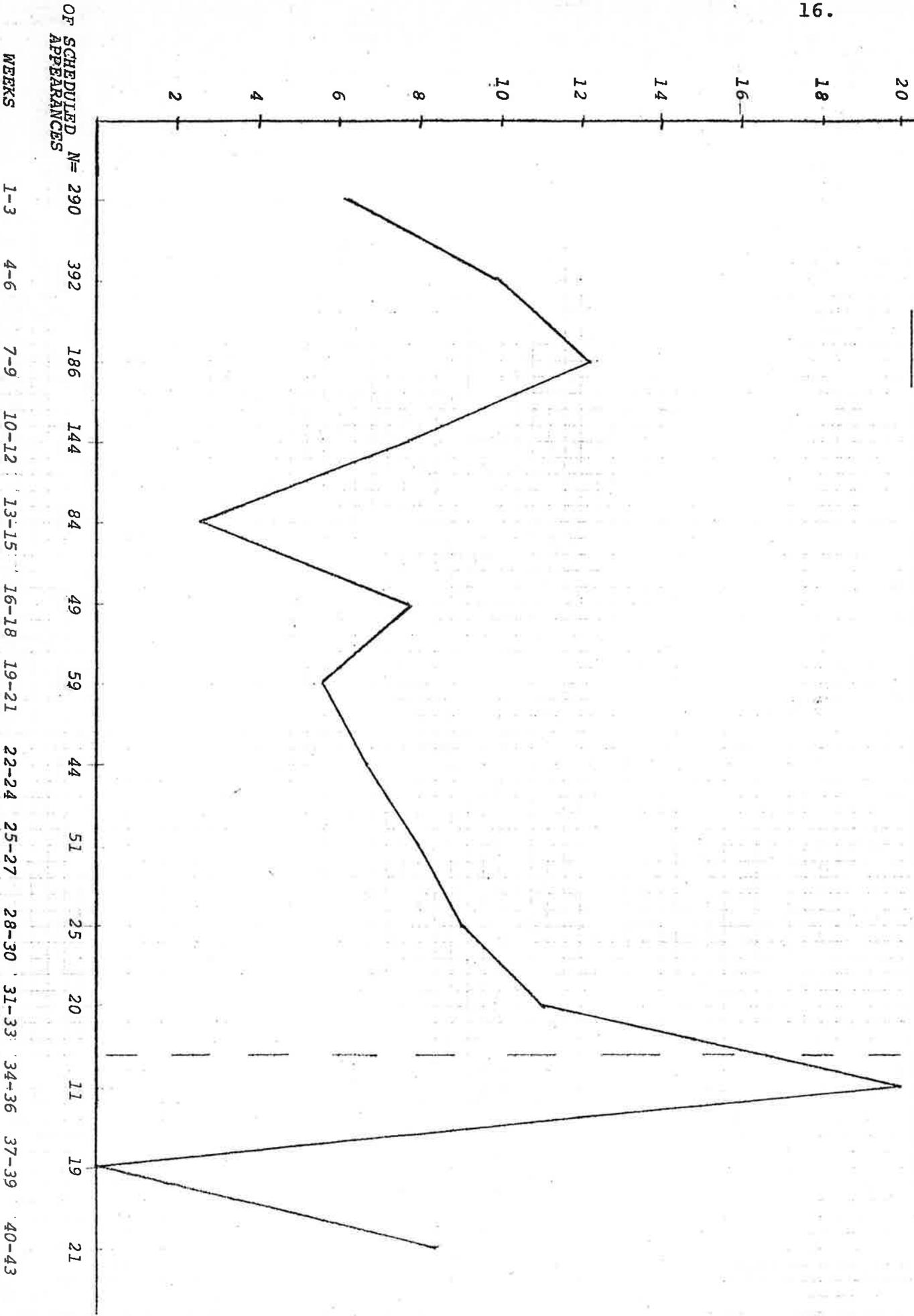RUNNING MEANS - OF FTA PERCENTAGES

GRAPH VI.

SMOOTHED FAILURE TO APPEAR RATES BY WEEK: MAY 3, 1976 - FEBRUARY 27, 1977

RUNNING MEANS - RECALCULATED RATES

GRAPH VII

SMOOTHED FAILURE TO APPEAR RATES BY WEEK: MAY 3, 1976 – FEBRUARY 27, 1977

MEDIAN OF F.T.A. RATES OF EVERY THREE WEEKS OF SCHEDULED APPEARANCES

Vertical axis: 2, 4, 6, 8, 10, 12, 14, 16, 18, 20

WEEKS	N= OF SCHEDULED APPEARANCES
1-3	290
4-6	392
7-9	186
10-12	144
13-15	84
16-18	49
19-21	59
22-24	44
25-27	51
28-30	25
31-33	20
34-36	11
37-39	19
40-43	21

GRAPH VIII

SMOOTHED FAILURE TO APPEAR RATES BY WEEK: MAY 3, 1976- FEBRUARY 27, 1977

———— MEAN OF F.T.A. RATES OF EVERY THREE WEEKS OF SCHEDULED APPEARANCES.

F
T
A

R
A
T
E
S

20
18
16
14
12
10
8
6
4
2

OF SCHED.
APPEARANCES.

