



**Creating Sound Business
Environments in Indian
Country by Enhancing
Tribal Justice**



**Tribal Court Structure
and Judicial Independence
Impact Economic
Development**

Tribal Court Protect and Promote Tribal Sovereignty



- Strong Justice Systems promote economic development
- Independent Court systems are crucial for economic development
- Court systems capable of handling all types of disputes protect tribal sovereignty

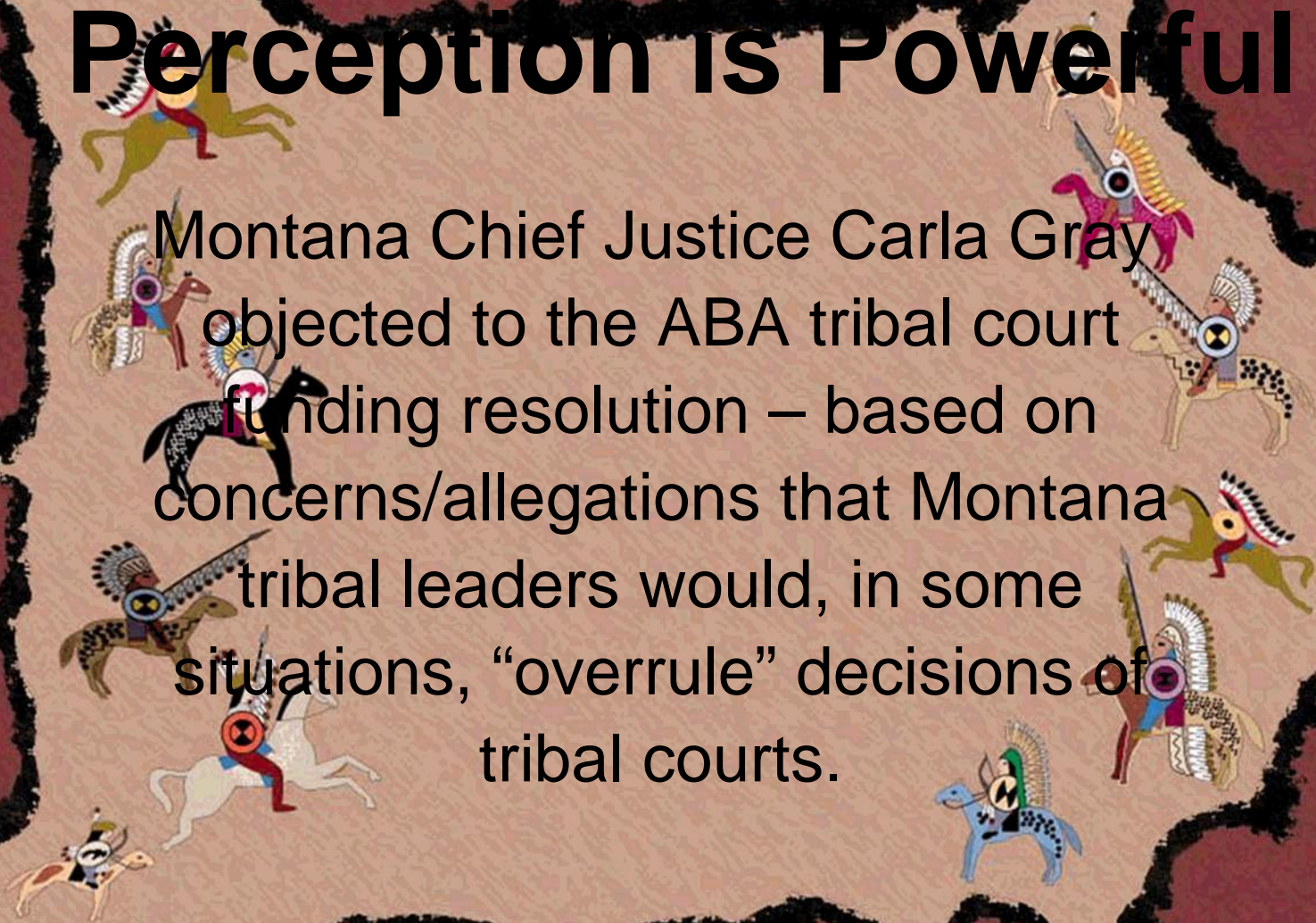
Threats to Judicial Independence

- Attempts to directly influence tribal court decisions by council members
- Ex parte contact
- Employment security
- Funding issues



Perception is Powerful

Montana Chief Justice Carla Gray objected to the ABA tribal court funding resolution – based on concerns/allegations that Montana tribal leaders would, in some situations, “overrule” decisions of tribal courts.





