

THE CHARGER

March 2012

485th Meeting

Vol. 33 #7

Tonight's Program:

The Annual Dick Crews Debate The Last Lincoln-Douglas Debate

Abraham Lincoln and Stephen Douglas will join us to argue over slavery, the Constitution, states rights, secession, and the fetching appeal of the former Mary Todd. It is January 1861 and Lincoln and Douglas are meeting in the home of Illinois politician and mutual friend Hadley V. Baxendale to provide background for the book Baxendale is writing on Lincoln's and Douglas's 1858 Senate campaign. It is a precipitous time for the three men personally and their country. Lincoln's election as president has, by the time of their meeting, already led to the secession of four states with eight more to soon follow. Fort Sumter is less than three months away and Douglas's death from typhoid fever - following his failed border states tour to plead for union - is only six months away.

This year's debate is an original play, conceived and written by the three actors with all three performing in character and costume.

Tonight's Debaters:

Mel Maurer (Lincoln) is a retired executive of the Dana Corporation and past president of the Cleveland Civil War Roundtable. An Abraham Lincoln scholar and interpreter, Mel is a lifetime member of the Lincoln Forum.

Chris Fortunato (Douglas) is a Cleveland attorney, long time member of the Roundtable, and an accomplished actor, regularly performing in both professional and community theater productions across northeast Ohio.

William Vodrey (Baxendale) is a magistrate judge of the Cleveland Municipal Court and past president of the Roundtable. He regularly gives presentations on a wide variety of Civil War topics to Roundtables and historical societies. He also moderates our annual Dick Crews Debate.

Date: **Wednesday,
February 8, 2012**

Place: **Judson Manor
1890 E. 107th Street
Cleveland, Ohio**

Time: **Drinks 6 pm
Dinner 6:45 pm**

Reservations: **Please send an email to ccwrt1956@yahoo.com with your reservation, or call Dan Zeiser at (440) 449-9311 by 9 pm the Sunday before the meeting.**

Meal: **Entree, vegetable, salad, and dessert.**

CLEVELAND
CIVIL WAR ROUNDTABLE
FOUNDED 1957

President: **Paul Burkholder** (440) 918-0222
Vice President: **Michael Wells** (216) 371-8449
Treasurer: **Jim Heflich** (216) 381.8833
Secretary: **Tim Myshrall**

Directors:

Lisa Kempfer Dennis Keating
C. Ellen Connally Howard Besser

website: www.clevelandcivilwarroundtable.com
email: pkburkholder@gmail.com

Editor - THE CHARGER - Dan Zeiser

Cleveland Civil War Roundtable
Past Presidents

2011 Lisa Kempfer	1984 Neil Evans
2010 Dennis Keating	1983 William Victory
2009 Jon Thompson	1982 John Harkness
2008 Terry Koozer	1981 Thomas Geschke
2007 John Fazio	1980 Charles Spiegle
2006 Dave Carrino	1979 William Bates
2005 Mel Maurer	1978 Richard McCrae
2004 Warren McClelland	1977 James Chapman
2003 Maynard Bauer	1976 Milton Holmes
2002 Bill McGrath	1975 Thomas Gretter
2001 William Vodrey	1974 Nolan Heidelbaugh
2000 Bob Boyda	1973 Arthur Jordan
1999 Dick Crews	1972 Bernard Drews
1998 John Moore	1971 Kenneth Callahan
1997 Dan Zeiser	1970 Frank Schuhle
1996 John Sutula	1969 Donald Heckaman
1995 Norton London	1968 Frank Moran
1994 Robert Battisti	1967 William Schlesinger
1993 Kevin Callahan	1966 Donald Hamill
1992 Bob Baucher	1965 Lester Swift
1991 Joe Tirpak	1964 Guy DiCarlo Jr.
1990 Ken Callahan Jr.	1963 Paul Guenther
1989 Neil Glaser	1962 Edward Downer
1988 Martin Graham	1961 Charles Clarke
1987 George Vourlojanis	1960 Howard Preston
1986 Tim Beatty	1959 John Cullen Jr.
1985 Brian Kowell	1958 George Farr Jr.
	1957 Kenneth Grant

President's Message March 2012

Our March meeting should be a dandy. We will be having our annual debate but, instead of our usual semi-collegiate debate format, we will feature a dramatization of an imagined meeting between Lincoln and Douglas in January 1861. The premise for the debate is this: Baxendale is writing a book on Lincoln and Douglas's 1858 debates and has invited his friends to his home to answer questions. The two political adversaries have agreed to be interviewed to ensure their positions are correctly stated and defend them as necessary.

