

Pest Control Essentials: Rogue Review Courses and Other Vermin



Introductions



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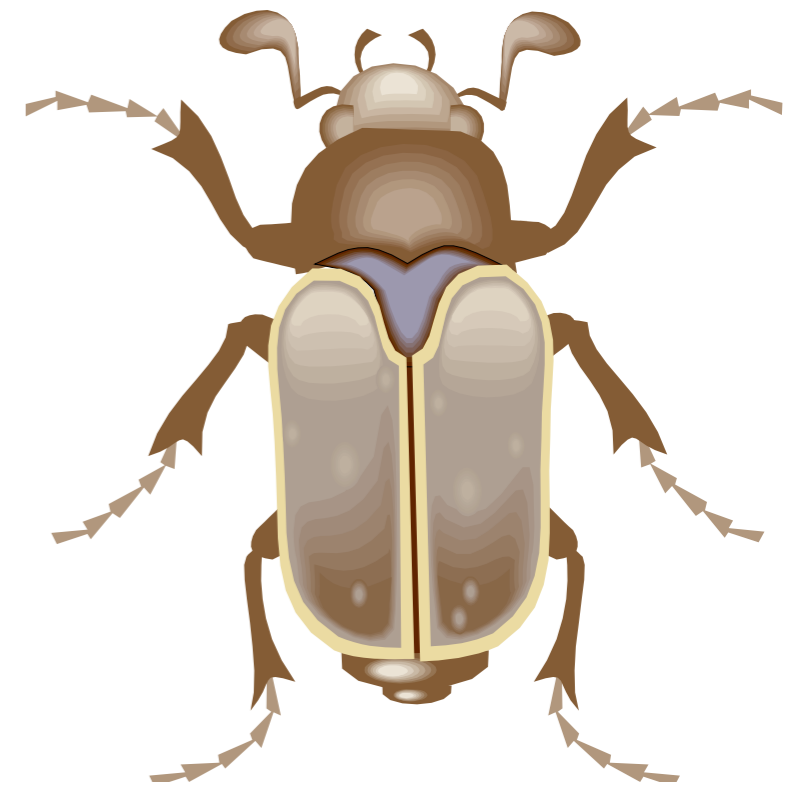
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Similarities & Signs

- Vermin (Cockroaches & Termites)
 - Lurk in the shadows
 - Nuisance and safety issues
 - Difficult to detect
 - May require exterminators
 - Recognize signs of infestation
- Rogue Review Courses (RRC's)
 - Same issues, larger scale