Judicial Independence

- Constitutionally
- Statutorily
- De Facto



Constitutionally

- Recognize the tribal justice system as a separate and distinct branch of tribal government
- Include language indicating tribal court's decisions are made without interference from tribal council.

Statutorily

- Enact legislation that creates an independent court system
- Establish the scope of court authority
- Determine the court structure
- Create Codes of Ethics

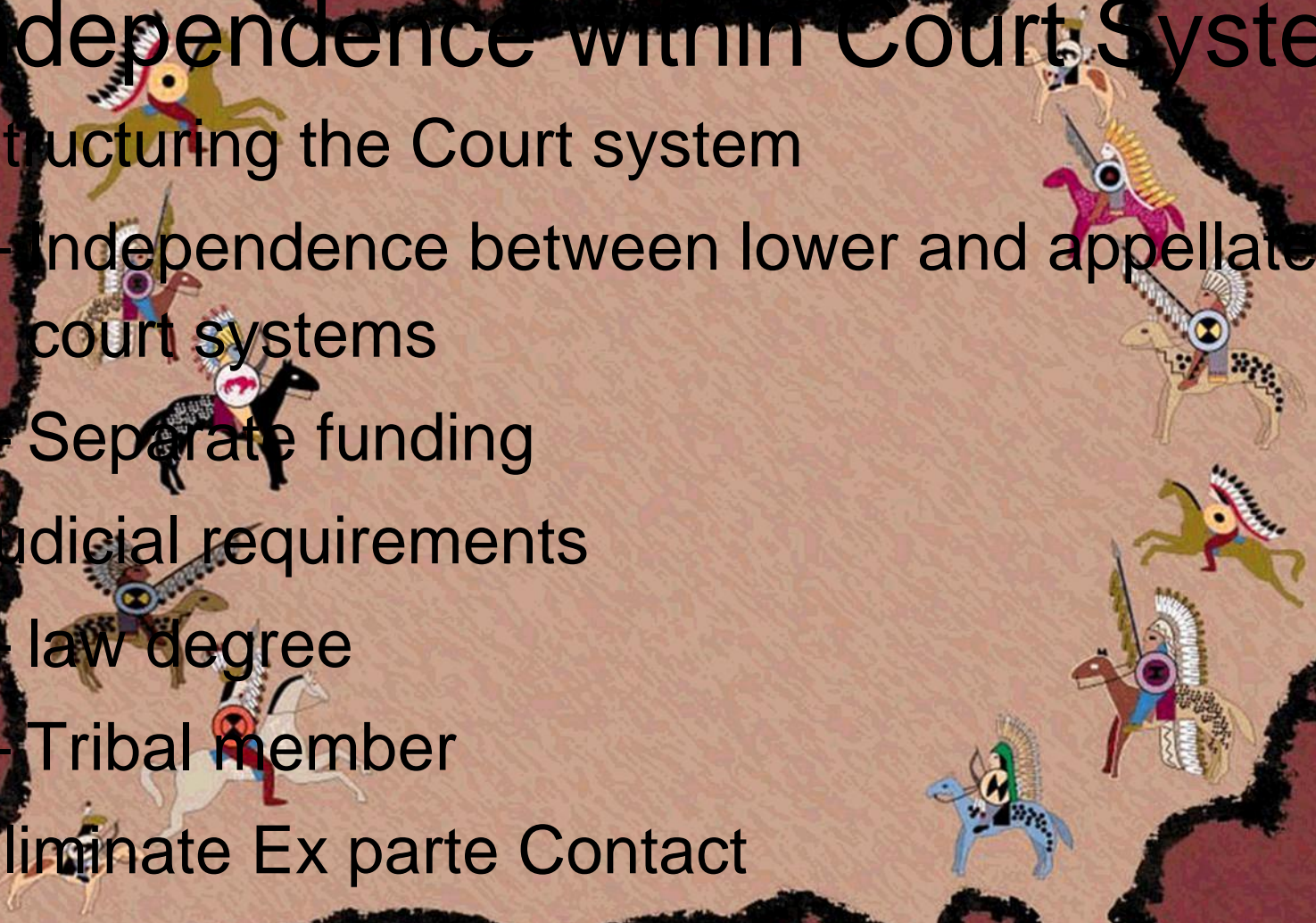
De facto Independence

- Enforce a policy of non-interference by council members
- Education about tribal courts structure and purpose