Our play is a prequel of sorts to the Lincoln - Davis debate staged by Mel Maurer, John Fazio, and William Vodrey in January 2009. If you have not seen that production one of the many times they have staged it, let me tell you that it is wonderful. I have seen it several times and it is different each time as Mel, John, and William perform it more or less extemporaneously. Mel is down-to-earth and funny as Lincoln, John is prickly and dismissive as Davis, and William is unawed and tough as the debate's moderator, permitting neither politician room to equivocate, dodge his questions, or create false history. It is quite compelling.

This year's production promises to be no different. The idea for this year's debate came about a couple summers ago when several of us from the Roundtable drove out to Madison to see Chris Fortunato play Richard Nixon in the Rabbit Run Theater's production of "Frost-Nixon." Chris, in a word, was terrific, by turns warm, cold, despicable, and sympathetic. During intermission someone said, "Boy, wouldn't it be interesting to see Chris play Stephen Douglas to Mel's Abraham Lincoln?" I thought to myself, "Chris as the 'The Little Giant?'" Yes, that *would* be interesting." The idea stuck somewhere in the back of my head.

A year ago, as I was putting together this year's schedule, I remembered that night and contacted Chris, Mel, and William to see what they thought of the idea. After a little cajoling on my part, I am happy to report that all three graciously agreed. Now, I feel compelled to highlight exactly what this commitment means for our three actors. First, they agreed not only to perform in a play, but also to research and write their own parts in that play. Second, they agreed to perform the play before an audience of historical experts, each of whom knows the characters and story almost as well as they do. Lastly, they agreed to perform the play in an unscripted, conversational format where improvisational hand grenades may be thrown at any time! Would you have agreed to be in this debate? I would not. Yet, these gentlemen each signed on. They are brave men and for that, I am very grateful.

Lincoln and Douglas in their last debate. As I said, our March meeting should be a dandy. I cannot wait.

Respectfully submitted,
Paul Burkholder

**CLEVELAND CIVIL WAR ROUNDTABLE
2011-2012 SCHEDULE**

September 14, 2011

***Experiencing
the Civil War***

**Robert
Olmstead**



January 11, 2012
***The Barlows and
the Gordons***

John Fazio

February 8, 2012

***A. P. Hill
at Gettysburg***

Jon Thompson



October 12, 2011

***The Battle of
Monocacy***

**Marc
Leepson**



Destruction of the RR bridge
over the Monocacy River

March 14, 2012

***The Dick Crews Annual Debate:
Lincoln and Douglas Debate***
Mel Maurer as Abraham Lincoln
Chris Fortunato as Stephen Douglas
Moderator: William F. B. Vodrey

November 9, 2011

***The Battle of
Nashville***

**Dan
Zeiser**



April 11, 2012

***How Robert E. Lee
Lost the Civil War***

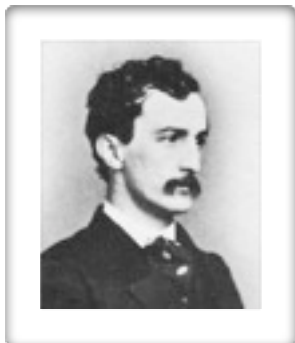
**Edward H.
Bonekemper III**



December 14, 2011

***How Sibling Rivalry
Helped Spawn an
Assassin***

Nora Titone



May 16, 2012 (Note later date)

Vicksburg!

Ed Bearss



Lincoln's Suspension of Habeas Corpus

by Dennis Keating © 2012

This article will address President Abraham Lincoln's wartime suspension of the Writ of Habeas Corpus and recount the cases of John Merryman, Clement Vallandigham, and Lambdin Milligan. The cast of characters includes many Ohioans.

Suspension of the Writ of Habeas Corpus and the Milligan Case

Following his election in the face of Southern opposition, Abraham Lincoln had to travel secretly through Baltimore by train under threat of assassination to take office as president in a badly divided county. Following the firing on Fort Sumter on April 12, 1861 and the secession of Virginia on April 17, he faced the possibility of the nation's capital being isolated from the North if the neighboring border state of Maryland joined the Confederacy. Given the small size and scattered location of the United State Army, Lincoln called for help from Northern governors to defend Washington, D.C.

