The Netherlands.
Answers to the Questionnaire of the 1st Study Commission 2018.

1) Examples of unfair criticism by the politicians and (social) media are the following.

Casus I.
In april this year a young girl, student, on her bike going home early in the evening, was brutally tortured, raped and murdered. Her body was buried in het woods and found ten days later.

The accused, who confessed, is a psychiatric patient who earlier was convicted to eleven years of prison for het rape of two minor aged girls. A criminal act he told to be proud of. He was in the last phase of his imprisonment, that was actually executed in a psychiatric clinic.
He made this new victim while being free, as a consequence of given permission to leave the clinic for a limited period of time.

The Dutch society was extrem eley shocked and very very angry. According to the public opinion the professionals (and the system) had failed. The clinic was wrong to let him go. But most wrong was the presiding judge in the case of the two raped girls. This judge should have decided to put the man lifelong in a forensic psychiatric clinic. In other words he should have made a hospital order (that indeed can last life long; it depends of the progress in the treatment). He now got only eleven years. Whereas the judge in first instance gave him max possible: sixteen years.

For your information:
- during the case of the two girls, many years ago, the man had no criminal record, he was very young and no evidence was given of any psychiatric disease. However, it would not have been - fully - impossible to have given said hospital order;
- This criticized presiding judge had earlier expressed in the literature as his opinion that judges should less decide for this hospital order;

Reactions:
- The presiding judge and even his children receive mails also of a threatening ones.
- In het social media many opinions en criticisms are are expressed, also unfair ones and also personly against said judge.
- The father of the victim in a open letter in a serious national newspaper, has requested the presiding judge to step down. In an official response this has been refused.
- The president of the court has given a reaction on this letter of het father. He has announced that he will invite the father to meet and talk. This is very rarely if never doen in Holland by judges.
- The former president of het Supreme Court has written a long article in the most important national newspaper explaining certain aspects,
Casus II.
Our most famous right wing populist politician, member of the parliament, mr Wilders, is prosecuted and convicted (he must pay a fine) for discrimination. His case is now in appeal. During the first session he has challenged the three judges. And was was succesful. The judges put the case down.

Reactions:
The presiding judge of he chamber that has been challenged, has received many hate mails also on her account of the university where she is a lector.

NB
Mr Wilders is very active in criticizing the judiciary and judges, often in a irrational or unfair way. His basic political point of view is that judges are worthless, not capable and unreliable.

Casus III.
One of our very well known criminal cases from years ago, is the murder by a environmental activist of a prominent and popular politician.

The murderer became also well known in Holland, at least we know his name.
He was condemned to many years of imprisonment, but is free now, be it under certain conditions.
He has more than once challenged these conditions and was succesful.
Many people were not happy with his successes.
One of he conditions is a reporting duty at the probation service.
His last request was to be freed from this duty, because he wants to emigrate to the US.
He again got what he asked for.

Reactions:
Several politicians were (very) critical about these decisions. As many other citizens were.

2)
It is difficult to measure the effects on independency of judges, the separation of powers and public confidence.

Although the social media could create a different impression, public confidence of the Dutch society in the judiciary still is fairly good, according to official reports.

But the judiciary an judges are more than in former days well aware of the vulnerability of their position and the possible effects of their opinions (if any, expressed in public), their decisions and their attitude.
On google, as we know, everything can be found about an individual judge.
We must admit that in exceptional, special cases, the chamber deliberately will be formed out of judges that are as ‘clean’ as possible. To avoid negative effects, f.i. the challenging of the chamber in court, or discussions in het media.
We also must admit that we tend to measure our words.
Positive is that we put much effort in making the reasoning in our written decisions better or easier to understand. By using other words and by explaining more.

3) Steps to deal with the criticism are not easy to take. Normally we do not act. Under question 1 casus I, I gave an example of an exception.

We do not approach in concrete cases the politicians or journalists and do not ask them to take their responsibility in accordance with the trias politica or the standards of journalism.

We do organise symposia and discussions about this (and other) topics. The courts take initiatives, the Council of the Judiciary, the school for magistrates, the Supreme Court, also universities. They also cooperate.

