

# The Legacy Plan

A Case Study | Cunningham Dance Foundation, Inc.



# Foreword

Merce Cunningham (1919 - 2009) was a leader of the American avant-garde throughout his seventy-year career and is considered one of the most important choreographers of our time. Through much of his life, he was also one of the greatest American dancers. With an artistic career distinguished by constant innovation, Cunningham expanded the frontiers not only of dance, but also of contemporary visual and performing arts. His collaborations with artistic leaders from every creative discipline yielded an unparalleled body of American dance, music, and visual art.

The Cunningham Dance Foundation (CDF), which, among other things, operated the Merce Cunningham Dance Company (MCDC) and the Merce Cunningham Studio and School, was formed in 1964 to fulfill Cunningham’s artistic vision.<sup>1</sup> But as its founder approached the age of 90, CDF was obliged to confront a future without its leader. To honor Cunningham’s profound artistic achievements, to secure the future of his choreographic legacy and to recognize those who helped bear out his vision, CDF developed the Legacy Plan, the core elements of which were:

- ❖ a final two-year world tour of the dance company
- ❖ extensive preservation of Cunningham’s work
- ❖ closure of both the Merce Cunningham Dance Company and Cunningham Dance Foundation
- ❖ financial assistance to the dancers and other CDF staff to help transition to new employment
- ❖ an extensive fundraising campaign to fund the plan

The Legacy Plan has been a resounding success. With the coordinated transition to the Merce Cunningham Trust (MCT), Cunningham’s legacy is in a position to flourish. At the time of the publication of this report, under the auspices of the trust, Cunningham Technique is being taught at three studios in New York City. In the fall of 2011, the trust announced the Cunningham Fellowship program, through which former MCDC dancers learn to restage Cunningham works during an intensive multi-week workshop with pre-professional students. Merce’s creative legacy is available for study at the New York Public Library and digitally preserved in “Dance Capsules” available online.<sup>2</sup> The trust continues to pursue the licensing of Cunningham works to other dance companies and educational

institutions, as well as sponsoring related projects, ensuring that the public will continue to have access to Cunningham’s work.

CDF is proud of its role in setting a precedent for the arts community in considering questions of legacy and in helping to open up possible avenues of funding for post-founder planning. Since the execution of the Legacy Plan choreographers, dance companies and other arts organizations have approached CDF for information and guidance about legacy planning. It is hoped that by laying out its experience in this report, CDF will make it easier for other organizations to face the transition into a post-founder existence. In addition to providing a road map for the creation of a “legacy plan,” including fundraising and organizational information, the report also explains not only the thinking that went into the development of the Legacy Plan, but also how the Plan evolved to meet changing circumstances. This report should also generate a more open approach to the difficult question of the preservation of an artist’s legacy.

The Legacy Plan moved forward on the power of an idea, carried by the commitment of the dancers, musicians, artists, individuals, and key funders who invested their time, talent and support to ensure its success. The Cunningham Dance Foundation would like to sincerely thank the dedicated members of the Board of Directors for their leadership and the many staff members, patrons, presenters and audience members whose passion and support across the years made Merce’s work possible. Not least, we thank Merce and his company for their marvelous performances throughout the marathon of the Legacy Tour, and all of the years before.

December 31, 2012  
New York, N.Y.  
Cunningham Dance Foundation, Inc.

**Trevor Carlson** *Executive Director*

**Judith R. Fishman** *Chairman, Board of Directors*

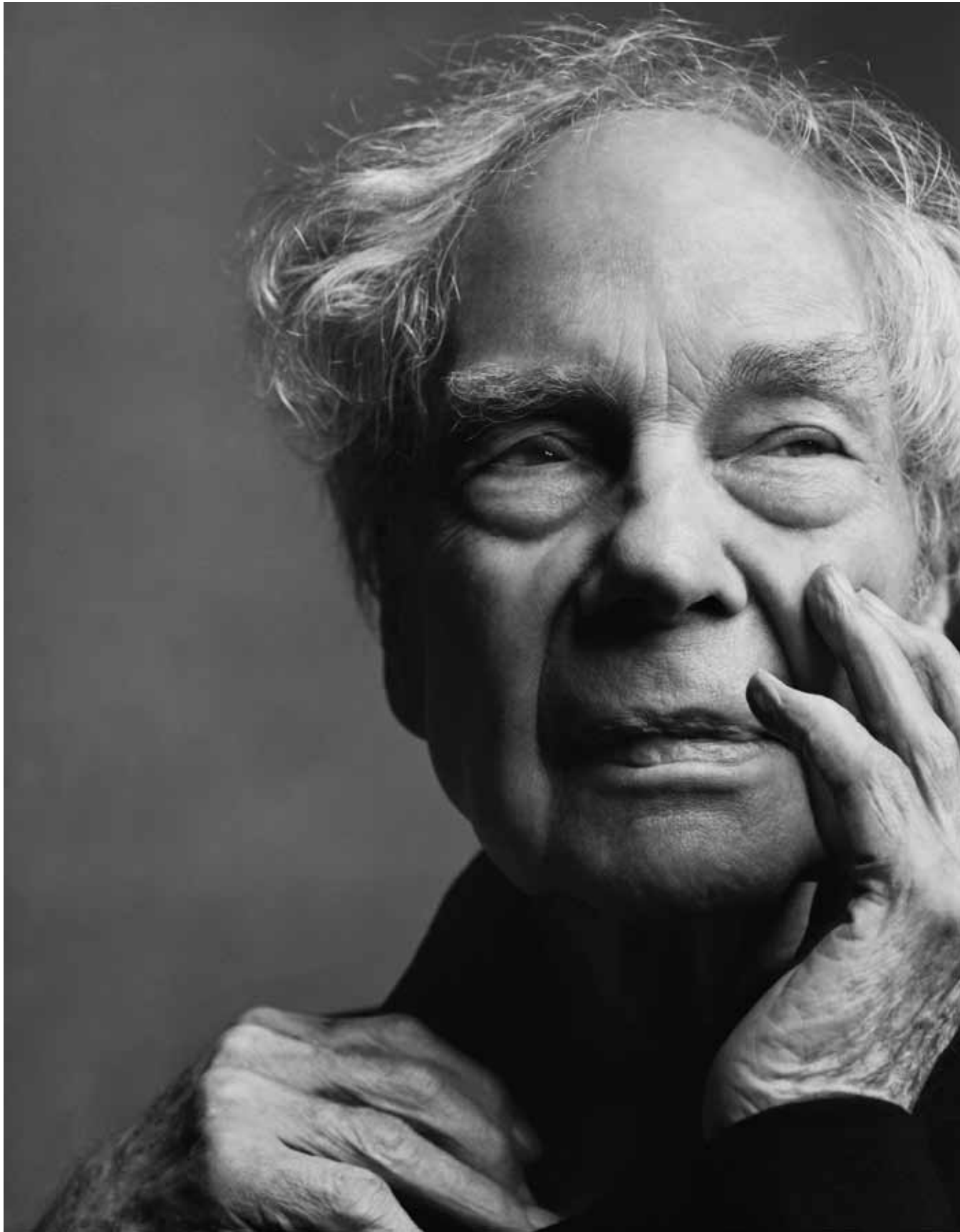
**Allan G. Sperling** *Chairman, Legacy Committee*

**Cover:** MCDC concludes the Legacy Tour with their final performances in New York City. Following the last performance of *Park Avenue Armory Event* on December 31, 2011, the company was disbanded. Photo: ©2011 Anna Finke

**Previous page:** MCDC, silhouette. Photo: ©James Klosty

<sup>1</sup> For a description of CDF and its activities, see Appendix A.

<sup>2</sup> Eighty-six of Merce Cunningham’s dances were selected for digital preservation. Each Dance Capsule provides an array of assets essential to the study and reconstruction of Cunningham’s choreographic work. <http://dancecapsules.mercecunningham.org/>



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## Background



Merce Cunningham and dancers  
in the studio at Westbeth.  
Photo: ©1971 James Klosty

# Historical Context

Single-choreographer dance companies emerged and flourished during the last century, reflecting an artistic model quite different from that of traditional repertory companies. Examples of such companies faltering in the years following the loss of their founders make the seriousness of legacy issues to the dance field all too clear. Influential choreographers and dance artists Lester Horton and Erick Hawkins died without clear plans for the future of their respective bodies of work, which today are rarely seen by the public and not well understood. The contributions of other important 20th-century choreographers are increasingly fading from the public sphere: Anna Sokolow, Ruth St. Denis and Ted Shawn, Isadora Duncan, and Helen Tamaris. Each of these artists made significant contributions to the field that today survive as remnants, if at all. Others, particularly those with the level of activity and visibility of Cunningham’s dance company, determined to move forward beyond their founders. When José Limón, Martha Graham and Alvin Ailey died, their companies, though not without test and trauma, survived them.

Comparisons are sometimes made between Cunningham and Limón and Ailey, as well as with New York City Ballet’s transition beyond the artistic leadership of George Balanchine. Unlike MDC, those companies performed work by multiple choreographers and were understood as “repertory companies.” Even Limón, whose repertory was always heavily driven by his own and Doris Humphrey’s work, commissioned new work and included other choreographers’ dances throughout his time as dancer/artistic director. The presence of multiple choreographic “voices” in a company positions that company differently from one that embraces a single individual’s artistic vision. Repertory companies, even those that principally reflect the artistic vision of an individual creative director, have an established identity and institutional model that allows them to continue placing new work on dancers and in front of audiences, keeping both groups fresh and engaged. They also have a distinct advantage with presenters and funders, who are generally more interested in new work.

An alternative that some mid-career artistic directors have taken when facing the challenges of sustaining the single-choreographer company model has been to dismantle artistic and administrative structures in favor of more flexible and fluid approaches to pursuing their artistic projects.

In 1988, Twyla Tharp disbanded her 23-year old company. “I was having to function too much as an administrator,” she explained in an interview in *The New York Times*. “We need to realize that for two years, from 1986 to 1988, I made no dances, and it is the only time

in my entire chronology you will see an empty year, and there are two of them. And the reason for that is because I was fundraising for the company.”<sup>3</sup>

Maintaining a contemporary dance company, even during its creative director’s peak years, has always been and continues to be a financial challenge. The constant hunt for funding and the attention to administrative details that Tharp found to be a distraction from dance-making also led Lucinda Childs, Ralph Lemon and others to free themselves from the burden of managing a full-time company, to instead pursue solo projects, serve as guest choreographers at other dance companies, or form “pick-up” companies of dancers to perform new work.

The most remarkable recent example of a planned closure of a dance company led by a single choreographer of relatively high visibility was in 1997, when the Los Angeles-based Bella Lewitzky Dance Company closed its door after 31 years. Lewitzky, who founded Dance Theater of Los Angeles with Lester Horton, one of the first institutions in the United States to house both a dance school and theater, was a renowned dance educator. The closure was announced in April 1995 with plans for a two-year celebratory tour and transfer of Lewitzky’s archive to the University of Southern California. Lewitzky had tested the waters for a post-founder future for her company some years prior, charging her manager with canvassing both funders and presenters to ascertain their level of interest in funding and presenting her company once Lewitzky herself was no longer directing it. The results were not encouraging, and Lewitzky, then in her late 70s, realized that her overall effort as artistic director of a major dance company was giving less and less back. In an interview in the *Los Angeles Times* she explained, “I’m really doing a service and duty to the organization, not the art.” In the same interview her views paralleled Tharp’s comments: “Every time you build an institution, the institution begins to be the thing you serve. I found that I had lost the ability to make independent choices. I thought, ‘Gee, at 80 I ought to be able to decide when I want to choreograph, how long it will take me to choreograph, with whom I will choreograph and where I do it.’ But I can’t, and that’s crazy.”<sup>4</sup>

In another decision similar to the Cunningham plan, Lewitzky had placed the ownership and rights to her choreography in a foundation established by her and her husband, Newell Reynolds. The agreement included providing perpetual rights to perform the works for as long as her company was active. Since Lewitzky and Reynolds’s respective passing, their daughter Nora Reynolds has overseen the work of licensing her mother’s dances to colleges and universities that request Lewitzky’s choreography. In addition to Reynolds herself, former Lewitzky dancers John Pennington and Walter Kennedy are approved to set the work on student dancers and professional dance troupes.

<sup>3</sup> Interview with Harvey Lichtenstein, “Twyla Tharp Looks to Brooklyn and Beyond,” *The New York Times*, February 11, 2001

<sup>4</sup> Lewis Segal, “A Time to Celebrate Change: Bella Lewitzky will Dissolve her Dance Troupe, But First She Plans to Celebrate her Career in 96-97 Season,” *Los Angeles Times*, April 19, 1995

The example set by Lewitzky, when contrasted to the difficulties experienced by Graham and Balanchine, helps to illustrate the critical need for choreographers to have a coherent plan regarding the future rights to their works. It is equally important for the artist and affected parties to understand the implications of how these rights are to be managed.

The outcome from the legal battle that engulfed Graham’s work following her death set a precedent for choreographers’ legal relationship to their work and remains a cautionary tale for choreographers contemplating the future of their dances. Graham’s legal heir, Ronald Protas, filed suit against the Martha Graham Dance Center and its dancers, arguing that he owned the copyrights to Graham’s choreography and denying the company the right to perform her work. After a protracted and costly court case, a federal judge issued a landmark ruling: because Graham was an employee of the Martha Graham Dance Center when she created most of her dances, those works belonged to the center.

Balanchine’s estate planning also created internal turmoil for New York City Ballet and his heirs. Upon his death in 1983, Balanchine’s will left his ballets to various individuals. While there was a wonderfully personal and poetic touch to Balanchine’s bequests, the economic and organizational consequences were dire. By passing his works on as gifts, Balanchine not only created enormous tax liabilities for his heirs, but also created impediments for the company he founded to perform his dances. Without a single entity to manage the works, it was nearly impossible to govern licensing or regulate usage to outside entities. In 1987, Barbara Horgan, Balanchine’s assistant of 30 years and one of his heirs, upon the advice and with the assistance of Paul Epstein, a lawyer, formed the Balanchine Trust to protect the integrity of his work and represent the heirs in managing the rights to his legacy.

The process of laying a plan for the future of Cunningham’s work involved many angles of consideration, years of discussion, long-range financial planning and collective commitment to a vision for the future of Cunningham’s work that was appropriate to his legacy. Claudia Bach refers to MCDC’s transition out of existence as an example of “carefully constructed plans” in a 2009 article for the *GIA Reader* on issues for arts organizations considering the passing of their founders. “Closure can vary from careful intentionality to chaotic dysfunction,” she says. “The decision to close is ideally arrived at through examination of all options, including dissolution, dormancy... merger or other forms of association.”<sup>5</sup> ❖

<sup>5</sup> Claudia Bach, “Graceful Exit Thoughts on End-of-Life Issues for Arts Organizations,” *GIA Reader* Vol. 20, No. 3, Fall 2009

# Earlier CDF Initiatives

Several initiatives laid the groundwork for what became the Legacy Plan. Looking back, it could be said that the first steps toward the “Transition Project” began in 1990 with the help of a \$1,000,000 Challenge Grant from the National Endowment for the Arts (NEA). The Challenge Grant proposal emphasized a re-orientation of company resources to decrease the reliance on touring in favor of Cunningham’s creative work through expansion of the Repertory Understudy Group (RUGs)<sup>6</sup>, dissemination of Cunningham’s choreography to other companies (which included increasing the number of people trained to set his work elsewhere), and increased presence in New York City for the company (allowing for, among other things, more film/video projects). But the proposal additionally stated:

*“...the Cunningham Foundation hopes to work with Merce in the fashioning of a practical approach to prepare for the future of his Foundation, to reckon with coming realities, in a way that maximizes his present options while maintaining a state of readiness for the future. We will engage legal counsel to aid in designing a plan of action for future activities of Merce Cunningham Dance Company, future distribution of Cunningham’s choreographic works and film/video archives, and the teaching of his technique. We aim to put in place a plan for the future uses of Merce Cunningham’s many artistic assets, including a structure for future decision-making, strictly in accordance with Merce’s expressed wishes.”*

To prepare for the grant, Art Becofsky, who served as CDF’s executive director for more than two decades, and Allan G. Sperling, then chairman of the Board, organized a board retreat in 1991 with “transition” as its defining rubric, collecting an extensive series of interviews with staff, key board members, Cunningham and John Cage. They were to examine founder transitions at four other major dance companies - Ailey, Limón, Graham, and New York City Ballet.

This research offered various lessons, which helped to inform the discussion:

- ❖ Respect for the artistic force behind the work should inform all decision-making.
- ❖ The more the founder is involved in planning for a transition, the smoother the process and more secure the outcome.
- ❖ Early discussions are important to begin the process and help to progress planning on what many consider to be a difficult or taboo subject.

<sup>6</sup> The Repertory Understudy Group was formed in 1983 as a training ground for younger dancers to learn Cunningham’s technique and works.



- ❖ Early planning does not guarantee a fixed set of outcomes; each of the four companies studied encountered unforeseen transition difficulties, despite the fact that none of the founders died unexpectedly.
- ❖ Planning need not be fixed or secretive, and the best outcomes come through a unified vision with a flexible framework.
- ❖ If the issue of succession is not resolved by the founder, then it may be necessary for the board to act for the good of the organization.
- ❖ Legal issues must be considered with the benefit of good counsel.
- ❖ Tax and other estate-related issues must be resolved; to leave them to chance is to leave them entirely with the Internal Revenue Service and, quite possibly, to invite an outcome contrary to what the founder intended.