On April 19, when the 6th Massachusetts regiment took to the streets of Baltimore (known as "Mob City" and home to many Southern sympathizers) to switch trains en route to Washington City, a mob attacked it. In the ensuing fracas known as the "Pratt Street Riot," 4 soldiers were killed and 36 wounded while 12 civilians died. In the wake of this bloodshed, Baltimore Mayor George Brown and Maryland Governor Thomas Hicks requested that Lincoln send no more Northern troops by train through Baltimore. Lincoln responded: "Union soldiers are neither birds to fly over Maryland nor moles to burrow under it." While Hicks was pro-Union, he authorized Maryland militia to prevent the passage of more Union troop trains by disabling railroad bridges and cutting telegraph wires. Answering the call was the Baltimore County Horse Guards, including Lieutenant John Merryman, a slave-owning farmer.

Its origins in the Magna Carta, the Founding Fathers enshrined in the Constitution the right to a Writ of Habeas Corpus to ensure that Americans who were arrested by the government had the right to go before a judge to be informed of the charges against them. Article I, Section 9, Clause 2 of the Constitution sets forth what is called the suspension clause: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." With a rebellion underway, Washington threatened by the formation of a Confederate army across the Potomac, and Congress not in session, on April 27 Lincoln authorized Winfield Scott, commander of the army, to suspend Habeas Corpus if necessary to ensure the safety of the military supply lines between Philadelphia and Washington. Before Congress convened on July 4, Lincoln would also suspend the writ on the Florida coast and between Philadelphia and New York.

Meanwhile, on April 29, the Maryland Legislature voted 53-13 against secession. On May 13, Massachusetts politician and now general Ben Butler (later known as "Beast" to Southerners because of his occupation policies in a captured New Orleans) marched his troops from the Maryland capital of Annapolis to Baltimore, where he declared martial law. Butler then imprisoned the mayor, city council, and police commissioner in Ft. McHenry (birthplace of the Star Spangled Banner during the British bombardment of the city during the War of 1812). James Ryder Randall, a native Marylander living in Louisiana, responded to these events by composing "Maryland, My Maryland" (adopted as the state song in 1939). Its opening verse begins: "The despot's heel is on thy shore, Maryland! His torch is at thy temple door, Maryland! Avenge the patriotic gore that flecked the streets of Baltimore and be the battle queen of yore." Its ninth and concluding verse shouts: "Huzza! She spurns the Northern scum." The bands of Lee's Army of Northern Virginia played "Maryland, My Maryland" as he invaded the state in September 1862 and Maryland regiments fought for the South as well as the North. But Maryland did not secede (and Lincoln would later imprison pro-secessionist state legislators).

On May 25, John Merryman was arrested and imprisoned in Ft. McHenry on suspicion of treason. His lawyers petitioned Roger Taney, Chief Justice of the United States and federal Circuit Court Judge for Maryland, for a Writ of Habeas Corpus. The elderly Taney obliged within a day. Taney, a Maryland slaveholder, was President

Andrew Jackson's Attorney General and Secretary of the Treasury. Jackson appointed him the Supreme Court in 1836. Taney was notorious for his 1857 Dred Scott opinion, which inflamed abolitionists in the North. Taney dispatched a U.S. marshal to Ft. McHenry to bring Merryman to court. Ft. McHenry's commander, General Cadwalader, refused to obey, citing President Lincoln's suspension of the writ.

An outraged Taney then wrote an opinion on June 1 calling Lincoln's action unconstitutional. In *Ex Parte Merryman*, Taney wrote that the placement of the suspension clause in the Constitution's section on the powers of Congress meant that only Congress could suspend Habeas Corpus. In the face of Taney's opinion, Lincoln simply ignored it. Given Taney's age and pro-slavery views and the dangers his new administration faced, it is understandable that Lincoln would not bow to Taney's view of the Constitution. Taney would die on October 13, 1864, the same day that Maryland outlawed slavery. Lincoln called Congress into session and his Attorney General issued an opinion justifying his action to address the emergency. Lincoln wrote to Congress: "Are all the laws but one to go unexecuted, and the government itself go to pieces, lest that one be violated?"