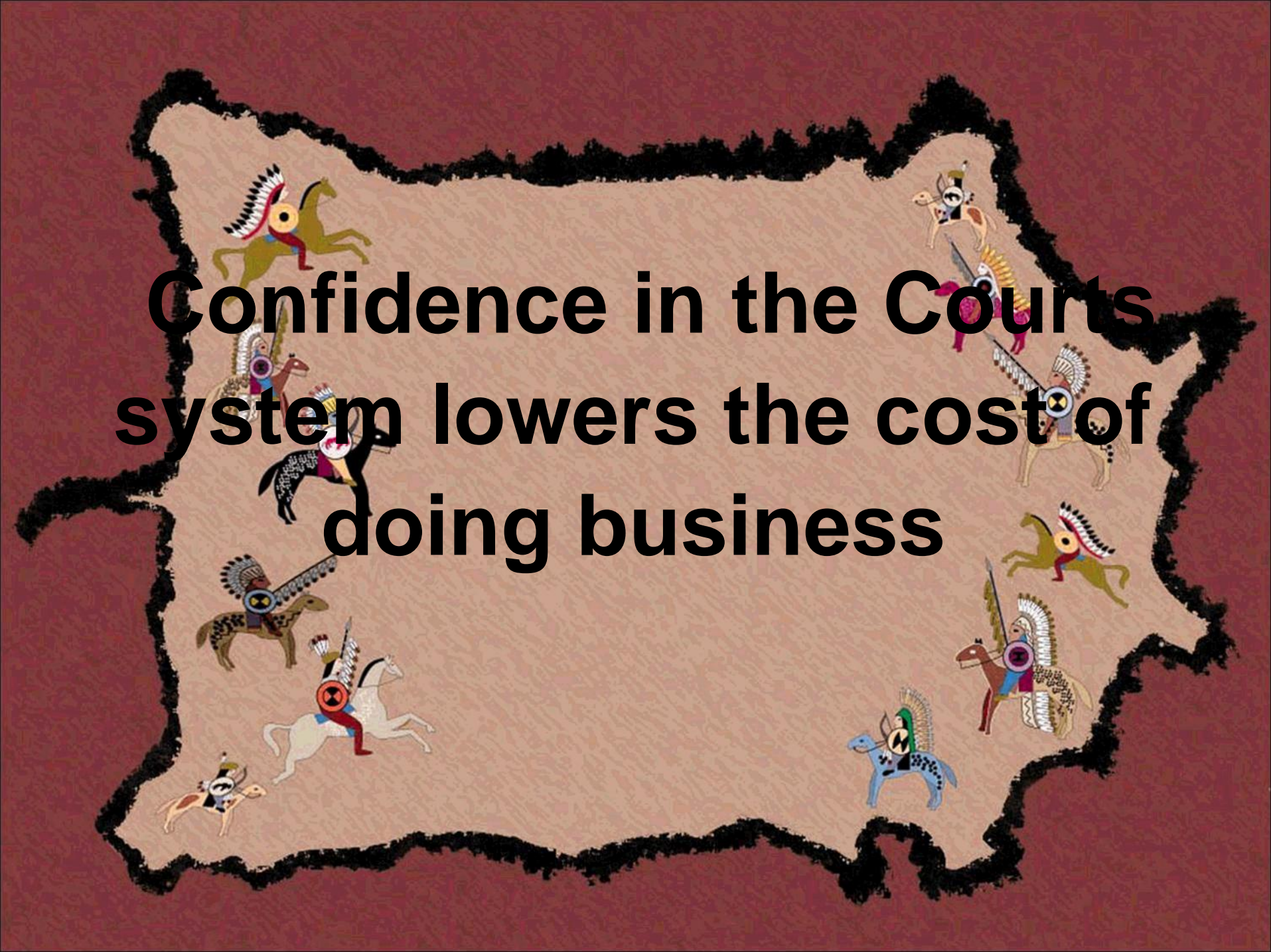
Independence within Court System

- Structuring the Court system
 - Independence between lower and appellate court systems
 - Separate funding
- Judicial requirements
 - law degree
 - Tribal member
- Eliminate Ex parte Contact