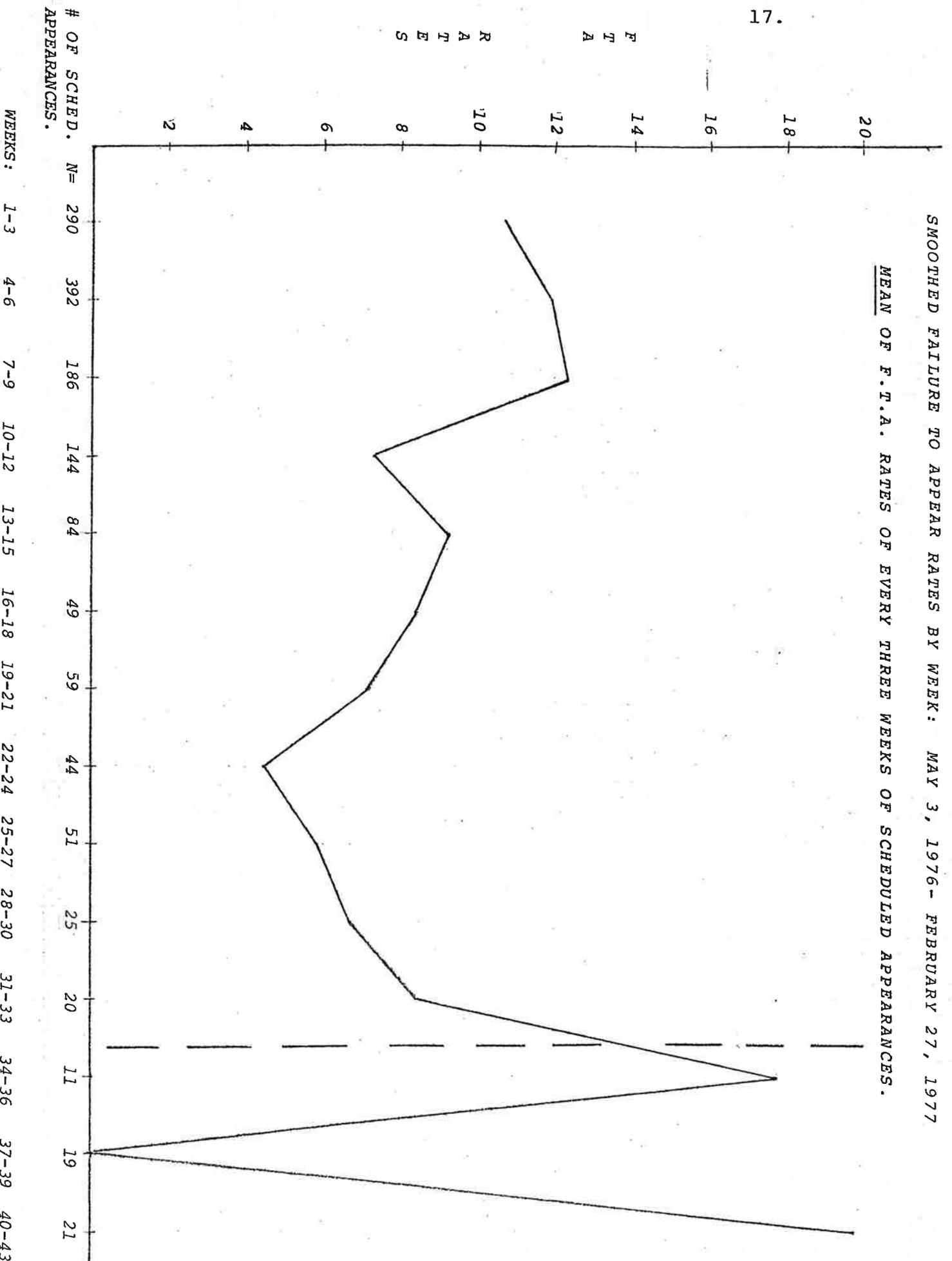N=   290   392   186   144   84   49   59   44   51   25   20   11   19   21

