FLYNN, C. J., dissenting. We are heirs of Connecticut colonists who distrusted lawyers because so many from the profession were aligned with King George.[1] In colonial times, the right most prized was the right to represent one's self rather than engage such a lawyer advocate.[2] This right was so valued that, early on, pleading for hire was illegal in the colonies, including Connecticut.[3] This explains why, in 1818, the people of Connecticut, one of the first thirteen states, adopted a constitution that expressly guaranteed this right so that no implication of the right of self-representation was necessary as in the sixth amendment to the United States Constitution.[4] Our state constitution expressly guarantees a defendant the right to be heard in court "by himself and by counsel . . . ." Conn. Const., art. I, § 8. This guarantee also elucidates why Connecticut's rule-making body adopted a rule of practice that provides in relevant part: "A defendant shall be permitted to waive the right to counsel and shall be permitted to represent himself or herself at any stage of the proceedings, either prior to or following the appointment of counsel. . . ." Practice Book § 44-3; see also *State* v. *Gethers*, 193 Conn. 526, 532, 480 A.2d 435 (1984). In this case, we now are called on to decide whether the trial court acted properly in denying the defendant, Maurice Flanagan, this time-honored right.

I respectfully dissent from the opinion of the majority, which decides for the first time on appeal that the defendant's request was equivocal, effectively ignoring the fact that the trial court ruled on the request, and thereby avoiding the substantial questions the defendant raises on appeal.

The defendant claims that the court improperly infringed on his constitutional rights to due process and self-representation under the federal and the state constitutions and that it committed plain error by using an incorrect legal standard and by failing to follow the mandates set forth in Practice Book § 44-3.[5]

I

I turn first to whether the defendant's request for self-representation was unequivocal *and therefore sufficient to warrant a proper waiver hearing*. The sixth amendment to the United States constitution guarantees not just the right to counsel but also the right to represent oneself. *Faretta* v. *California*, 422 U.S. 806, 835–36, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975). Although I agree that the assertion of the right to self-representation must be clear and unequivocal, it is evident from the record that the trial court thought that the defendant adequately enough expressed that choice because the court clearly and unequivocally denied the request on

March 18, 2003, and two days later confirmed on the record that it had denied his earlier request "to represent [him]self . . . ."

That colloquy began when the defendant asked the court, "excuse me Your Honor, don't I have the right to finish this case . . . without [defense counsel]?" The court responded: "In a word, no." At the end of this colloquy, which began with the defendant's inquiry about whether he had the right of self-representation, the court stated: "So, if you're making a request of me that you be allowed to represent yourself or that you be allowed to retain or have new counsel appointed for you, that request is denied."[6]

Furthermore, on appeal, the state once conceded the facts surrounding the defendant's self-representation request and the court's ruling thereon. When the state filed its objection to the defendant's motion for articulation, it conceded: "Contrary to the defendant's contention, the record, including all inferences reasonably drawn therefrom, provides both the factual criteria considered by the trial court in denying the defendant's motion to waive counsel and proceed pro se, and the factual findings made by the trial [court] in denying the motion." Arguably, at least in part on the basis of that concession, this court, although granting the defendant's motion for review of the trial court's denial of his motion for articulation, denied his request that we order the trial court to articulate the basis for its denial of the defendant's request to represent himself.[7] See also Practice Book §§ 66-5 and 66-7.

A

I first disagree with the majority's holding that the defendant's request was equivocal and that the trial court was not required to conduct an inquiry on his request to represent himself, citing *State* v. *Carter*, 200 Conn. 607, 513 A.2d 47 (1986), as authority. On appeal, it is not our function to make factual findings; rather, we give a trial court's findings of fact complete deference unless they are clearly erroneous in light of the "whole record." *State* v. *Reagan*, 209 Conn. 1, 8, 546 A.2d 839 (1988).