**Why is Judicial
Independency and
competency important for
Economic development?**



**Confidence in the Courts
system lowers the cost of
doing business**

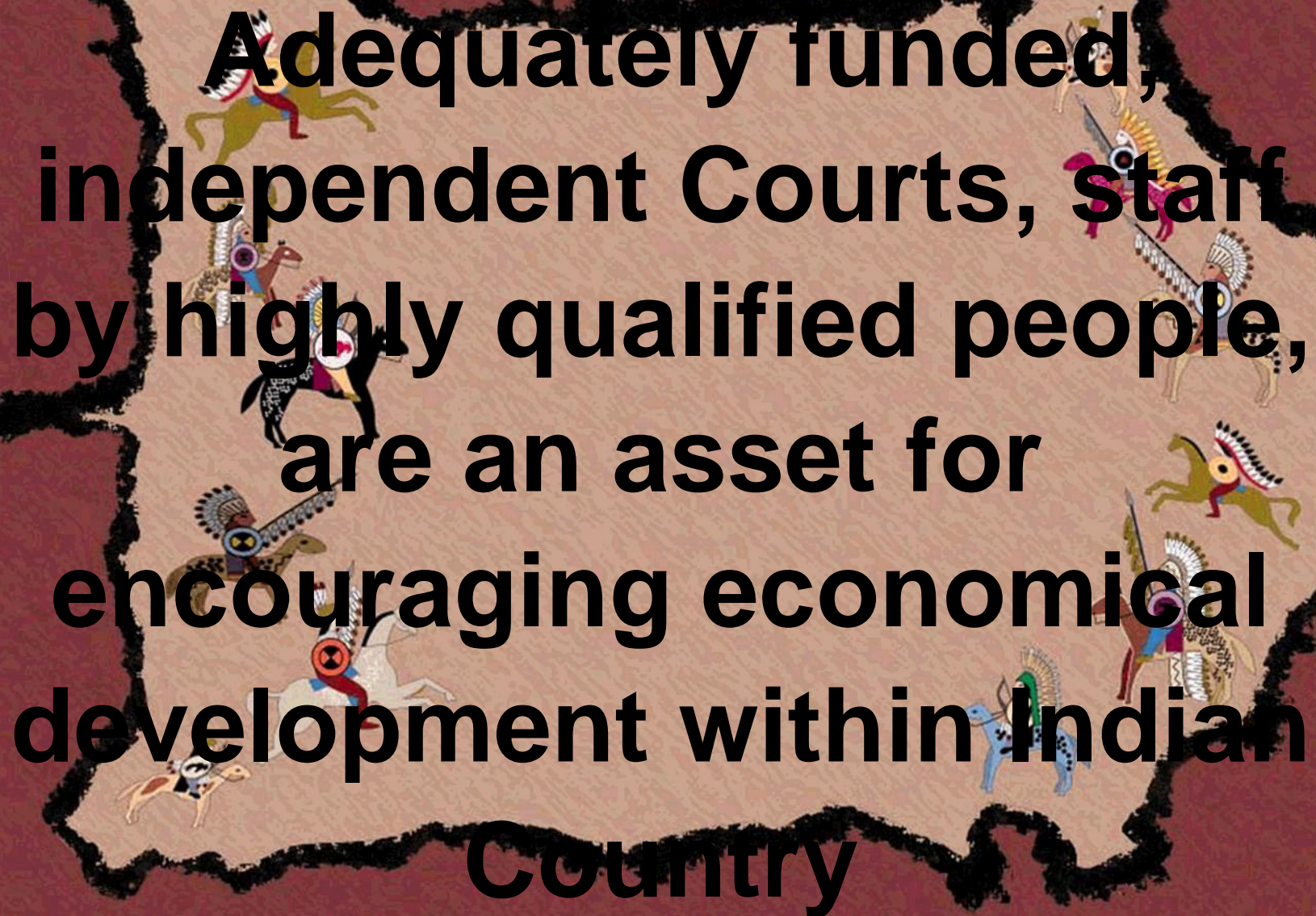
Promoting certainty and comfort in economic development endeavors ?



- An unknown legal systems increase the risk factor
- When risk factors increase so does the costs associated with lending
- A court that provides easy access, timely decision, fairness and enforcement encourages affordable lending

Protecting Tribal Sovereignty

- Strong, well-reasoned decisions are less likely to be overturned on appeal, no matter what justice system is hearing the matter
- The ability to retain jurisdiction over matters occurring within Indian country is a key element of governance
- Fairness in the decision-making process encourages use of tribal systems making the unfamiliar familiar.

The image features a map of India with a torn paper border. The map is filled with a light beige, textured background. Scattered across the map are several colorful illustrations of Native American people on horseback, wearing traditional headdresses and carrying bows and arrows. The text is overlaid on the map in a large, bold, black font.

**Adequately funded,
independent Courts, staff
by highly qualified people,
are an asset for
encouraging economical
development within Indian
Country**

Contact Information



Maylinn Smith, Director

Indian Law Clinic

School of Law

The University of Montana

Missoula, MT 59812

406-243-2544

406-243-2132 FAX

maylinn.smith@umontana.edu

Dennis Puz, Jr. Esq.

Best and Flanagan LLP

225 South Sixth Street, Suite 4000

Minneapolis, MN 55402-4690

612-339-7121

Fax. 612-339-5897