

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

LARRY GAPEN,

Petitioner,

: Case No. 3:08-cv-280

- vs -

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

DAVID BOBBY, Warden,

Respondent.

:

DECISION AND ORDER

This capital habeas corpus case is before the Court on Petitioner's Motion to Reopen the Juror Depositions (Doc. No. 125).

At the conclusion of the deposition of Juror David Nedostup on January 26, 2012, the Magistrate Judge advised the parties that the Court would copy the book Mr. Nedostup had produced pursuant to subpoena (*RELATIVISM: FEET FIRMLY PLANTED IN MID-AIR*), distribute copies to all parties, and "Petitioner's counsel will let us know whether they wish to reconvene the deposition based on their examination of the book." (Deposition, Doc. No. 121, PageID 3036-3037.) The instant Motion includes the advice that Petitioner's counsel do wish to continue their questioning of Juror Nedostup about the book, but that they also:

1. Wish to question Juror Nedostup further about the other materials he produced pursuant to subpoena,
2. Wish to reopen the concluded depositions of Jurors Raymond Senter, Mattie Sue Flournoy,

and Vickie Thompson on the issues presented by the Grounds for Relief on which Judge Rice granted discovery after the January depositions, and

3. Reserve the right to depose other jurors on the newly-added Grounds for Relief.

The Warden opposes reopening the Nedostup deposition, but concedes that the other depositions sought are authorized by Judge Rice's Order of March 6, 2012 (Doc. No. 122).

The Court finds that Petitioner has had adequate opportunity to examine Juror Nedostup on all of the material produced by him except the book. The Motion to Reopen is denied as to those materials but otherwise granted.

Counsel shall consult with Judicial Assistant Kelly Kopf to arrange a time for the additional depositions.

April 6, 2012.

s/ **Michael R. Merz**
United States Magistrate Judge