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 Nixon, Burger
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ALTHOUGH Chief Justice Warren Burger seems to be in retreat, President Nixon may still have to take on the Supreme Court over the issue of school busing. Mr. Nixon is not going to be able to carry water on both shoulders — to convince people of his own sincere opposition to busing while his administration continues to support federal court busing demands.

Right now, the President's position is that he, personally, opposes busing, but that he will enforce the Supreme Court's limited busing mandate — and no more.

This won't work. Mr. Nixon can't support 3X worth of busing in one place, because the courts demand it, and then expect to be applauded when he opposes 4X worth of busing somewhere else. And besides, busing per se is merely an incidental issue, although it is the one seized upon for dramatic purposes. The real issue is racial balance. Should we, in the name of desegregation, integration or whatever, scrap the idea of schooling children in their own neighborhood in order to distribute them citywide in appropriate racial ratios?

REAL ARGUMENTS can be made on both sides, but if Mr. Nixon opposes busing for racial balance — as I, for one, believe he does — he should say so, and never mind the court. Past Presidents have not hesitated to take on the court when it has gone against common sense and the wishes of the people.

The late Supreme Court Justice Robert Jackson, who previously had served as Franklin D. Roosevelt's Attorney General, has described this opposition in his book, "The Struggle for Judicial Supremacy":

"It (the court) has been in collision with the most dynamic and popular Presi-

dents in our history. Jefferson retaliated with impeachment; Jackson denied its authority; Lincoln disobeyed a writ of the Chief Justice; Theodore Roosevelt, after his presidency, proposed recall of judicial decisions . . . and Franklin D. Roosevelt proposed to reorganize it."

These confrontations did not occur simply by chance. The Supreme Court lags behind the times. By and large it has greeted every critical

juncture of U.S. society, politics and history with an outpouring of obsolescence — poor sociology and stale jurisprudence rooted in a credo and era that have already failed. Such error has led our greatest Presidents to challenge the court and its authority.

Another point should be made and underscored. The U.S. Constitution nowhere gives the Supreme Court the vast authority it has been exercising of late. Actually, the court assumed this power on its own back in the early 19th Century.

First Thomas Jefferson and then Andrew Jackson despised the Supreme Court. After it upheld the constitutionality of the Bank of the U.S., Jackson vetoed the bank's charter anyway, saying that he deemed it unconstitutional. Said President Jackson: "John Marshall has made his law. Now let him enforce it."

Abraham Lincoln, too, ignored the court when it got in his way during the crucial years of the Civil War.

IN FACT, the Supreme Court has a pretty poor all-around record. To quote Justice Jackson again:

"Surprise turns to astonishment when we reflect that time has proved that its judgment was wrong on the most outstanding issues upon which it has chosen to challenge the popular branches. Its judgment on the Dred Scott case was overruled by war. Its judgment that the currency that preserved the Union could not be made legal tender was overruled by Grant's selection of an additional justice. Its judgment invalidating the income tax was overruled by the 16th Amendment. Its judgments repressing labor and social legislation are now abandoned. Many of the judg-

During this decade, the federal judiciary seems disposed to thrust the "Equal Protection" clause of the U.S. Constitution even further into the thicket of requiring this and that sort of racial balance and social engineering. If President Nixon opposes such policies, now is the time for him to take his stand against the federal judiciary and alongside the great men of American history.