On 3 July 2018 the Trias Politica Congres was held, organised by the Supreme Court, The Highest Administrative Court and the Council of the Judiciary. Her the representatives of the three powers meet and discuss, all to a better mutual understanding.

Prominent judges, mostly after their retirement, may publish open letters or articles in the newspapers. Of course also in the professional journals one can find opinions of professors, judges and students.

Several judges are active on Twitter, like our rather famous Judge Joyce. She and others succeed in giving to the point information, in clarifying and explaining lots of small and big topics out of the world of the judiciary, topics that are current in the media. They are serious but their tone is light and humorous.

4) You ask what is regarded as the boundary between legitimate and unfair criticism.

We live in a free and open democracy. Freedom of speech is important. Besides, authorities and people having formal power, should be strong and wise enough to endure criticism that is unfair or seen or felt as unfair. When the boundary is trespassed is subjective. This means that much can be said. Also unfair criticism.

If the boundary between legitimate and unfair criticism could be defined. If we succeed in defining it, to what goal would that be, in what sense will it help us?

Further, if the facts are put wrong and the conclusions are false, when with other words the criticism could be unfair, we still are very much restricted in giving a response. We speak only through our decisions and we have to obey the secret of the counsel chambers.

When the criticism is aggressive or threatening as to individual judges, when the criticism comes down to a criminal offense, we may not sit still and report to the police.
5) About approaches to improve the accuracy of reporting of court decisions and fair treatment of judges and the justice system.

Realise a better understanding of our work, be a less closed and impermeable world of unknown professionals and act, write and speak more transparent and simple, will contribute. We hope.

We further work with so called media judges, they are our spokesmen to the media about certain cases and the decisions taken in these cases. Never the judge himself will speak to the media about his own case. The media judges get media training.

Also judges sometimes get a mediatraining to help them in their ‘performance’ in the court, in case of television recording or mainstreaming.

We cooperate with reality television series about the daily work of judges and courts.

We cooperated in a series of depth interviews on television, where several individual judges were confronted in a personal way, with moral questions and dilemma’s concerning their work and responsibility. The program was called: A look into the soul.

6) Benefit of the approaches meant in question 5, is a better legitimation and understanding of the judiciary. Or even more simple, some knowledge of the juridiciary

The risk can be that we become (too) vulnerable or give rise to new and even more criticism.

7.a) Suggestions for improving accuracy of reporting of court decisions

I.
Make your court decisions better to understand, by using clear and easy language.

We have developed several projects that all aim at stimulating a better wording in written decisions. You are invited to copy them

- De Klare Taal Bokaal, meaning: The Clear Language Cup
  Every year one written judgment, the best in clear writing, is winning this Cup. The cup is handed out by the president of het Supreme Court, during a special ceremony;

- Project in Amsterdam with the name Wat Ik Eigenlijk Bedoel (WIEB), meaning: What I Actually Mean (WIAM);

- Judges follow courses in clear writing
- We know the concept ‘Agendasetting’, meaning that we work on awareness as to the need and importance of clear writing, we try to get it high on the individual agenda of the judges;

- In some courts the judge first will read aloud a judgment to another colleague, before signing it;

And further:

- Make het press release yourself.
  Keep it short and simple.

- Write an oral version of the judgement, one that is much shorter and easy to understand for the public attending the court.

7.b) Suggestions for the fair treatment of judges and the justice system:

By politicians:
not so many suggestions to give. We are separated in a formal sense, the politicians have their own position and responsibility, we ours.

However, it might be good to meet some of them, in general, in professional conferences and study and discussion meetings. Unknown is unloved.
Also it can sometimes be necessary to raise our voice in the media, if a politician is not respecting the separation of powers, but without entering in a debate about the content of his opinion. Explaining the facts cannot harm.

By mainstream media:
be generous as to their requests for information, facilitate their work.

By the social media:
use these media yourself in a constraint and sensible way. Look at the chances these media offer. NB we make profound analyses of the social media in important cases. With the aim to to get them learn and understand, to improve the use of these media by us.

Finally, for all three, politicians, mainstream and social media:
- good and permanent education for politicians, journalists and media active citizens,
- regularly open house in the courts for them and everyone.

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The Hague, 6 juli 2018.