Significantly, during the 1991 board retreat, Cunningham revealed his plan to establish a trust as a legal body to own and regulate the rights to his work. The trust was not formed for another decade, and no other specific plans for a future structure emerged.

At the turn of the current century, special fundraising campaigns began to focus more acutely on the need to preserve Cunningham’s work and legacy. In March 2004, CDF received a generous grant of \$1,250,000 from The Andrew W. Mellon Foundation for a multi-year digital film project for filmmaker Charles Atlas to collaborate with Cunningham on four films: *Views on Camera*, *Views on Video* (2005); *Split Sides* (2003); and *Ocean* (1994). Also in 2004, the “For Merce” campaign was launched by Sage Cowles and Jeffrey James, respectively chairman of the Board of Directors and executive director of CDF at the time, to raise additional funds for filming and documenting Cunningham’s work. Recognizing the need to continue to preserve as much of Cunningham’s work as possible during his lifetime, the effort continued with the “To Merce” campaign in 2006, initiated by Judith R. Fishman, then co-chairman of the Development Committee and later the last sitting chairman of the Board of Directors of CDF.

The 1991 board retreat, the NEA Challenge and Mellon Grants, and “For Merce” and “To Merce” campaigns all helped to inform CDF’s approach for when it came time to embark on a new future for Cunningham’s work. Still, as Cunningham approached ninety, there was no tangible plan in place for how CDF would address a post-Cunningham era.

There was, however, one very important element that would impact all considerations: In 2000, Cunningham created the Merce Cunningham Trust that he had first referred to



in the 1991 discussions. MCT was established as a charitable tax-exempt non-profit entity under Section 501(c) (3) of the Internal Revenue Code. The trust, which would continue in existence after Cunningham’s death, would hold and administer the rights to his work. It represented Cunningham’s desire to make clear where ownership of his choreography rested and thus provide a structure to protect his legacy. Upon its creation, an agreement, signed by both Cunningham and CDF, assigned all ownership of, and rights to, the choreography to MCT, while MCT immediately granted a license back to CDF to perform the dances.

MCDC performing *Split Sides* (2003), filmed by Charles Atlas in 2006 with support from The Andrew W. Mellon Foundation. Photo: ©2003 Tony Dougherty

“From that point, there was no question that MCT owned the choreography and all related rights.”

With the creation of MCT, the cornerstone had been laid for thoughtful and long-range planning of Cunningham’s legacy. Cunningham and CDF recognized the need for more extensive planning in the years ahead, dealing with the logistics of how MCDC, the Studio and School, and CDF would function after Cunningham’s passing. ❖

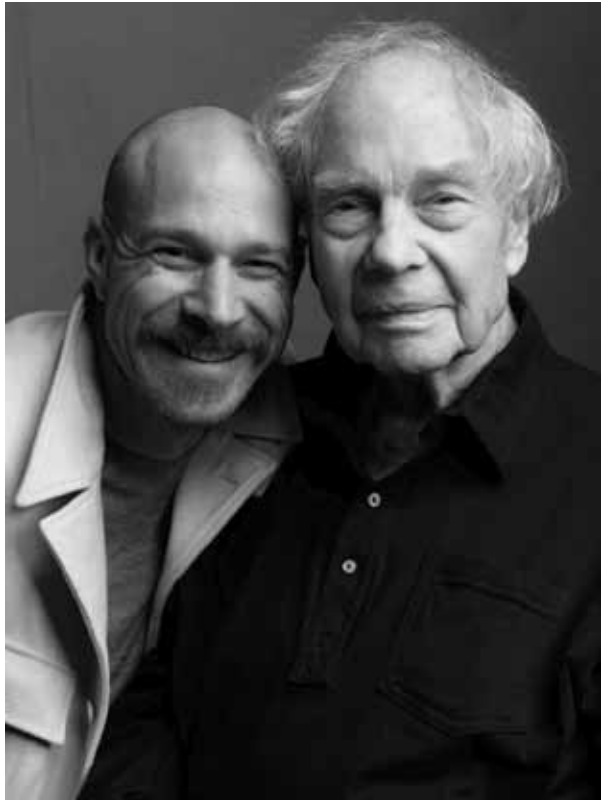
## Development of the Legacy Plan



Throughout the development of the Legacy Plan, MCDC's two-year residency at DIA:Beacon provided Cunningham with the opportunity to work close to home to create site-specific Events in the galleries devoted to the work of Andy Warhol, Walter De Maria, Bruce Nauman, Richard Serra, John Chamberlain, Sol LeWitt, Dan Flavin, and Imi Knoebel. Pictured: MCDC performing in the Chamberlain and LeWitt galleries. Photo: ©2008 Stephanie Berger



## Pre-Planning, Information Gathering and an Initial Draft



Trevor Carlson, CDF's executive director, with Merce Cunningham sitting for his last formal photography shoot. Photo: ©2009 Mark Seliger

In 2005, Trevor Carlson was appointed to replace Jeffrey James as CDF's executive director. Carlson had occupied multiple positions within the organization, starting with company manager in 1998, and enjoyed a close friendship with Cunningham and a deep understanding of his artistic vision. At this point, although he was still active and often toured with the dance company, Cunningham was 86 years old.

MCDC, having recently celebrated an ambitious 50th anniversary tour, had saturated its touring market, diminishing potential to generate earned revenue from performance fees in the near term. Accordingly, the search committee instructed Carlson to develop a three-year business plan to address how CDF would stabilize itself.

Unaware of the 1991 board retreat on the topic, Carlson interpreted the board's request to address CDF's situation with a business plan in the context of the larger question of legacy. To help overcome the projected income shortfall,

Carlson engaged David Bury & Associates (DBA) in 2006 to bolster CDF's fundraising efforts and assist in developing a three-year fundraising plan. It was during this period that the conversations between Carlson and Lynn Wichern, CDF's chief financial officer, kept turning to the larger question of legacy and how CDF would operate, which led to planning for a "Living Legacy" initiative.

The first step involved a series of interviews with key stakeholders. In 2007, to better understand the significance of Cunningham's legacy outside of CDF, Carlson commissioned DBA to conduct interviews with funders, presenters, friends of MCDC and thinkers in the performing arts field to assess Cunningham's role in the history of dance, obtain their thoughts on preservation and on possible avenues for the future of the dance company.

There was an expectation within CDF's administration that the outcome of the interviews would likely call for CDF to find a way to secure the resources and will to sustain the dance company into the future. Planning for the interviews triggered additional concerns. How would the organization proceed regarding staff and board leadership, especially regarding artistic decision-making? It was clear that a plan for the dance company to continue into the future, even with the same mission and intentions it had in the past, would require significant changes in the organization's structure and methods.

In order to get a sense of these challenges and potential solutions, the interview protocol was open-ended, based on the following questions:

1. What is your relation to Merce's work? How would you describe Merce's role in dance history?
2. What makes Merce's work unique or pioneering?
3. Do you feel that we should preserve Merce's legacy? Why?
4. Which aspects of Merce's work do you believe are the most important to preserve or continue?
5. How do you imagine this preservation taking place? What role do you think the Merce Cunningham Dance Company should take in continuing the legacy of its founding choreographer?
6. Is Merce's work particularly suited to preservation in some way?
7. What would be the "price" of not preserving this work?
8. To whom is this legacy of value?

Twenty-four individuals were interviewed by DBA during the summer of 2007. The interviewees' responses pointed towards a very different path than originally expected. "We entered into the process with the assumption that in some way, the dance company as we knew it would continue," Carlson said. Before the questionnaire, the possibility of a Bauhaus-like institution with a dance company and young artists was thought to be the most likely scenario going forward. But while the messages were varied, one question recurred frequently: "What is the company without Merce?" The majority of those interviewed questioned whether the dance company's artistic integrity was viable without Cunningham. Questions arose concerning the quality of the work and the dancing, and whether or not they would diminish over time when Cunningham was no longer there to supervise it, train the dancers himself, and create new choreography with the dancers.

On the subject of preservation and continuation, there was a striking consensus among the interviewees:

*I think it's hard to keep a company alive just as a museum, even though the works are wonderful. But the dancers need to have somebody creating on them. And presenters want things that are new even if they've never seen the old.* —Beverly D'Anne, Director, NYSCA Dance Program

*What will happen when Merce goes? You disband the company, the foundation goes on. Maybe the company goes on for a while, but when you snip off the source of new repertoire, you move further and further from the work of the presiding genius.* —John Rockwell, arts critic

*They will come up with new ways for new times. You can always learn, you can continue to learn, you can study, and you can be inspired by the work of the master that went before. But to expect that the company will continue to evolve creatively without Merce strikes me as odd.*

—Alberto Ibargüen, CEO, Knight Foundation

With doubts about the dance company's artistic viability after Cunningham's death coming from people close to the company, the difficulties CDF would likely encounter in trying to convince funders and presenters to support a company without Cunningham became apparent. As a result, instead of focusing on ways to continue the dance company indefinitely, CDF's thoughts expanded to include the possibility of closure. The question became, if CDF and the dance company were to close, what would be the most honorable way to do it?

The interviews passionately affirmed the importance of preservation and some manner of continuation of Cunningham's work in the future. The importance of Cunningham's work, together with questions and concerns about its life beyond his lifetime, were key considerations, as was concern for the dancers and individuals whose lives and livelihoods were directly entwined with Cunningham's.

Also, Wichern and Carlson were aware that funding would drop away as a result of Cunningham's death, and with diminished resources the artistic quality of the company almost certainly would be reduced. In thinking about the dance field as a whole, they also thought about the highest and best use of philanthropic funds. If CDF closed, its funders and supporters could direct their resources to support choreographers and companies actively making new work.

In the fall of 2007, based on the interview findings and further conversations with Carlson and Wichern, DBA drafted a document titled "Framework for the Future,"



which represented a first outline of the components of the Legacy Plan. The Plan discussed two phases: first was the "Creative Phase," during which Cunningham remained involved and active; second was the "Legacy Phase," beginning whenever Cunningham was no longer active.

Three essential elements of the Legacy Plan were outlined: the world tour, documentation and preservation of the work, and caring for the Cunningham community. In order to accomplish these objectives, the Legacy Plan also included a fourth essential element: a significant fundraising campaign.

Cunningham's participation in planning for his own legacy was crucial. While he was reticent to discuss the future of the organization beyond his lifetime, his feelings on the topic were made known and taken strongly into account. As the Legacy Plan research and discussion developed, Carlson's tactical approach was to "mention something over dinner, in passing. I would say, 'you know, we were thinking about thus and such.' Sometimes Merce would say 'no, I don't think so,' or 'oh, you mean when I'm not here,' and that would be the end of it. Other times he would show interest and say, 'I'd like to do that,' or offer a specific suggestion, or express a preference."

During the "creative phase" of the Legacy Plan, Merce Cunningham continued to teach and to choreograph. Photo: Still of MCDC from *Mondays with Merce*, the innovative web series that took its name from the advanced class for company members Cunningham taught each Monday.

When a draft of the Legacy Plan was finalized in 2007, Carlson gave the draft to Cunningham to read. His first response was “I’m glad you’re taking care of the dancers.” Cunningham made three additional observations: first, that the plan appeared to take a lot of people into consideration; second, that the final world tour referenced in the plan should culminate in a performance in New York City with \$10 tickets for all; and, most importantly, that there should not be two organizations (CDF and MCT) going forward.

Parallel to the interview process, Carlson also had a series of extended conversations about legacy and planning for the future with some of CDF’s key board members and supporters to assess the possibilities for funding. It was clear that any undertaking to preserve Cunningham’s work and provide for MCDC in any form would take significant resources and require strong commitment from CDF’s supporters from beginning to end. The first supporter Carlson approached was The Andrew W. Mellon Foundation, one of CDF’s long-standing funders. In these early conversations, Mellon offered not only the possibility of significant support, but also validated the basic reasoning behind the plan, providing confidence to move forward. ❖

# The Legacy Plan and Its Adoption

Carlson kept CDF board leadership informed as the DBA interviews and legacy planning proceeded. He also shared Cunningham’s reactions to the draft plan with them. In December 2007, Molly Davies, then chairman of the Board of Directors, and the other members of the Executive Committee of the Board of Directors created a “Legacy Committee” to prepare for a presentation to the entire board. The Committee’s charge was to identify and address key questions and recommend a final version of the Legacy Plan to be brought to the full board in early 2008. Chaired by Allan G. Sperling, a former CDF board chair and partner with the law firm of Cleary Gottlieb Steen & Hamilton LLP, which provided CDF with legal services on a pro bono basis, the Legacy Committee included board members who all had long histories with Cunningham and his work.<sup>7</sup>

Between January and March 2008, the Legacy Committee covered many different areas of research and consideration. Together with Carlson and Wichern, they debated how funders and presenters would respond to the dance company without Cunningham, versus a plan to disband the dance company. They discussed the feasibility of the Legacy Plan; its ideal timeframe, and the problem of how to fundraise concurrently for it and ongoing operating support. They researched the legal implications and processes of closing CDF; the future of the studio and school; and the ideal shape of the Legacy Tour—how long it would last, and where it would go.

It was through the Legacy Committee that the plan to close MCDC and CDF was formally articulated. In March 2008, Davies sent a comprehensive, confidential memorandum to the entire board entitled “The Future of the Cunningham Dance Foundation.” The memorandum stated that in considering how to best preserve and enhance Cunningham’s cultural legacy for the benefit of future generations, there were certain “givens” that strongly pointed the way. First, Cunningham had established MCT, which owned all of his choreography, with the understanding that the trust would have the responsibility of preserving and managing his artistic legacy. Second, without Cunningham’s involvement, CDF and MCDC would simply not be viable.

The memorandum proposed a three-year Legacy Plan. The plan provided that, at the appropriate time and following an extended celebratory world tour, CDF would close MCDC and transfer all remaining assets and those of its other activities that the trust chose to take over to MCT. Thereafter, CDF would go out of existence.

<sup>7</sup> Legacy Committee Members: David Bury, Trevor Carlson, Alvin Chereskin, Anthony B. Creamer III, Molly Davies, Judith R. Fishman, Harvey Lichtenstein, Bénédicte Pesle, Jean Rigg, Allan G. Sperling (Chair), Suzanne S. Weil, Lynn Wichern



Here, in part, is how the memorandum described the various elements of the Legacy Plan as proposed by the Legacy Committee.

#### The World Tour:

*The international tour celebrating Merce's career will be the world's last chance to see his choreography on the company he personally trained.... To accommodate previously contracted venues and the expected demand from additional venues, it is anticipated that the tour will extend over the first two years of the Legacy transition....*

*There is significant appetite among the public for the revival of Merce's past major works. It is, therefore, important to incorporate three to four groundbreaking past works into the world tour....*

*The company size will increase to incorporate the four current dancers from the Repertory Understudy Group as company members.... Furthermore, the extensive and intensive nature of the tour will require the addition of several touring staff members.*

#### Documentation, Preservation, and Continuation:

*An integral part of the Living Legacy transition will be the comprehensive documentation, digitization, and centralization of records of Merce's work.... This will enable the integrity of productions to be preserved when they are licensed and staged in the future, researched by scholars, or otherwise used as a resource....*

*Thanks to Merce's collaborations with filmmakers Charles Atlas and Elliot Caplan, much of his oeuvre has been documented on film and video, but there are still important pieces that have not been filmed. The revivals mounted in the world tour will present a critical opportunity to fill the gaps in the visual lexicon of Merce's great works, the last chance to document and preserve the dances as they reflect Merce's direct influence.*

#### Caring for the Cunningham Community:

*In preparing for a future without Merce, it is appropriate and responsible to respectfully care for those who have invested their time, resources, and creative efforts into the realization of his work. The Living Legacy Plan thus includes provisions for the appropriate compensation and career transition of organizational staff, who have played an instrumental role in bringing to life Merce's artistic vision and who will be essential players in shepherding the organization's transition process.*

*The Dance Company will not be performing in year three of the Plan as the Foundation's focus turns to preservation and preparation for the transition from the Foundation to the Trust. The dancers who stay through the two touring years will, however, continue to receive financial support from the Foundation. This support may take the form of a combination of salary continuation (a potential requirement of their American Guild of Musical Artists [AGMA] contracts) and stipend....*



Meg Harper and Merce Cunningham in *RainForest* (1968), one of the seminal works revived for the Legacy Tour. Photo: ©1968 James Klosty

*Many of the musicians who play for the dance company have longstanding relationships with Merce and the organization that realizes his work. The musicians will receive a subsidy in year three that is intended to honor their commitment and provide a degree of financial security as they transition to other work.... This subsidy provides incentive for the musicians to remain with the Foundation throughout the transition period in two ways: first, the subsidy will be paid on the completion of year three, and, as the musicians will be assured of compensation in the final year, they will not yet need to begin seeking other work.*

*Experienced staff members' involvement in the organizational transition process will be critical to its success. The participation of those who have worked alongside Merce*

*and are most familiar with his work will ensure that the materials prepared for future use will be faithful to the original productions and to Merce's intentions and wishes. The continued involvement of administrative staff members who are familiar with the operation of the organization itself will be equally essential. Therefore, the Plan includes a salary incentive for staff members who stay with the Foundation through the completion of the transition process that will help cushion the job transition that the closure of the Foundation will necessitate. It will eliminate the need for staff to begin searching for new positions before the closure of the organization. It will offset competition in the field for the same jobs that may otherwise occur when the Foundation's professional staff begins seeking other positions simultaneously. And, as the incentive is payable only on the completion of year three, it will provide motivation for the commitment required by an undertaking like the Plan.*

*In addition to the incentives helping to ensure the continued involvement of existing staff members, the Plan calls for additional compensation in acknowledgment of staff members' long dedication to Merce and his artistry. This is intended to honor those whose efforts have made the work of the Foundation possible, and provide for them as they have provided for Merce's work. All staff members who complete the three-year Legacy period will receive, in addition to the salary incentive above, a bonus directly tied to the length of their service, to enable career transition or ease retirement....*

#### **Fundraising Campaign:**

*Funding the Living Legacy Plan will require a significant fundraising campaign that must begin as soon as possible.... It is currently anticipated that non-operating support in the amount of approximately \$12 million will be required to fund the three years of the Living Legacy Plan. While this amount is very large, and to raise it will be challenging, the Committee believes that the justification for the Plan is sufficiently compelling that it can be done."*

The Legacy Committee recognized that the Legacy Plan as outlined in the memorandum was very much a work in progress. It raised many complex and difficult issues that would have to be considered carefully and that would take time to resolve, but it was important for the board to be fully informed and have the opportunity to express their views and give their input. At the board meeting the following month, in April 2008, the board unanimously approved the Legacy Plan. ❖

## The Fundraising Campaign and Timeline

In fiscal year 2007, CDF's operating budget was approximately \$5 million, of which \$2.8 million in contributed support was raised from foundations, government, corporations, and individuals. Earned income, primarily from touring fees, but also from the studio, school and licensing fees, averaged \$2.2 million a year. The goal of the Legacy Campaign was to secure, in advance, three years of contributed support for the purpose of sustaining normal operations (\$2.8 million x 3, or \$8.4 million), plus an additional \$3.6 million to cover costs of the preservation, the revival of works for the tour, the increased costs of mounting a major world tour, and career transition, for a total of \$12 million in contributed support.

