



Francis L. Van Dusen

Born: May 16, 1912, in Philadelphia, Pennsylvania

Died: May 26, 1993, in Bryn Mawr, Pennsylvania

**Federal Judicial Service:**

Judge, U.S. District Court for the Eastern District of Pennsylvania

Nominated by Dwight D. Eisenhower on May 20, 1955, to a seat vacated by Guy K. Bard.

Confirmed by the Senate on July 29, 1955, and received commission on August 1, 1955.

Service terminated on June 27, 1967, due to appointment to another judicial position.

Judge, U.S. Court of Appeals for the Third Circuit

Nominated by Lyndon B. Johnson on January 16, 1967, to a seat vacated by James Cullen Ganey.

Confirmed by the Senate on June 12, 1967, and received commission on June 12, 1967.

Assumed senior status on May 16, 1977.

Service terminated on May 26, 1993, due to death.

**Education:**

Princeton University, A.B., 1934

Harvard Law School, LL.B., 1937

**Professional Career:**

Private Practice, Philadelphia, Pennsylvania: 1937-1941; 1945-1955

Attorney, Office of Administrator of Export Control: 1941

Senior Attorney, Office of Production Management: 1941-1942

Senior Attorney, War Production Board: 1942

U.S. Navy Lieutenant Commander: 1942-1945

## Other Nominations/Recess Appointments:

Nominated to U.S. District Court for the Eastern District of Pennsylvania, March 29, 1954; no Senate vote.

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## Judicial Biography

\*At the same time as John W. Lord, Jr. was nominated, President Eisenhower also chose Francis Lund Van Dusen of Montgomery County, a Republican, to succeed Judge Bard, who as previously noted had resigned in 1952 to run for the United States Senate. Van Dusen came from a family of prominent attorneys. His father Lewis H. Van Dusen had presided as the President Judge of the Orphans' Court of Philadelphia County, and his brother Lewis was a leading lawyer in the City who served a year as Chancellor of the Philadelphia Bar Association. After Francis Van Dusen was graduated from Princeton University and Harvard Law School, he practiced law in Philadelphia before heading to Washington to work for a variety of war-related boards. During World War II, he became a naval officer. He had returned to his law firm, then known as Barnes, Dechert, Price, Myers, and Rhoads, when he was nominated for the District Court.

Van Dusen's confirmation did not move nearly as quickly or easily as that of John Lord. In fact, it was delayed until mid-1955, more than a year after he was first nominated. While Van Dusen's chief backers were Congressman Hugh Scott of Philadelphia and the American Bar Association, initially he did not have the endorsement of Lloyd Wood, the Montgomery County Republican Chairman and former Lieutenant Governor, or more importantly, the critical support of Senator Martin and Senator James Duff. Not until Martin finally withdrew his opposition was Van Dusen confirmed.

Once on the bench, Judge Van Dusen and Judge C. William Kraft, Jr., with the approval of Chief Judge Kirkpatrick, totally revised the Court's local rules which had not been updated since 1913.

Judge Van Dusen presided over a precedent-setting case involving the issue of venue, that is, the proper district where a lawsuit is to be heard. On October 4, 1960, an Eastern Airlines plane on a flight from Boston to Philadelphia crashed into Boston Harbor shortly after take-off from Logan Airport. Over 150 passengers were killed or injured. Fifty-five diversity cases were brought in the Eastern District of Pennsylvania while others were instituted in the District of Massachusetts. The defendants moved to transfer to the federal court in Massachusetts the cases filed here under the widely used federal change-of-venue statute. Judge Van Dusen granted the motion as to the wrongful death cases "for the convenience of parties and

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\* The following material is excerpted from JUDGE HARVEY BARTLE, III, MORTALS WITH TREMENDOUS RESPONSIBILITIES, A HISTORY OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, 3-12 (Saint Joseph's University Press, 2011). Reproduced with the permission of the author, Judge Harvey Bartle, III, and the publisher, Saint Joseph's University Press.

witnesses, in the interest of justice.” Since the decision was not immediately appealable, the plaintiffs sought a writ of mandamus or prohibition against Judge Van Dusen in the Court of Appeals to compel him to vacate his order. Underlying this heated legal struggle over the location of the trials was a much more consequential practical issue. Massachusetts law at the time capped the damages in a wrongful death action at \$20,000 while Pennsylvania law had no such arbitrary limitation.

The Court of Appeals held that Judge Van Dusen had erred in transferring these cases. The Supreme Court thereupon granted the defendants’ petition for a writ of certiorari. The high Court reversed the Court of Appeals and remanded to the District Court for further consideration in light of its construction of the venue statute. This, however, was not the most noteworthy aspect of its decision. In this case known as *Van Dusen v. Barrack*, the Supreme Court ruled that even if the cases were ultimately transferred, the substantive law of the state of the transferor court, here the law of Pennsylvania with no cap on damages, would be applicable rather than that of Massachusetts. This decision had broad ramifications, for now the law of the state where any diversity action was originally filed would apply even if a change of venue was later granted.

In 1967, he was appointed to the Third Circuit Court of Appeals by President Lyndon B. Johnson. He assumed senior status on May 16, 1977, and retired from the Appeals Court in 1990. He died at his home in Bryn Mawr, Pennsylvania on May 26, 1993, at the age of 81.