WEEKS: 1-3   4-6   7-9   10-12 13-15 16-18 19-21 22-24 25-27 28-30 31-33 34-36 37-39 40-43

GRAPH IX

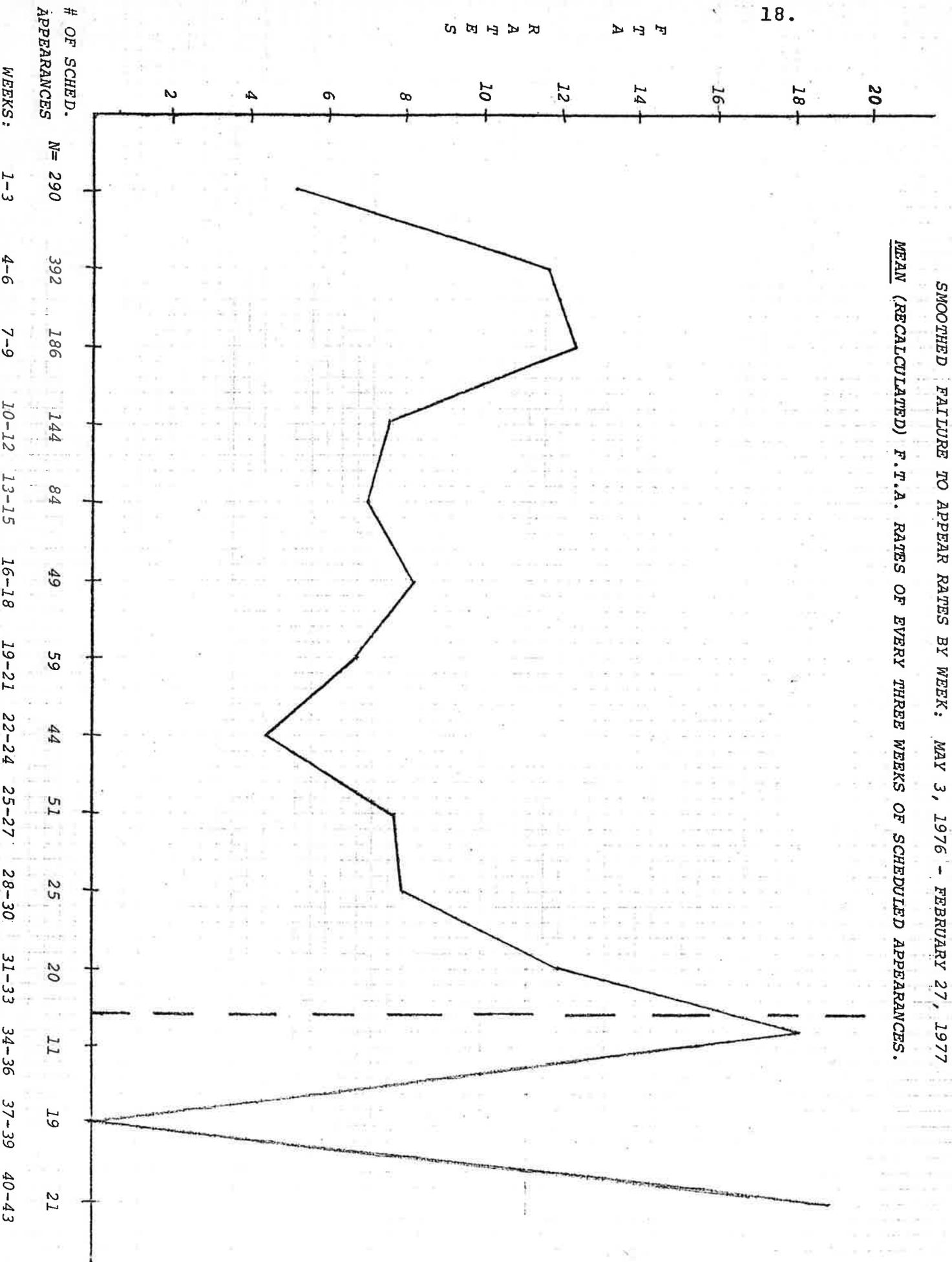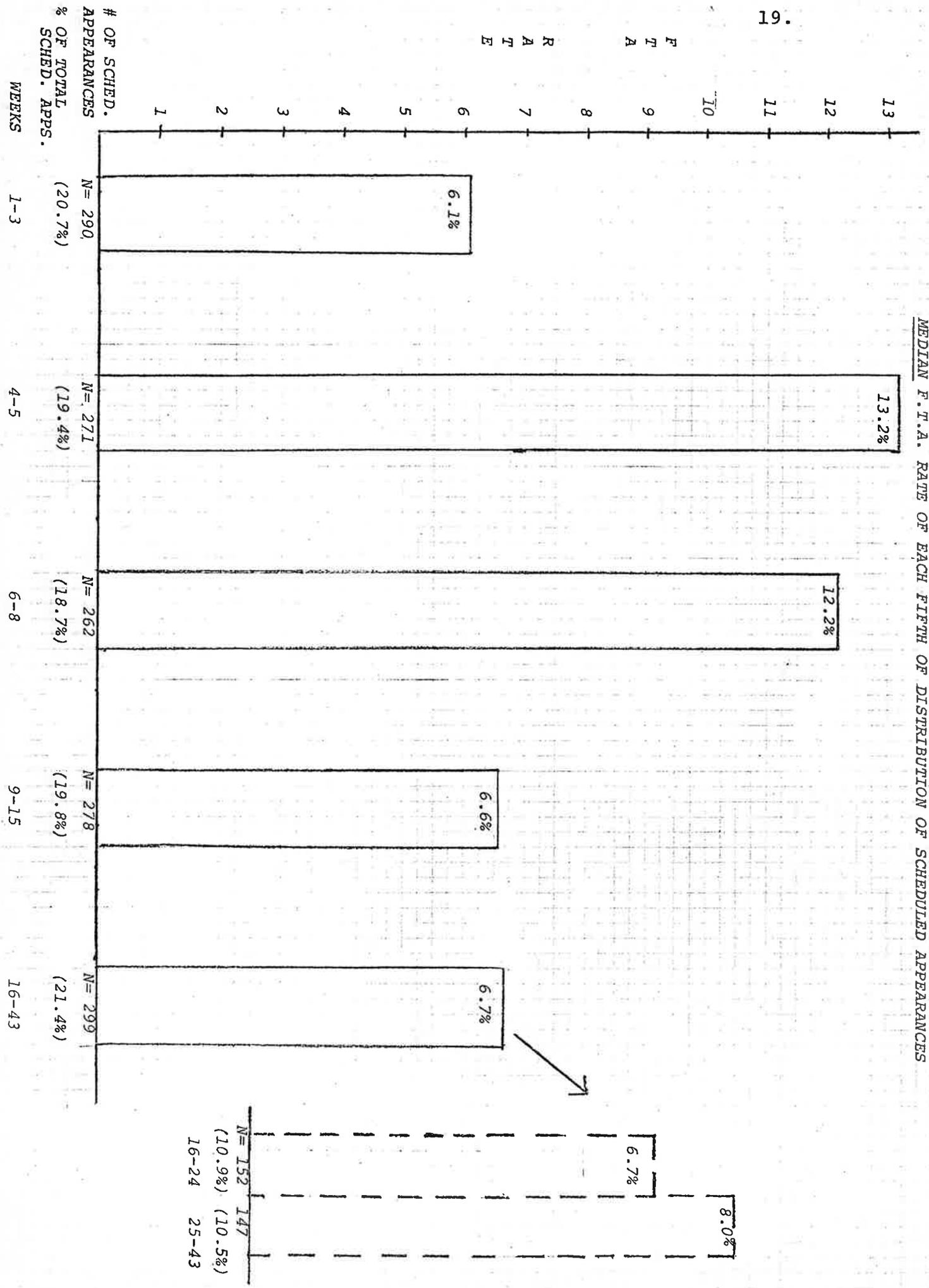SMOOTHED FAILURE TO APPEAR RATES BY WEEK: MAY 3, 1976 - FEBRUARY 27, 1977