Although the majority concludes that the colloquy between the defendant and the court did not amount to a clear and unambiguous request for self-representation, the trial court was present when the defendant made his request, and it participated in the proceedings, listening to the defendant and observing his demeanor. In contrast, on appeal, we have nothing but the cold record. Whatever others might say about the initial dialogue, it is unquestionable that the court viewed this request as one of self-representation, and it clearly articulated its position. On appeal, all that is ascertainable from the record is that on the basis of whatever the defendant said and did, the court realized and acknowl-

edged that the defendant was asserting his right of self-representation, and it denied the request. Once the court made its finding and ruled on that basis, specifically telling the defendant that he had no right to represent himself, there was no reason for the defendant to have attempted to say more. The court had ruled.

The majority would have us ignore the court's statement made on the record two days after the defendant first made the request to represent himself. In that statement, the court very clearly reaffirmed that it had denied the defendant's request to represent himself.[8] That statement on the record effectively amounted to an articulation, and it conclusively demonstrated that the court understood that the defendant had made such a request and that it had denied the request. Although this statement was made two days after the court's ruling, it is entitled to no less deference on appeal, where there has been no showing or claim that the finding was clearly erroneous, than an explanation or articulation that is offered months later. On appeal, appellate courts often look to articulations of the trial court to determine the factual basis for a ruling months or even a year earlier. See Practice Book §§ 60-5, 66-5 and 66-7. Further, I note that "[t]he purpose of an articulation is to dispel any . . . ambiguity by clarifying the factual and legal basis upon which the trial court rendered its decision, thereby sharpening the issues on appeal." (Internal quotation marks omitted.) *Pecan* v. *Madigan*, 97 Conn. App. 617, 623, 905 A.2d 710 (2006), cert. denied, 281 Conn. 919, 918 A.2d 271 (2007). "[A]n articulation is simply an explanation of a previous order or ruling." *Rathblott* v. *Rathblott*, 79 Conn. App. 812, 820, 832 A.2d 90 (2003). An explanation offered by a court a mere two days after it has issued a ruling should not be ignored any more than an articulation offered months or even one year after a ruling.

In concluding that the defendant's self-representation request was equivocal, the majority, for the first time on appeal, makes a finding that was not made by the trial court, and it does so citing the authority of *State* v. *Carter*, supra, 200 Conn. 607.[9] However, that thoughtful decision is inapposite to the present case for several reasons. The defendant in *Carter* made several requests to change his attorney and, although he stated that he would "have to represent [him]self"; id., 611; the court never recognized that he was asserting a right of self-representation, and, accordingly, it did not issue a ruling, as did the court in the present case.[10] See id., 614–15.[11] The question on appeal in *Carter* was whether the court had an "independent obligation to inquire into the defendant's interest in representing himself . . . ." Id., 613. In contrast, the trial court in this case knew that the defendant was interested in representing himself and denied this request without conducting a waiver hearing, as *Carter* requires once an unequivocal request is made. See id., 613 n.9. Unlike the trial court in *Carter*,

the trial court in this case recognized that the defendant was asserting his right, and it acted by denying the request. A waiver hearing based on the proper standard should have followed this request, before the court issued a ruling.

B

In passing on whether the defendant should have been permitted to represent himself, the record reveals that the court applied an *exceptional circumstances* test when denying the defendant's request. Specifically, the court stated: "The fact that you disagree with [your attorney] over trial tactics . . . at this stage of the case where the state is about to rest, after we have been on trial essentially for about two and one-half months, does not constitute the kind of exceptional circumstances that I would have to find in order for me to allow you either to have a new lawyer or to represent yourself at this point in time."[12] I conclude that this is not the proper test.

Certain additional facts bear on this issue. First, there is nothing in the record before us to indicate that the request of the defendant to represent himself would cause inordinate delay or that it was made as part of a pattern of disruptive or tumultuous conduct. Second, the request was made at the end of the state's case because the defendant wanted to call one witness on his behalf and his attorney absolutely refused to do so. Third, the state had taken two and one-half months to call twenty-eight witnesses on its behalf before resting; the defendant had called none. An exceptional circumstances test employed by the court would require the defendant to show some exceptional circumstances to utilize the right to represent himself once trial begins. I do not believe this to be the proper test.