Rogue Review Courses

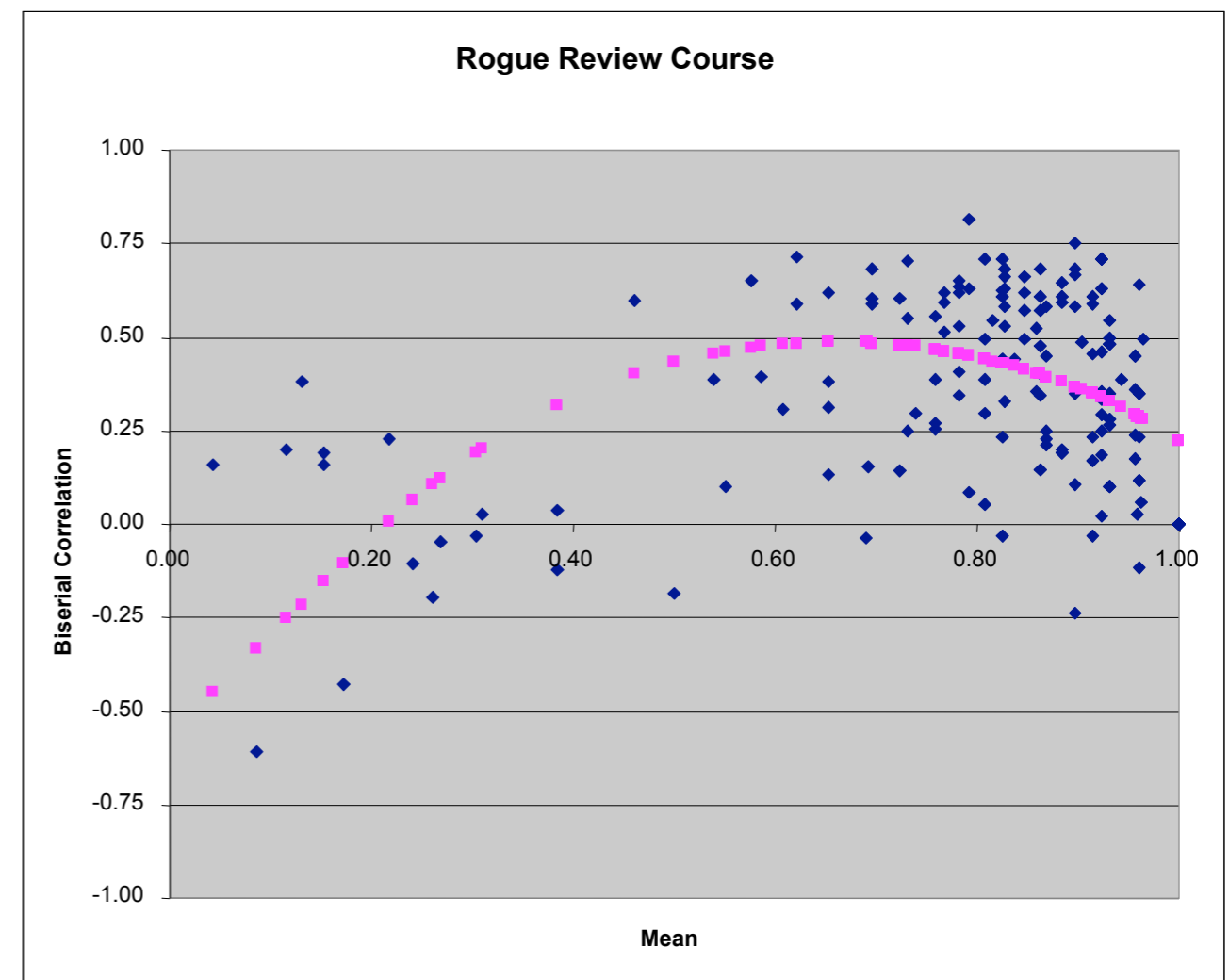
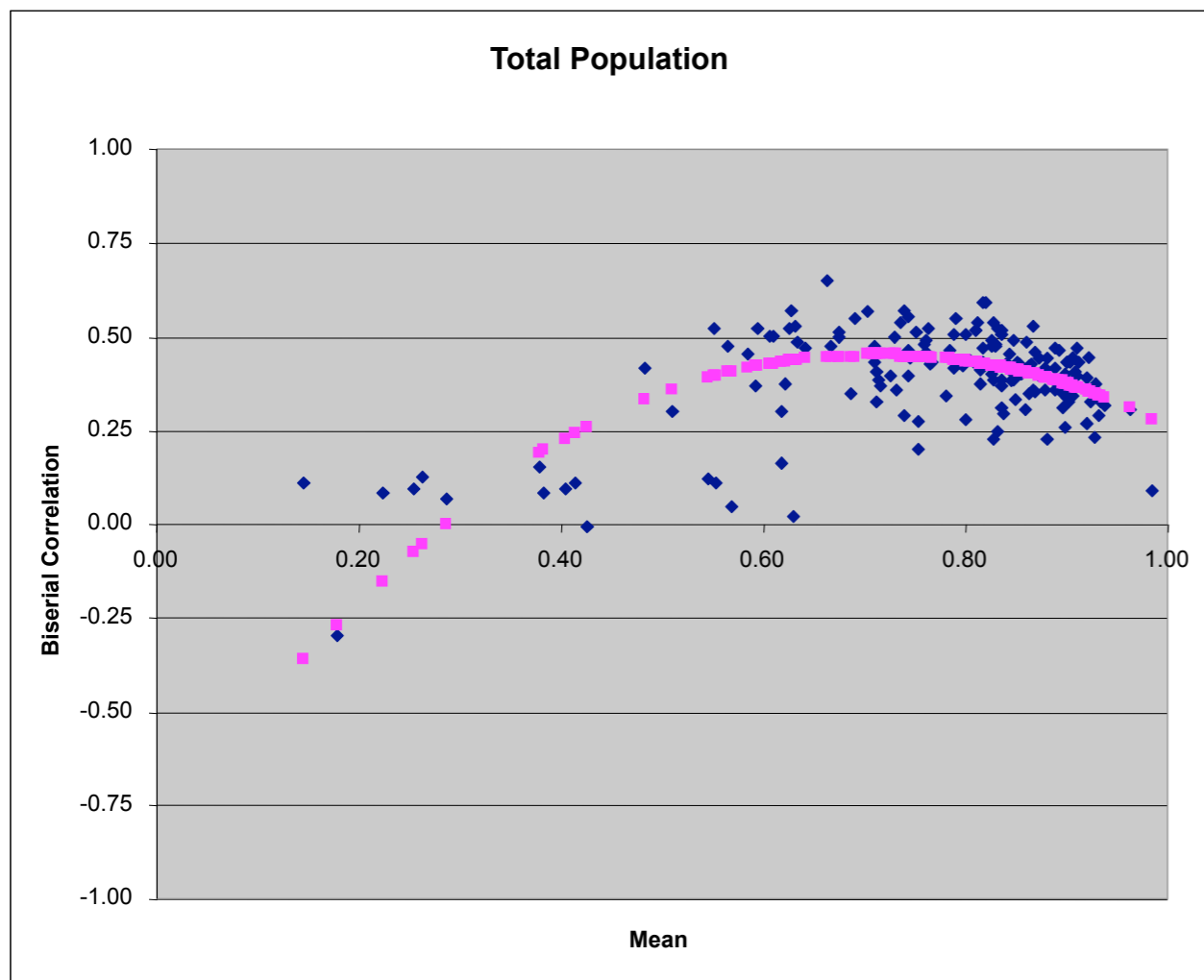
- Signs of infestation
 - Tips and reports to the hotline
 - Pass rates increase in risk groups
 - Large clusters of similar test instances
 - Aberrance - multidimensionality
 - Hide in the shadows
- Eradication
 - Investigations and Interviews
 - Raids
 - Copyright Infringement Litigation
 - Score Invalidations

