



Ruling overturned: Lord Hoffmann enjoying the company of a model in Stringfellows in 1987 and, right, with his wife Gillian



Pinochet Lords overturned

by JOHN STURGIS

AUGUSTO PINOCHET was given new hope of avoiding extradition today when, in the first case of its kind, the Law Lords ruled that one of their colleagues may have been unfairly biased. The former Chilean dictator's legal team had argued that links between Lord Hoffmann, who had the casting vote in a 3-2 decision against Pinochet last month, and human rights group Amnesty International, who have campaigned in favour of extradition, meant the case should be set aside. Today a new panel of five different Law

Case set aside over Hoffmann's link with Amnesty

Lords voted unanimously in favour of Pinochet. While not an unqualified triumph, today's decision represents a necessary first step towards Pinochet being allowed to return home to Chile. It means the case has reverted to where it

stood before the decision last month. Then Pinochet appeared to hold the winning hand — the High Court had ruled in his favour, deciding that as a former head of state he was immune from prosecution. That finding was challenged by the Spanish authorities, who want Pinochet sent to Madrid to face alleged human rights crimes. Lord Hoffmann and his colleagues then reversed the High Court's decision, backing Spain, a ruling that was endorsed last week by Home Secretary Jack Straw. However, two hours after Mr Straw's decision that Pinochet should face extradition proceedings, his lawyers had lodged an unprecedented appeal, based on the links between Lord Hoffmann and Amnesty. Five past and present Law Lords spent two days listening to arguments that the links gave rise to "a real danger of bias".

COMMENTARY

WHY DID Lord Hoffmann never mention his Amnesty connections? According to his friends, he would never have thought to do it, because he is just incapable of bias; anyway, the connection is so slim; anyway, if he had raised the matter, everyone would have said it was fine, and please go ahead and hear the case, etc etc. Even if this is all true, Lord Hoffmann cannot avoid the charge of complacency, at the very least, with inevitable consequences for his future. Can this "mistake" be ignored? There is no doctrine he or anyone else can turn to. But when someone — by what is at best a clear error of judgment — causes so much havoc, there has to be a question of whether he can stay in office. The Law Lords as an institution have taken a serious body blow to their dignity, and more important, to their very professional reputation. Resignation has to be a very seriously considered option, in the interests of the whole judiciary. One major problem is who is going to hear the second round of Pinochet v UK? So far, eight of the 12 current Law Lords and two recently

Judge has failed the bias test

retired Lords are counted out. That only leaves four very new and junior Lords for a panel which must have at least five members. Of course, one can use more of the rebrands, as their Lordships themselves refer to retired Law Lords. But a panel consisting of the very junior and the "put out to grass" inevitably lacks the full authority needed to make a decision in such an extremely awkward context. Ideally, we would have a reinforced panel of seven Law Lords in this situation — and perhaps we should have had such a panel in the first place. Just where are we going to be if the second panel splits 3-2 as the first one did? The inevitable head-counting is going to demonstrate only one thing — there just is no settled law about head of state immunity, and the decisions are nakedly political. The whole issue underlines a crucial fact about the Law Lords, and possibly about our legal system altogether.

We are moving rapidly to a new stage in the history of British justice — our top court is becoming a Constitutional Court, dealing with highly politically charged matters. This is going to become even more true with devolution, which is bound to bring legal challenges from Scotland against the UK government. Above all, when the Human Rights Act comes on line in 2000, the courts are going to be routinely hearing constitutional challenges to legislation. The Pinochet case, from the beginning has been deeply political, both in terms of the engagement of core values, and in terms of international institutional connections. There are already two appeals, one from each side, before the European Court of Human Rights in Strasbourg, and it is the standards of Strasbourg jurisprudence which are relevant here. Under those standards, it is necessary not just that a judge be, in fact, without bias, but that no rational onlooker might suspect him of bias. Lord Hoffmann failed that test. ●Professor David Robertson is Fellow in Politics at St Hugh's College, Oxford, and author of the recently published *Judicial Discretion In The House Of Lords*.

Cartier



Tank Française Watch 18 carat gold.

Cartier
175/176 New Bond Street, London W1.
Telephone: 0171-408 5700.
188 Sloane Street, London SW1.
Telephone: 0171-235 9023.
The Fine Jewellery Room and
The International Room of Luxury at Harrods.
Telephone: 0171-730 1234.
Heathrow Terminal 4.
Telephone: 0181-745 6724 and leading
jewellers throughout the United Kingdom
and Ireland. For information on your nearest
stockist please call 0171-408 5700.