Our Supreme Court often has discussed the utilization of an exceptional circumstances test when a defendant seeks to discharge counsel and have *new counsel* appointed, especially on the eve of trial or midtrial. The Supreme Court has "distinguish[ed] between a substantial and timely request for new counsel pursued in good faith, and one made for insufficient cause on the eve or in the middle of trial. . . . [It has explained that] [t]here is no unlimited opportunity to obtain alternate counsel. . . . It is within the trial court's discretion to determine whether a factual basis exists for appointing new counsel. . . . A request for substitution of counsel requires support by a substantial reason, and may not be used to achieve delay. . . . A defendant has no unbridled right to discharge counsel on the eve of trial. . . . In order to work a delay by a last minute discharge of counsel there must exist exceptional circumstances." (Citations omitted; internal quotation marks omitted.) *State* v. *Drakeford*, 202 Conn. 75, 82–84, 519 A.2d 1194 (1987).

Frequently, when a court has found no exceptional circumstances to warrant the discharge of counsel and the appointment of substitute counsel, however, it has offered the defendant the option of exercising the right of self-representation. See, e.g., *State* v. *Webb*, 238 Conn. 389, 425–26, 680 A.2d 147 (1996), aff'd after remand, 252 Conn. 128, 750 A.2d 448 (no exceptional circumstances warranting appointment of substitute counsel but defendant permitted to proceed pro se with standby counsel), cert. denied, 531 U.S. 835, 121 S. Ct. 93, 148 L. Ed. 2d 53 (2000); *State* v. *Calderon*, 82 Conn. App. 315, 319–21, 844 A.2d 866 (no exceptional circumstances warranting continuation of trial to hire new counsel but defendant allowed to discharge counsel and proceed pro se), cert. denied, 270 Conn. 905, 853 A.2d 523, cert. denied, 543 U.S. 982, 125 S. Ct. 487, 160 L. Ed. 2d 361 (2004); *State* v. *Miller*, 69 Conn. App. 597, 612–13 n.4, 795 A.2d 611 (no exceptional circumstances allowing appointment of substitute counsel but defendant offered option of proceeding pro se), cert. denied, 260 Conn. 939, 802 A.2d 91 (2002); *State* v. *Fisher*, 57 Conn. App. 371, 381–82, 748 A.2d 377 (same), cert. denied, 253 Conn. 914, 754 A.2d 163 (2000); *State* v. *Charles*, 56 Conn. App. 722, 726, 745 A.2d 842 (no exceptional circumstances for appointing new counsel but defendant given choice of continuing with appointed counsel or proceeding pro se), cert. denied, 252 Conn. 954, 749 A.2d 1203 (2000). On the basis of this case law, I conclude that the exceptional circumstances test, which is employed for lawyer substitutions, is inapplicable where, as here, the defendant seeks to discharge counsel and proceed pro se.

Even if I were to agree with the majority that this case should be determined under federal law, the court did not follow the proper federal test as articulated in many cases decided by the United States Court of Appeals for the Second Circuit construing the right of self-representation under the federal constitution. I find such cases informative.

Concerning the exercise of one's right of self-representation after trial has commenced, the Second Circuit has explained that a balancing test is to be used. " 'Once . . . trial has begun with the defendant represented by counsel . . . his right thereafter to discharge his [lawyer], and to represent himself is sharply curtailed. There must be a showing that the prejudice to the legitimate interests of the defendant overbalances the potential disruption of proceedings already in progress, with considerable weight being given to the trial judge's assessment of this balance.' [*United States ex rel. Maldonado* v. *Denno*, 348 F.2d 12, 15 (2d Cir. 1965), cert. denied sub nom. *DiBlasi* v. *McMann*, 384 U.S. 1007, 86 S. Ct. 1950, 16 L. Ed. 2d 1020 (1966)]. The . . . [United States] Supreme Court decision, *Faretta* v. *California*, [supra, 422 U.S. 806], casts no pall on [the] *Maldonado* ruling.