Detection of RRC's

- Pass Rates increase for the risk group
- Aberrance may be present
 - Partial exposure of exam content
 - Poor item reconstructions (memory)
 - Miskeyed items
 - Multidimensional effects
- Risk Groups (*RRC clientele*)
 - Repeat test takers
 - Non-native English speakers
 - Low-performing localities

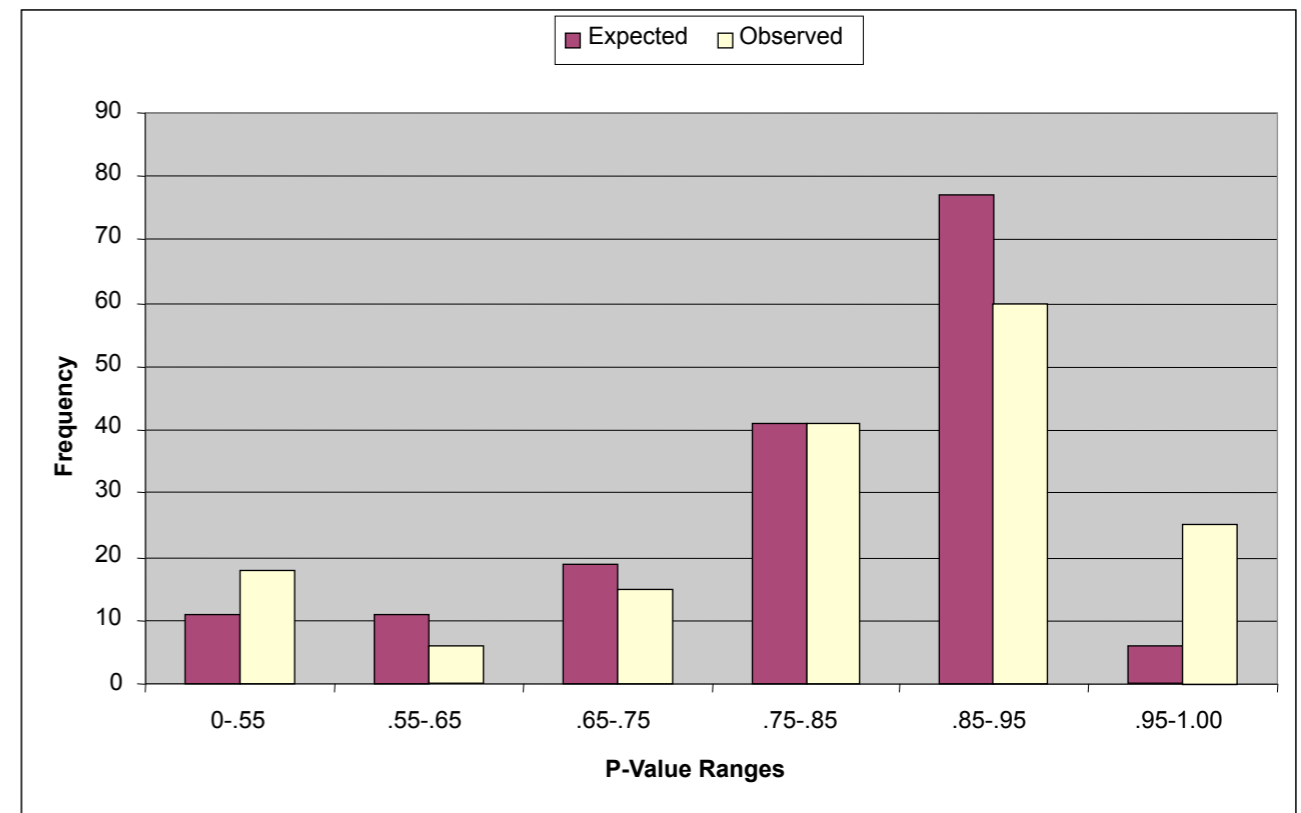
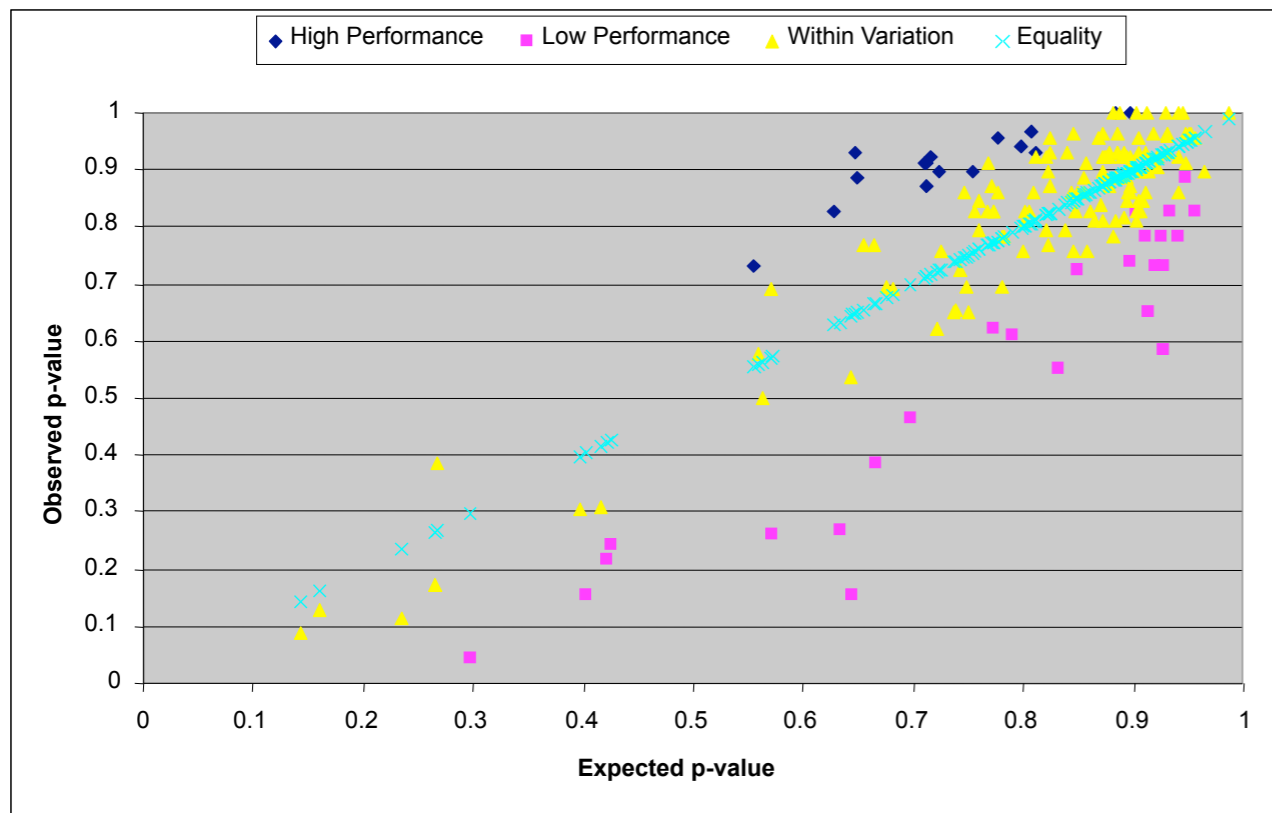
Item Impacts - RRC #1 (IT)