MEAN (RECALCULATED) F.T.A. RATES OF EVERY THREE WEEKS OF SCHEDULED APPEARANCES.

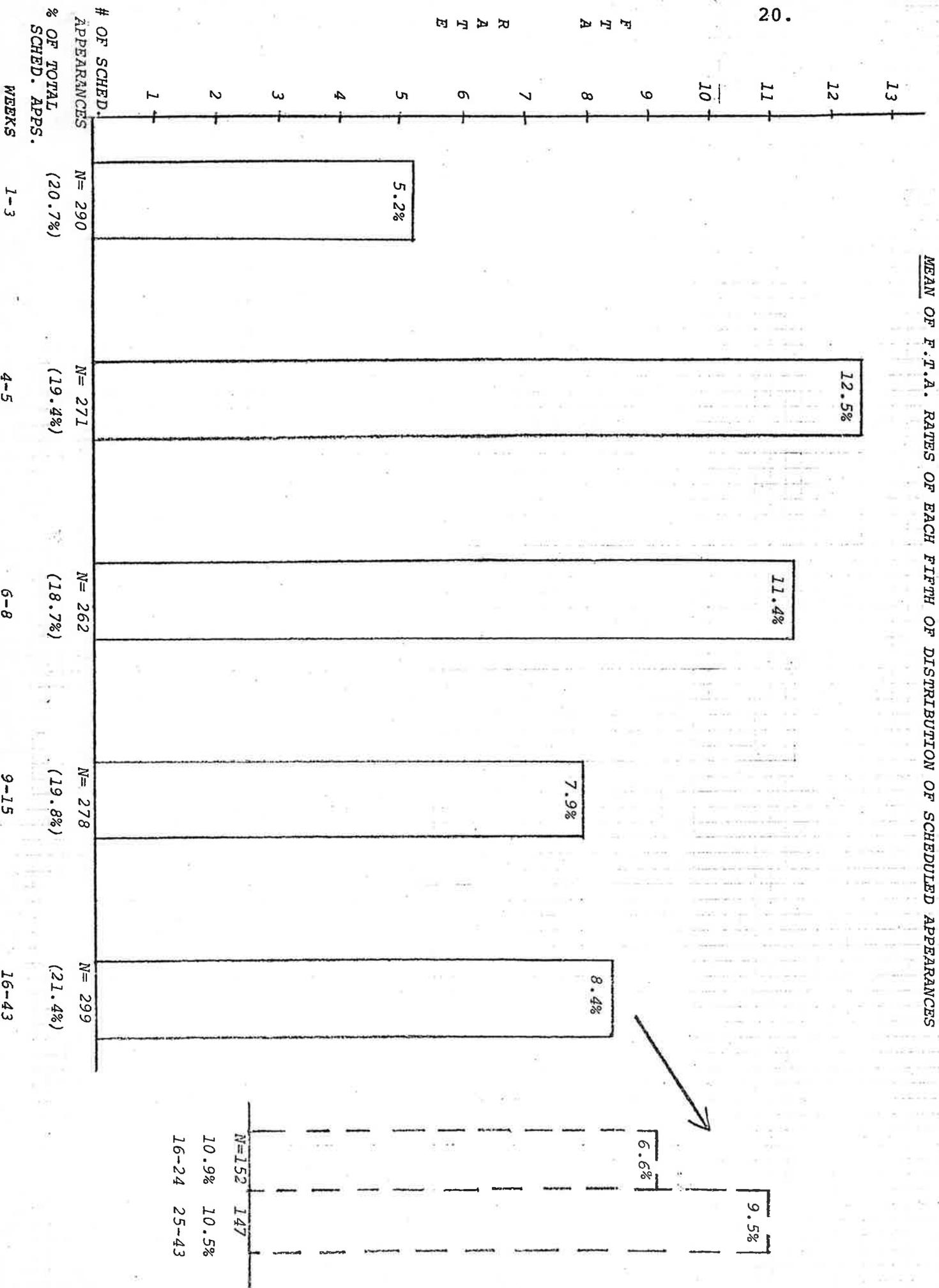F.T.A. RATES

20 — 18 — 16 — 14 — 12 — 10 — 8 — 6 — 4 — 2 —

OF SCHED. APPEARANCES   N=

WEEKS:	N=
1-3	290
4-6	392
7-9	186
10-12	144
13-15	84
16-18	49
19-21	59
22-24	44
25-27	51
28-30	25
31-33	20
34-36	11
37-39	19
40-43	21

19.

