



**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

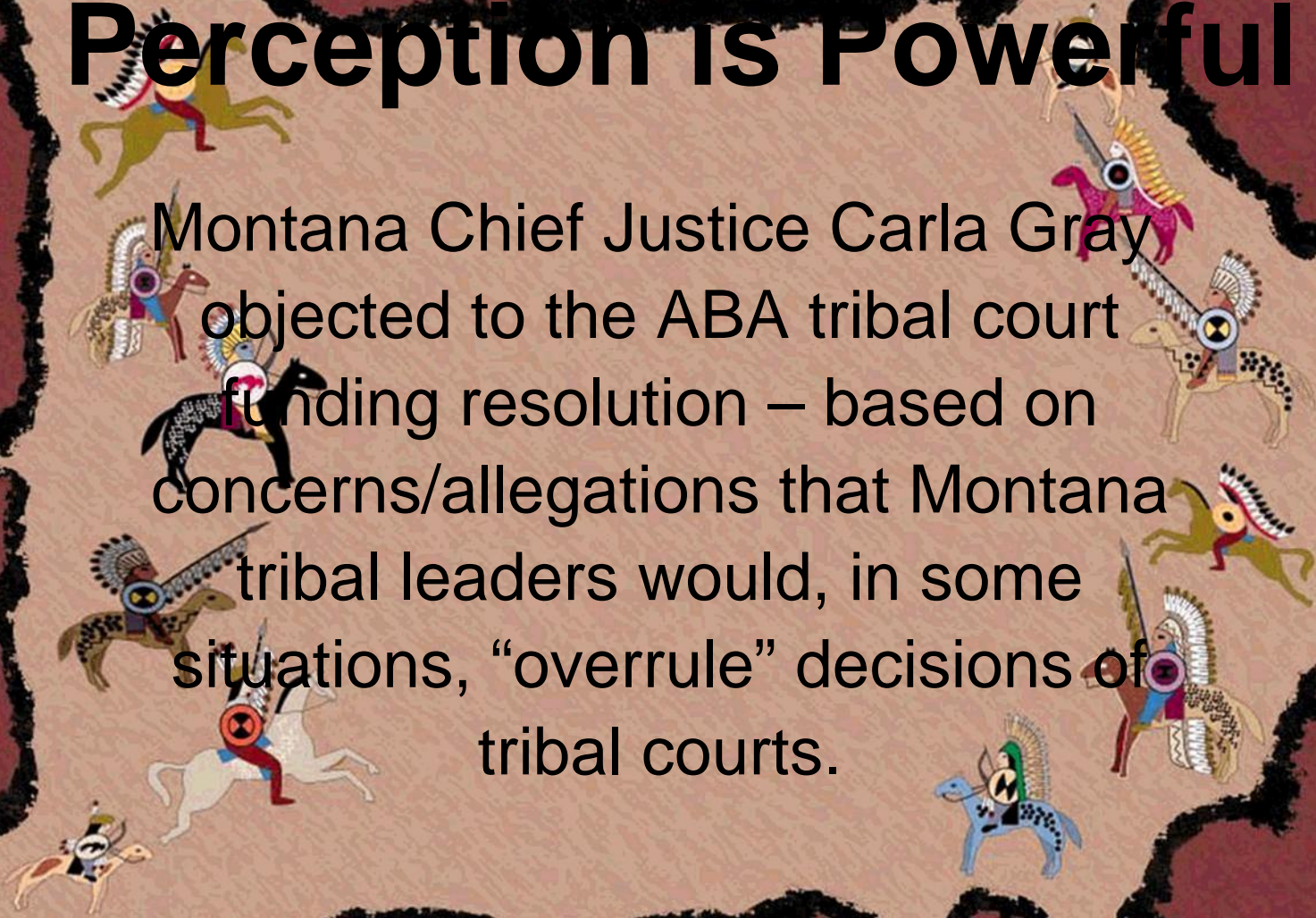
Threats to Judicial Independence

- 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