Faretta [did] not involve motions made after the commencement of trial and in that decision the Court cited (without disapproval) *Maldonado* which does. *Faretta*, supra, [817]. . . . Subsequent application of its rule indicates that the reason for the request, the quality of the counsel representing the party, and the party's prior proclivity to substitute counsel are all appropriate criteria to be factored into the balance. See, *United States* v. *Catino*, 403 F.2d 491, 497–98 (2d Cir. 1968), cert. denied [sub nom. *Pagano* v. *United States*], 394 U.S. 1003, 89 S. Ct. 1598, 22 L. Ed. 2d 780 (1969); *United States* v. *Ellenbogen*, 365 F.2d 982, 988–89 (2d Cir. 1966), cert. denied, 386 U.S. 923, 87 S. Ct. 892, 17 L. Ed. 2d 795 (1967)." *Sapienza* v. *Vincent*, 534 F.2d 1007, 1010 (2d Cir. 1976) (affirming District Court's denial of request to proceed pro se because defendant's "public defender was competent . . . [the defendant] was obstinate, and the ill-timed request followed a torrent of abortive counsel substitutions").

In *United States* v. *Matsushita*, 794 F.2d 46 (2d Cir. 1986), the court reaffirmed that in assessing an untimely request to proceed pro se, the "prejudice to the legitimate interests of the defendant must be balanced against the potential disruption of the proceedings in progress." Id., 51 (affirming trial court's exercise of discretion in denying request to proceed pro se because of defendant's propensity to substitute counsel, to delay trial and to use disruptive tactics); see also *Williams* v. *Bartlett*, 44 F.3d 95, 99 n.1 (2d Cir. 1994) ("After trial has begun, a trial court faced with [a request to proceed pro se] must balance the legitimate interests of the defendant in self-representation against the potential disruption of the proceedings already in progress. . . . In exercising this discretion, the appropriate criteria for a trial judge to consider are the defendant's reasons for the self-representation request, the quality of counsel representing the party, and the party's prior proclivity to substitute counsel." [Citations omitted.]); *United States* v. *Brown*, 744 F.2d 905, 908 (2d Cir.) (trial court did not abuse its discretion in denying right of self-representation where court reasonably concluded that counsel's representation was adequate and defendant's self-representation "would have been disruptive of the trial process"), cert. denied, 469 U.S. 1089, 105 S. Ct. 599, 83 L. Ed. 2d 708 (1984).

In the present case, the court recognized that the defendant was asserting the right of self-representation and firmly informed him that he had no right to represent himself and then denied his request. The court, however, conducted no balancing test before ruling on the request, but, rather, it focused solely on its opinion that the performance of the defendant's attorney was "beyond competent and . . . superior." Although this is one of the criteria to be balanced under the federal test when a defendant makes a request to proceed pro se after the start of trial, it is only one of several factors

that must be balanced against the legitimate interests of the defendant in representing himself. See *Williams* v. *Bartlett*, supra, 44 F.3d 99 n.1; *Sapienza* v. *Vincent*, supra, 534 F.2d 1010; *United States ex rel. Maldonado* v. *Denno*, supra, 348 F.2d 15. There is no indication in the record that the defendant sought to delay or disrupt the trial or that he had a proclivity to substitute counsel. If anything, the record supports a conclusion that the defendant had a very legitimate reason for wanting to represent himself at the close of the state's case; he wanted to put on a defense by calling a witness on his behalf.