GRAPH X

FAILURE TO APPEAR RATES BY WEEK: MAY 3, 1976 - FEBRUARY 27, 1977

MEDIAN F.T.A. RATE OF EACH FIFTH OF DISTRIBUTION OF SCHEDULED APPEARANCES

F.T.A. RATE

13
12
11
10
9
8
7
6
5
4
3
2
1

6.1%

13.2%

12.2%

6.6%

6.7%

6.7%

8.0%

# OF SCHED. APPEARANCES	N= 290	N= 271	N= 262	N= 278	N= 299
% OF TOTAL SCHED. APPS.	(20.7%)	(19.4%)	(18.7%)	(19.8%)	(21.4%)
WEEKS	1-3	4-5	6-8	9-15	16-43

N= 152   147
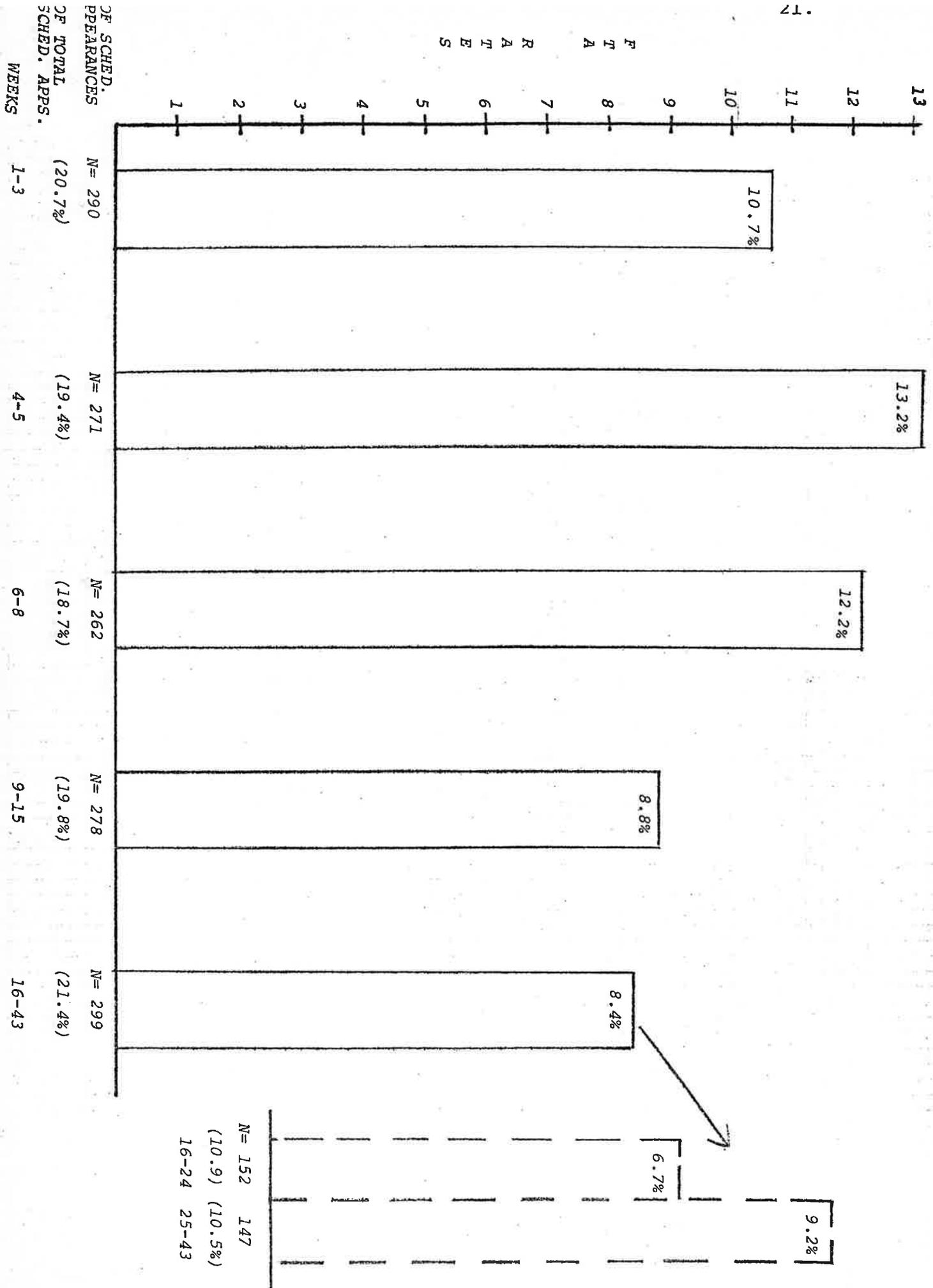(10.9%) (10.5%)
16-24   25-43