Under an amnesty proclamation issued by Lincoln, nevertheless, on July 13, Merryman was turned over to the civilian authorities and released. In July 1863, the U.S. Attorney for Baltimore re-indicted Merryman for treason. However, his trial was postponed and the charges eventually dismissed in April 1867. In May 1863, the North Central Railroad sued Merryman for damages for his participation in the 1861 railroad bridge burnings, but nothing came of this. In turn, Merryman sued General Cadwalader for unjust imprisonment, but his suit was dismissed by a federal court in April 1864. In July of that year, Merryman entertained Maryland Confederate general Bradley Johnson at his farm during Jubal Early's incursion into Maryland that led to the confrontation at Fort Stevens outside Washington with President Lincoln present. Merryman was a prosperous farmer and prominent citizen after the war, dying in 1881.

Extension of Habeas Corpus

On September 24, 1862 (following the battle of Antietam), Lincoln expanded the suspension of the writ of Habeas Corpus:

"All Rebels and Insurgents, their aiders and abettors within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice, affording aid and comfort to Rebels against the authority of the United States, shall be subject to martial law and liable to trial and punishment by Courts Martial or Military Commission."

Lincoln initially delegated implementation of this policy to Secretary of State William Seward, but then transferred it to Ohioan and Secretary of War Edwin Stanton. It has been estimated that between 14,000 and 38,000 were imprisoned and denied access to Habeas Corpus during the war.

In March 1863, the Congress passed the Habeas Corpus Act, effectively authorizing its suspension. However, this law required the government to provide lists of those imprisoned to civilian judges and have them charged by grand juries. Noncompliance resulted in their release. This legislation reflected growing opposition to the military draft, culminating a few months later in the New York City draft riots. Again, Lincoln simply ignored the conditions that Congress attached to the suspension of the writ.

Copperheads: Vallandigham and Milligan

"Peace Democrats" (known as "Copperheads") opposed Lincoln's war policy, arguing instead for a negotiated peace with the Confederacy, which Lincoln refused to recognize. Their opposition grew in tandem with Union military setbacks and the draft. This was heightened by discontent among many Northerners at Lincoln's issuance of the Emancipation Proclamation in 1862. The Peace Democrats enjoyed considerable electoral success that fall in reaction to these events.

A prominent voice among the Peace Democrats was Ohio Congressman Clement Vallandigham, a lawyer from Dayton, even though he lost his seat in 1862. He was sympathetic to the South and an outspoken critic of Lincoln. General Ambrose Burnside, following his disastrous defeat at Fredericksburg in December, 1862, was reassigned to the Department of Ohio. On April 13, 1863, Burnside issued an order that "Treason, express or implied, would not be tolerated." On May 1, Vallandigham spoke in Mt. Vernon, denouncing "King" Lincoln in the presence of a federal agent. He was arrested on May 5, imprisoned in Cincinnati, tried before a military tribunal despite his request for a jury trial, and sentenced to imprisonment for the remainder of the war. Vallandigham protested a denial of due process and demanded a writ of Habeas Corpus. His appeal to the U.S. Supreme Court would be rejected in *Ex Parte Vallandigham* in February 1864, with the court ruling it had no jurisdiction over military commissions.

Rather than allow his sentence to be carried out and make him a Copperhead martyr, Lincoln exiled him to the Confederacy. He was turned over to General Braxton Bragg's Army of Tennessee on May 25. His exile did not last long; within twenty-four days he was sent out to sea, making his way to Canada via Bermuda. Vallandigham then ran for governor of Ohio on the Democratic ticket from Canada, but lost in a landslide to pro-Union War Democrat John Brough. Undeterred and allowed by Lincoln to return to the United States, Vallandigham attended the Democratic convention in Chicago in the summer of 1864 and drafted its peace platform (although the party's candidate, George McClellan, refused to accept its demand for an immediate end of the war). After the war, Vallandigham ran unsuccessfully for the U.S. Senate and House of Representatives on an anti-Reconstruction platform. His practice as a lawyer ended with his death in 1871 in Lebanon, Ohio when he accidentally shot himself while defending an accused murderer.

