MCDONALD, C. J., concurring. I agree with the majority and with Judge Landau that the testimony from the declarant's family and the police concerning her repeated accusations was harmless. In this respect it is important to note that the declarant previously had testified without objection that she made those accusations to her family and the police. Furthermore, there was testimony that the declarant was obviously distraught and extremely upset after she arrived home that evening. Her family questioned the teenager as to the cause and learned of the sexual assault. At this time the declarant was only five days beyond her sixteenth birthday and had been a virgin until offered a brief ''ride home'' by the defendant, whom she had just met. The next morning, when the police examined the cargo area of the Jeep Wagoneer that had been driven by the defendant, they found her maidenhead blood on the floor. Dr. Marilyn Kessler examined her that day and found genital bruises and lacerations. The statements therefore were admitted along with strong circumstantial evidence of a sexual assault. That corroborating evidence also rendered their admission harmless; see *Idaho* v. *Wright*, 497 U.S. 805, 824, 110 S. Ct. 3139, 111 L. Ed. 2d 638 (1990); and gave them a sufficient indicia

of reliability. See id., 831 (Kennedy, J., dissenting).

I also agree that the statements made to her father, mother, sister and brother that night were excited utterances and properly admissible. See *State* v. *Wargo*, 255 Conn. 113, 127–28, 763 A.2d 1 (2000); *State* v. *Stange*, 212 Conn. 612, 616–17, 563 A.2d 681 (1989). They were made when the declarant was in an obviously devastated condition. This led first her father and then her sister to ask what was wrong. Because of her youth,[1] her continuing extreme distress and fear, the statements had the required indicia of reliability despite her failure to tell her father what had happened when first asked. There was evidence that her later answers were prompted by the startling, terrifying and deeply personal nature of the attack. We have quoted *State* v. *Hill*, 121 N.J. 150, 158–59, 578 A.2d 370 (1990), in turn citing 4 J. Wigmore, Evidence (Chadbourn Rev. 1972) § 1135, p. 298, that ''rape . . . more than any other violent crime . . . could shed shame and embarrassment on the victim.'' (Internal quotation marks omitted.) *State* v. *Troupe*, 237 Conn. 284, 295, 677 A.2d 917 (1996).

As to the police evidence, the defendant previously sought to impeach the complainant by cross-examining her about details of her written police statement. He also questioned her about inconsistencies between her testimony at the earlier trial and this trial. He claimed that the evidence in this trial was a recent fabrication. This led to the proper admission of a part of the written police statement as a prior consistent statement used to rehabilitate her credibility. See *State* v. *Valentine*, 240 Conn. 395, 412–13, 692 A.2d 727 (1997); *Thomas* v. *Ganezer*, 137 Conn. 415, 419–20, 78 A.2d 539 (1951).

Although the majority does not directly decide if repeated accusations should be admissible as constancy of accusation evidence, its reference to *State* v. *Parris*, 219 Conn. 283, 294, 592 A.2d 943 (1991), appears to sanction their admissibility as '' 'constant and consistent' '' reports of sexual abuse.

Constancy of accusation had as its original rationale that it is ''natural'' for the true victim of rape to make a ''fresh complaint.'' See *State* v. *De Wolf*, 8 Conn. 92, 100 (1830). In keeping with that rationale, the complaint was to be ''fresh'' or made shortly after the incident. *State* v. *Ouellette*, 190 Conn. 84, 98–100, 459 A.2d 1005 (1983). As Wigmore observes, ''Now, when a woman charges a man with a rape, and testifies to the details, and the accused denies the act itself, its very commission thus coming into issue, the circumstance that at the time of the alleged rape the woman said nothing about it to anybody constitutes in effect a self-contradiction . . . . It was entirely natural, after becoming the victim of an assault against her will, that she should have spoken out. That she did not, that she went about as if nothing had happened, was in effect an assertion that nothing violent had been done.'' 4 J. Wigmore,

supra, § 1135, p. 298.