- Detected by response time analysis
- Verified by investigation



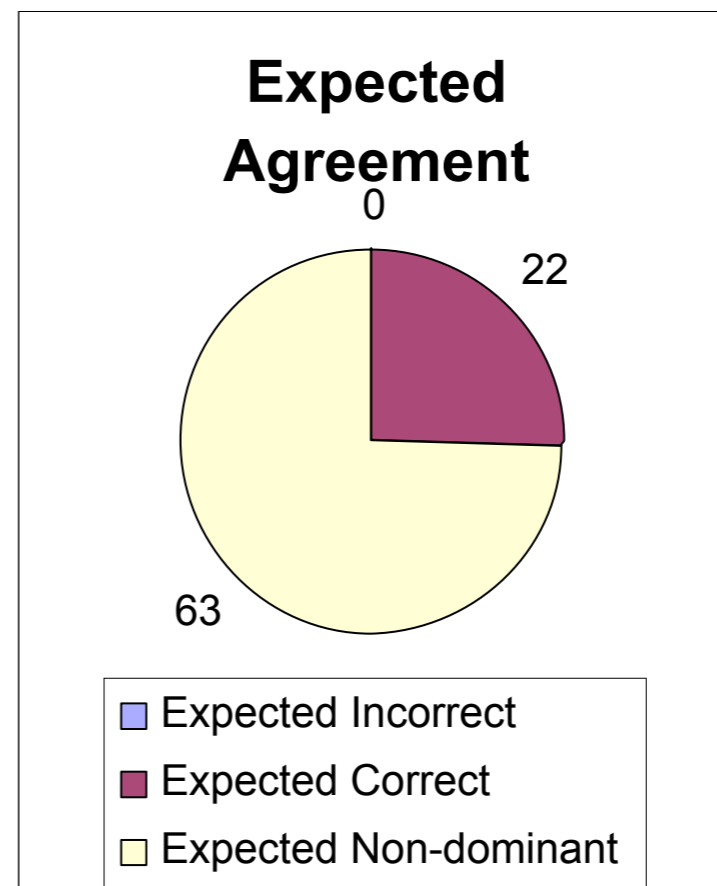
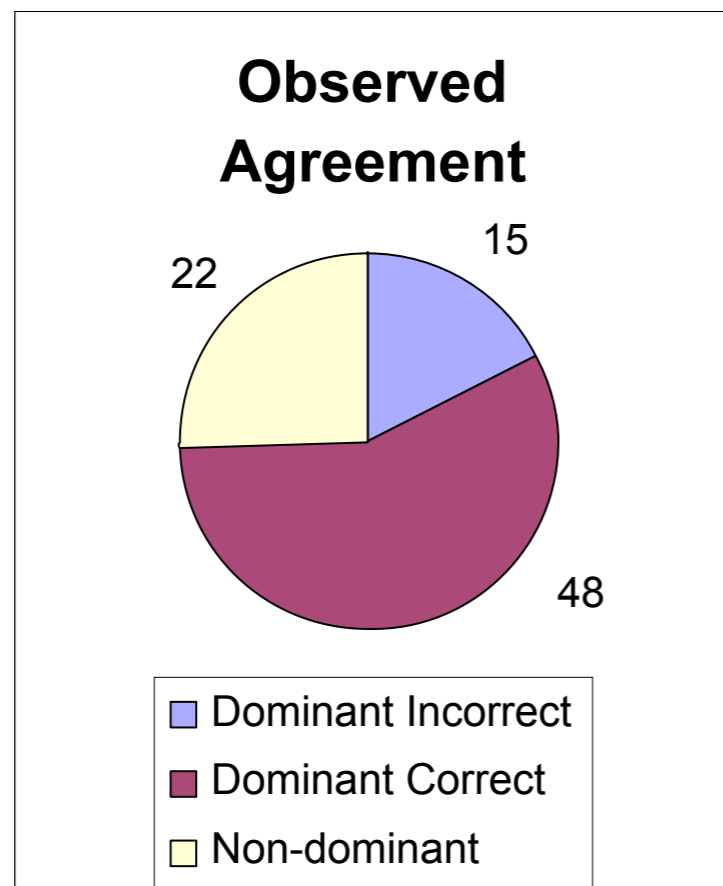