Despite Vallandigham's 1863 defeat for governor, there was considerable Copperhead support in southern Ohio and neighboring Indiana. Union authorities feared a secret underground group of pro-Confederate sympathizers - the Knights of the Golden Circle or the Sons of Liberty - might stage an uprising aimed at freeing Confederate prisoners and leading disaffected midwestern states to secede, despite the lack of support for General John Hunt Morgan during his Confederate cavalry through southern Indiana and Ohio in 1863.

Another outspoken Copperhead opponent of the Lincoln was Ohio-born lawyer and farmer Lambdin Milligan (a law classmate of Edwin Stanton). Suspected of conspiring against the Union, he and other Indiana Copperheads were arrested under the direction of General Alvin Hovey on October 5, 1864 and tried by a military tribunal. Milligan was convicted of treason (along with four others) and sentenced on December 10 to be hanged on May 19, 1865. Following Lincoln's assassination and apparently at the behest of War Secretary Stanton, President Andrew Johnson postponed Milligan's execution until the civilian courts could hear his appeal.

On March 6, 1866, the Supreme Court, led by Ohioan and Chief Justice Salmon Chase, Lincoln's former Secretary of the Treasury, began six days of argument on the issue of the validity of his trial and conviction by the military. The government's case was presented by Attorney General James Speed, aided by Ben Butler and former Ohio Attorney General Henry Stansbury. Milligan was represented by a team that included Ohioan Civil War hero, Congressman, and future president James Garfield and David Dudley Field, a prominent attorney and older brother of sitting Supreme Court Justice Stephen Field.

The court issued its opinion and the writ of Habeas Corpus on December 17, 1866 in *Ex Parte Milligan*, ruling unanimously that, under the 1863 Habeas Corpus Act, Milligan should have been tried in civilian courts in Indiana rather than by military commission. The author of the lead opinion was Justice David Davis. Maryland-born Davis attended Kenyon College in Ohio and began a law practice in Illinois. He became a state judge. Befriending attorney Abraham Lincoln, Davis became his campaign manager at the 1860 Chicago Republican convention that nominated him. In 1862, Lincoln (by recess appointment) named Davis to the Supreme Court. With Lincoln now dead and the Civil War over, Davis famously wrote:

"The Constitution of the United States is a law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended

during any of the great exigencies of government. Such a doctrine leads to anarchy or despotism.”

Davis recognized not only the operation of the civilian courts in Indiana in 1864, but the denial of the Sixth Amendment right of Milligan to a trial by jury. On behalf of four justices, Chief Justice Chase wrote that Congress had the power to create military commissions, something not recognized by Davis in his opinion. On March 2, 1867, in the first Reconstruction Act, Congress empowered military commanders in the occupied South to use military commissions, which were used until its end when Ohioan and President Rutherford Hayes withdrew federal troops from the South and ended its occupation after his controversial election in 1876.

Released in April, 1866, Milligan inveighed publicly the next month against the martyred president and wartime pro-Union governors of Indiana and Ohio. He then sued those involved in his jailing for \$500,000 in damages for trespass and false imprisonment. Milligan was represented by Thomas Hendrickson, a future Vice President. The general who ordered his arrest was represented by Ohio-born future president Benjamin Harrison. In 1871, the jury awarded a verdict for Milligan, but only \$5 in damages. Milligan died in 1899.

The Milligan opinion still resonates today as the legal and political debates continue over the treatment of “enemy combatants” imprisoned in Guantanamo Bay, Cuba, their trials before military commissions, and the Patriot Act provisions for the arrest of those Americans accused of being associated with “terrorism.”

Conclusions

My conclusions are these:

1. Lincoln was entirely justified in his initial suspension of Habeas Corpus with Congress not in session under unprecedented wartime conditions caused by the secession of the Southern states.
2. Taney’s interpretation of the Constitution that only Congress could suspend the Writ of Habeas Corpus is debatable.
3. Lincoln’s refusal to comply with the procedural provisions of the 1863 Habeas Corpus Act and the use of military commissions in Ohio and Indiana when civilian courts were available for the prosecution of Vallandigham and Milligan are also debatable, although his actions were not successfully challenged in the courts during the war.
5. Lincoln’s refusal to make Copperhead martyrs of Peace Democrats Vallandigham and Milligan was politically shrewd.