GRAPH XI

FAILURE TO APPEAR RATES BY WEEK: MAY 3, 1976 — FEBRUARY 27, 1977

MEAN OF F.T.A. RATES OF EACH FIFTH OF DISTRIBUTION OF SCHEDULED APPEARANCES

F T A
R A T E

13
12
11
10
9
8
7
6
5
4
3
2
1

5.2%
12.5%
11.4%
7.9%
8.4%

OF SCHED. APPEARANCES: N= 290 | N= 271 | N= 262 | N= 278 | N= 299

% OF TOTAL SCHED. APPS.: (20.7%) | (19.4%) | (18.7%) | (19.8%) | (21.4%)

WEEKS: 1-3 | 4-5 | 6-8 | 9-15 | 16-43

6.6%
9.5%

N=152   147
16-24   25-43
10.9%   10.5%

GRAPH XII

FAILURE TO APPEAR RATES BY WEEK: MAY 3, 1976 - FEBRUARY 27, 1977
### MEAN (RECALCULATED) F.T.A. RATES OF EACH FIFTH OF DISTRIBUTION OF SCHEDULED APPEARANCES

F.T.A. RATES					
	10.7%	13.2%	12.2%	8.8%	8.4%
# OF SCHED. APPEARANCES	N= 290	N= 271	N= 262	N= 278	N= 299
% OF TOTAL SCHED. APPS.	(20.7%)	(19.4%)	(18.7%)	(19.8%)	(21.4%)
WEEKS	1-3	4-5	6-8	9-15	16-43

6.7%		9.2%
N= 152	147	
(10.9)	(10.5%)	
16-24	25-43	

FINDINGS

D. **The Pattern Failure-to-Appear Rates by Adjournment**

Analysis of non-appearance rates by adjournment shows
the same pattern as non-appearance rates by number of weeks
from criminal court arraignment. The failure-to-appear
rate of 9.2% at the first adjournment rises 1.3 percentage
points by the second adjournment (see Graph Xlll, p. 23).
It then falls an additional 1.7, 1.2 and 3.6 percentage
points by the third, fourth and fifth adjournments respect-
ively until it reaches a low of 4.0% at the fifth adjournment.
The sixth through thirteenth adjournments have an overall failure-
to-appear rate of 8.2%, an increase of 4.2 percentage points.

Failure-to-appear rates are also examined by the number
of adjournments scheduled for each defendant. While the
non-appearance rate again fluctuates markedly by the number
of required appearances (see Graph XIV, p. 24), regression
(R^2=.30, m=3.8) of the failure-to-appear rates on the number
of adjournments clearly evidences a positive relationship.
The greater the number of appearances scheduled for each
defendant, the greater the likelihood of the defendant missing
at least one adjournment. This finding lends further credence
to the earlier conclusion that lengthy court procedings are
directly related to the likelihood of failure-to-appear prior
to disposition of criminal charges for defendants released
on their own recognizance at arraignment.