The ideal timeframe for completing the Legacy Plan was estimated to be five years: two years to prepare and secure 65% of the \$12 million fundraising campaign goal, two years to carry out the world tour and complete the campaign, and one year to close CDF and ensure a smooth transition to MCT. A difficult issue to contend with was the unknown timetable for implementing the plan, because it could not be known when Cunningham would cease his involvement with CDF. Cunningham had specifically requested that current activities continue as long as he was able to lead the dance company, and that the final world tour and closure of the dance company occur only following his death or inability to remain at the company's helm. While aging, Cunningham continued to enjoy good health and, with assistance, could potentially continue to lead the dance company for the foreseeable future. As a result, CDF developed three different scenarios: a "Baseline" plan of five years, an "Accelerated" plan of three years, and an "Extended" plan of more than five years.

The fact that the precise timeline for carrying out elements of the Legacy Plan could not be determined in advance had significant implications for the fundraising component. It was anticipated that when Cunningham's involvement ceased, CDF's fundraising abilities would begin to diminish. Philanthropic institutions interested in supporting dance pioneers and innovators were likely to begin redirecting funds to other living artists, while individual donors, whose loyalty was rooted in their personal relationships with Cunningham, would begin to feel less committed to CDF. The need to begin seeking Legacy Plan-specific institutional support was recognized, and the challenge became more urgent with the financial crisis of 2008.

A further complication was the need to maintain the confidentiality of the Legacy Plan during the “silent” or “quiet” phase of the fundraising campaign. Conventional fundraising wisdom counsels that it is important to raise a minimum of 50% of the intended goal in the form of lead gifts from major donors before a campaign is made public. This not only allows major gifts from core supporters to be secured in advance, but also gives confidence to prospective donors to invest in the campaign and makes for a successful and newsworthy kick-off, giving the campaign momentum once it is made public.

Immediately following the board’s approval of the Legacy Plan, the dancers, musicians and staff were informed. To everyone’s relief, the plan was unanimously applauded. Importantly, everyone understood the need to maintain the Legacy Plan’s confidentiality so that the Legacy Campaign could begin its silent phase and CDF could manage the message when it became time to publicly announce the plan.

Strategic planning was now underway. Throughout 2008, Carlson and Wichern worked closely with the board and key advisors to fully understand the scope of the work ahead and make sure that resources were in place to carry out the Legacy Plan. Two key appointments were made to help realize the plan. Patricia Lent, a former dancer with extensive knowledge of Cunningham’s work and experience in reviving and restaging Cunningham’s dances was hired. Her responsibilities included working with Cunningham and generations of former dancers, as well as Carlson and others to identify and prioritize dances for preservation and determining the best methods for digitally preserving and packaging them for current and future licensing and revival. Tambra Dillon joined CDF to spearhead the Legacy Campaign and serve as liaison between departments to ensure a comprehensive and coordinated marketing approach in implementing the Legacy Plan.

Several preliminary discussions with funders were now in process, but the public relations challenges facing CDF during the silent phase of the Legacy plan were tricky. The essential point about the world tour—its finality—could only be announced if the public knew the dance company would be disbanded. And, that news could only be announced within the context of the Legacy Plan, which required an acknowledgement of the campaign, which was still in the “silent” phase.

It was decided to capitalize on the newsworthiness of Cunningham’s upcoming 90th birthday to build momentum in advance of any announcement of the Legacy Plan.

A request for proposals was crafted to hire a public relations firm to support the announcement of the Legacy Plan and Legacy Campaign. The project was awarded to Resnicow Schroeder, which worked closely with CDF on developing key messages, preparing institutional materials, mapping events and managing the public relations activities for Cunningham’s 90th birthday celebration to proactively begin to cultivate the media. The relationship proved so successful that the contract was extended through the active phase of the Legacy plan.

As a small organization with limited resources, engaging a strategic communications firm proved to be an invaluable decision. The firm helped guide CDF through some very difficult and emotional months, when much had to be managed and coordinated to achieve the goals of the Legacy Plan. ❖



## Executing the Legacy Plan



Rashaun Mitchell, Marcie Munnerlyn and Silas Riener, *Nearly Ninety* (2009). Photo: ©2009 Stephanie Berger



## Preparing for the Eventual

In October 2008, CDF was one of only ten performing and presenting arts organizations awarded a “change capital” investment (in the form of a grant) from the Doris Duke Charitable Foundation through its innovative “Leading for the Future” initiative, designed and administered by the Nonprofit Finance Fund (NFF).<sup>8</sup> The premise of the initiative was that upfront commitments of sizable sums of flexible money are necessary when nonprofits seek to undergo and financially sustain major operating and programming changes. In CDF’s case the \$1.075 million award—the first major gift towards the \$12 million Legacy Campaign—was made to support the plan and transition, including the effort to raise the remainder of the campaign funds. The award was accompanied by access to consulting services from NFF and Helicon Collaborative. They served as strategic partners, notably helping to advise CDF leadership on fundraising approaches and the refinement of the financial and business models required to successfully complete the Legacy Plan.

Throughout the fall of 2008, CDF also worked closely with DBA and Diane Ragsdale, a program officer with The Andrew W. Mellon Foundation, to flesh out the Legacy Plan and model 3-, 5- and 7-year scenarios as part of its application to the Mellon foundation. The financial crisis was deepening and major individual and institutional funders had been severely affected. Its impact on Mellon, and by extension CDF, was profound. From the time of Mellon’s formal invitation to apply in August 2008 to the date the proposal was actually submitted in January 2009, the economic climate changed Mellon’s focus from an extraordinary gift of \$3-5 million to a lead gift of \$1 million to be paid over three years and awarded in March 2009.

Parallel to silently launching the Legacy Campaign, CDF was struggling to fund the 2008-2009 season, which had been planned during good economic times and included several major events to mark Cunningham’s 90th anniversary: the making and performance of *Craneway Event* and its filming by Tacita Dean; the remounting of *Ocean* in Minnesota; and the premiere of *Nearly Ninety* with a gala performance on April 16, 2009, Cunningham’s 90th birthday. The challenge of finding a way to raise extra operating funds for the anniversary season and provide Cunningham with the resources he needed to create what would become his last work while meeting the fundraising goals of the Legacy Plan was made more difficult and urgent by the fact that Cunningham was noticeably slowing down.

<sup>8</sup> To learn more about the Leading for the Future initiative and the concept of change capital, visit <http://nonprofitfinancefund.org/content/leading-future-innovative-support-artistic-excellence>



Emma Desjardins and Brandon Collwes in *Craneway Event* (2008), filmed by Tacita Dean. Photo: ©2008 Anna Finke

The Andrew W. Mellon Foundation, through Diane Ragsdale, strongly encouraged CDF to reduce the scale and scope of the Legacy Plan and to reduce the Legacy Campaign from \$12 million to \$8 million. At the same time, NFF and Holly Sidford of Helicon Collaborative urged CDF to make radical reductions to the Plan and the operating budget all at once and quickly to avoid a “death by a thousand cuts.” To reinforce this point, NFF subsequently communicated that the future disbursement of change capital funds was contingent on CDF either providing strong evidence of its ability to raise \$12 million or scaling back the Legacy Campaign. In short order, the fiscal year 2009 operating budget was cut by 23% through reductions in line items and salaries, layoffs and mandatory furloughs for the remaining staff. While many items were later added back into the Legacy Plan budget as the campaign continued, at that point the Legacy Campaign was downsized to \$8.3 million, requiring the elimination of subsidies for presenters for the Legacy Tour, special funds to support revivals of seminal works, and massive reductions to preservation efforts, including the number of works to be digitally preserved in Dance Capsules from 50 to five.

After much negotiation and agreement on further benchmarking, NFF agreed to release \$400,000 of its grant much sooner than it had originally expected under the Leading for the Future initiative. This “recovery capital” was lifesaving money that provided CDF with the latitude to continue daily operations while also fundraising for the Legacy Campaign.

The conflicting and competing needs of the operating and Legacy Plan budgets and unfavorable economic circumstances were managed with a heavy dose of pragmatism and an open approach to working with CDF's core funders and its board. During this period, Carlson and Dillon initiated conversations with CDF's funding circle, including the NEA, the New York State Council on the Arts (NYSCA), and the NYC Department of Cultural Affairs (DCA), along with a handful of foundations representing CDF's most faithful donors. Through these conversations, CDF became more adroit at communicating the complexities of the Legacy Plan and responding to the myriad questions the meetings invariably generated.

Just prior to the premiere of *Nearly Ninety* at Brooklyn Academy of Music (BAM) in April 2009, Cunningham's health could no longer be taken for granted and the Legacy Plan was announced in June of that year. Given that the campaign was still struggling, and only a third of the way to meeting its goal despite the reduction in scale, this was a difficult decision. Any public announcement of the Legacy Plan would necessitate announcing the fundraising campaign prematurely. Ultimately, the desire to announce the Legacy Plan during Cunningham's lifetime outweighed the benefits to postponing.

A pre-launch for major funders hosted by the DCA was held on June 9, 2009 and was immediately followed by a press conference at the Merce Cunningham Studio. Lead funders were asked to speak peer-to-peer on CDF's behalf at the donor event. Representatives of Duke, Mellon, NFF, and the DCA testified to the need for legacy planning and the preservation of Cunningham's work to a group of about 30 funders, who were then given Legacy Campaign packets and invited to mingle with members of the board, staff and dancers after the presentation.

The invitation to both the donor event and the press conference referred only to "a visionary new plan for the dance company," but an exclusive feature had been given in advance to *The New York Times*. A detailed press release was spooled up and ready to be issued to the global media immediately following the conference. Carlson made the presentation, clearly outlining the rationale for the Legacy Plan. Cunningham did not participate in the presentation, but was present to take questions following the conference. The extensive press coverage served to reinforce the Legacy Campaign, although no major gifts materialized as a result of the announcement alone. There was also a great sense of relief by all involved to be able to talk freely and openly about the Legacy Plan.

Merce Cunningham died peacefully in his home on July 26, 2009.



A call-chain had been created to ensure those closest to Cunningham and the organization would learn of his passing first-hand and not by reading about it in the news. Splash pages for the website had been designed and were ready to go up and a communal gathering in the studio pre-planned. Resnicow Schroeder was fully prepared to take over and field all media inquiries, and had a selection of images and video clips, along with a media alert with statements from the executive director and chairman of the Board of Directors, at hand. *The New York Times*, having gotten wind of Cunningham's absence from the studio, had updated and prepared Cunningham's obituary with CDF's cooperation. CDF, too, had a paid obituary ready to run in the papers. ❖

Less than a week after Merce Cunningham's death, MCDC's scheduled performances in NYC's River to River Festival co-presented by The Joyce Theatre became an impromptu celebration of the late choreographer's life.  
Photo: ©2009 Anna Finke



## The Merce Cunningham Trust

Following Cunningham's death, the "legacy phase" of the Legacy Plan was swiftly put into action. On August 6, 2009, CDF announced the leadership of the Merce Cunningham Trust. Prior to his death, Cunningham named, but did not disclose, four trustees to lead the trust: Patricia Lent; Allan G. Sperling; Laura Kuhn, executive director of the John Cage Trust; and Robert Swinston, assistant to the choreographer, who joined the MCDL in 1980. The four trustees appointed by Cunningham later elected Trevor Carlson as a fifth.

Understanding that MCT would require funding, Cunningham left the bulk of his estate, including the artwork that he and John Cage had been given by artists, to MCT. On November 10, 2009, Christie's auctioned the "Collection of John Cage and Merce Cunningham" with works by Jasper Johns, Robert Rauschenberg, Philip Guston and others. The proceeds of the sale, along with other cash from the estate provided an endowment to support MCT's future activities. The auction, however, created confusion for the Legacy Campaign. Many donors did not understand the distinction between MCT and CDF and that the proceeds from the auction could only be used as capital for MCT, not to support the Legacy Plan.

The largest question left open by the Legacy Plan was what would become of the Merce Cunningham Studio and School. Unlike many studio and dance schools, the Westbeth operation was not profitable. Factoring in the rent for the studio space at Westbeth and other expenses, as well as the revenues generated, the operation represented a net loss to CDF of approximately \$200,000 per year. Therefore, the trustees had to decide not only whether the trust should undertake the operation of a studio and school but also if it could afford to do so. The trustees were intent on trying to find some way for the studio and school to continue at Westbeth, but Cunningham had made it clear that he did not intend for MCT to be a fundraising entity. Therefore if the school could not support its operations, it would have to close. In June 2010, CDF stopped accepting new students into the school's certificate program.

In October 2010, students at the school presented the trustees with a petition signed by approximately 4,500 people asking the trust to operate a "Merce Cunningham Center" at Westbeth to continue the programs of the studio and expand them. A number of options were explored to keep the school open, but ultimately none of these proved



workable. It was decided to end the Certificate Program on August 31, 2011 and end the open classes on March 31, 2012.

Class at the Merce Cunningham Trust at New York City Center.  
Photo: ©2012 Paul Gaschler

Though the school was closed, MCT was later able to reinstate classes in Cunningham Technique and repertory workshops on April 1, 2012 in their new headquarters at City Center. ❖

# The Budget

In the fall of 2009, CDF initiated weekly meetings (generally via conference call) with the Executive Committee of the Board of Directors, largely comprised of individuals who also served on the Legacy and Finance Committees. The first task was to take the \$8.3 million pro forma Legacy Campaign budget, which had excluded earned revenue projections, and develop an accurate three-year budget through to the end of the Legacy Plan. To allow the organization to move forward, the board approved a fiscal year 2010 (July 1, 2009 to June 30, 2010) budget as an interim measure, but directed that earned and contributed income, as well as expenses, in fiscal years 2010, 2011 and 2012, go through further vetting before the board would approve a budget spanning the duration of the Legacy Plan.

The plan was adapted based on some of the realities of scheduling and budget. The 2010 fiscal year had just begun; a three-year plan concluding with the closure of CDF at the end of fiscal 2012 was decided upon. Definition of the size and scope of the largest item in the budget, the tour, was necessary to accurately project income and expenses. Originally, the tour was to start immediately with engagements already in place, but following MCDC's summer engagements in 2009, there were gaps in the fall calendar, and calendar year 2010 was still being booked. A two-year world tour starting in early 2010 would allow time to obtain bookings and properly announce the venues and dates in the media, thereby better supporting participating presenters. Also, with the tour concluding at the end of 2011, the dancers' contract with AGMA would only require a six-month extension of its June 30 expiration. The final timeline allowed for six months to schedule the tour and solidify expense and income projections, the two-year world tour, and six months to complete preservation efforts, transfer the archive to the New York Public Library, shut down the office and manage the handover to the trust.

Following a reduction from the original \$12 million Legacy Campaign to \$8 million in January 2010, the three-year budget presented to the board in October 2009 totaled just under \$14.4 million in expenses (including a contingency allowance for unforeseen expenses of \$370,000). This left a deficit in the third and final year of just over \$2 million. To make possible the approval of a balanced budget, career transition and expenses for the revival and filming of three additional works were removed from the three-year budget and placed in a contingent "supplemental budget," allowing CDF to hold onto its aspirations while it continued to fundraise to close the gap. On January 28, 2010, the board approved a balanced

three-year budget. At the same time, the board passed a resolution affirming its desire to provide career transition payments, but stating that they would only be paid to the extent that funds were available after CDF met all its other expenses and obligations.