References

Kelley, Darwin. 1973. Milligan’s Fight Against Lincoln. Exposition Press.

Neely, Mark. 1991. Fate of Liberty: Abraham Lincoln and Civil Liberties. Oxford University Press.

Rehnquist, William. 2000. All the Laws But One: Civil Liberties in Wartime. Knopf.

Weber, Jennifer. 2006. Copperheads: The Rise and Fall of Lincoln’s Opponents. Oxford University Press.

White, Jonathan W. 2011. Abraham Lincoln and Treason in the Civil War: The Trials of John Merryman. LSU Press.

Williams, Frank. 2004 (May 5). Abraham Lincoln and Civil Liberties in Wartime. The Heritage Foundation (Lecture #834)

Dennis Keating is a professor at Cleveland State University’s Maxine Goodman Levine College of Urban Affairs and a past president of the Roundtable.

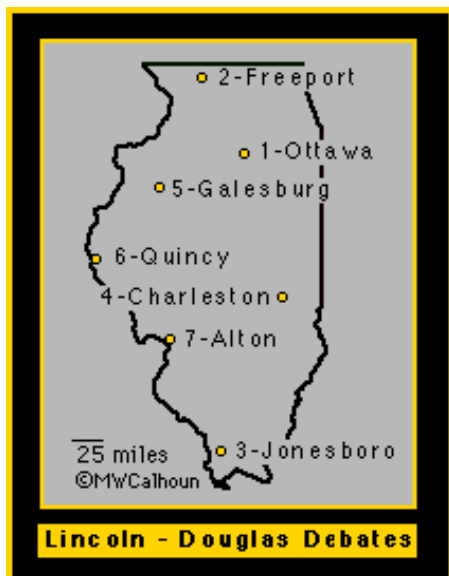
Lincoln - Douglas Debates of 1858

The debates between Stephen A. Douglas and Abraham Lincoln were held during the 1858 campaign for a US Senate seat from Illinois. The debates were held at 7 sites throughout Illinois, one in each of the 7 Congressional Districts.

Douglas, a Democrat, was the incumbent Senator, having been elected in 1847. He had chaired the Senate Committee on Territories. He helped enact the Compromise of 1850. Douglas then was a proponent of Popular Sovereignty, and was responsible for the Kansas-Nebraska Act of 1854. The legislation led to the violence in Kansas, hence the name "Bleeding Kansas"

Lincoln was a relative unknown at the beginning of the debates. In contrast to Douglas' Popular Sovereignty stance, Lincoln stated that the US could not survive as half-slave and half-free states. The Lincoln-Douglas debates drew the attention of the entire nation.

Although Lincoln would lose the Senate race in 1858, he would beat Douglas out in the 1860 race for the US Presidency.



List of Debates

- 1. Washington Square, Ottawa, Illinois**
- 2. Freeport, Illinois**

Over 15,000 people attended the original debate in Freeport, then a town of 5,000. Freeport Doctrine, which was the result of the debate, states people had the right to choose whether or not to exclude slavery from their limits.
- 3. Union County Fairgrounds, Jonesboro, Illinois**

Union County Fairgrounds is today part of Shawnee National Forest's Lincoln Park) Union County is south of the Mason-Dixon Line. The debate subject split families into Confederate & Union factions. Over 50 cemeteries throughout Union County tell of many who lost their lives in the War Between the States
- 4. Coles County Fairgrounds, Charleston, Illinois**

This was area was very familiar to Lincoln. Lincoln's father had lived and died here. Lincoln's stepmother & many relatives & friends lived here too. Lincoln had a thriving law practice in the community. A majority of the townspeople had come from Kentucky and Tennessee, moving north to avoid competition with slave labor. Most were poor and believed they had no chance to win out in the competition with slave labor.
- 5. Old Main, Knox College, Galesburg, Illinois** The east side on East South St. between Cedar and South Cherry Streets was the site of the original debate. This location has the only currently remain structure from the original debates. [[Photo of Old Main](#)]
- 6. Washington Park, Quincy, Illinois**
- 7. [Broadway & Market Streets, Alton, Illinois](#)**



NEXT MONTH
HOW ROBERT E. LEE LOST THE CIVIL WAR
EDWARD H. BONEKEMPER III

IMAGES OF THE LINCOLN-DOUGLAS DEBATES