GRAPH XIII

FAILURE TO APPEAR RATE BY ADJOURNMENT: MAY 3, 1976 — FEBRUARY 27, 1977

COHORT OF 566 DEFENDANTS ROR'D AT ARRAIGNMENT
FROM MAY 3 TO MAY 9, 1977
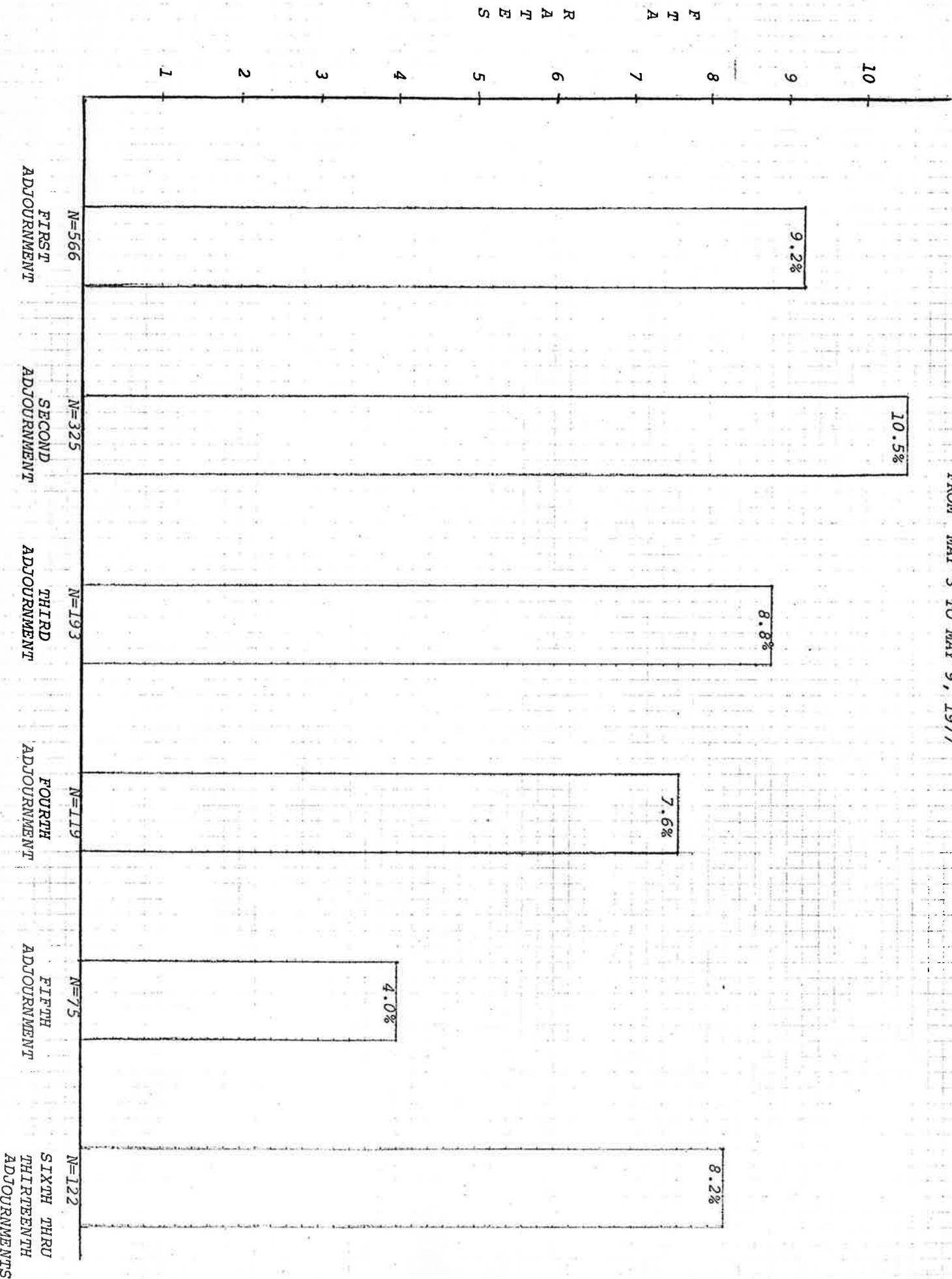
GRAPH XIV.

PERCENT OF DEFENDANTS WHO EVER FAILED TO APPEAR
BY NUMBER OF SCHEDULED ADJOURNMENTS

MAY 3, 1976 – FEBRUARY 27, 1977

%
F
T
A

10 20 30 40 50 60 70 80 90 100

N=(241) (132) (74) (44) (32) (20) (3) (6) (2) (2) (2) (2) (2)