Item Impacts - RRC #1

- A lot of items get very easy
- Some items get harder



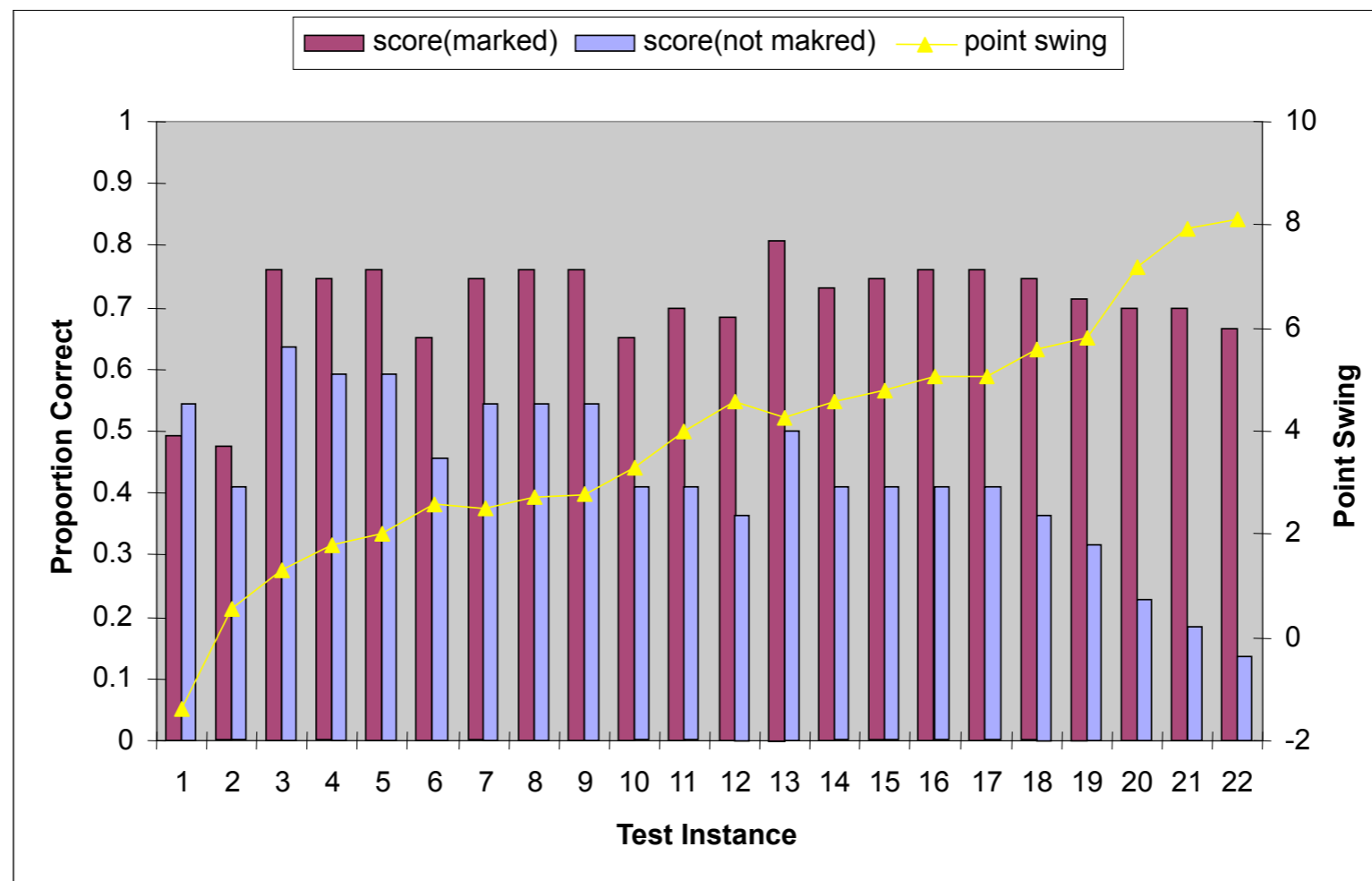
M4 Similarity - RRC #2 (Education)