The CDF board stipulated that the contributed income projected in the three-year budget had to be backed up with a signed pledge form, a written grant award, or be based on a proven history of giving. Given the relatively small window of time available to raise funds for the Legacy Plan following Cunningham's death, NFF took the board's concern about income projections even further, outlining a number of conditions keyed to its future disbursements to CDF. These conditions included supplying written letters of agreement with presenters to support earned revenue projections as well as award letters from funders, and signed pledge letters along with some upfront cash from 100% of the board.

All prospective donors were removed from the budget projections until they could be confirmed. Securing three-year pledges from funders so that CDF could move forward with a degree of confidence was difficult, particularly with institutional funders. In most cases, funders were not able to make a three-year commitment due to annual grant cycles and review processes that could not be accelerated. Compounding the problem, many institutional funders who expressed strong support for the Legacy Plan were unable to make an additional, one-time only gift due to diminished assets and loss of discretionary funding caused by the financial crisis. NFF's requirement for 100% board participation was a challenge - but also a huge help - resulting in over \$1.1 million in pledges from the board, of which \$350,000 was in hand at the close of fiscal year 2010. And, as anticipated, CDF witnessed some fall off from individual supporters whose interest waned following Cunningham's death, as well as contributions to the Legacy Campaign that were made in lieu of ongoing annual support.

Government funders were unwavering in their commitment, reflecting a long and rich history that extended to the formation of the NEA, NYSCA and the DCA. The multi-million dollar investments these public agencies had made in Cunningham's work since the 1960s were essential to the company's survival and their continued commitment played an instrumental role in honoring and preserving his legacy. In addition to awarding sizable grants for the revival and preservation of several dances and also providing substantial support to U.S. presenters to book the company on the Legacy Tour, the NEA helped CDF secure funding from the U.S. Department of State for the dance company's engagements in Moscow and Mexico City. Both NYSCA and the DCA followed through with multi-year funding agreements for the duration of the Legacy Plan and advocated on CDF's behalf for the need to celebrate and preserve Cunningham's legacy.



Guest artist Mikhail Baryshnikov with CDF Board Member Suzanne Weil following the benefit performance of *Occasion Piece*<sup>2</sup> at REDCAT in Los Angeles. Photo: ©2010 Stefanie Keenan

The artistic community was also a tremendous source of support with presenters providing commissioning fees for the revival of work, cultural ministries sponsoring the preservation of work in Dance Capsules, organizations licensing works, and partners such as the Walker Art Center, REDCAT and the Baryshnikov Arts Center organizing joint benefits to help support the Legacy Plan. Mikhail Baryshnikov very generously agreed to perform as a guest artist for benefit performances with the dance company, and the Baryshnikov Arts Center became a presenting partner for “BAC Flicks: Mondays with Merce” to showcase video and film dances by Charles Atlas from the Cunningham archive. Each film showing also featured an episode of the pioneering webcast *Mondays with Merce* and a talk with special guest artists moderated by Nancy Dalva, the writer and producer of the series.



Perhaps the most unique element of CDF’s financial structure was the support of Cunningham’s collaborators. Throughout the years, when CDF experienced financial difficulties, Robert Rauschenberg, Jasper Johns and many others donated artwork that the organization could sell, using the proceeds as revenue. Yet, the CDF board, as well as NFF, was concerned about the risky nature of projecting the sale of artwork in the three-year Legacy budget—especially during a recession.

Additionally, CDF knew that it held a vast and valuable asset in MCDC’s collection of theatrical set and costume elements. Carlson had had ongoing conversations over the years with the Walker Art Center, which was keenly interested in acquiring the collection. CDF knew that it could break up the collection and sell important works individually on the open market, but wanted to retain the works as a collection that could be placed at an institution with a deep appreciation of Cunningham’s work and the ability to exhibit it for the public’s



benefit. With funding from The Andrew W. Mellon Foundation, the Walker Art Center completed an assessment of the “MCDC Collection” in 2010, but needed to raise the money to acquire it. It was not until spring 2011 that the acquisition could be confirmed. The proceeds, together with an anonymous gift of \$1 million, secured CDF’s commitment to career transition for the dancers, musicians and staff, and constituted the final substantial piece of funding needed to meet the full budget. The acquisition was hailed as a “win-win” for CDF and the Walker. ❖

Ellen Cornfield in *Minutiae* (1954), performing against Robert Rauschenberg’s work of the same name, one of the earliest and largest freestanding Combines he created, a copy of which was acquired by the Walker Art Center. Photo: ©1976 Herb Migdoll



# The Legacy Tour

Envisioned as a celebration of Cunningham's lifetime of artistic achievement, the Legacy Tour was to feature the last company of dancers chosen and trained by Cunningham himself, and was to visit places that had long been supportive of Cunningham's work, as well as locations never before visited by the company. Following Cunningham's death, MCDC continued to fulfill its remaining regular engagements while planning shifted to the Legacy Tour and what works would be revived for the tour. Administrative adjustments were made to prepare for the unprecedented two-year world tour and recalibrate the organization to allow it to move forward into the Legacy Phase of the plan. Artistic oversight now fell to Swinston, who stepped immediately into the role of director of choreography. The next most senior dancer, Jennifer Goggans, was appointed as Swinston's assistant in February 2011 and joined in the duties of planning rehearsals and teaching daily company class. Lent, as the director of repertory licensing, oversaw the staging of numerous works, including the revival of *Roaratorio*.



MCDC performing the revival of *Roaratorio* (1983) in Los Angeles in June 2010.  
Photo: ©2010 Anna Finke

## Tour Planning

In early August 2009, Carlson flew to Paris with the company's domestic booking agent, David Lieberman, to meet with Bénédicte Pesle and her primary associate Julie George, who represented MCDC in Europe. Pesle had been an ardent supporter of Cunningham's work since the 1960s and was also a member of CDF's board. Together these four formed a booking committee, and began to map the tour. During their two-day meeting, they laid out the tour schedule based on the dates of pre-existing engagements and of known festivals and the seasonal habits of the company's traditional presenters. The tour schedule was divided into blocks of time between the two agents, with periods for rehearsal and performances in New York.

Meanwhile, CDF Chief Financial Officer Lynn Wichern was working to set a fee structure for the tour. A major challenge in booking the tour would be the requirement that presenters respond to a different financial arrangement than was typical. Regrettably, presenter subsidies had been one of the items cut from the Legacy Plan budget during the revisions necessitated by the 2008 economic downturn. This meant that MCDC had to insist that presenters cover the total costs of the dancers, musicians, production crew, and administrative team needed for tour engagements. Pesle observed that some presenters had never really "understood what it took" to bring the entire company on the road. The fees that were established also included an amount earmarked as a contribution to the fund for career transition for dancers, a core element of the Legacy Plan.

Time presented another challenge. CDF's agents were used to working in advance with presenters, who often committed to the following year if the current one was not suitable, or required time to raise the necessary funds. But that was not possible under the circumstances, placing an enormous amount of pressure on presenters to fit the dance company into their schedule. At times bookings were proposed for conflicting dates, while at other times there were large gaps in the schedule. The gaps were a problem for the dancers: the rigors of touring could be grueling, but too much time off without routine conditioning or physical therapy increased the potential for injury. The tour involved timing headaches for production as well. At times, sets, costumes and production equipment would need to be on opposite sides of the Atlantic or in vastly different time zones at nearly the same time. Nevertheless, as of January 2010, a 35-city tour was confirmed with signed letters of agreement from presenters in place.



MCDC in *Sounddance* (1975).  
Photo: ©2011 Stephanie Berger

## Personnel

When the dance company began the tour on February 12, 2010 at the Wexner Center for the Performing Arts in Columbus, Ohio, the travelling company consisted of the following:

- ❖ fifteen dancers (including the director of choreography)
- ❖ the company's standing "Music Committee" of four musicians who provided live music for performances, with at least one committee musician at each performance joined by other supplemental musicians depending on the repertory
- ❖ a sound engineer/music supervisor, who also participated as a musician
- ❖ a technical crew of three, including a production supervisor, lighting designer, and wardrobe supervisor/designer; as well as a carpenter/merchandise supervisor
- ❖ a company manager
- ❖ a physical therapist (a second was later added to help prevent and manage dancer injuries)
- ❖ the company archivist
- ❖ the executive director, who also directed the company's residency and outreach activities.



MCDC in *Nearly Ninety* (2009).  
Photo: ©2009 Anna Finke

## The Tour

Showcasing 18 seminal works from throughout Cunningham's career, including the revival of seven historic dances that had not been performed in years, the Legacy Tour highlighted the collaborations with artistic innovators such as John Cage, Jasper Johns, and Robert Rauschenberg that characterized Cunningham's creative life. The tour grew from 35 engagements and 53 performances at the time of the initial announcement in January 2010, to eventually encompass 57 engagements and 152 performances, not including residency activities or special events. In all, the dancers were engaged for a total of 75 weeks across two years. The singularity of the tour was not lost on audiences as evidenced by their enthusiasm throughout the tour, which consistently attracted large crowds, composed of first-time and seasoned viewers.

A number of the company's longtime and most loyal presenters committed quickly to the tour, including the Kennedy Center, London's Barbican Centre in concert with Dance Umbrella, Théâtre de la Ville and Festival d'automne in Paris, Cal Performances at University of California Berkeley, The Krannert Center at University of Illinois in Urbana, and Columbia College Chicago in partnership with the Harris Theater. Two cities set as high priorities were Berlin, Germany, which had a long and storied history of visits by the company, and Seattle, WA, Cunningham's home state, where he grew up and received his earliest dance training. To get the company to Seattle, the choreographer Donald Byrd rallied numerous arts groups and foundations to work with CDF and Cunningham's family on what ultimately became a city-wide celebration with repertory performances presented by the Seattle Theatre Group. Other appearances required partnerships and/or a consortium approach to assemble the venues and the financial resources necessary: in Berlin, the Volksbühne and the Akademie der Künste joined forces, and at the Israel Festival, the Jerusalem Season of Culture worked together with the Israel Museum.

A series of very special engagements for New York City, the company's home since its founding in 1953, were designed to offer hometown audiences the opportunity to see the entire repertory at five venues whose support had been pivotal to the company: Brooklyn Academy of Music, The Joyce Theater, Lincoln Center Festival, New York City Center, and Park Avenue Armory, where the tour would conclude on December 31, 2011 with a New Year's Eve performance.



Jamie Scott and Daniel Madoff  
in *Duets* (1980).  
Photo: ©2011 Anna Finke



## Special Events

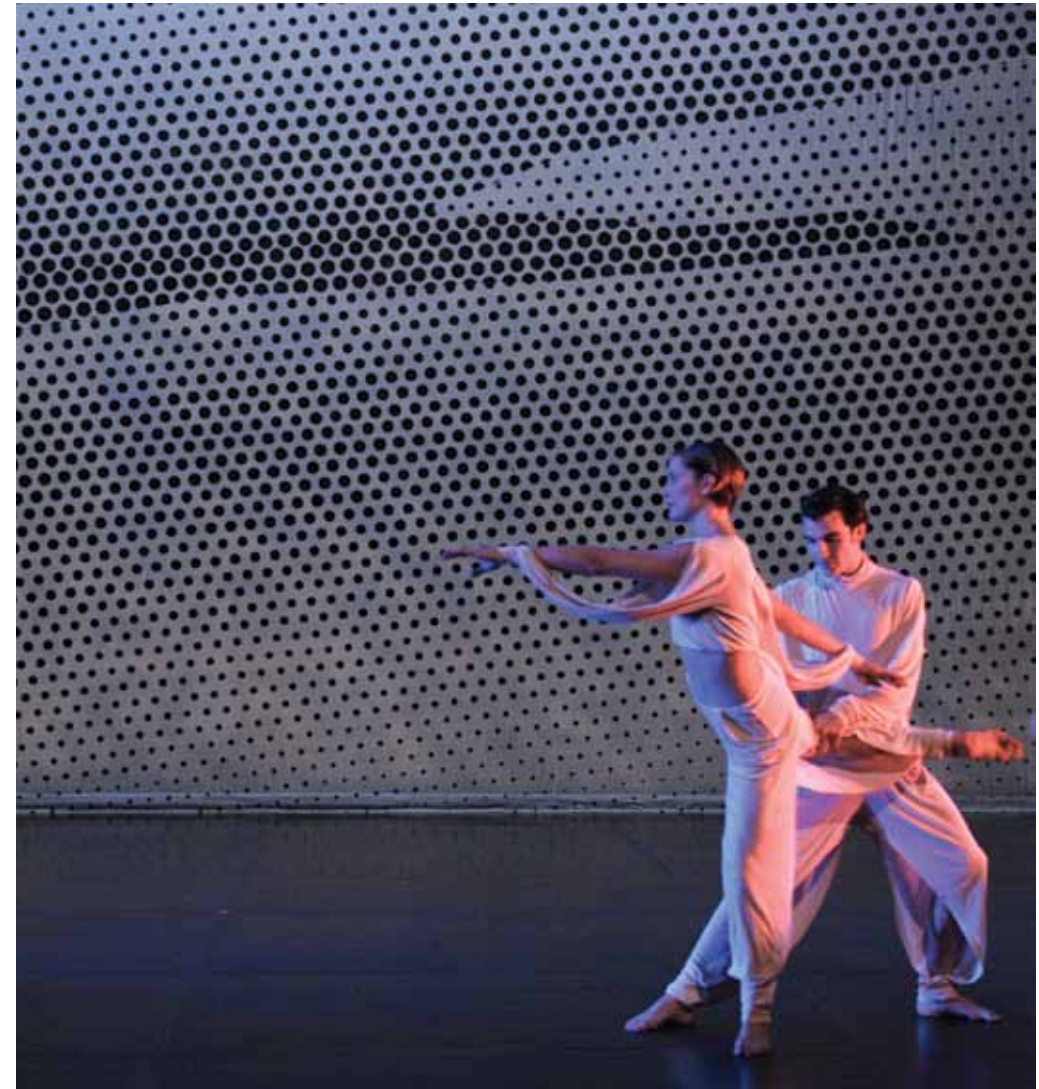
The tour was marked by a number of memorable special events, such as:

- ❖ the company's final visit to Cunningham's home region of Seattle in October, 2011, during which a sculpture in his honor was erected in front of the Cornish School of the Arts, where Cunningham was a dance student from 1937-39
- ❖ Mikhail Baryshnikov's appearance in a special performance of *Occasion Piece*, originally a duet he performed with Cunningham in 1999 in the Lincoln Center Festival and adapted as an *Event* for the full company, first performed at REDCAT in June 2010 and later at the Baryshnikov Arts Center in October 2011
- ❖ the proclamation by Mayor Rahm Emanuel of November 18, 2011 as "Merce Cunningham Day" across the city in celebration of the company's appearance in Chicago,
- ❖ the Israeli Ministry of Education's decision to dedicate 2011 as "The Merce Cunningham Year" in a nation-wide celebration
- ❖ the unveiling of the Walker's acquisition of Cunningham sets, costumes, props and décor during the company's residency at the Walker's McGuire Theater in November 2011
- ❖ the Company's first ever visit to Moscow as part of the International Chekhov Festival, funded by the U.S. Department of State
- ❖ "Merce Fair," a daylong Cunningham celebration at Lincoln Center in New York City in July 2011, attended by over 3,000 participants
- ❖ "Merce Circus," a similar event produced in East London in October 2011

In every city the company visited, its performances were accompanied by varying ancillary activities designed to facilitate deeper and wider public engagement with Cunningham's

work. Company members taught master classes and/or conducted residency workshops with local dance students, which often culminated in showings. Pre- and post-performance talks were frequently offered. So were film screenings, lectures, discussions, art and archival exhibitions, and "Family Day" events, designed to engage parents and small children with Cunningham's creative methods.

Daniel Arsham's *Avalanche*, the set for MCDC's *Event* as part of Miami Art Basel. Photo: ©2010 Justin Namon, courtesy of the Adrienne Arsht Center for the Performing Arts.



Andrea Weber and Silas Riener in *Pond Way* (1998). Photo: ©2010 Anna Finke

The final, sold-out performances were held at Park Avenue Armory in New York City on December 29, 30 and 31, 2011, with two performances each evening. Performed across three stages in the Armory's soaring 55,000-square-foot drill hall, the *Park Avenue Armory Event* marked the conclusion of the Company's two-year Legacy Tour and provided a retrospective glimpse of 50 years of Cunningham's dances, from *Rune* (1959) to *Nearly 90* (2009). Featuring new music commissioned from the MCDC Music Committee and performed by 17 musicians, décor by the young visual artist Daniel Arsham, lighting by Christine Shallenberg, and costumes by Anna Finke, the final performances were the crowning feat of the Legacy Tour. As Cunningham had requested, all 9,000 tickets to the final performances were priced at \$10. ❖



# Preservation

## Dance Capsules

From the earliest discussions, the preservation of Cunningham's dances was identified as a crucial part of addressing Cunningham's legacy. In response, Carlson conceptualized "Dance Capsules," digital packages comprised of the array of creative elements that make up a specific Cunningham work. The Legacy Plan originally included creation of 50 Dance Capsules from Cunningham's more than 200 works. In the end, CDF was able to complete 86 Dance Capsules before transferring the project to MCT.