The United States Supreme Court in *Faretta* very eloquently expressed the importance of the right of self-representation and the defendant's right to put forth a defense: "The right of self-representation finds support in the structure of the Sixth Amendment, as well as in the English and colonial jurisprudence from which the Amendment emerged. . . . The Sixth Amendment includes a compact statement of the rights necessary to a full defense: 'In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his [defense].' Because these rights are basic to our adversary system of criminal justice, they are part of the 'due process of law' that is guaranteed by the Fourteenth Amendment to defendants in the criminal courts of the States. The rights to notice, confrontation, and compulsory process, when taken together, guarantee that a criminal charge may be answered in a manner now considered fundamental to the fair administration of American justice—through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence. In short, the Amendment constitutionalizes the right in an adversary criminal trial to make a defense as we know it. . . .

"The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. It is the accused, not counsel, who must be 'informed of the nature and cause of the accusation,' who must be 'confronted with the witnesses against him,' and who must be accorded 'compulsory process for obtaining witnesses in his favor.' Although not stated in the Amendment in so many words, the right to self-representation—to make one's own defense personally—thus, is implied necessarily by the structure of the Amendment. The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails.

"The counsel provision supplements this design. It speaks of the 'assistance' of counsel, and an assistant,

however expert, is still an assistant. The language and spirit of the Sixth Amendment contemplate that counsel, like the other defense tools guaranteed by the Amendment, shall be an aid to a willing defendant—not an organ of the State interposed between an unwilling defendant and his right to defend himself personally. To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment. In such a case, counsel is not an assistant, but a master; and the right to make a defense is stripped of the personal character upon which the Amendment insists. It is true that when a defendant chooses to have a lawyer manage and present his case, law and tradition may allocate to the counsel the power to make binding decisions of trial strategy in many areas. . . . This allocation can only be justified, however, by the defendant's consent, at the outset, to accept counsel as his representative. An unwanted counsel 'represents' the defendant only through a tenuous and unacceptable legal fiction. Unless the accused has acquiesced in such representation, the defense presented is not the defense guaranteed him by the Constitution, for, in a very real sense, it is not *his* defense." (Citations omitted; emphasis in original.) *Faretta* v. *California*, supra, 422 U.S. 818–21.

Because the defendant was denied the fundamental right of self-representation without any attempt by the court to conduct a balancing of the very legitimate interests of the defendant in self-representation, as so eloquently expressed in *Faretta*, against the potential disruption of the proceedings already in progress, I would reverse the defendant's conviction and remand the case for a new trial.

II

As stated in part I B of this dissent, there is nothing in the record that would indicate that the defendant was disruptive or tumultuous or that granting his request would cause an inordinate delay. Additionally, as stated earlier, the defendant articulated a very good reason for wanting to proceed pro se immediately after the state rested; he wanted to put on a defense by calling a witness on his behalf after his attorney refused to do so. Therefore, the only criteria of the balancing test to be weighed would be the issue of timeliness. On this issue, the defendant asked that, rather than looking to federal law, we look to Practice Book § 44-3,[13] which provides in relevant part that "[a] defendant . . . shall be permitted to represent himself or herself at *any stage of the proceedings* . . . ." (Emphasis added.) The state argues that we should adopt a per se rule that any request for self-representation made after the start of trial is untimely. I would honor the defendant's request and analyze the issue of timeliness under our rules of practice, which are not irrelevant and which provide that a defendant "shall be permitted to represent himself or herself at any stage of the proceedings

. . . .” Practice Book § 44-3.

The Court of Appeals of Maryland in *Snead* v. *State*, 286 Md. 122, 406 A.2d 98 (1979), was called on to interpret a rule of practice that, at the time, was similar to § 44-3 in that it “implement[ed] the constitutional mandates for waiver of counsel” and provided that an inquiry was to be made “[w]hen a defendant indicat[ed] a desire or inclination to waive counsel.” (Internal quotation marks omitted.) Id., 130. The Maryland court explained: “An effective waiver of counsel is to be determined under Rule 723 and that Rule contains no provision as to the time an indication of a desire or inclination to waive counsel must be made.”[14] Id, 132. In *Snead*, the Maryland court reversed the judgment of conviction and ordered a new trial because the trial court had not conducted an inquiry after the defendant had indicated a desire to proceed pro se. Id., 132. The court held that such a failure never could be harmless: “The State would have us hold that if the refusal to permit [the defendant] to proceed without counsel was error, the error was harmless. As we have indicated, we do not reach the merits of the issue whether the refusal to permit [the defendant] to proceed without counsel was error because the foundation necessary for a ruling thereon was not laid, and it was the failure to lay the foundation by appropriate inquiry that necessitates reversal of the judgments. It is manifest that the failure to conduct a properly invoked inquiry, which is necessary for a resolution of whether an accused is entitled to the right to proceed *pro se*, may not in any event be harmless.” (Emphasis in original.) Id. Similarly, on the basis of the clear language set forth in Practice Book § 44-3, I would conclude that there is no time requirement and that, therefore, the defendant’s request was not untimely.