- High pass rates - first-timers (87%)
- Low pass rates - repeaters (30%)
- Large Cluster - 18 extreme tests
- 100% pass rate (22 repeaters)



Point Swings - RRC #2

- Book of Facts - “Drill & Kill”
- Estimation of Advantage Gained

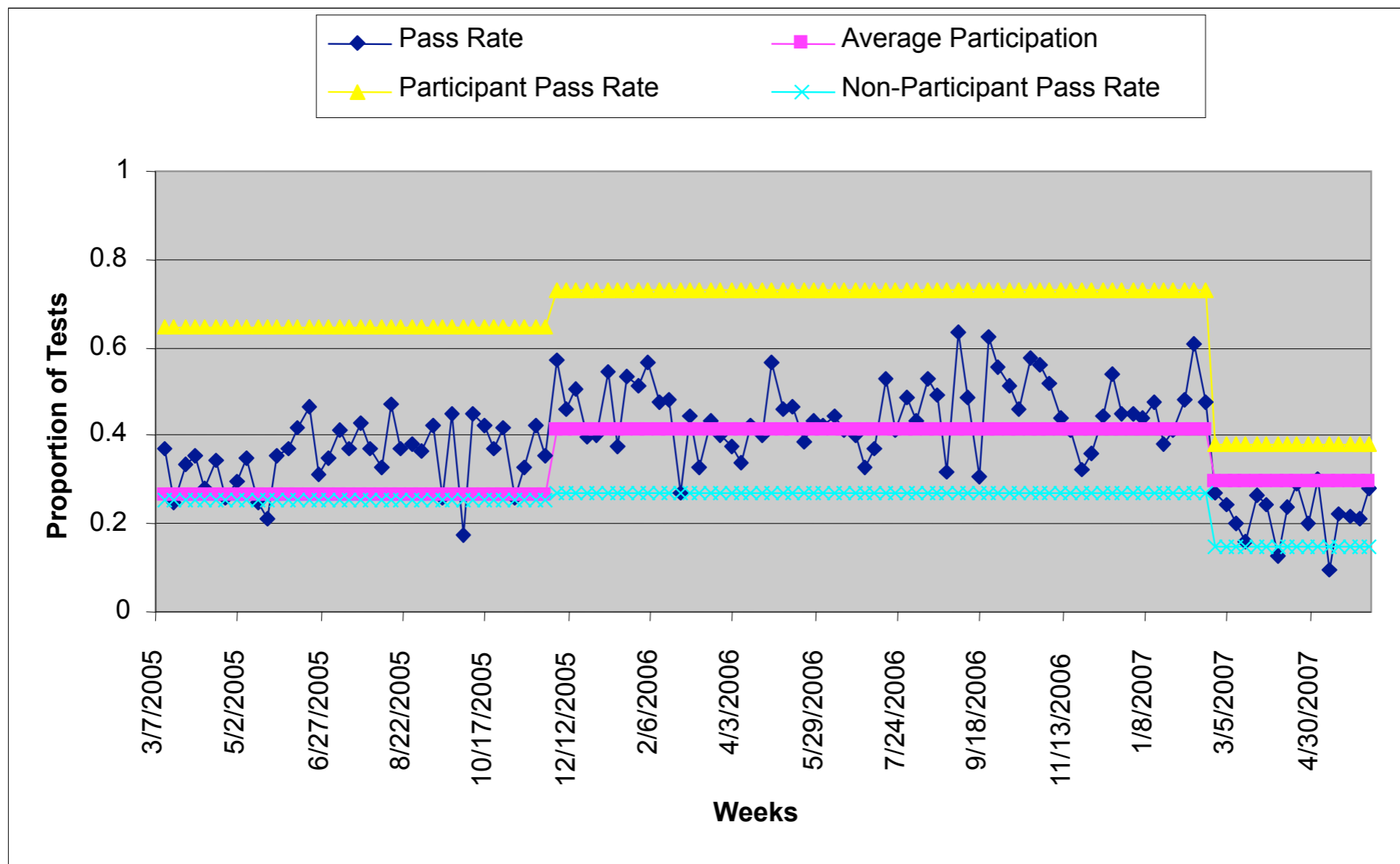


Internet Chatter - RRC #3 (Medicine)

- “Hot” review course
- Climbing pass rates
- Infiltration and investigation
- Police Raid
 - Participation lists (*partial*)
 - Disclosed exam content (*partial*)
- Forensic verification
 - 96% accurate - review course attendance
 - 74% accurate - compromised content
 - Compromise estimate of 34%

Risk Group Analysis - RRC #3

- Upper and Lower Item Detection



Detection Summary

- Analyze statistical subtleties
 - Sensitive detectors
 - Large similarity clusters
 - Careful interpretation
 - Masking from multiple disclosure sources
- Use Tip lines
- Identify risk groups
- Contaminated statistics
 - Biased psychometric analyses
 - Test scores which shouldn't be trusted

POLL: Have you had to deal with a RRC in the past two years?

- Yes
- No



Confirmation & Investigation

- Defining the scope of the problem
- Building your case
 - Gathering the evidence
 - Identifying individuals, questions, regions
 - Confirming the scope of the problem
 - Analyzing your legal options

Pest Detection Tools

- Data forensics
 - Item exposure, anomalies, collusion
- Web Monitoring
 - Web sites, chat rooms
 - Auction sites, brain dumps
- Tip lines
- Candidate information, Registration, Eligibility
- Interviews, other due diligence



Gathering Evidence

- Obtaining infringing materials
- Incriminating statements (web postings, interviews, etc.)
- Surveillance
- Data forensics: unfair advantage?

Use of Private Investigators



- Pros and Cons
- State Licensing Requirements
- Useful for:
 - Obtaining infringing materials
 - Attending review courses
 - Surveillance
 - Testimony

POLL: What is your expected cost to shut down a RRC?

- Less than \$50,000
- Between \$50,000 and \$250,000
- More than \$250,000



Eradication: Preparatory Step

- Copyright Registration
 - Copyright protection is automatic, but . . .
 - Should register before infringement begins
 - Preserves right to attorney's fees and statutory damages
 - Permits legal action in court
 - Special in-person registration procedure for secure tests
 - www.copyright.gov/circs/circ64.pdf

Eradication: Analysis of Your Case

- Comparing Content - Is it Infringement?
 - Is your content copyrightable?
 - Is the other material “substantially similar”?
 - Copycat items do *not* have to be identical
 - See *National Conference of Bar Examiners v. Multistate Legal Studies, Inc.*, 458 F.Supp.2d 252 (E.D. Pa. 2006)

NCBE Questions: Real? Or Copycat?

As part of the Federal Deficit Eradication Act, Congress imposed a special tax on “all interest in excess of 5% per annum earned by each state of the United States on any of its investments.” This tax is probably:

Congress has passed a new federal statute called the Federal Deficit Eradication Act. The law imposed a special tax on all interest in excess of 5% per annum earned by each state on any investments made by the respective state(s).

The state of Texas has filed an appropriate action in federal district court challenging the constitutionality of the federal statute. In all likelihood the court will find the Federal Deficit Eradication Act to be:

Answer choices: Real? Or Copycat?

- (a) constitutional, because it does not discriminate among the several states—it treats all of them in the same manner.
 - (b) constitutional, because it taxes only a proprietary function of the states—it does not tax any of their strictly governmental functions.
 - (c) unconstitutional, because it singles out state governments for special taxation that is not applicable to any other entities or individuals.
 - (d) unconstitutional, because it requires a state government itself to make a tax payment to the United States.
- (a) constitutional, because the law does not discriminate among the several states.
 - (b) constitutional, because the incidence of the tax is on interest payments from outside investments and does not apply to government functions.
 - (c) unconstitutional, because it places a discriminatory burden on state governments
 - (d) unconstitutional, because the tax burden applies to state governmental bodies and not the residents of the state.

ANSWER: B (oops!)