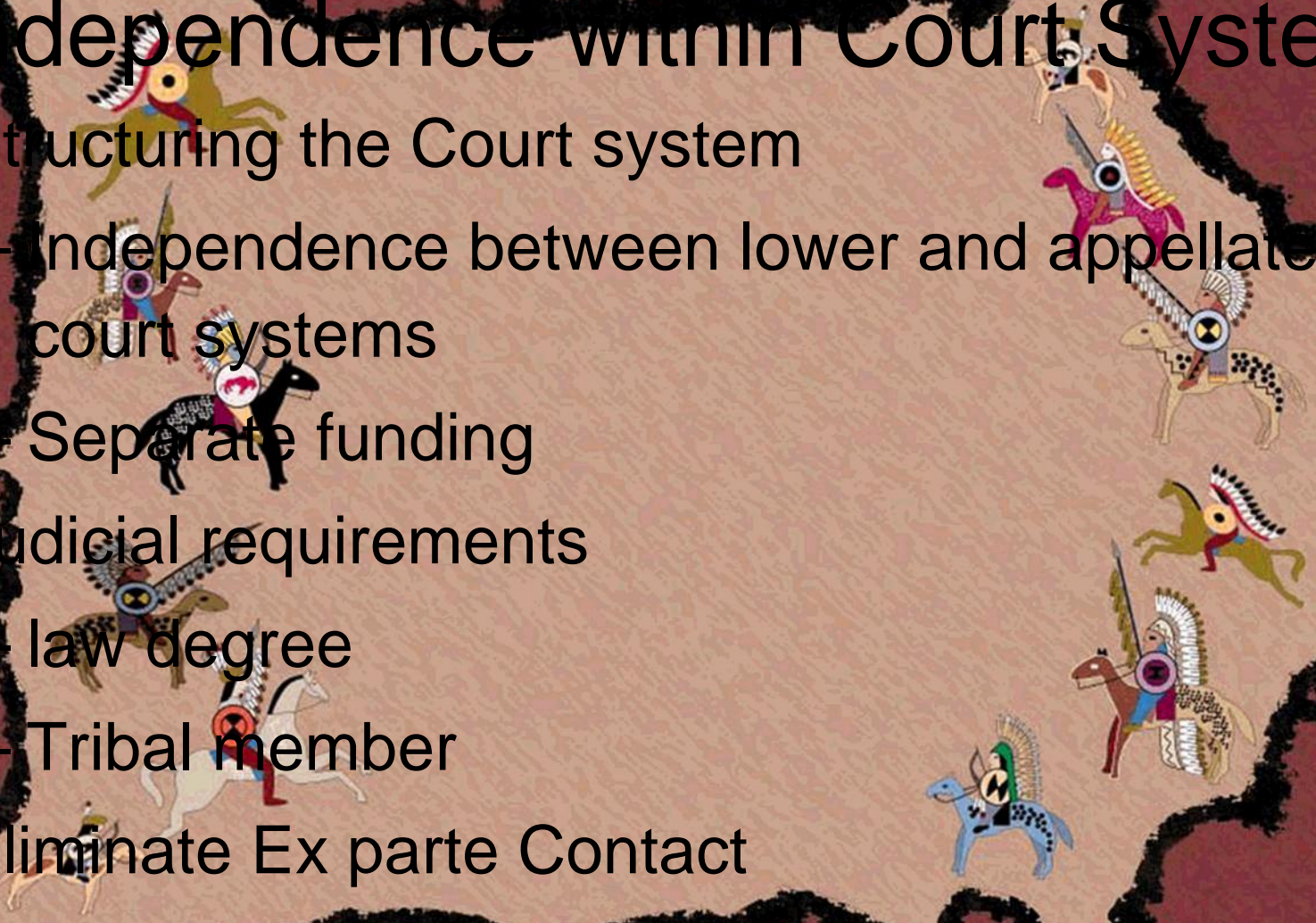
De facto Independence

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



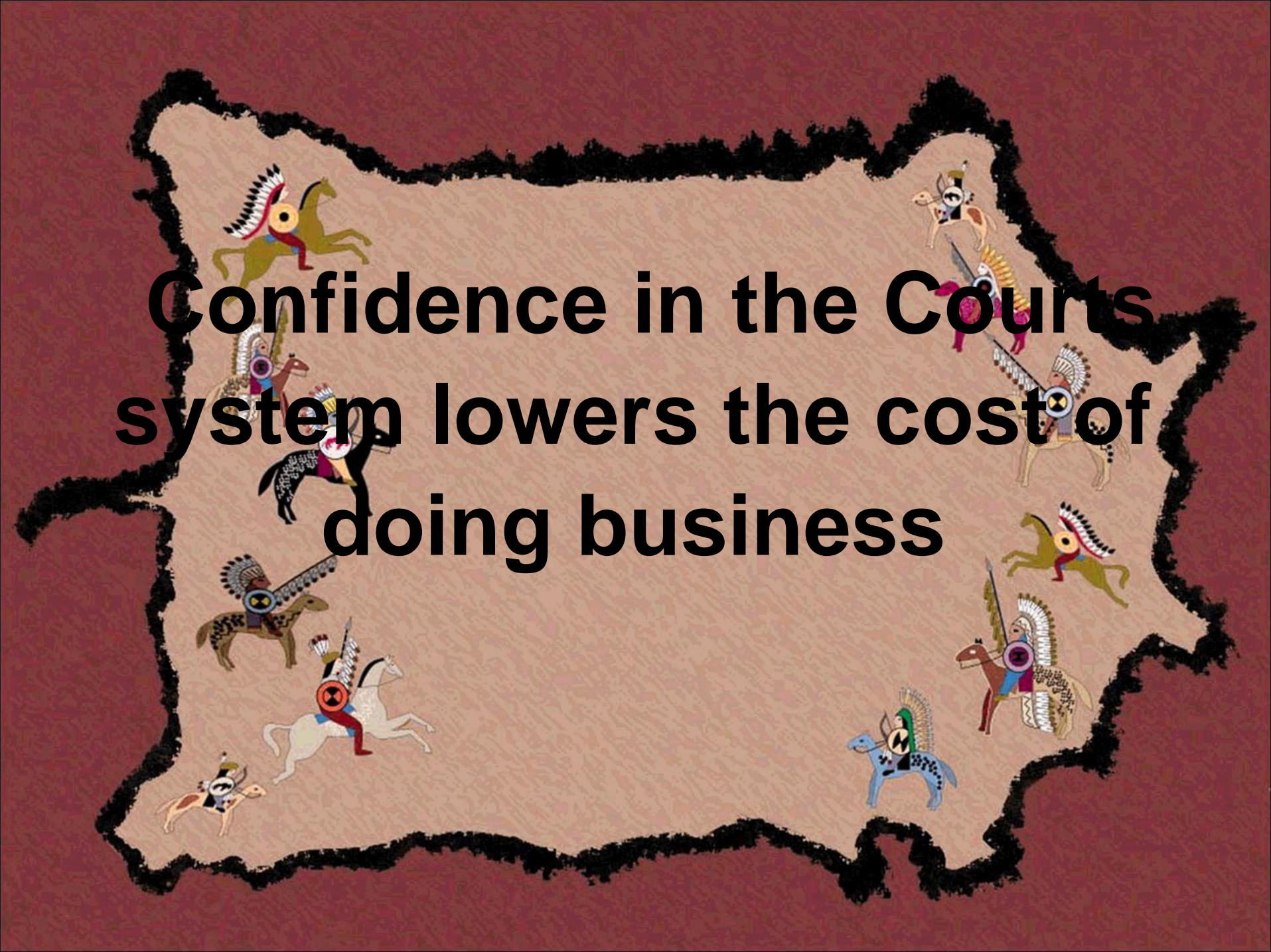