The guiding framework in creating the Dance Capsules was to include all the material that an experienced, skilled, knowledgeable stager needs in order to make the dance happen. They were designed not only for licensing dances, but also scholarly research. The Capsules are not intended to replace a trained stager, but rather to facilitate the process of setting the work in a way that maintains the artistic integrity of the dance. This desire for accessibility and the inclusion of large amounts of information made a digital format ideal. Digital preservation was also a fitting choice for a choreographer such as Cunningham, who embraced the innovative possibilities of new technologies.

Dance Capsules are stored in an online format easily accessible to scholars, dance companies, and the general public. They were assembled by individuals with first-hand knowledge of Cunningham's work, thus enabling the works to be studied and performed in perpetuity with knowledge of how they originally came to life. They include performance videos, Cunningham's notes, sound recordings, lighting plots, décor images, costume designs, and production notes from rehearsal and performance periods, as well as information pertinent to the restaging of works drawn from the Merce Cunningham Archive managed by David Vaughan.

The platform is gated, with two levels of access. The general public has access to a database of all Dance Capsules that can be filtered by multiple search terms, including duration, revivals, composers, set designers, costume designers and lighting designers, as well as basic information about each dance, a production overview, audio clips, and photographs. Protected assets require a password to view, and are accessible via permission from the trust; they include in-depth production overviews, choreographic notes, full-length videos, additional photos and music, programs and press, costumes, details on stage management, lighting, décor, and marketing materials.



To determine which dances should be prioritized for preservation as Dance Capsules, Patricia Lent interviewed Robert Swinston, whose deep knowledge of Cunningham's work and process draws from nearly 30 years with the company. Dancers from each decade since the 1950s were asked for their opinions on the dances that had most impacted them as dancers, as well as the pieces they viewed as key to Cunningham's overall body of work. She had also conducted similar interviews with Cunningham prior to his death.

Lent had extensive experience performing Cunningham's work, working with archival material for purposes of reconstruction, and serving as a liaison between CDF and current and prospective institutional licensing partners, making her an ideal person to work with Carlson to investigate both the form and content of the Dance Capsules.

The CDF team of technical, artistic and archival staff then identified the materials to be preserved and catalogued and engaged Joshua Telson, a media consultant specializing in digital technology and film preservation, to manage the development of a web-based system for the storage and distribution of the Dance Capsules. The system was designed to allow for storage expansion and the highest level of "future-proofing" (capacity for upgrading files and technology), ease of accessibility and portability (accessible via the internet). The software for the Dance Capsules was developed by Broadleaf Systems (a consulting arm of FigureOne).

Merce Cunningham and dancers in *Walkaround Time* (1968), featuring a set by Jasper Johns after Marcel Duchamp's *The Bride Stripped Bare by her Bachelors, Even* (*The Large Glass*). The set, which was acquired by the Walker, was also used for performances organized by MCT as part of *Dancing Around the Bride*, an exhibit mounted by the Philadelphia Museum exploring Duchamp's influence on Cage, Cunningham, Johns and Rauschenberg.  
Photo: ©1970 James Klosty



MCDC performing  
*Antic Meet* (1958) in 1963.  
Photo: ©1963 Marvin Silver

## Archives

The Jerome Robbins Dance Division of the New York Public Library for the Performing Arts acquired the Merce Cunningham Archive in 1999. The archive had been formed and maintained by longtime Company Archivist David Vaughan. A grant from the NEA's *Save America's Treasures* and CDF Board Member Jacqueline Monnier in 2006 resulted in the digitization of much of the Cunningham Archive, including audio recordings. Thereafter, over the years, Cunningham's manuscripts and papers, 948 reels of film, and video for 548 titles were transferred to NYPL to be catalogued and made accessible to the public. The majority of the archive, however, continued to be housed at CDF and was very much a working, living archive supporting CDF's activities, facilitating research by dancers restaging work and the research of any number of scholars.

Large sections of the archive were working files stored at CDF and managed by individual departments, with additional volumes of paper files, videos, film, sound recordings, costumes and sets stored at various locations. In January 2012 curators came to CDF to give an overview on how to select, cull and organize files to be transferred to NYPL. These materials will also be digitally archived, and, like all materials in the Dance Division, they will be free and available to the public to be viewed at the Library for the Performing Arts at Lincoln Center.



MCDC in the revival of  
*Antic Meet* (1958) in 2011.  
Photo: ©2011 Stephanie Berger

## The Walker Acquisition

Throughout Cunningham's choreographic career, the creation of a new Cunningham dance occasioned collaboration with visual artists who created sets, décor, and/or costumes to accompany the work. An additional preservation effort involved finding a home for this unique collection of visual art objects created for MCDC by artists with whom Cunningham collaborated.

The Walker Art Center's acquisition of the entire collection of visual elements associated with Cunningham's work represented the single largest acquisition in its 133-year history. In all, over 300 objects were acquired by the Walker, including works by Rauschenberg, Johns, Frank Stella, Andy Warhol, Bruce Nauman, and Roy Lichtenstein, capturing Cunningham's distinctive relationship with his collaborators and comprising a significant body of American art. One of the country's premier contemporary art museums and, through its performing arts division, an early champion of Cunningham and Cage's work, the Walker, with its multi-disciplinary focus, made it an ideal partner in forging a future for Cunningham's visual art legacy. Keeping the work together also reflected CDF's perception of its obligation to the artists to maintain the integrity of the work's original context by showing the work in relation to Cunningham's dances.



The Walker has since mounted three major exhibitions of pieces from the collection, *Dance Works I: Merce Cunningham/Robert Rauschenberg*, *Dance Works II: Merce Cunningham/Ernesto Neto*, and *Dance Works III: Merce Cunningham/Rei Kawakubo*. A complete retrospective is planned for 2015.

Not only did the Walker's acquisition ensure that the materials would be preserved and available to the public, but, together with an anonymous gift, the acquisition also provided a critical piece of funding CDF needed to fulfill its commitment to provide career transition payments in full.



Merce Cunningham working in the studio. Photo: Press still from *Mondays with Merce*.

### *Mondays with Merce*

As planning began for the Legacy Tour, production of the *Mondays with Merce*<sup>9</sup> web series continued, becoming an integral part of CDF's organization-wide preservation efforts. First launched in 2009, the *Mondays with Merce* "webisodes" were designed to provide audiences around the world unprecedented behind-the-scenes access to Cunningham's work and his process with the company in the studio. Following Cunningham's death, the series' significance took on new meaning, serving as

a vital preservation initiative, documenting hundreds of hours of Cunningham teaching and working with his company in the final years of his life.

Writer-producer Nancy Dalva had begun interviewing Cunningham regularly in the spring of 2008 to document his comments and recollections on a wide range of subjects. Excerpts of these interviews, interwoven with other content, were included in each webisode. The project ultimately proved to be a comprehensive and intensive documentation of the dance company in its final years. Sixteen different episodes were created, 330 hours of footage shot, 19 interviews conducted with Cunningham, and a wealth of archival footage and materials incorporated into the various webisodes.

Filming also included the dance company in rehearsal and on strategic stops on the Legacy Tour. The *Mondays with Merce* production team filmed the revivals of *Roaratorio* (in Los Angeles) and *RainForest* (in Moscow), and also filmed works in the Legacy Tour repertoire during the company's engagement at The Joyce Theatre in 2010, and SUNY Purchase and the University Musical Society in Ann Arbor, Michigan, in the spring of 2011. The digital filming of previously undocumented dances provided content for a number of the Dance Capsules.

The resulting web series is unique in the dance world for its comprehensive coverage of its subject's aesthetic and body of work. *Mondays with Merce* became a valuable tool in residency activities during the Legacy Tour, and is a frequently referenced resource for general



Andrea Weber, Daniel Roberts, Jonah Bokaer in *Interscape* (2000), with a backdrop by Robert Rauschenberg, part of the Walker Art Center's acquisition. Photo: ©2005 Tony Dougherty

learning about Cunningham and his work. The last in the series, released in January 2012, featured Cunningham's last interview with Dalva a month before his passing, recorded on the second-to-last day he was in the studio in Westbeth.

### *Filming the Company's Final Performances*

The capstone to CDF's preservation efforts was the filming of the company's final performances at Park Avenue Armory in a 16-camera shoot in Super High Definition digital video. The filming was conducted by PGM Productions, and overseen by John Goberman, creator of *Live From Lincoln Center*. Additional "b-roll" footage was captured by the *Mondays with Merce* team working with the firm Dancing Camera to film the company's final rehearsals in the Merce Cunningham Studio, as well as the performances. ❖

<sup>9</sup> To view *Mondays with Merce* webisodes, please visit <http://www.mercecunningham.org/film-media/mondays-with-merce/>





## Transition Assistance

Financial assistance to all members of the Cunningham organization was a key element of the Legacy Plan. When the plan was adopted by the CDF board, it provided that dancers who stayed through the Legacy Tour would receive a combination of salary continuation (seven weeks of which was required by the AGMA contract) and stipend. Musicians who stayed on would receive a subsidy, and staff members who stayed through the transition process would receive severance plus a bonus directly tied to the length of their service. The payments were to honor the recipients' commitment to furthering Cunningham's artistic vision, incentivize them to stay as long as needed to execute the Legacy Plan, and assist them in their transition to new endeavors. Initially, the Legacy Plan did not specify the amounts to be paid or provide details on how the amounts were to be determined.

Sperling, as chairman of the Legacy Committee and legal advisor to CDF, felt that it was essential that any financial assistance provided by CDF be viewed as appropriate and fair not only by CDF's board and the recipients, but also by funders, other organizations who might look to the Legacy Plan as a model and by any governmental bodies that might examine the propriety of the assistance, such as the Internal Revenue Service and the Office of the New York State Attorney General. Both precedents and internal expertise on the subject were lacking, but Sperling recognized that a determination by unrelated outsiders would in any event carry more weight. He asked a group of outside experts to join an *ad hoc* Career Transition Committee to advise the board on appropriate and fair payments in these circumstances.<sup>10</sup> The committee had to consider a number of different employment circumstances and histories of involvement with the organization. These included musicians, employed as contracted workers; CDF staff, primarily salaried employees; dancers, whose transition assistance would have to be factored into the terms of their preexisting AGMA contracts; and production staff, few of whom were full-time but whose involvement became full-time for the duration of the Legacy Tour.

The committee recommended career transition packages with three purposes in mind: first, to assure retention of each staff member during the entire period that CDF wished to employ them; second, to provide financial assistance to staff members to help each transition to a new job; and, third, to recognize a staff member's length of service to CDF. To achieve the first two purposes, it was recommended that all dancers and other staff members should receive six months of pay based on their salary as in effect on June 30, 2012, plus six months of health care coverage. The dancers were given an

**Opposite:** MCDC in *Scenario* (1997) featuring costumes by Rei Kawakubo, which became the focus of *Dance Works III*, an exhibit mounted by the Walker in October 2012.  
Photo: ©1997 Icare/Moatti.

<sup>10</sup> The advisors were Alex Dubé, Executive Director of Career Transition for Dancers; Lois Gray, a professor emeritus of industrial and labor relations at Cornell University and specialist in arts organizations; and Bettina B. Plevan, a senior partner of the law firm Proskauer Rose LLP and recognized expert in employment law. The committee also included Sperling, CDF's Chairman Judith R. Fishman and Treasurer Anthony B. Creamer III and received input from Carlson and Wichern. Sperling also consulted briefly with Michael Kaiser, Executive Director of the Kennedy Center.



Cunningham Dance Foundation  
staff clearing out one of MCDC's  
storage units in March 2012.  
Photo: ©2012 Anna Finke

additional \$10,000. To achieve the third purpose, all dancers and other staff members were to receive an additional two weeks of salary for every year of service to CDF, up to a maximum of six months of additional compensation, and an additional month of health care coverage for every year of service up to a maximum of twelve months of coverage. The musicians would receive flat specified amounts, and CDF's archivist would receive a retirement package reflecting his years of service since the 1950s.

In adopting the recommended packages in January 2010, CDF's board made the payment of the career transition packages contingent on two things: the employee remaining with CDF as long as CDF needed him or her and CDF having enough money to pay the packages after all of its other financial obligations were satisfied. ❖

## Planned Closure

CDF's final effort was to understand the intricacies of its ultimate dissolution, ensure that it satisfied all outstanding obligations, and meet all regulatory requirements. While there were numerous contracts to which CDF was a party that had to be reviewed and, where necessary, terminated, CDF was fortunate that its largest such contract, its lease for the organization's space at Westbeth, terminated on June 30, 2012. This was the result of a lease renewal agreement that CDF had entered into with Westbeth after the adoption of the Legacy Plan, and it was therefore known at the time that the space would not be required after June 30, 2012.

In April 2011, a staff retreat was held to identify every step to be taken to close the organization by June 30, 2012. Each department was asked to come prepared to discuss what the planned closure would mean for their areas of responsibility and outline the resources needed to complete their work. Every item that had to be addressed was compiled into a master document, and supervisors for each department were appointed to attend weekly meetings to track progress.

CDF's bank account would need to be closed, which meant that every business account would also need to be closed or transferred to the trust as appropriate. These included accounts for telephone, internet, security systems, health insurance and the retirement plan, including those retirement plan accounts still held by former employees. Due to billing cycles, accounts had to be closed one or more months in advance. Services such as cellular phones were transferred to individual employees, while others, such as employee credit cards, were cancelled. In the final months, reimbursements for these and other expenses were made on a cash-only basis.

With the culmination of the plan, it was important to set a final date for individuals with outstanding pledges to make their final payments. A deadline of January 31, 2012 was set, which provided a tax deduction for donors in the new year. Additionally, formal requests to release cash reserve funds established by a number of foundations had to be made far in advance, requiring board approvals on both sides.

Separate and apart from processing and shipping materials to NYPL that had previously been identified and set aside as archival materials, an extensive and time consuming effort was required for the review of the organization's voluminous paper files that had accumulated over the years in order to identify which of the files should be added to the archives. Files





Merce Cunningham in silhouette in the Westbeth studio. Photo: Courtesy of the Merce Cunningham Trust

not sent to NYPL or the trust were destroyed. Sifting through the files and warehouses was an onerous and time-consuming job for every department.

The fact that the space at Westbeth was taken over by the Martha Graham Dance Company was fortuitous as the two companies were able to reach an agreement with respect to the dance floor in the studio, as well as office furnishings and some equipment. Still, there were huge quantities of electronic and other equipment and things, such as promotional merchandise, that had to be properly disposed of.

CDF had a number of nonprofit “sister” institutions, namely the John Cage Trust, the Foundation for Contemporary Arts, and the Robert Rauschenberg Foundation. These organizations were given the first opportunity to identify and accept items that could be of use to them, ranging from computers and production equipment to a collection of Cage instruments and objects used in performance. Similarly, CDF entered into an agreement with Dia Art Foundation to retain the portable dance floor that had been purchased for the company’s *Hudson Valley Events* at DIA:Beacon in 2008-2009, with a provision that DIA would loan the floor to the trust as needed for special projects.

CDF still owned a number of artworks separate from the collection acquired by the Walker. These artworks had been accumulated from various print portfolios and auctions organized to benefit CDF. The more valuable works were given to Christie’s to auction with reserves set to ensure they would not be sold below a minimum price. The remaining works were consigned to Artspace, an online marketplace specializing in contemporary art. Artspace was willing to store and insure the work until sale. The contract with Artspace was made with the trust so that revenue from future sales would go to the trust.

In addition, over the course of some 50-odd years, CDF had amassed a trove of memorabilia ranging from posters (many designed by Johns and Rauschenberg), books, DVDs and other merchandise of great sentimental and emotional value, but negligible or non-existent realizable value. The studio was given over to a display of the memorabilia and patrons, students and friends of the company were invited to come and take what they wished.

Parallel to closing the foundation, it was important to see that the trust was fully operational. In the fall of 2011, the trust announced that Lynn Wichern, CDF’s chief financial officer, would transition into the role of executive director of MCT. She joined Lent, director of repertory licensing, and Swinston, director of choreography, as a full-time employee

to administer the trust’s programs. MCT also announced that it would establish its headquarters at New York City Center in April 2012 and launch a pilot program, the Cunningham Fellowship, offering stipends to former dancers to restage Cunningham work during multi-week intensive workshops. Upon the closure of the studio at Westbeth, the trust began offering classes in Cunningham Technique and repertory workshops at City Center, effectively resolving the issue concerning the future of the studio and school.

CDF also needed to take steps to transfer all intellectual property rights, copyrights and trademarks that it owned to the Merce Cunningham Trust, and satisfy The Andrew W. Mellon Foundation that this had been accomplished for the works that Mellon had funded.

To confirm and clarify matters with respect to the intellectual property rights, CDF sent a letter to each of Cunningham’s artistic collaborators clearly outlining CDF’s planned transfer of the rights to the trust. The letter also set forth CDF’s proposal for how such rights would be handled in the future, together with a simple confirmatory agreement to be signed and returned by the collaborator.