For all of these reasons, I would reverse the judgment of conviction and remand the case for a new trial.

Accordingly, I respectfully dissent.

[1] See *State* v. *Gethers*, 197 Conn. 369, 389, 497 A.2d 408 (1985).

[2] See *State* v. *Colon*, 272 Conn. 106, 320–21, 864 A.2d 666 (2004), cert. denied, 546 U.S. 848, 126 S. Ct. 102, 163 L. Ed. 2d 116 (2005); *State* v. *Gethers*, 197 Conn. 369, 389, 497 A.2d 408 (1985).

[3] As explained in *Faretta* v. *California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975): “The Founders believed that self-representation was a basic right of a free people. Underlying this belief was not only the antilawyer sentiment of the populace, but also the ‘natural law’ thinking that characterized the Revolution’s spokesmen. See P. Kauper, The Higher Law and the Rights of Man in a Revolutionary Society, a lecture in the American Enterprise Institute for Public Policy Research series on the American Revolution, Nov. 7, 1973, extracted in 18 U. of Mich. Law School Law Quadrangle Notes, No. 2, p. 9 (1974). For example, Thomas Paine, arguing in support of the 1776 Pennsylvania Declaration of Rights, said: ‘Either party . . . has a natural right to plead his own cause; this right is consistent with safety, therefore it is retained; but the parties may not be able . . . therefore the civil right of pleading by proxy, that is, by a council, is an appendage to the natural right [of self-representation] . . . .’ Thomas Paine on a Bill of Rights, 1777, reprinted in 1 Schwartz 316.” *Faretta* v. *California*, supra, 830 n.39; see also *State* v. *Colon*, 272 Conn. 106, 321, 864 A.2d 666 (2004), cert. denied, 546 U.S. 848, 126 S. Ct. 102, 163 L. Ed. 2d 116 (2005); *State* v. *Gethers*, 197 Conn. 369, 389, 497 A.2d 408 (1985).

[4] *State* v. *Gethers*, 197 Conn. 369, 390–91, 497 A.2d 408 (1985).

[5] Practice Book § 44-3 provides: "A defendant shall be permitted to waive the right to counsel and shall be permitted to represent himself or herself at any stage of the proceedings, either prior to or following the appointment of counsel. A waiver will be accepted only after the judicial authority makes a thorough inquiry and is satisfied that the defendant:

"(1) Has been clearly advised of the right to the assistance of counsel, including the right to the assignment of counsel when so entitled;

"(2) Possesses the intelligence and capacity to appreciate the consequences of the decision to represent oneself;

"(3) Comprehends the nature of the charges and proceedings, the range of permissible punishments, and any additional facts essential to a broad understanding of the case; and

"(4) Has been made aware of the dangers and disadvantages of self-representation."

[6] The state now argues on appeal that the defendant's request was not clear and unequivocal, to which the defendant responds, in essence, that once the court recognized that he was asserting his right of self-representation, to require him to be punctilious or to recite some talismanic phrase would be an elevation of form over substance. At oral argument, the defendant's counsel further explained this position: "In all of the cases that I've researched . . . where there is a claim by a defendant that he was denied his right to represent himself, and the issue [on appeal] is whether there was a clear and unambiguous request—there was no ruling by the trial court. And so, what we're left with is, did the trial court fail to acknowledge and recognize a clear and unambiguous request? In which case, it would have been error not to address it. In this case, [however] I'm now being asked to show that there was a clear and unequivocal request where a trial court ruled. And I don't—I don't know how I go about doing that, Your Honor. I now have to say, even though the trial court ruled, we're now going to say that it was a—it was an ambiguous request. Even though the trial court understood it." I find the defendant's argument compelling.