1 2 3 4 5 6 7 8 9 10 11 12 13

$R^2 = 30.0$, $m = 3.8$
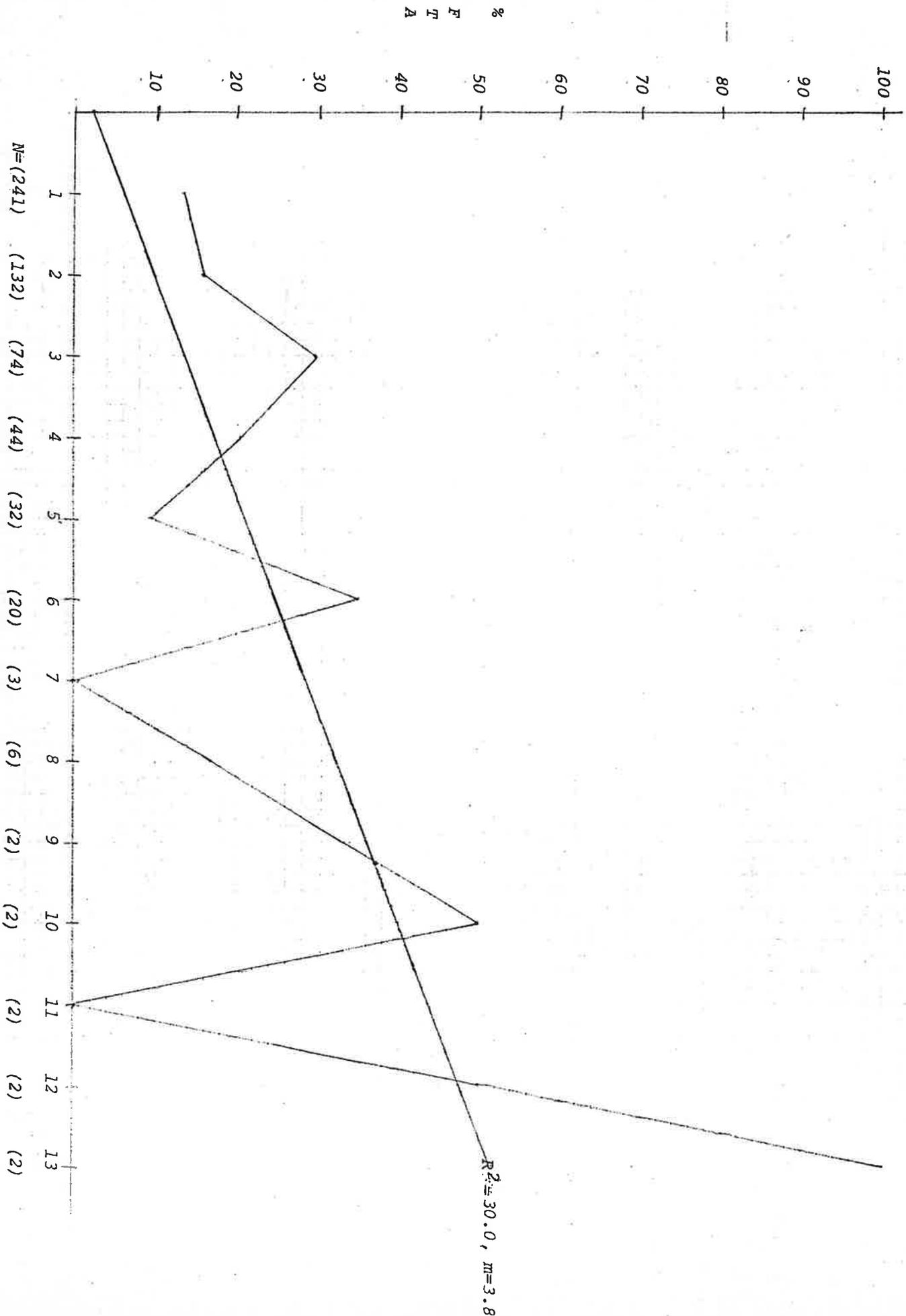
METHODOLOGY

    Analysis of failure-to-appear rates across time for a cohort of defendants presents special difficulties. As shown in Graph I, p. 7, the number of court appearances scheduled each week drops dramatically as the defendants' cases reach final disposition. While 182 appearances were scheduled during the third week after arraignment, only six were scheduled for the 43rd week. The same drop in volume affects adjournments (see Graph II, p.9): all 566 defendants were scheduled for a first adjournment but only two defendants were required to appear in court for thirteen adjournments. This progressive decrease in volume, the denominator of the failure-to-appear rate, holds implications for data analysis. For example, each failure to appear that occurs during a week (or for an adjournment) for which many defendants were sched- uled to appear exerts less impact on the non-appearance rate for that week than a failure which occurs when few defendants are to appear in court. Thus, although failure-to-appear rates may be expected to fluctuate somewhat from week to week and from adjournment to adjournment, the variation tends to increase over time (see Graph III, p. 11).

    Similarly, a high FTA rate during a week soon after arraignment involves many more defendants and is consequently of far greater theoretical and operational import than the same rate of non-appearance for a comparable period months later. In addition, such wide variations in volume render standard techniques for summarizing time series data inappro- priate. The choice of analytic techniques was further con- strained by the early observation (see Graph III, p.11) that

the relationship between failure-to-appear rates and time
is neither linear nor does it fit common curvilinear models.

Thus, it was necessary to use analytic procedures that
would not constrain the shape of the relationship but would
instead merely minimize extraneous variation and reveal the
actual pattern of the data. The ideal method would also take
account of the variations in volume discussed above. A
variety of techniques were selected to "smooth" the data.
These fall into three categories: to locate a smoothed value,
each procedure in the first group, which includes the running
median, the running mean, and the running recalculated mean,
relies on the failure-to-appear rates of the weeks adjacent to
the week in question. A smoothed value is provided for the
failure-to-appear rate at each of the 43 weeks examined. The
running median (McNeil,1976) procedure involves taking the
median of three sequential data points (Graph IV, p.13). The
running mean technique (Graph V, p.14) requires the mean of
the failure-to-appear rates of each of the overlapping three
week periods. Both the running median and the running mean
procedures are repeated until further iteration produces no
change. The "mesas" resulting from the use of medians are
smoothed by a "splitting"technique.

The running recalculated mean procedure (Graph VI, p.15)
is also based on the mean of the failure-to-appear rates of
three adjacent weeks but in this case the smoothed value is
determined by recalculating the failure-to-appear rate of each
successive three-week period and assigning it to the middle

week. No iterations are performed. This method has the advantage of accounting for the relative volumes of scheduled appearances in the three weeks within each triad but unfortunately does not appreciably smooth the data array. Of the three techniques that derive smoothed values for every data point, the running mean procedure provides the smoothest display. However, these procedures appear less satisfactory than those discussed below.

The second group of techniques is similar to the first but here the median, mean, or recalculated mean of the failure-to-appear rates for non-over-lapping three-week periods is employed. 43 data points are reduced to 14. The graphs resulting from computing medians (Graph VII, p. 16) means (Graph VIII, p.17 and recalculated means (Graph IX, p.18) of the three-week clusters of failure-to-appear rates are comparable to one another.

The third category of analyitic procedures employed in this research also relies on the median, mean and recalculated mean. These are the only techniques that account for the progressive decrease in volume of scheduled appearances. The median (Graph X, p.19), mean (Graph XI,p.20) or recalculated mean (Graph XII, p.21) failure-to-appear rate is computed for time periods that represent equal proportions of the distribution of scheduled appearances, in this case for intervals equivalent to 20% of scheduled appearances. Since the final 20% of scheduled appearances spans weeks 16 through 43, the median, mean and recalculated mean for 10% of appearances are also shown within this fifth. Bar graphs were used to display the results for this group of procedures.

TABLE OF GRAPHS

REFERENCES

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        ROR'd at Arraignment". Memorandum to Michael J.
        Farrell, Director of Pretrial Services Agency,
        New York. November 13, 1975.

McNeil, Donald R. (1976). Interactive Data Analysis,
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