CDF also had to dissolve itself as a legal entity. This required a number of steps, starting with the adoption of a plan of dissolution by CDF’s board and approval of the plan by CDF’s members. Thereafter, approval of the plan of dissolution by New York’s Department of Education and the Office of the Attorney General of New York was needed. With those approvals in hand, CDF was able to seek the approval of the plan of dissolution by a justice of the Supreme Court of New York. After the plan of dissolution was carried out and its remaining assets were transferred to MCT, CDF was then able to obtain regulatory approval to file a certificate of dissolution with the New York Secretary of State, which formally terminated its existence. All of this needed to be coordinated with the filing of CDF’s tax returns. ❖



Class at the Merce Cunningham Trust at New York City Center. Photo: ©2012 Paul Gaschler

## Conclusion



Merce Cunningham, collaborators and dancers following the premiere of *XOVER* (2007). The backdrop, which is based on Robert Rauschenberg's painting *Plank* (2003), was acquired by the Walker. Photo: ©2007 Kawakahi Amina



# Conclusions

CDF believes that the Legacy Plan and CDF’s experience in developing and executing the plan can provide useful guidance to other dance companies, particularly single choreographer companies, as well as other arts and other nonprofit organizations facing the need for post-founder planning. Some of the conclusions set forth below were as readily apparent at the outset of CDF’s process as they are today; others, only became apparent as CDF worked through the challenges it faced.

## Commitment

- ❖ The support of strong and committed artists and staff is essential to carrying out the plan.
- ❖ Unwavering commitment to the basic plan is essential to its success. Some will disagree with all or parts of the plan, but if the support for the basic plan is widespread, then the organization should stay committed. Should minor course corrections become necessary, the organization should make those changes promptly and decisively.

## Planning

- ❖ With an organization whose mission is to support the activities of its founder, the future may arrive sooner than expected. Start planning now.
- ❖ Strong, accessible institutional systems should be in place before the organization is faced with legacy issues and decisions. Simple steps such as centralized filing, protocols for storing electronic files on shared servers, a well-organized archive, and clear cataloguing of all inventory will facilitate planning and execution of any transition. Investment in digital technology, which is relatively inexpensive and holds untold rewards for documentation and preservation, is strongly recommended.
- ❖ A plan’s timeline should be analyzed as rigorously as possible to ensure that goals can be completed thoroughly and on-time with minimum stress for those involved. In the case of CDF, a three-year plan was ideal, with six months of planning for the two-year tour, and six months to prepare for the final closure. Two years also represented the maximum amount of time the organization could maintain the energy of presenters as well as dancers for the tour.
- ❖ In developing a plan, it is essential that all affected parties be included. In CDF’s case, this included Cunningham, the executive board, key funders, and presenters. There are two essential reasons for this. First, it is important to understand how each of the

parties react to the transition. Second, those consulted are more likely to be committed to and supportive of the plan, financially and otherwise, if they feel their views were heard in its development.

- ❖ Executing a legacy plan requires a greater number of employees than normal operating circumstances. Especially during the closure or transition period, when expected and unexpected loose ends will need to be dealt with in a short period of time, it is essential not to underestimate the number of hands that will be needed.
- ❖ It is best to be prepared for employees’ jobs to adapt and change from the beginning to the end of any transition. Anticipating where specific project management will be needed, and hiring people with a wide skill set, will greatly ease transition.
- ❖ The timing of the broad announcement of the plan should be carefully considered. It is essential to secure commitment from core leadership, including executive staff, executive board, and lead funders, before communicating plans too broadly. In addition, the plan’s framework should be firmly in place and its message clearly defined before it is taken to a wider circle. If, however, the organization waits too long, it can lose control of the manner in which the plan becomes public and thereby lose the value that a carefully managed announcement can have on the public perception of the plan.
- ❖ Hiring an outside planning and development consultant can provide needed expertise and perspective. Similarly, hiring a good PR consultant will assist in clearly articulating the organization’s goals and ensure that all of the institutional materials and public relations are prepared to support the necessary fundraising.

## Finances

- ❖ While it is obvious that any plan must be formulated in light of an organization’s ability to pay for it, recognition of this constraint is even more critical if the plan involves the ultimate closure of the organization. There is no ability to make up shortfalls. Bankruptcy presents not only moral and ethical issues, but legal ones as well, including potential liability for members of the organization’s board.
- ❖ Accordingly, proper budgeting becomes even more important than in normal times. All budgets should be created as conservatively as possible, tested extensively by an organization’s executive board and staff, and, where possible and appropriate, by experienced outsiders. In CDF’s case, it became apparent fairly quickly that the presentation of separate budgets for the plan and normal operating activities was not helpful. What was needed was a budget that contained all sources of revenue and all kinds of expenses. It also became clear that budgets were immediately needed for the entire three-year period ending with the closing of CDF, showing the three years together and individually.

- ⚡ A system must be developed to proof anticipated revenue before it can be added to the budget. If those revenues are not sufficient to support all elements of the plan, as well as the organization’s other activities and obligations, the plan should be cut back or modified, making some elements contingent on securing additional sources of revenue.
- ⚡ Commit to upfront and honest communication about financial decisions with all those affected. Access to knowledgeable and supportive advisors can prove invaluable when challenges present themselves (for CDF, they included DBA, Mellon, NFF and Helicon).
- ⚡ Many nonprofit organizations have fragile balance sheets with limited flexible cash. For such organizations to proceed successfully with a legacy-like plan they need to obtain funds that can serve as “recovery capital” to address any accumulated deficits and/or cash challenges.
- ⚡ It is equally important to maintain a contingency in the budget to absorb unexpected expenses or funding shortfalls. Throughout the Legacy Plan, CDF worked to maintain a contingency of about five percent of non-fixed costs to provide a cushion for unpredictable expenses and fluctuations in income.

## Fundraising

- ⚡ The organization must be realistic in assessing its ability to raise funds to execute a plan and in setting goals for a fundraising campaign. If the plan involves closure or the continuation of the organization without the founder or a clearly acceptable successor, the likelihood of attracting significant new donors should be viewed skeptically. Also, it should be assumed that some donors will withdraw support. Nevertheless, other donors, including members of the board and other core supporters, if they have been appropriately consulted and involved in the process, should be expected to provide financial support beyond their usual giving. Their support is essential. The majority of CDF’s funding came from donors already tied to the organization.
- ⚡ Once the plan is announced, the window of time available to raise funds to complete the plan is limited, so the importance of planning and the timeliness of campaign execution cannot be underestimated. In CDF’s case the first \$5.3 million was pledged within ten months after Cunningham’s death and the final \$5 million needed to fund the plan was secured by the end of 2011.
- ⚡ The importance of obtaining lead gifts and upfront commitments of flexible support, or “change capital,” cannot be overstated. Knowing that funds are available allows an organization to proceed with its plans; uncertainty means continuously re-figuring budgets, which is a waste of the organization’s resources at a crucial time. Funds that are not restricted to a particular element of a given plan are especially helpful given

the frequency of necessary plan adjustments. It is unclear as of this writing how deeply the concept of “change capital” will take hold in the funding community. CDF’s experience suggests that such a movement would make a real difference.

- ⚡ In assessing the organization’s ability to raise the funds to support a plan and in planning the fundraising campaign, the organization should carefully consider what aspects of the plan can be emphasized and leveraged. As noted above, closing the organization is definitely not one of them. Nor, as it turned out in CDF’s case, were funders attracted to providing for career transition payments. On the other hand, CDF found that the Legacy Tour and commissioning fees for revivals during the tour were extremely appealing, as were the preservation-related projects such as filming, the Dance Capsules and *Mondays with Merce*.
- ⚡ If the plan involves closing the organization, are there assets that may be sold, and what is their realizable value? In CDF’s case, there were highly valuable sets and costumes, the disposition of which generated approximately 12% of the total CDF budget for the three years that included the Legacy Plan.
- ⚡ The timing of grant cycles should be considered when a schedule is established. Had the dance company performed at least once in 2012, CDF would have been eligible for additional funding from numerous funders working on a calendar fiscal year.
- ⚡ A number of final reports could not be submitted until CDF had completed its fiscal year 2012 audit, leaving a fair amount of work to do post-closure. Understanding what will be required post-closure or transition and identifying the resources to complete the work is important.

## Legal Practices

- ⚡ Good legal counsel is essential to achieving the goals of any plan, and is best acquired by having good legal representation on the board.
- ⚡ Careful and thoughtful attention should be paid to where the intellectual property (IP) rights rest with choreography or any other main artistic element. Precautions should be taken, for example, by engaging legal counsel to establish that the rights are in sync with the current and future needs of the organization and the artist. Ensuring the greatest possible clarity with respect to all artistic agreements is essential. This encompasses choreography as well as the photographs, video, film, music, and other ancillary elements to any work. Keeping a discrete file for each artistic collaborator ensures that IP agreements relative to an artist’s work are in one place. It is easiest to resolve IP issues while all collaborators are living.



Final Tour

- ❖ The size and scale of the tour, the extent to which accommodations can or should be made to presenters, and the forward planning required to maintain the health of the company need to be taken into consideration for each engagement booked on a large-scale tour. In a typical touring season, the company had roughly 12 dances in the repertory. For the Legacy Tour, the repertory was increased to 18, reflecting the revival of seven seminal works viewed as important to restage for preservation and to share with audiences before the company disbanded. The expanded repertory for the Legacy Tour had huge ramifications on the budget and placed enormous demands on the company.
- ❖ If possible, earmarking funds to help subsidize the company’s fees is desirable when booking a tour within a tight timeframe. Budget pressures forced CDF to eliminate presenter subsidies. This diminished its ability to help smaller presenters participate by filling in touring weeks, and to capitalize on last minute opportunities.
- ❖ Elaborate and/or ancillary projects in a legacy phase should be treated with caution. Activities such as intensive residencies can be draining and tangential projects, whether undertaken internally or by outside entities, can add extra and unanticipated work. However, residency activities added tremendous value to the Legacy Tour and enabled presenters to secure additional funding or justify the expenditure required to present the company.
- ❖ With respect to a dance company, dancer weeks should be scheduled in a way that minimizes extended breaks. Sufficient rehearsal weeks and the provision of physical therapy will minimize injuries, which in MCDC’s case were prone to happen after a lengthy break.

Melissa Toogood and Rashaun Mitchell in *Crises* (1960).  
Photo: ©2010 Briana Blasko



- ❖ Small to medium-size touring companies with a small production unit should consider adding a production coordinator to work from the main office to advance shows. With the company’s production team on the road for long stretches, often in different time zones, the addition of a full-time production manager to interface with presenters, coordinate freight shipments, and track budgets was indispensable.



Jamie Scott and Dylan Crossman, *Park Avenue Armory Event* (2011).  
Photo: ©2011 Stephanie Berger

Preservation

- ❖ To preserve an artist’s legacy, organizations should not defer or short change systematic documentation efforts employing traditional methods of archiving along with the use of new technologies. The preservation of an artist’s legacy, while manifested in the value of the art itself, is reliant upon how carefully the work is documented over time. The value of these preservation efforts is then contingent upon making the collection of materials accessible to the public. The Legacy Plan benefited from a long history of archiving Cunningham’s work: the agreement CDF had made with NYPL to purchase the Merce Cunningham Archive, the acquisition of the company’s collection of sets and costumes by the Walker Art Center, and the development of digital Dance Capsules to provide the MCT with the tools it would need to license, study and stage his work in the future.
- ❖ In CDF’s case, its preservation efforts also had a financial value, generating a substantial return on its investment from the sale of its archives and collections, and facilitating the licensing of Cunningham’s work that will generate revenue for the trust.

- Investing in new technology has many rewards and provides superior quality, justifying the cost. As CDF learned throughout the production of *Mondays with Merce* and the development of the Dance Capsules, digital technology is relatively affordable and has many applications. Filming the company in rehearsal and on stage in high definition digital video provided the source material for use in promoting the company and creating a number of Dance Capsules. Digitizing photographs and files from the archives not only preserved these assets in a stable and readily accessible format, but also provided key elements for the Dance Capsules. These efforts not only increased the value of the Merce Cunningham Archive, but also provided the trust with a cost-efficient, portable, non-degradable and secure way to maintain and utilize the assets.
- Unless “best practice” methods are already in place and strictly observed for the storage of all files and objects, the amount of time required to process decades of paper and electronic files, not to mention items and objects stored in warehouses, should not be underestimated. CDF belatedly realized the importance of this point, and, while it did add a full-time position to assist with the Archives, it underestimated the time other departments would need to organize and prepare its holdings for their future homes.
- Additionally, the Dance Capsules would have benefitted from a dedicated editor to establish a consistent language and protocol to make sure that the materials selected for each Dance Capsule were uniformly prepared and catalogued. While the different perspectives of each department selecting materials to include in the Dance Capsules was essential—for example, the production department selecting the video that showed the lighting cues, and artistic personnel selecting video that showed the choreography—the video from different viewpoints and time periods had to be reconciled so that someone restaging the work could accurately cross-reference the material. At the conclusion of the Legacy Plan, CDF delivered a functioning version of the Dance Capsule website to MCT, but further editing was required to refine both

the assets housed in the Dance Capsules and to increase the accessibility of the website for its intended users. Fortunately, digital technology lends itself to content management, making upgrades and additions to both the software and the assets possible. Moreover, the fact that there was an entity, the Merce Cunningham Trust, to continue where CDF left off was important to the overall quality and practical application of the preservation efforts.

Merce Cunningham in *Fabrications* (1987), which became the first prototype Dance Capsule, sponsored by La Cinémathèque de la Danse with support from the French Cultural Ministry.  
Photo: ©1987 Dee Conway



All staff, including the dancers pictured here in the revival of *Squaregame* (1976), were given financial assistance to help with career transition.  
Photo: ©2011 Anna Finke

### Career Transition Payments

- Providing for career transition payments is a moral and practical response to a planned closure. Such payments help keep personnel together until the end, provide real and legitimate transitional support, and give the staff a sense that their work is being valued and their well-being looked after. Career transition, however, was not widely appealing to most funders.
- Continuing health insurance for a period after closure may be desirable but can present huge challenges for an organization planning to close. Health insurance options should be researched carefully, and whatever is offered should be clear, specific, and deliverable. While the dancers were covered through AGMA, once CDF closed, its insurance contract could not be extended to provide COBRA coverage to its employees and the question of health insurance took extensive time and effort to resolve.
- The rules established regarding eligibility to receive career transition were clear and helpful for existing staff, but it became awkward for those employed after the plan began. Although they joined the team knowing the terms of their engagement, they nevertheless deserved some form of financial recognition but were ineligible for the transition payments as such. This recognition can be handled through the allowance for discretionary bonuses. ❖



## Appendices



The revival of *Roaratorio* (1983) was filmed at Walt Disney Concert Hall in Los Angeles as part of CDF's preservation efforts.  
Photo: ©2010 Anna Finke

Appendix A

The Cunningham Dance Foundation, its activities and the Merce Cunningham Trust

The Cunningham Dance Foundation (CDF)

CDF was incorporated in New York in 1964 as a not-for-profit membership corporation, and qualified as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, as a necessity for administering the Merce Cunningham Dance Company’s 1964 World Tour. Its stated purpose was to “support, sustain, and further the wide-ranging activities of Merce Cunningham.” CDF supported all aspects of Cunningham’s creative life, growing to accommodate MCDC’s worldwide success and the establishment of the Merce Cunningham Studio and School, as well as a range of other archival, educational, and artistic projects. Over the years, members of the Board provided crucial financial, legal, and marketing support. In its final year, the full-time administrative and production staff numbered 20, not including part time help, several interns, and outside consultants.

CDF supported the following components of Merce Cunningham’s creative life:

**The Merce Cunningham Dance Company (MCDC)** MCDC was officially created in 1953, consisting of Merce Cunningham and five dancers dedicated exclusively to the performance of Cunningham’s choreography. The creation of a company provided a formal context through which Cunningham could continue to explore his choreography and teach his technique, which was his method of training dancers to perform his work and, in the early years, a way of keeping them together as a company between engagements. In 1968 MCDC became one of the first modern dance troupes to sign American Guild of Musical Artists (AGMA) contracts.

One of the premiere modern dance companies in the world, MCDC toured internationally and staged new work by Cunningham almost every year during its nearly 60-year existence. Upon its closure on December 31, 2011, MCDC consisted of 14 dancers led by Robert Swinston, who, in addition to dancing in the Company, served as Cunningham’s assistant and became director of choreography after Cunningham’s death; and the MCDC Music Committee comprised of four musicians.

**The Merce Cunningham Studio and School** The Merce Cunningham Studio was located in several places in lower Manhattan before finding its permanent home on the 11th floor of the Westbeth building in New York City’s West Village. In addition to serving as the rehearsal space for MCDC, the Studio was an accredited founding member of the National Association of Schools of Dance, offering daily classes in Cunningham Technique from beginning to advanced levels and two certification programs. Cunningham Technique is a rigorous, but not codified, training technique for dancers, placing an emphasis on acquiring strength, clarity and precision. Maximum use of the spine and torso are key and concepts of space and time exist in a relative framework, one that differs from other contemporary dance techniques.

**Repertory Understudy Group (RUGs)** The Repertory Understudy Group was formed in 1983 to provide young dancers with intensive training in Cunningham Technique and performance experience and to work alongside MCDC. The RUGs rehearsed dances from the Company’s inactive and active repertory and, in Cunningham’s final years, worked with him to set and refine material when MCDC was on tour without Cunningham. In addition, they performed an educational role in the Studio’s in-school residencies in New York City public schools, served as understudies to MCDC and as a source for new members of MCDC.

**Studio Performance Program for Young Artists** The Studio Performance Program for Young Artists gave emerging choreographers access to the Studio space at a reduced rate, technical staff and promotional assistance, placing a professionally-produced New York City performance within reach for early-career choreographers.