[7] Specifically, the defendant requested that we order the trial court to articulate (1) the legal standard of review that it applied when it denied the defendant's motion to waive counsel and to proceed pro se and (2) the facts that it found relevant to its decision to deny the defendant's motion to waive counsel.

[8] On March 20, 2003, the following discussion occurred:

"The Court: . . . . Before we bring [an alternate juror] in, I wanted to put something on the record and get counsel's view. But I do want to ask you, [defense counsel], I asked you yesterday if you would confer with [the defendant] on the issue of whether or not it's necessary for the court to reverse its previous ruling about no shackles. I asked him to do that, Mr. Flanagan, because I know you [were] angry and disappointed the other day at the turn things took about resting *and my not permitting you to represent yourself*. But I asked [defense counsel] to find out from you whether I could continue to have your assurance that there wouldn't be any need for me to be concerned about having shackles on you during the court proceedings today. . . ."

* * *

"The Court: So, Mr. Flanagan, do I continue to have your assurance, sir, that my continuing to leave the shackles off is not going to cause any problems for either the court staff or anybody else in the courtroom?

"[The Defendant]: Yes. Not from me." (Emphasis added.)

After the conclusion of a brief discussion with the alternate juror, defense counsel stated that the defendant wanted to address the court and to put something on the record, which the court allowed:

"[The Defendant]: I just want to put it on the record that I wanted to call witnesses and that I feel that this is being done against my will, and it's not what I want." The court then responded: "All right. The record will reflect that, sir."

I also note that there is no transcript of the conversation that the court stated it had with defense counsel regarding the defendant's demeanor after not being allowed to represent himself. Accordingly, I assume that the conversation was off the record.

[9] I disagree with the majority's conclusion that the present case is "particularly similar" to *United States* v. *Light*, 406 F.3d 995, 999 (8th Cir. 2005), where the defendant asked the court what was the rule on self-representation, and the court told the defendant that he had the option of representing himself but went on to explain the negatives of self-representation. In the

present case, the court expressly and improperly told the defendant that he did not have a right of self-representation. In my opinion, these cases are not "particularly similar."

[10] Compare *United States ex rel. Maldonado* v. *Denno*, 348 F.2d 12, 14–15 n.1 (2d Cir. 1965), cert. denied sub nom. *DiBlasi* v. *McMann*, 384 U.S. 1007, 86 S. Ct. 1950, 16 L. Ed. 2d 1020 (1966), in which the United States Court of Appeals for the Second Circuit concluded that the trial court improperly had restricted a defendant's right of self-representation on the basis of the following colloquy:

"Defendant Maldonado: Your Honor, I would like to say thank you for assigning a lawyer, but I don't feel that this man is interested in my case, and I would like to be assigned someone else.

"The Court: How long have you had this lawyer?

"Defendant Maldonado: I have had him since eight, ten minutes ago, sir.

"The Court: Eight or ten minutes ago?

"Defendant Maldonado: Yes, sir.

"The Court: You mean you have never seen this lawyer before?

"Defendant Maldonado: I don't recall.

"The Court: Don't tell me you don't recall. Have you seen him? Yes or no.

"Defendant Maldonado: I think so.

"The Court: What do you mean, you think so? Have you discussed it with him before?

"Defendant Maldonado: I don't remember, sir.

"The Court: Yes or no. Have you discussed this case with him before? Don't jockey with me, mister.

"Defendant DiBlasi: May I say something? He was my lawyer when my co-defendant was out on bail at the time, and he had a different lawyer.

"The Court: Did you ever discuss it with this lawyer before?