Eradicating the Pests: Threshold Considerations

- Strength of case (facts and law)
- Goals
- Budget
- Management support
- Timing
- Publicity
- Implications of inaction

Eradicating the Pests: Taking Action

- Three Primary Paths:
 - Letter Writing
 - Traditional Lawsuit
 - Lawsuit and Raid



Eradicating the Pests: Letter Writing

- Cease-and-Desist Letter or DMCA “Take Down” Notice
- Pros:
 - Quick
 - Cheap
 - Not public
- Cons:
 - may not be taken seriously
 - gives advance notice to infringer

Eradicating the Pest: Lawsuit

- Typically, copyright infringement suit in U.S. federal court
- Pros:
 - gets infringer's attention
 - public (also a con?)
- Cons:
 - higher cost
 - time consuming
 - infringer may fail to appear or may destroy incriminating evidence

Eradicating the Pest: Lawsuit and Raid

- Typically, U.S. federal court lawsuit and application for *ex parte* seizure order
- Pros:
 - most aggressive approach
 - seize evidence quickly and without warning
 - potentially significant deterrent effect
- Cons:
 - most costly
 - evidence should be strong

Actions Against Candidates

- How will you handle candidates who shared test items?
- What about candidates who benefitted from stolen test items?
- What would trigger candidate action in your organization?



Actions Against Candidates

- Key Document: Candidate Agreement
 - Are candidates on notice that sharing items is a breach? That studying from recalled items is improper?
 - Did you reserve the right to invalidate scores?
- Courts typically treat as a contract matter
 - Generally deferential to test administrators
 - Uphold score invalidations if contractual obligations carried out in “good faith”
 - Do not have to prove “cheating”

POLL: What is the greatest damage you experienced or fear from a RRC?

- Unqualified certificate holders
- Loss of item pool
- Lost public confidence
- Inability to act



Summary

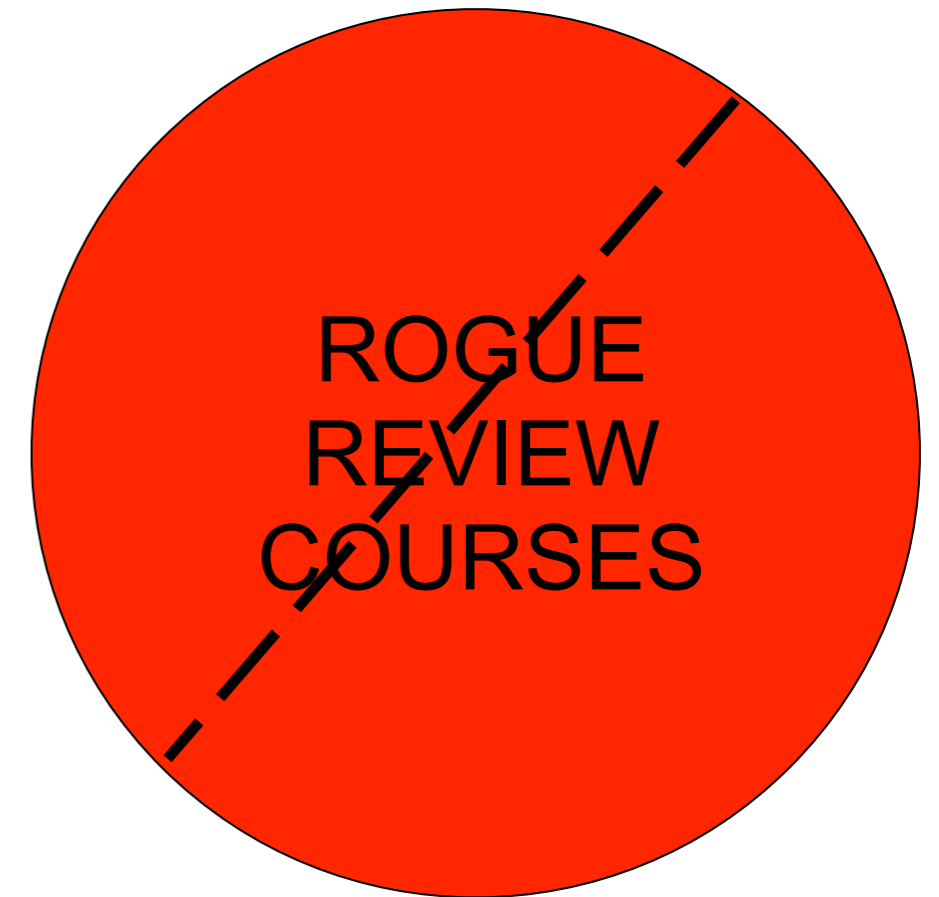
- Be vigilant and use detection tools and tip lines
- Get organized and budgeted
- Be prepared for when the breach occurs
- A proper and thorough investigation can strengthen your case
- Action against RRCs will target the supply of test items, while action against candidates may be necessary to affect demand

Q & A



- Any questions?

Who are you gonna' call?



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