**Merce Cunningham Archive** The Merce Cunningham Archive, on the second floor of the Westbeth Building, housed the materials archived since the Company’s inception by dedicated Archivist David Vaughan. It was a rich educational and research resource for scholars and students, consisting of films, programs, photographs, and other materials.

**Etc.** Other activities of the company included licensing works, video sales and special projects such as the internet series *Mondays with Merce*.

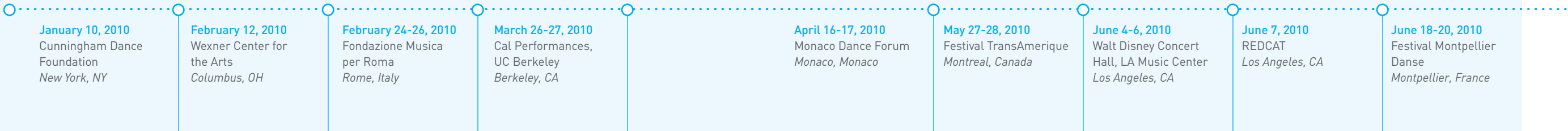
The Merce Cunningham Trust (MCT)

The mission of the Merce Cunningham Trust is to preserve, enhance, and maintain the integrity of the choreographic and other artistic works of Merce Cunningham, and make such works available for the benefit of the public.

In 2012, MCT established headquarters at New York City Center, where it offers classes in Cunningham Technique™. The Trust also launched a pilot program, the Cunningham Fellowship, which awards stipends to former dancers to restage Cunningham’s work during a multi-week intensive workshop. MCT will continue to license Cunningham works to leading dance companies and educational institutions worldwide, and will partner with cultural institutions to mount special projects, performances, and exhibitions that celebrate Cunningham’s artistic achievements.

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The Legacy Tour





Appendix B

Merce Cunningham Dance Company – The Legacy Tour

Choreography Merce Cunningham (1919–2009)  
Founding Music Director John Cage (1912–1992)  
  
Director of Choreography Robert Swinston  
Assistant to the Director of Choreography Jennifer Goggans  
Dancers Brandon Collwes, Dylan Crossman, Julie Cunningham, Emma Desjardins, Jennifer Goggans  
John Hinrichs, Daniel Madoff, Rashaun Mitchell, Marcie Munnerlyn, Krista Nelson, Silas Riener,  
Jamie Scott, Robert Swinston, Melissa Toogood, Andrea Weber  
  
Music Committee David Behrman, John King, Takehisa Kosugi, Christian Wolff

The Legacy Tour Repertory Revived works for the Legacy Tour (\*).

<i>Suite for Five</i> (1956) Music by John Cage, <i>Music for Piano</i> Décor by Robert Rauschenberg	<i>Duets</i> (1980)* Music by Paedar and Mel Mercier, arranged by John Cage, <i>Improvisation III</i> Décor by Mark Lancaster	<i>Split Sides</i> (2003) Music by Radiohead, Sigur Rós Décor by Robert Heischman, Catherine Yass
<i>Antic Meet</i> (1958)* Music by John Cage, <i>Concert for Piano and Orchestra</i> Décor by Robert Rauschenberg	<i>Quartet</i> (1982)* Music by David Tudor, <i>Sextet for Seven</i> Décor by Mark Lancaster	<i>XOVER</i> (2007) Music by John Cage, <i>Aria</i> , <i>Fontana Mix</i> Décor by Robert Rauschenberg, <i>Plank</i> (2003)
<i>Crises</i> (1960) Music by Conlon Nancarrow Décor by Robert Rauschenberg	<i>Roaratorio</i> (1983)* Music by John Cage, <i>Roaratorio</i> , <i>an Irish Circus on Finnegans Wake</i> Décor by Mark Lancaster	<i>Nearly Ninety</i> (2009) Music by John Paul Jones, Takehisa Kosugi, Sonic Youth Décor by Benedetta Tagliabue, with video design by Franc Aleu Costumes by Romeo Gigli for <i>io ipse idem</i> Lighting by Brian MacDevitt
<i>RainForest</i> (1968)* Music by David Tudor Décor by Andy Warhol, <i>Silver Clouds</i> (1966) Costumes by Jasper Johns	<i>CRWDSPCR</i> (1993) Music by John King, <i>blues 99</i> Décor by Mark Lancaster	<i>Nearly 90<sup>2</sup></i> (2009) Music by John Paul Jones and Takehisa Kosugi Costumes by Anna Finke Lighting by Christine Shallenberg
<i>Second Hand</i> (1970) Music by John Cage, <i>Cheap Imitation</i> Décor by Jasper Johns	<i>Pond Way</i> (1998)* Music by Brian Eno, <i>New Ikebukuro (for three CD players)</i> Décor by Roy Lichtenstein, <i>Landscape with Boat</i> (1996)	<i>Events and MinEvents</i>
<i>Sounddance</i> (1975) Music by David Tudor, <i>Toneburst</i> Décor by Mark Lancaster	<i>BIPED</i> (1999) Music by Gavin Bryars, <i>Biped</i> Décor by Shelley Eshkar, Paul Kaiser	
<i>Squaregame</i> (1976)* Music by Takehisa Kosugi, <i>S.E. Wave/E.W. Song</i> Décor by Mark Lancaster		

Appendix C

Cunningham Dance Foundation Board of Directors

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Molly Davies, <i>Co-Vice Chair</i>	Beinecke	Harvey Lichtenstein	Allan G. Sperling
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	Katherine D. R. Hayes	Kirk A. Radke	
	Rosalind G. Jacobs	Eileen Rosenau	
	Pamela Kramlich	Nicholas Rudenstine	

Cunningham Dance Foundation As of January 2012

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<i>Assistant Production Manager</i> Carrie Wood	<i>Archival and Dance Capsules Associate</i> Shanna Kudowitz	
<i>Director of Repertory Licensing</i> Patricia Lent	<i>Faculty Chair</i> Carol Teitelbaum	
<i>Archivist</i> David Vaughan	<i>Legacy Fellow</i> Bonnie Brooks	
<i>Mondays with Merce Producer/ Writer</i> Nancy Dalva		

June 25-29, 2010  
Xacobeo Festival,  
Galicia Spain

August 28-30, 2010  
Kunstfest Weimar  
Erfurt, Germany

September 28-29, 2010  
New York City Center  
New York, NY

October 1, 2010  
State Theater  
New Brunswick, NJ

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Baryshnikov Arts  
Center  
New York, NY

October 26-30, 2010  
The Barbican Centre,  
Dance Umbrella,  
Stratford Circus  
London, United Kingdom

November 3-13, 2010  
Théâtre de la Ville,  
Festival d’automne  
Paris, France

November 17, 2010  
La Comédie de  
Clermont-Ferrand  
Clermont-Ferrand,  
France

November 20, 2010  
Metz-en-Scène Arsenal  
Metz, France

November 24, 2010  
Grand Théâtre  
Amiens, France

Appendix D

Funding Credits

The Cunningham Dance Foundation would like to acknowledge and thank the many institutions and individuals whose generous support was essential to the success of the Legacy Plan.

Legacy Partners

The Merce Cunningham Trust for its stewardship of Cunningham’s work into the future; the New York Public Library for the Performing Arts, for maintaining and providing public access to the Merce Cunningham Archives; and the Walker Art Center, which acquired MCD’s decors, sets, and costumes.

Lead support for the Cunningham Dance Foundation’s Legacy Plan was provided by *Leading for the Future*, a program of Nonprofit Finance Fund, funded by the Doris Duke Charitable Foundation; The Andrew W. Mellon Foundation; CDF’s Board of Directors; and an anonymous donor.

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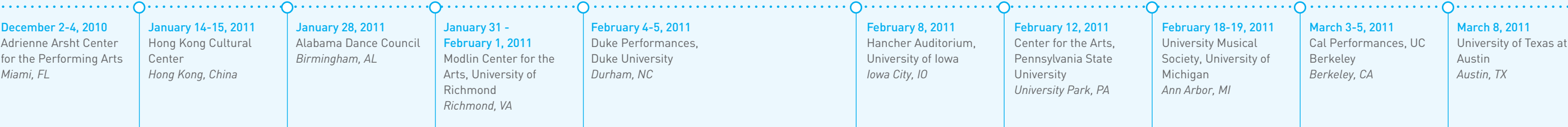
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**Up to \$300**

John Achatz  
Greg Allen  
Mindy Aloff  
Gícia Amorim  
Deborah Auer  
John & Nancy Austin  
Ananda Badet & Kieffer Denning  
Ella Baff  
Sherrie Barr  
Ronald Bentley & Salvatore Larosa  
Donatella Bertozzi  
John Bivona  
Julia Blackburn  
Adam Blumenkrantz  
Tanya Bonakdar  
Peter A. Boysen  
Nancy Lou Bright &  
Joseph Galipeo  
Joanna Brotman  
Christopher Bruhn  
Walter & Mary Beth Buck  
Timothy Buckley  
Ronald L. Bunker  
Randy Burd  
Abigail & Cass Canfield, Jr.  
Karen Carr  
Bodil Castot  
Claire Catenaccio  
Jonathan Chaukovsky  
Ellen Chenoweth  
Constance Clare-Newman  
Emily C. Coates

Rachel Cohen  
Stephan Cohen  
Michael Cole  
James Coleman  
Nicole Collins  
Nancy Cosner  
Jane Sage Cowles  
Page & Jay Cowles  
David Cox & Wenda Habenicht  
Barbara Crane  
Douglas Crimp  
Jill Cunningham  
Melissa Dawn  
Joe Deer  
Renko & Stuart Dempster  
Christophe de Menil  
Diane de Terra  
Patricia Deuter  
Lee Ann Dillon  
Dan Dodt & Linda Blacketer  
Mary & Rick Donahoe  
Devin Dougherty  
Jenna Duffy  
Jennie Dunham  
Susan Dunn  
Marjorie Dybec  
Karen Eliot  
Beverly Emmons  
Barbara Ensley  
Lucy Epstein  
Paul Fearer & Sally Randel  
Molissa Fenley  
Evelyn Ficarra

Susan Wheeler Foot  
Isabel Fox  
Benjamin Fraley  
Bess Fredlund  
Arlene Freedman  
Vincent & Shelly Fremont  
Eleanor Friedman  
Micaela Fujita  
Anthony Gammardella  
Gandini Juggling  
Alex Gaskell  
Anna Gaskell  
Sandra J. Genter  
Julie George  
Leslie Getz &  
Donald F. McDonagh  
Flora Gillespie  
Jessica Gillis  
Jenny Goldberg  
June O. Goldberg  
James N. & Katherine Goodman  
Pamela Graham  
Cory Greenberg  
Mimi Gross  
Mary A. Hack  
Jane Hamburger  
Doug Hamby  
Jaime Hamlin  
Meg Harper  
Linda Caruso Haviland  
David Hawkanson  
Joan Hershey  
Marjorie Hess

July 8-9, 2011  
Hopkins Center for the  
Arts, Dartmouth College  
Hanover, NH

July 16, 2011  
Lincoln Center Festival  
New York, NY

August 24-27, 2011  
Palacio de Bellas Artes  
Mexico City, Mexico

September 9-11, 2011  
Richard B. Fisher  
Performing Arts Center  
at Bard College  
Annandale-on-Hudson, NY

September 22-23, 2011  
Tanz im August/Hebbel-  
Theater  
Volksbühne at Rosa-  
Luxemburg-Platz  
Berlin, Germany

September 26-27, 2011  
Akademie der Künste  
Berlin, Germany

October 1-2, 2011  
Dance Umbrella,  
Stratford Circus  
London, United Kingdom

October 5-8, 2011  
The Barbican Centre  
London, United Kingdom

October 27-29, 2011  
Paramount Theater  
Seattle, WA

November 1, 2011  
Stanford Lively Arts  
Stanford, CA



David Hill	Vera Lutter	Linda Pastore
Marcus Huie	Robert Majoros	Laura Paul
John Ireland	Stanford Makishi	Avril Peck
Lynn Jacobson	Carol Mann & Howard Helene	Charlotte Penenberg
Jill Jacobson-Bennett	Donald P. & Denise Azzari Marazzo	Kathryn S. Pershan
Marian B. Javits	Ira Mark	Lois Rakoff
Beatrice Johnson	Erica Marks & Dan George	Albert Reid
Sarah Johnson	Gail Marks	Susan Restler
Charles Johnstone	Carola Marte & Douglas Stein	Nancy Reynolds
Marcella Kahn	Julie Martin	Nicole Robertson
Steven Karanikolas	Todd Martin	Margarete Roeder
Dennis Karr	Gary McCraw	Jean Roland
Nancy Kaufman	Constance Melrose	David M. Ross
Maura Keefe	Frances Millberg	Richard Rothar
Susan A. Kelly	Clara Miller	Joan Sabba
Kathleen E. Klein	Gill Wright Miller	Barbara Sahlman
Catherine Kodat	Greg & Vicki Mitchell	Rona Joan Sande
Mary Ann M. Koontz	Polly Morris	Iñaki F. Sastre
Judith Kottick	D. W. Moyer	William Schaffner
Rhoda Krasner	Ann Murphy	Joy C. Schein
Barbara & Irwin Kremen	Nabisco Foundation	David Schleifer
Robert Kurshan	Harriet Newburger	Joshua Seiden
Sandra Kurtz	Joseph Newland	Theresa Sgobba
Monique Lanoix	Alessandra Nicifero	Stephen Shelley
Martha Lask & Jonathan Harmon	Ruth & Peter Nielsen-Jones	Linda Shelton
Eric C. Latzky	Renae Williams Niles	Vernon Shetley
Doralice Soares Leao	Carol Nolte	Margerite Shore
John Leffler	Ms. Margaret Nomentana	Danielle Short
Mr. & Mrs. Arnold Lehman	Nancy Nowacek	Randall Shown
Margot Lehman	Morgan O'Hara	Holly Sidford
Ann Lewis	Michael K. Ozment	Sara Slawnik & Phil Ashton
Erica Ling	Doris Palca	Jean Chapin Smith
John & Mary Lithgow		Lois Smith

Richard Smith	Kathleen E. Taylor	Mr. Cliff Weinstein
Allegra F. Snyder	Alice Teirstein	David N. White
Andrea Snyder	Françoise Teitelbaum	Rebecca Wilhelms
Elin Sowle	Ann Temkin	Frank & Frances Wilkinson
Jody Sperling	Barbara B. Toole	Cydnee Yamamoto
Willard Spiegelman	Randy Tully	LeAnn & John Yannelli
Adam Stolorow	Marya Ursin	
Ceceile Strand	Maria Pia Urso	
Lynne & Bertram Strieb	Joanne W. Von Blon	
Deborah Sussman	Thomas von Foerster	
Theresa Swink	Carol K. & Peter Walker	
Florence Tannenbaum	Marya Warshaw	
Judith Tannenbaum	Emily Wass yng & Win Lockwood	
Kim Tanzer	Reishi Watanuma	



A memorial for Merce Cunningham was held on October 28, 2009 at Park Avenue Armory. MCDC, together with dozens of former company dancers and musicians, performed *Event in Honor of Merce*, a five hour marathon attended by thousands. Photo: ©2009 Stephanie Berger

November 4-6, 2011  
Walker Art Center  
Minneapolis, MN

November 10-12, 2011  
Debartolo Performing Arts Center, University of Notre Dame  
Notre Dame, IN

November 15, 2011  
Krannert Center for the Performing Arts, University of Illinois at Urbana-Champaign  
Urbana, IL

November 18-19, 2011  
Harris Theater, Dance Center at Columbia College  
Chicago, IL

December 2-3, 2011  
John F. Kennedy Center for the Performing Arts  
Washington D.C.

December 7-10, 2011  
Brooklyn Academy of Music  
Brooklyn, NY

December 15-23, 2011  
Théâtre de la Ville, Festival d'automne  
Paris, France

December 29-31, 2011  
Park Avenue Armory  
New York, NY

## The Financial Story of CDF



New Year's Eve 2011.  
Photo: ©2011 Samantha Siegel



# The Financial Story of the Cunningham Dance Foundation

By Rodney Christopher and Jina Paik, *Nonprofit Finance Fund (NFF)*

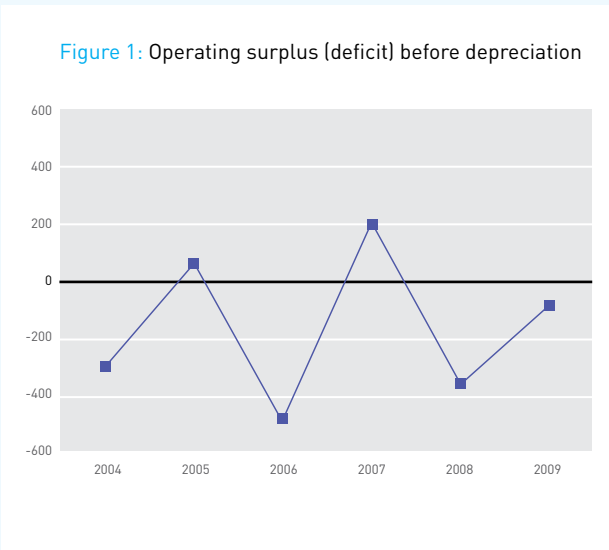
Like many nonprofit arts and cultural organizations, the Cunningham Dance Foundation experienced financial challenges throughout its history. Yet, when the organization’s leadership set its collective minds to the task of honoring Cunningham’s legacy, they achieved remarkable financial success. What made the organization distinct financially was the support Cunningham enjoyed from other great 20th century contemporary artists. These artists donated, in addition to cash, artwork that the organization could sell, using the proceeds as revenue in difficult pre-Legacy years. Also, many of them created sets and costumes for Cunningham’s dances, and it was the sale of the collection of these sets and costumes, in combination with a successful world tour and fundraising campaign, that made it possible for the organization to realize all of the elements of its groundbreaking Legacy Plan.