In modern times, that rationale has been largely abandoned. *State* v. *Troupe*, supra, 237 Conn. 300–301; *State* v. *Parris*, supra, 219 Conn. 288–91; see also note, ''The New Face of Connecticut's Constancy of Accusation Doctrine: *State v. Troupe*,'' 29 Conn. L. Rev. 1713, 1718–22 (1997) (analysis of doctrine's evolution through Connecticut's case law). The present justifications for the doctrine's existence is that the evidence is a powerful weapon to secure justice in sexual assault prosecutions; see *State* v. *Sullivan*, 244 Conn. 640, 645–46, 712 A.2d 919 (1998); *State* v. *Dabkowski*, 199 Conn. 193, 202, 506 A.2d 118 (1986); and that it addresses the fact that there may be benighted jurors who still believe it only ''natural'' that the victim would complain immediately. *State* v. *Troupe*, supra, 300–302.

As to the first justification, of course, the prior consistent statements of any state's witness to any crime would be powerful weapons, as would those of any defense witness, including the accused, especially if those statements were repeated. We simply do not permit such evidence. ''Prior consistent statements are self-serving in nature and their admissibility creates a motive and opportunity to manufacture corroborating evidence.'' C. Tait & J. LaPlante, Connecticut Evidence (Sup. 2000) § 11.22.1.

As to the second justification, the immediacy of the accusation is not a condition of admissibility, nor is the evidence restricted to the original complaint. A suggested amendment to rule 801 (d) (1) of the Federal Rules of Evidence, in keeping with this justification, would restrict the evidence to the initial and not subsequent accusations.[2] I would limit constancy of accusation evidence in this manner.

In this case, the state presented evidence of repeated accusations after the initial complaint. The state's attorney also urged the jury to find the complaint credible because the complainant repeated her accusation to a number of witnesses in her family and to the police. Statements to the police by a complainant, particularly, are subject to the jury's interpretation that the police believed the complaint and acted to pursue and arrest the defendant. See *State* v. *Sullivan*, supra, 244 Conn. 676 (*McDonald, J.*, dissenting).

The danger in admitting repeated accusations is that they may result in an unfair and prejudicial chorus of supporting witnesses who have no firsthand knowledge vouching for the accuser. ''Constancy accusations are admitted solely to overcome society's lingering prejudices in rape cases, not to permit the prosecution to manufacture testimony . . . .'' C. Tait & J. LaPlante, supra, § 11.22.1.

Constancy of accusation does not require an indicia of reliability for the accusation, only that it may be

considered as a ''normal'' reaction. In this respect, constancy of accusation evidence is distinct from other evidentiary rules that may allow the testimony. Although the majority rightly repeats *Troupe*'s caution that the trial court must carefully balance the probative value of the evidence against any prejudice to the defendant, I would not agree that the rationale for *Troupe* or fairness supports permitting repeated accusations as constancy of accusation. I would conclude that the repeated accusations to the family and later to the police should not have been admitted as constancy of accusation. On the other hand, excited utterances prompted by a startling and wrenching sexual assault or abuse may be admissible beyond the initial declaration because the later statements may have an indicia of reliability.

I concur in the remainder of the majority opinion.

[1] In youthful rape and sexual abuse cases, there is very often an indicia of reliability found in excited utterances. ''[In] modern practice, particularly where children are the victims of sexual offenses, many courts have liberally interpreted the allowable period of time between the exciting event and the child's description of it. The theory of these courts is that the general psychological characteristics of children typically extend the period that is free of the dangers of conscious fabrication.'' 2 C. McCormick, Evidence (5th Ed. 1999) § 272.1, p. 212.

[2] The Federal Rules of Evidence make no explicit provision for the admission of a statement of prompt complaint of sexual abuse against the complainant's will. M. Graham, ''The Cry of Rape: The Prompt Complaint Doctrine and the Federal Rules of Evidence,'' 19 Willamette L. Rev. 489, 490 (1983). In this article, Graham has proposed an amendment to rule 801 (d) (1), specifically addressing the doctrine. ''Statements Which Are Not Hearsay . . . (d) . . . (1) Prior Statement by Witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . *(D) consistent with the declarant's testimony and is one of initial complaint of sexual abuse against the will of the declarant.*'' (Emphasis in original.) Id., 510.