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THE COURTS AND THE ADMINISTRATIVE STATE

Honorable Brett M. Kavanaugh

INTRODUCTION

I am honored to be included among the jurists and scholars who have delivered this lecture. I clerked for one of them, Judge Alex Kozinski, back in the early 1990s. When Judge Kozinski spoke here about twenty years ago, he started by asking his audience to picture the judicial system as "a large snake that feeds largely on field mice and occasional squirrel and maybe a game hen here or there." Even twenty years later, Judge Kozinski is a hard act to follow.

I have been a judge for seven years, but no field mice or game hen for me. I have been on the D.C. Circuit—the United States Court of Appeals for the District of Columbia Circuit—which has a distinctive history and docket really captured by the title of this lecture and Article, The Courts and the Administrative State. I will start by telling you a little bit about the background of the D.C. Circuit, how our court works, and then I will talk briefly about three of our most important responsibilities: (1) interpreting statutes that are administered by administrative agencies; (2) enforcing the Constitution's separation of...