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For or against emotionalism

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Conservatives have rightly taken pride in Neil Gorsuch's calm and cerebral performance at his Senate confirmation hearings. Many commentators, along with Republican senators, have mocked Democrats for presuming to evaluate Gorsuch based on the outcomes of his cases. Did he "side with the little guy" or with big corporations? The right answer, conservatives have correctly chided, is that justice is supposed to be blind. A good judge makes determinations based upon the facts and the law without regard to whether he personally prefers one party to another and without some social-justice agenda to equalize the fortunes of little guys and big guys. It's not little versus big or sympathetic versus unsympathetic in a courtroom, but facts and law.

It's a shame, then, that so many conservatives are disregarding the virtues they laud in Gorsuch — prudence, careful weighing of facts, refusal to be swayed by emotional appeals — when it comes to a disturbing story of a rape in Maryland.

Reports indicate that a 14-year-old high school student in Rockville, Maryland (a suburb of Washington, D.C.), may have been sodomized and raped in the boys' bathroom by two suspects. At least one of the suspects, according to Fox 5 in Baltimore, is an 18-year-old who recently entered the country illegally and was enrolled in the school as a freshman. The other, also an immigrant, is 17.

Emotional reactions to heinous crimes are completely understandable, but as Judge Gorsuch has properly reminded us, our feelings are not a good guide to justice. Neither are they a prescription for sensible policy. Quite the opposite.

If the evidence shows that the victim's account is correct — that she was pushed into the bathroom by the two suspects and raped by both of them in a stall — the young men could be facing many years in prison and deserve to.

But many are rushing to link this inflammatory case — before we know the facts — to the larger cause of immigration restriction. White House press secretary Sean Spicer drew the link: "Part of the reason the president has made illegal immigration such an issue is because of tragedies like this. ... This is why he's passionate about this. Because people are victims of these crimes. Immigration pays its toll on our people." That is exploiting people's anger, which is bad enough, and it's false, which is worse.

There are good and bad arguments against immigration. I am sympathetic to some restrictionist points, but smearing immigrants as out-of-control criminals is shameful. High rates of

immigration, legal and illegal, are not associated with spikes in crime. In our recent history, between 1990 and 2013, the illegal immigrant population in the U.S. more than tripled to 11.2 million. Yet FBI data indicates that the violent crime rate declined by 48 percent during those years. This included violent crimes, such as aggravated assault, robbery, rape and murder. Rates of property crime fell by 41 percent, including declining rates of motor vehicle theft, larceny/robbery and burglary.

As a survey by the CATO Institute shows, immigrants — both legal and illegal — are less likely to be incarcerated than native-born Americans. And when you exclude those illegal immigrants who are jailed for immigration offenses (i.e., just for being here illegally), the numbers really plunge. Looking at the Census Bureau's American Community Survey, CATO notes that illegal immigrants are 44 percent less likely to be incarcerated than native-born Americans. Legal immigrants are 69 percent less likely to be jailed than natives. White native-born Americans are more likely to be imprisoned than black immigrants, legal or illegal. The Wall Street Journal's Jason Riley cites a Public Policy Institute study showing that while the foreign-born comprise 35 percent of California's population, they represent 17 percent of the state prison population.

Some immigrants commit crimes. But as the data shows, most keep their noses clean. About 7 percent of our population is comprised of non-citizens, yet they account for only 5 percent of the prison population.

We don't yet know the facts of the rape case in Maryland. But even if they turn out to be every bit as brutal as first reports indicate, the attempt to tar all immigrants with this brush — or to let emotional appeals dictate policy — is exactly what fair-minded admirers of Judge Gorsuch will resist.