"Defendant Maldonado: I don't remember, sir.

"The Court: Do you have any money to hire a lawyer?

"Defendant Maldonado: No, your Honor.

"The Court: Then what do you suggest the Court do?

"Defendant Maldonado: Assign me someone—

"The Court: How do you come to the conclusion that you don't want this lawyer?

"Defendant Maldonado: I just feel that—

"The Court: And do you come to the conclusion just as we are ready to pick a jury?

"Defendant Maldonado: Yes.

"The Court: Application denied. This is your lawyer.

* * *

"Defendant Maldonado: Your Honor, I don't feel that this man, in eight or ten minutes, can defend me. I am facing a lot of time.

"The Court: All right, mister, you have had your say. Sit down. We are trying this case.

"Defendant Maldonado: Your Honor, if I feel that the case must go on, I want to be able to act as my own attorney. Would you give me that permission, sir?

"The Court: No, No. You sit down, mister. You have got a lawyer, a good lawyer, and he is going to try your case. Now sit down."

[11] The briefs in *Carter* reveal that a public defender was appointed to represent the defendant on November 29, 1983, and, on January 4, 1984, the defendant requested new counsel. This request was denied. On September 7, 1984, the defendant again requested that new counsel be appointed because "the people in the corporation [were] bringing a set of force to give false evidence . . . ." Counsel explained to the court that the defendant suffered from paranoia, and the court told the defendant that this attorney would continue to represent him. On September 11, 1984, the defendant, again, requested a new attorney because he believed that his attorney was assisting the prosecution. On September 12, 1984, the defendant told the court that he wanted a new attorney because his attorney was engaging in misconduct. At this time, the court told the defendant to sit down because trial was about to begin. The defendant then stated that he would have to represent himself; the court, thereafter, told the defendant to be seated and that his attorney was going to continue his representation. See *State* v. *Carter*, Conn. Supreme Court Records & Briefs, June Term, 1986, Pt. 2, Defendant's Brief pp. 28–30 and State's Brief pp. 11–13, 18 n.21.

[12] The majority does not address why the court employed any type of test in this case.

[13] The state urges that the defendant did not brief adequately a state constitutional claim. Because our Supreme Court specifically has ruled that Practice Book § 44-3 "and the constitutional requirements for permitting a defendant to waive his right to counsel and, thereby, assert his constitutional

right to represent himself, are synonymous"; *State* v. *Wolff*, 237 Conn. 633, 653–54, 678 A.2d 1369 (1996); I believe that the denial of the defendant's request to brief the applicability of the state constitution contained in his request for reargument en banc was denied improvidently by this court. It seems counterintuitive to interpret a rule of practice that is synonymous with a constitutional right without benefit of analysis under our state constitution.

[14] See also *State* v. *Brown*, 342 Md. 404, 676 A.2d 513 (1996), decided seventeen years after *Snead*, which explained that the mandates of Maryland Rule 4-215, formerly Rule 723 and Rule 719, had been changed over the years. Specifically, the court explained that Rule 4-215 formerly had an "*at any stage of the proceedings*" provision similar to that of our own Practice Book § 44-3. In *Brown*, the court explained that "[t]he original rule regarding waiver of the right to counsel was Rule 719, which stated that: 'If, *at any stage of the proceeding*, an accused indicates a desire or inclination to waive representation, the court shall . . . .' Rule 719 was amended and renumbered at Rule 723; Rule 723 was subsequently redesignated as Rule 3-305, and later as Rule 4-215. . . . The current rule, 4-215, omits the 'at any stage of the proceedings' language from the original rule. By omitting this phrase, it is clear to us that the procedural requirements of 4-215 were not intended to apply in every situation where a defendant waived counsel. The focus of the Rule was progressively narrowed to concentrate on early-stage decisions to dismiss counsel." (Citation omitted; emphasis in original.) *State* v. *Brown*, supra, 427. I note that the rule contained in Practice Book § 44-3 has not been narrowed.