

existing government or belonged to any organization that so advocated. *Brown*, 356 U.S. at 150. The Court held that she was properly held in contempt of court for refusing on cross-examination to answer whether she had been or was a member of the Communist Party and to answer other questions concerning her involvement in Communist activities. *Id.* at 155-56.

A defendant's plea of guilty and answers to a judge's questions at a plea colloquy do not bar a defendant from invoking the Fifth Amendment privilege at the defendant's sentencing hearing. *Mitchell v. United States*, 526 U.S. 314, 324-25 (1999).

A defendant or other witness may invoke the Fifth Amendment privilege after a conviction and sentencing if there is a pending appeal or there is a reasonable possibility of prosecution by another jurisdiction for similar misconduct (for example, a state defendant pleads guilty and a federal prosecution may be brought). See *State v. Eason*, 328 N.C. 409, 419 (1991) (witness could invoke privilege when asked questions about incident that led to her conviction in district court, and the case was still pending in superior court for trial de novo); *United States v. Kennedy*, 372 F.3d 686, 691-92 (4th Cir. 2004) (conviction pending appeal); *State v. Pickens*, 346 N.C. 628, 637-38 (1997) (sufficient fear of later federal prosecution); *Murphy v. Waterfront Comm'n of N.Y. Harbor*, 378 U.S. 52, 77-78 (1964). However, the possibility of collateral attack on a conviction is insufficient to invoke the privilege. *MCCORMICK* at § 121.

A witness who is not a defendant generally must submit to questioning and invoke the Fifth Amendment privilege in response to each question, although sometimes a blanket invocation may be appropriate when it is clear that any question would be subject to the privilege. *MCCORMICK* at § 130. And the witness, like a defendant, may not invoke the privilege on cross-examination concerning matters made relevant on direct examination. *State v. Ray*, 336 N.C. 463, 469-70 (1994).

C. Judge's Warning of Right to Invoke Privilege. A judge has the discretion whether to advise a witness of his or her right not to answer incriminating questions. See *State v. Poindexter*, 69 N.C. App. 691, 694 (1984) (pro se defendant); *State v. Lashley*, 21 N.C. App. 83, 84-85 (1984) (same); *MCCORMICK* at § 131 ("trial judge who becomes aware that the questioning of a witness raises the risk that the witness by responding will incriminate himself . . . has substantial discretion as to whether and how to respond"). There is no statutory authorization for a judge to appoint counsel for a witness who is indigent, and thus the Office of Indigent Defense Services is not authorized to pay for such representation. However, the judge could give any witness, indigent or not, an opportunity to consult with counsel before answering questions. And an attorney could volunteer at a judge's request to represent an indigent witness for this limited purpose.

D. Voir Dire Hearing. Sometimes the issue of the invocation of the privilege will be raised before trial and can be decided then. If the issue arises during the trial, the judge's inquiry of a witness should be conducted outside the jury's presence. The judge may decide that the issue is clear, and a limited inquiry is sufficient to make a determination. However, a hearing often may be appropriate if the court needs additional evidence or information. See, e.g., *State v. Pickens*, 346 N.C. 628, 637-38 (1997). The court needs to be careful that its questioning, as well as any questions by counsel for the parties and the witness, do not require the