The financial story of the Cunningham Dance Foundation is told here in the hope that it will be inspiring and instructive for the field. Footnotes are provided to explain analytical details for interested readers.

### Pre-Legacy Operating Performance and Liquidity: An Uphill Battle

While achieving great critical acclaim and the adoration of audiences around the world throughout its history, CDF had trouble earning and raising enough money each year to cover its operating expenses, let alone save for its future. Prior to the conception of the Legacy Plan and through the planning period, CDF’s financial condition was precarious.

Figure 1 shows CDF’s financial performance from 2004 through 2009, the period prior to the implementation of the Legacy Plan (fiscal years end June 30, hence 2009 was the last pre-Legacy year).<sup>1</sup> With an annual budget that averaged \$4.5 million (before depreciation), deficits were incurred in four of the six years and reached as high as \$482,000, or 12% of expenses, in 2006; the largest surplus was \$208,000 in 2007.<sup>2</sup> Without sales of donated artwork, which yielded nearly \$800,000 during this six-year period, the Cunningham Dance Foundation would have struggled even more to fulfill Cunningham’s artistic vision.

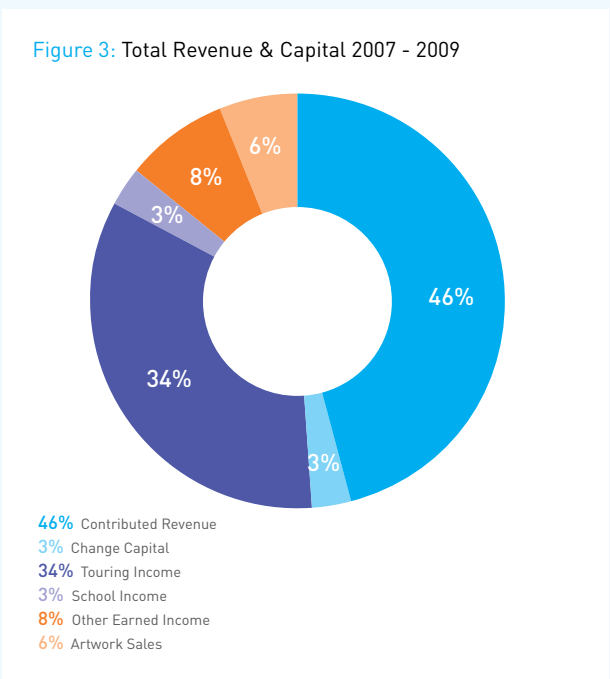
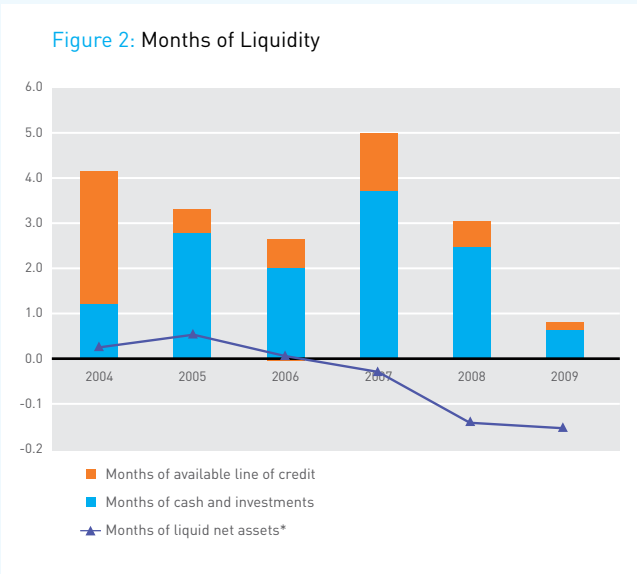


NFF advises leaders and supporters of nonprofits to pay attention to two primary measures of financial health: surpluses and liquidity. The former gives organizations room to succeed and save; the latter facilitates paying bills on time, absorbing risk and pursuing opportunity. Ultimately, surpluses strengthen liquidity while deficits weaken it. Generally, NFF encourages nonprofit arts organizations to aim for at least enough liquidity to cover three months of expenses.<sup>3</sup>

In the case of CDF, annual deficits led to diminished levels of “organization-controlled” or unrestricted liquidity. As the line in Figure 2 (on the next page) shows, the liquid portion of CDF’s unrestricted net assets (which included an operating reserve) was sufficient to cover less than two weeks of expenses from 2004 to 2006 and was increasingly negative from 2007 through 2009.<sup>4</sup>

Fortunately, CDF had access to an external line of credit and cash restricted for future periods. As depicted by the stacked bar in Figure 2 below, the combination of cash on hand (blue) and the available portion of the line of credit (orange) was at or above 3 months for most of the period until 2009 when it dropped below 1 month. In 2009, the organization experienced a bit of a “perfect storm.” It had its peak expense budget of the six-year period as it celebrated Cunningham’s 90th birthday at the same time that the economy fell into The Great Recession, which made it unwise to sell any donated artwork at “below-market” rates. An early release of change capital (which NFF called “recovery capital”—see sidebar at the end of this section) helped the organization negotiate this precarious moment.

CDF’s negative liquidity position required resolution when the organization moved into its Legacy period. As chronicled in the case study, CDF’s board was clear that when the organization closed its doors there could be no unpaid bills—the organization had to be solvent.



### Pre-Legacy Business Model

Figure 3 above shows the composition of total revenue for 2007 through 2009, the three years preceding the Legacy period. CDF was fortunate to have a diversified blend of revenue from two main sources: touring fees and grants and contributions from foundations, government, corporations and individuals. Like many arts and cultural organizations, CDF relied on grants and contributions for nearly half of its revenue. Equally important to understand is that about 33% of contributed revenue (15% of total revenue) during the period was provided by releases of restricted multi-year grants for specific programming rather than as general operating support.

Among other sources of revenue, tuition income from the school was minimal, and the 6% of income generated from sales of donated artwork made a real difference to CDF’s bottom line. Other earned income included royalties, licensing fees, commissioning fees, studio rentals, etc.<sup>5</sup>

<sup>1</sup> To isolate true operating performance as distinct from changes in unrestricted net assets that appear in CDF’s audits, NFF excluded extraordinary items from “revenue,” e.g., loan forgiveness and the book value of donated artwork. However, sales from artwork are included in revenue.

<sup>2</sup> CDF’s annual depreciation expense between 2004 and 2009 was \$45,000, relatively insignificant.

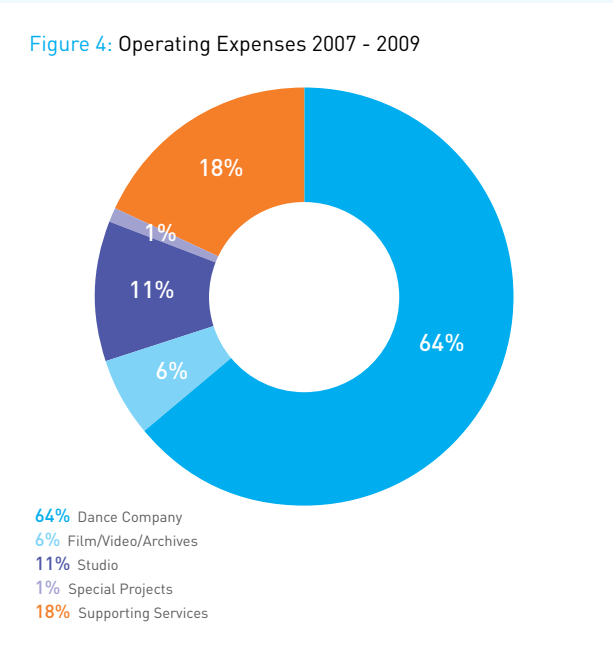
<sup>3</sup> The number of months of liquidity an organization should have on its balance sheet ultimately depends on a range of factors, including the predictability of its cash flow, whether it owns property, and whether it has restricted dollars that can be used for programs and operations in the next 12 months [i.e., committed revenue].

<sup>4</sup> The concept of liquidity in the nonprofit sector is a bit complex because donors can restrict dollars for specific purposes and time periods. As a result, an organization can have cash on its balance sheet but not have management freedom to spend it to address any or all of its needs. Thus, while cash is an important measure of liquidity it can be misleading. Isolating funds that are in an organization’s control requires looking at the unrestricted portion of net worth (net assets). Yet, for some nonprofits, a portion of unrestricted net assets represents their equity stake in property and equipment which does not pay their bills, and must be subtracted to isolate the liquid portion. In the case of the Cunningham Dance Foundation, a further complication was its donated artwork—it was an unrestricted net asset, but illiquid until it was sold, so we deduct the artwork from our calculation of true liquidity.

<sup>5</sup> See the Capital sidebar to learn more about the 3% recovery capital slice of the pie.

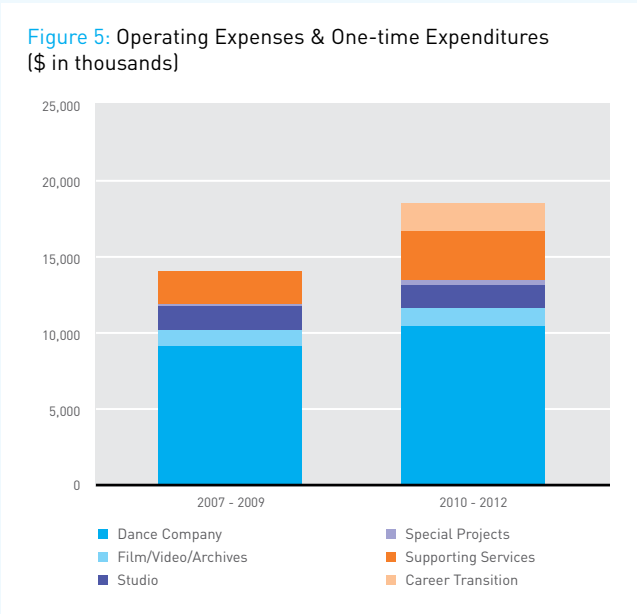
A look at expense composition (Figure 4 below) during the same three-year period indicates that nearly two-thirds of CDF’s dollars were spent on the activities of the dance company. The remainder was split equally between supporting services (management and fundraising) and other program activity, including preservation and the school. As described in the case study, the organization had been investing in preservation for many years before the Legacy Plan was conceived, which made the creation of digitized dance capsules much easier than it might have been otherwise.

In two of the three years, revenue was insufficient to cover expenses and, like many of its peers, CDF struggled year to year. Leadership knew that this was not sustainable and set forth an ambitious and carefully managed course through its Legacy Plan.



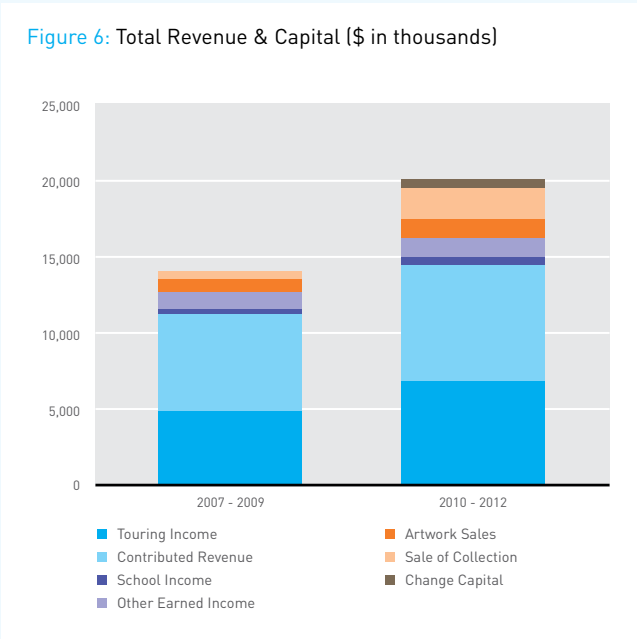
**Achieving The Legacy Plan: Hard Work And Good Fortune**

CDF’s finances during the three-year period of the Legacy Plan, 2010 through 2012, were markedly different from the three years prior, reflecting Legacy activities above and beyond normal operations. Figure 5 above presents the combined budgets for 2007 to 2009 beside



the combined budgets for 2010 to 2012. For the Legacy period, the combined budget was \$4.6 million greater than in the previous period. Of this, \$1.8 million was for the one-time career transition support expenditure, while the other \$2.7 million represented an increase in the regular operating budget (marked by the top of the orange “supporting services” bar).

The increase in expenditures was supported by an expanded revenue and capital model, as shown in the next page in Figure 6. Contributed dollars, which included \$1,075,000 in change capital from Nonprofit Finance Fund<sup>6</sup> (with funds from the Doris Duke Charitable Foundation), a \$1,000,000 lead gift from The Andrew W. Mellon Foundation, pledges from CDF’s Board totaling over \$1.1 million and an anonymous gift of \$1 million, were in total \$1.4 million greater during the Legacy period than the prior three years; touring income was \$1.9 million greater. The sale of the collection of sets and costumes was a key element in the success of the Legacy fundraising campaign, making the total raised for the plan \$10.3 million.



**Conclusion: Remarkable Triumph**

As a result of its success with earning and raising funds alongside careful management of expenses, CDF was able to achieve three critical elements of its ambitious plan: the celebratory final tour, development of digital dance capsules as an accessible archive of Cunningham’s work, and—the element hardest to underwrite—a career transition fund to support the artists and staff who made achieving the Legacy Plan possible.

The final element of the Plan involved transferring remaining assets from the Foundation to the Merce Cunningham Trust. On its closing date of June 30, 2012, CDF expected to transfer \$428,000 of donated artwork and about \$725,000 in cash to the Trust. Thus, despite many years of operating deficits prior to the Legacy period, the organization exceeded its final goal of ensuring CDF was solvent upon closure—an impressive and hard-earned effort, indeed.<sup>7</sup>

**Change and Recovery Capital: Critical Tools For Graceful Exits**

As described in the case study, early commitments of support for the Legacy Plan acted more like capital than ordinary revenue. The Leading for the Future investment of \$1.075 million, made by Nonprofit Finance Fund with funds from the Doris Duke Charitable Foundation, was a creative and important application of the change capital concept.

Change capital provides sizable sums of flexible, multi-year money to help nonprofits pursue plans to adapt how they do business and develop and deliver programming. A critical element that typically distinguishes change capital from ordinary program grants is that the funds are to be used in ways likely to generate reliable, recurring future revenue to support the organization after the proposed change has taken place.

NFF and the Doris Duke Charitable Foundation expanded their definition of change capital in response to CDF’s proposal and now espouse the importance of change capital for organizations seeking to exit gracefully. Worthy of note, the investment in dance capsules made by the Legacy Plan has established a means for the Merce Cunningham Trust to generate licensing revenue in the future, thus staying close to the definition of change capital.

NFF’s support, which was pledged at the start of the Legacy Plan, was effectively unrestricted and therefore provided the organization maximum flexibility to put the money to the best use in achieving its plan. While it had some specific restrictions, the \$1 million committed early by The Andrew W. Mellon Foundation had some flexibility and therefore had qualities similar to NFF’s change capital.

In early 2009, when CDF’s cash crisis was crippling ordinary operations—and threatening to undermine the execution of the Legacy Plan—CDF negotiated with NFF to make an early disbursement of \$400,000 of the \$1.075 million Leading for the Future investment so that financial hurdles would not disrupt the Legacy planning. CDF’s experience, among others in the initiative, contributed to NFF’s decision to articulate an additional term—recovery capital—to describe funds some organizations may need to put themselves on sound financial footing before they can use change capital effectively.

<sup>6</sup> \$400,000 of these dollars was released in 2009 as “recovery capital” – see sidebar.

<sup>7</sup> Notably, the Trust has used some of those funds to support post-closure expenses of CDF.





The final *Hudson Valley Event* (2009) in the Imi Knoebel gallery at DIA:Beacon.  
Photo: ©2009 Stephanie Berger

### Acknowledgements

The law firm of Cleary Gottlieb Steen & Hamilton LLP provided CDF with legal services on a pro bono basis. Partner Allan G. Sperling played a lead role in orchestrating and managing CDF’s planned closure. A number of his colleagues assisted, including Elana Bronson, Antonia Carew-Watts, Daniel Ilan, Heidi Ilgenfritz, Arthur Kohn, Ruth Plave, and Olga Tseykin.

We are deeply appreciative of the help provided by numerous people in the preparation of this report. Among those deserving special mention are Tambra Dillon and Allan G. Sperling for guiding the report to fruition; Bonnie Brooks, contributing writer and editor, who provided extensive material and insights after conducting research, numerous interviews and traveling with the dance company on the world tour as the Legacy Fellow; Elizabeth Feidelson and Gary Champi, who provided editorial assistance; Matthew Lanza for copyediting the manuscript; and Rafael Weil of WeilCo. for designing the case study.

Cunningham Dance Foundation, Inc.