Independence within Court System

- 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**

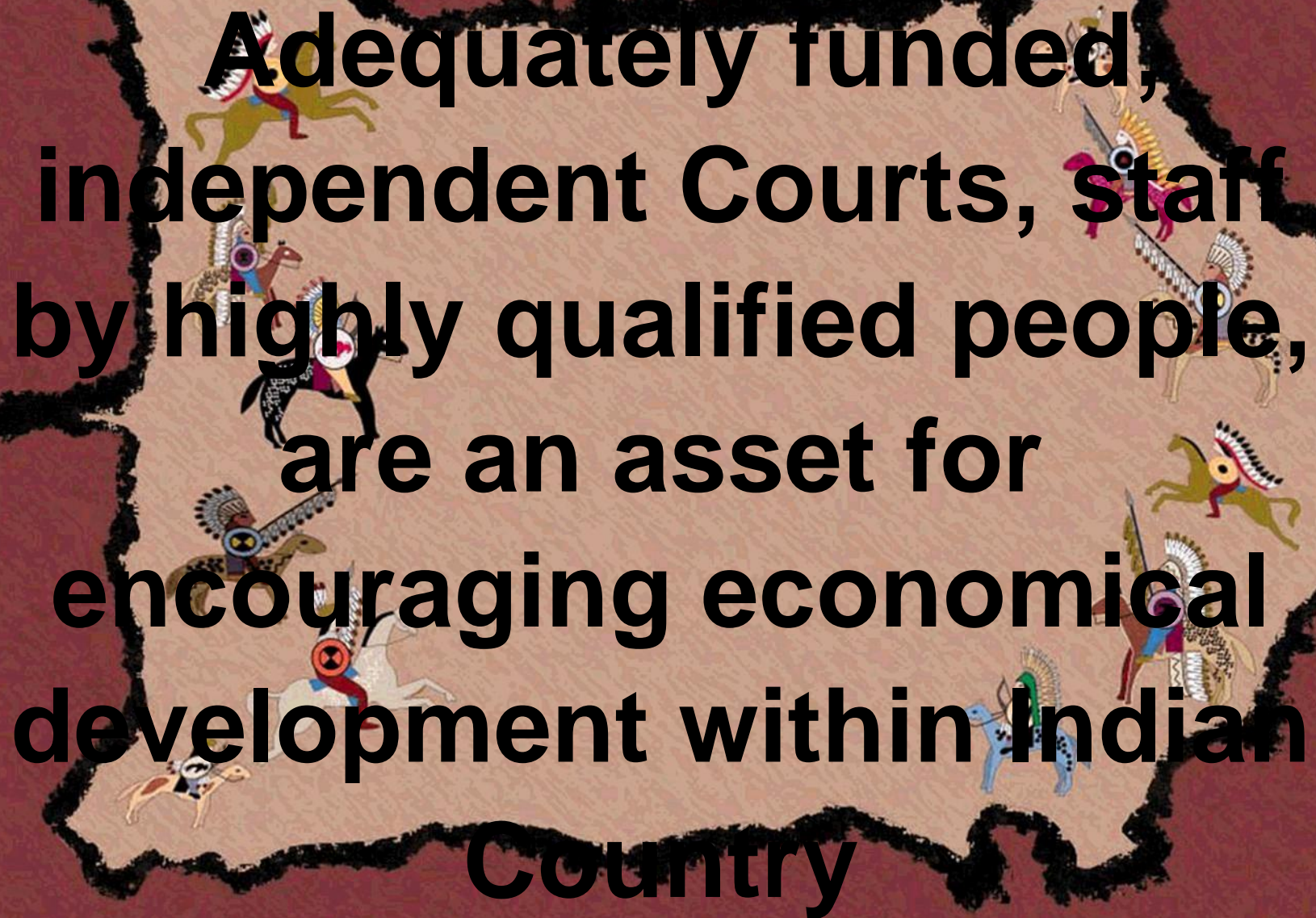
Promoting certainty and comfort in economic development endeavors ?



- 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.



**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